

CHAPTER 6

INMATE ACCESS TO COURTS

Authority

N.J.S.A. 30:1B-6, 30:1B-10 and *Lewis v. Casey*, 116 S.Ct. 2174 (1996).

Source and Effective Date

R.1997 d.528, effective December 15, 1997.
See: 29 N.J.R. 4238(a), 29 N.J.R. 5302(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 6, Inmate Access to Courts, expires on June 13, 2003. See: 34 N.J.R. 1079(a).

Chapter Historical Note

Chapter 6, Inmate Access to Courts, was adopted as R.1987 d.444, effective November 2, 1987. See: 19 N.J.R. 914(a), 19 N.J.R. 2057(a).

Pursuant to Executive Order No. 66(1978), Chapter 6 was readopted as R.1992 d.470, effective October 27, 1992. See: 24 N.J.R. 2799(a), 24 N.J.R. 4390(b). Pursuant to Executive Order No. 66(1978), Chapter 6, Inmate Access to Courts, expired on October 27, 1997.

Chapter 6, Inmate Access to Courts, was adopted as R.1997 d.528, effective December 15, 1997. See: Source and Effective Date.

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SUBCHAPTER 1. INTRODUCTION

10A:6-1.1 Purpose

(a) The purpose of this chapter is to:

1. Establish policies under which inmates shall be provided with access to both State and Federal courts through the use of inmate law libraries and trained inmate paralegals; and
2. Establish procedures whereby the records of correctional facilities can be altered to reflect an inmate's new legal name.

10A:6-1.2 Scope

Unless otherwise stated, this chapter shall be applicable to State correctional facilities under the jurisdiction of the Department of Corrections.

Repeal and New Rule R.1996 d.163, effective March 18, 1996.
See: 28 N.J.R. 25(a), 28 N.J.R. 1543(a).

Former section, "Scope", repealed.

Amended by R.1997 d.528, effective December 15, 1997.
See: 29 N.J.R. 4238(a), 29 N.J.R. 5302(a).

10A:6-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Inmate law library" means a room within a correctional facility where legal reference materials are kept.

"Inmate paralegal" means an inmate who has been approved by the Institutional Classification Committee (I.C.C.) to render legal assistance to other inmates.

"Legal Services Coordinator" means a Department of Corrections Central Office staff person who coordinates the provision of inmate legal services by maintaining adequate legal materials in inmate law libraries and training inmate paralegals.

"Notary service" means service provided by a notary public authorized by law to certify or attest documents, take affidavits, administer oaths, and perform other services ordinarily performed by a notary public.

Amended by R.1992 d.60, effective February 3, 1992.
See: 23 N.J.R. 3268(a), 24 N.J.R. 467(a).

Revised definitions "legal material" and "notary service".
Amended by R.1992 d.470, effective December 7, 1992.
See: 24 N.J.R. 2799(a), 24 N.J.R. 4390(b).

Revised definition "Legal Services Coordinator."
Amended by R.1997 d.528, effective December 15, 1997.
See: 29 N.J.R. 4238(a), 29 N.J.R. 5302(a).

In "Legal material", deleted the second sentence, deleted paragraph "2. Pleadings", and recodified paragraphs 3. through 11. as 2. through 10.

Amended by R.1998 d.364, effective July 20, 1998.

See: 30 N.J.R. 1367(b), 30 N.J.R. 2618(b).
Deleted "Legal material" definition.

SUBCHAPTER 2. INMATE LEGAL SERVICES

10A:6-2.1 Inmate access to courts

Inmates have a constitutional right of access to the courts. Prison authorities shall assist inmates in the preparation and filing of meaningful legal papers by providing inmates with adequate law libraries or adequate assistance from persons trained in the law.

10A:6-2.2 Inmate legal services

(a) Inmate legal services as established in this subchapter which permit access to the courts shall include the following:

1. Establishment and use of an inmate law library or access to legal reference materials;
2. Photocopying services;
3. Opportunity to make legal telephone calls;
4. Provision of supplies, such as pens and paper, when needed;
5. Use of typewriters to the extent that they are available and/or operable;
6. Notary service;
7. Assistance of inmate paralegals; and
8. Payment of postage for indigent inmates.

Petition for Rulemaking.
See: 26 N.J.R. 505(a), 26 N.J.R. 861(c), 26 N.J.R. 1400(a).
Amended by R.1994 d.410, effective August 1, 1994.
See: 26 N.J.R. 2188(a), 26 N.J.R. 3178(a).
Amended by R.1997 d.528, effective December 15, 1997.
See: 29 N.J.R. 4238(a), 29 N.J.R. 5302(a).
Rewrote (a)2.

10A:6-2.3 Availability of legal services

(a) Inmate legal services are available to all inmates.

(b) Based on the availability of space, supervisory staff and the security needs of the correctional facility, the Superintendent or designee shall determine those inmates who may have direct personal access to legal reference materials and related services.

(c) Inmates who, in the discretion of the Superintendent or designee, may not have direct personal access to legal reference materials and related services shall receive legal reference materials and related services from assigned inmate paralegals.

Amended by R.1997 d.528, effective December 15, 1997.
See: 29 N.J.R. 4238(a), 29 N.J.R. 5302(a).

10A:6-2.4 Inmate law library

(a) Each correctional facility Superintendent or designee shall be responsible for establishing and maintaining an inmate law library and for developing internal management procedures for library use and supervision. The procedures shall specify:

1. Law library hours;
2. Number of inmates who may use the library at one time;
3. Persons responsible for the supervision of inmates;
4. Limitation(s) on removal of legal reference materials;
5. Provision of supplies such as pens and paper;
6. Typewriter use; and
7. Any additional rules deemed necessary by the Superintendent or designee.

(b) Consideration shall be given to the following factors regarding the use of the inmate law library:

1. Space and staff limitations;
2. Availability of supplies;
3. The availability and operability of typewriters;
4. The secure and orderly operation of the correctional facility; and
5. The verified need of certain inmates to meet time requirements for filing legal documents.

(c) The Legal Services Coordinator, Department of Corrections is responsible for initial purchases of legal reference materials.

(d) The initial purchase of legal reference material shall be consistent with law and correctional facility needs.

(e) The maintenance and updating of the inmate law library is not optional and is the responsibility of the correctional facility.

(f) Maintenance of the inmate law library includes:

1. Annual update costs; and
2. Replacement of lost or damaged volumes.

(g) As part of the annual budget request, the Superintendent or designee shall include a specific request (line item) for budgeted funds to maintain the inmate law library. In the event the specified budget request is reduced or eliminated, the correctional facility shall assume the cost.

(h) Information concerning costs and sources of legal materials may be obtained from the Legal Services Coordinator. All purchases of reference materials shall be cleared through the Legal Services Coordinator's office.

Amended by R.1992 d.470, effective December 7, 1992.
See: 24 N.J.R. 2799(a), 24 N.J.R. 4390(b).

Revised (c).

Amended by R.1997 d.528, effective December 15, 1997.
See: 29 N.J.R. 4238(a), 29 N.J.R. 5302(a).

Inserted new (a)5; recodified existing (a)5 and (a)6 as (a)6 and (a)7; inserted new (b)3; and recodified existing (b)3 and (b)4 as (b)4 and (b)5.

10A:6-2.5 Legal photocopying services; general provisions

(a) The Department of Corrections shall provide photocopies of legal material, as that term is defined in N.J.A.C. 10A:6-1.3 to inmates at the rate of \$.10 per page in accordance with the guidelines and limitations set forth in this subchapter.

(b) Each correctional facility shall establish written procedures by which inmates are permitted to have legal material photocopied.

(c) At a minimum, inmates may submit legal material to be photocopied to a staff member designated by the Supervisor of Education, or an inmate paralegal under the supervision of a designated staff member, during the hours prescribed by the correctional facility. The original and photocopies of the legal material shall be returned to the inmate within four days of submission unless return of the legal material is prevented by exceptional circumstances. If the fourth day falls on a weekend or holiday, the legal material shall be returned on the weekday following the weekend or holiday.

Amended by R.1992 d.60, effective February 3, 1992.
See: 23 N.J.R. 3268(a), 24 N.J.R. 467(a).

Revised text.

Amended by R.1996 d.163, effective March 18, 1996.
See: 28 N.J.R. 25(a), 28 N.J.R. 1543(a).

Imposed rate of \$.10 per page.

Amended by R.1997 d.528, effective December 15, 1997.
See: 29 N.J.R. 4238(a), 29 N.J.R. 5302(a).

Case Notes

Prison regulations entitled inmate to free copies of his medical file.
DeMarco v. Ginn, D.N.J.1990, 137 F.R.D. 214.

10A:6-2.6 Legal photocopying services for indigent inmates

(a) The Department of Corrections shall provide photocopies of legal material as defined in N.J.A.C. 10A:6-1.3 at no charge to the indigent inmate as defined in N.J.A.C. 10A:1-2.2, in accordance with the guidelines and limitations in this subchapter.

(b) Only legal material which must be photocopied for a legitimate purpose, related to pending litigation attacking an indigent inmate's sentence, directly or collaterally or challenging the conditions of confinement such as civil rights actions and/or writs of habeas corpus, will be photocopied for indigent inmates at the expense of the Department of Corrections. Such legal materials may include supporting documents, such as relevant prior correspondence and copies of receipts, which are to be attached to court documents. The legal material submitted for photocopying may be reviewed by the Supervisor of Education, or designee, in order to determine whether the legal material:

1. Falls within the definition of legal material provided in N.J.A.C. 10A:6-1.3; and
2. Must be photocopied for a legitimate purpose related to pending litigation; or
3. Should be duplicated by typing instead of photocopying, as provided by (d) below.

(c) The Supervisor of Education, or his or her designee, has complete discretion in determining whether the criteria enumerated in (b) above are fulfilled. Photocopies will be limited in quantity to the number required by the court plus one photocopy for the indigent inmate.

(d) If, in the discretion of the Supervisor of Education or his or her designee, the legal material which the indigent inmate seeks to have photocopied should instead be duplicated by typing, the inmate shall be required to type the duplicates and the correctional facility shall not provide photocopies.

(e) Exceptional circumstances may dictate that material other than legal material would need to be photocopied. The photocopying of such material is left to the discretion of the Supervisor of Education or his or her designee.

New Rule, R.1996 d.163, effective March 18, 1996.
See: 28 N.J.R. 25(a), 28 N.J.R. 1543(a).

Amended by R.1997 d.528, effective December 15, 1997.
See: 29 N.J.R. 4238(a), 29 N.J.R. 5302(a).

In (b), added clause limiting purposes for which photocopying for inmates will be done at the expense of the Department.

10A:6-2.7 Legal photocopying services for nonindigent inmates

(a) The Department of Corrections shall provide photocopies of legal material to nonindigent inmates in accordance with the guidelines and limitations established in this subchapter.

(b) If a nonindigent inmate has funds in his or her account, the nonindigent inmate shall be charged for the cost of all photocopying of legal material as established at N.J.A.C. 10A:6-2.5(a).

(c) If the nonindigent inmate has temporarily overdrawn his or her account or has a balance in the account, but the balance is not sufficient to pay the cost of all photocopying of legal material, the correctional facility shall:

1. Remove from the nonindigent inmate's account the amount available in accordance with (d)1 below;
2. Charge the nonindigent inmate's account the amount owed the correctional facility; and
3. Advise the nonindigent inmate in writing of the amount owed and the reason therefor.

(d) Until the correctional facility has been reimbursed in full for the photocopying of legal material, the Business Manager or designee shall:

1. Remove from the nonindigent inmate's account any amount of funds in excess of the one time monthly amount of \$15.00 after deductions to pay court ordered penalty assessments, restitutions, fines or other revenue obligations;
2. Note in the nonindigent inmate's account each removal of funds from the inmate's account;
3. Provide to the nonindigent inmate a monthly account statement to include each removal of funds for photocopying legal materials from the nonindigent inmate's account; and
4. Reimburse to the correctional facility the funds collected from inmates for the cost of photocopying legal material. Reimbursements shall be made in accordance with applicable State and Departmental internal management policies.

(e) In the event a nonindigent inmate is transferred to another correctional facility within the Department of Corrections, the Business Manager or designee of the sending correctional facility shall notify the Business Manager of the receiving correctional facility in writing of the remaining amount due the sending correctional facility for photocopying of legal materials. The notification shall also request that funds continue to be removed from the nonindigent inmate's account until reimbursement has been made in full. The receiving correctional facility shall handle the collected funds in accordance with (d)4 above and shall issue a check for the funds collected from the inmate and forward the check to the sending correctional facility.

(f) Whenever a nonindigent inmate's account exceeds a \$25.00 negative balance, the Superintendent or designee shall be notified.

(g) Photocopying costs are regarded as collectable, if a nonindigent inmate is paroled or released prior to making full reimbursement of funds owed for photocopying of legal materials.

(h) The Business Manager or designee shall notify in writing the Central Office Revenue Unit (CORU) of the remaining amount due the correctional facility. The CORU shall take whatever action possible to collect the photocopying funds due and forward same to the correctional facility.

New Rule, R.1996 d.163, effective March 18, 1996.

See: 28 N.J.R. 25(a), 28 N.J.R. 1543(a).

Amended by R.1997 d.528, effective December 15, 1997.

See: 29 N.J.R. 4238(a), 29 N.J.R. 5302(a).

In (d)3, provided for monthly accountings to the inmate of removal of funds for photocopying costs; deleted (d)4; and recodified existing (d)5 as (d)4.

10A:6-2.8 Legal telephone calls

(a) The Superintendent or designee shall establish written rules and regulations by which inmate paralegals and/or professional staff members may place telephone calls to the following individuals or agencies requesting assistance in legal research or preparation of legal documents:

1. The Office of the Public Defender;
2. Regional Legal Services;
3. Court Clerks;
4. Attorneys; and
5. The Office of the Ombudsman.

(b) Legal telephone calls shall not be monitored, except to determine the identity of the party called.

Amended by R.1992 d.470, effective December 7, 1992.

See: 24 N.J.R. 2799(a), 24 N.J.R. 4390(b).

Added new (a)7; redesignated existing (a)7 as (a)8.

Recodified from 10A:6-2.6 and amended by R.1996 d.163, effective March 18, 1996.

See: 28 N.J.R. 25(a), 28 N.J.R. 1543(a).

In (a) eliminated the Office of the Public Advocate and the Office of Hispanic Services.

Amended by R.1997 d.528, effective December 15, 1997.

See: 29 N.J.R. 4238(a), 29 N.J.R. 5302(a).

Deleted (a)6.

10A:6-2.9 Legal services

(a) Legal supplies such as paper, carbon paper, envelopes and pens shall be provided as needed to all inmates who request them for legal purposes. An inmate may be required to justify the need for unusually large amounts of legal supplies.

(b) Frequently used legal forms and applications shall be made available through the inmate law library.

(c) Typewriters to the extent that they are available and/or operable may be provided for inmate use in the inmate law library area and in Close Custody Units.

Petition for Rulemaking.

See: 26 N.J.R. 505(a), 26 N.J.R. 861(c), 26 N.J.R. 1400(a).
Amended by R.1994 d.410, effective August 1, 1994.
See: 26 N.J.R. 2188(a), 26 N.J.R. 3178(a).
Recodified from 10A:6-2.7 by R.1996 d.163, effective March 18, 1996.
See: 28 N.J.R. 25(a), 28 N.J.R. 1543(a).

10A:6-2.10 Notary public service

(a) Each Superintendent is responsible for ensuring that inmates have reasonable access to notary public services.

(b) Inmates shall not be permitted to be made notary publics, to perform notary public services or possess notary public equipment such as a seal or stamp.

Recodified from 10A:6-2.8 by R.1996 d.163, effective March 18, 1996.
See: 28 N.J.R. 25(a), 28 N.J.R. 1543(a).
Amended by R.1997 d.528, effective December 15, 1997.
See: 29 N.J.R. 4238(a), 29 N.J.R. 5302(a).

In (b), added restrictions on performing notary services and possessing a notary seal or stamp.

10A:6-2.11 Inmate legal material

(a) Each inmate shall be permitted to retain personal legal material in his or her cell. This legal material shall be subject to contraband search only.

(b) The Superintendent may establish regulations which limit the accumulation of personal legal materials in an inmate's cell. Any limitation on the accumulation of personal legal materials should be based on the amount in relation to:

1. Security;
2. Sanitation;
3. Fire hazard considerations; and
4. Cell space available.

Recodified from 10A:6-2.9 by R.1996 d.163, effective March 18, 1996.
See: 28 N.J.R. 25(a), 28 N.J.R. 1543(a).

10A:6-2.12 Inmate paralegals

(a) The Superintendent or designee shall be responsible for establishing:

1. Criteria for considering inmates to be assigned as paralegals;
2. Duties and responsibilities of inmate paralegals; and
3. Hours which inmate paralegals will be on duty in the inmate law library and available in Close Custody Units.

(b) Inmates with the following job titles are considered paralegals:

1. Law library clerk;
2. Legal assistant; and
3. Legal paraprofessional.

(c) The Supervisor of Education shall interview and evaluate each candidate for a paralegal position. The Supervisor of Education shall submit his or her written assessment and recommendation to the Institutional Classification Committee (I.C.C.) for approval.

(d) Upon approval by the I.C.C., inmates with any of the titles in (b) above may render legal assistance to other inmates.

(e) No inmate paralegal shall solicit or accept any form of remuneration or gift from any inmate or anyone associated with the inmate such as a family member or friend for rendering legal assistance. Acceptance of remuneration in any form will result in disciplinary action and/or referral to the I.C.C. for reconsideration of program assignment.

Recodified from 10A:6-2.10 by R.1996 d.163, effective March 18, 1996.
See: 28 N.J.R. 25(a), 28 N.J.R. 1543(a).
Amended by R.1997 d.528, effective December 15, 1997.
See: 29 N.J.R. 4238(a), 29 N.J.R. 5302(a).

In (e), added restriction on gifts or remuneration received by inmate paralegals from anyone associated with another inmate for whom legal services were rendered.

10A:6-2.13 Inmate paralegal training

(a) The Legal Services Coordinator shall be responsible for training inmate paralegals.

(b) Inmate paralegals shall successfully complete an Introduction to Paralegal Functions course which includes training in:

1. Basic Legal Research including Locator Skills and Shepardizing;
2. How to Complete Legal Forms;
3. Basic Familiarity with Habeas Corpus Petitions;
4. Motions for New Trials;
5. Direct Appeals;
6. Civil Rights Actions;
7. Motions for Post-Conviction Relief;
8. Descriptions of the State and Federal Court Systems; and
9. Other actions pertaining to inmates' welfare.

(c) The course selections may be modified at the discretion of the Legal Service Coordinator.

(d) The Supervisor of Education and the Legal Services Coordinator may, at their discretion, determine that an inmate's experience, training and/or education in paralegal

functions will serve as a substitute to the Introduction to Paralegal Functions course.

(e) An inmate may participate in the Legal Services Program on an internship basis with the provision that he or she completes the Introduction to Paralegal Functions course at its next offering date.

(f) Inmate paralegals, shall at all times, be subject to all search and security regulations. All material which the paralegal carries into Close Custody Units shall be subject to search for contraband. Legal material shall not be read nor seized unless contraband is found.

Amended by R.1992 d.470, effective December 7, 1992.

See: 24 N.J.R. 2799(a), 24 N.J.R. 4390(b).

Revised (a).

Recodified from 10A:6-2.11 by R.1996 d.163, effective March 18, 1996.
See: 28 N.J.R. 25(a), 28 N.J.R. 1543(a).

10A:6-2.14 General provisions

(a) Nothing contained in this subchapter shall preclude an inmate from obtaining legal assistance from any other inmate, except that only inmates designated as paralegals will be granted access to Close Custody Units.

(b) Nothing contained in this subchapter precludes any inmate from obtaining legal assistance from an attorney.

Recodified from 10A:6-2.12 by R.1996 d.163, effective March 18, 1996.
See: 28 N.J.R. 25(a), 28 N.J.R. 1543(a).

Amended by R.1997 d.528, effective December 15, 1997.

See: 29 N.J.R. 4238(a), 29 N.J.R. 5302(a).

10A:6-2.15 Written policy and procedures

(a) The Superintendent or designee of each correctional facility shall ensure that written policies and procedures pursuant to this subchapter are established. These written policies and procedures shall be known as the Institutional Legal Access Plan and shall be incorporated into the next revision of the correctional facility Inmate Handbook. A copy of the written policies and procedures shall also be posted in the inmate law library.

(b) New and revised policies and procedures to the Institutional Legal Access Plan shall be posted in each housing area and in the Inmate Law Library. These revisions shall be incorporated into the next publication of the Inmate Handbook.

Recodified from 10A:6-2.13 by R.1996 d.163, effective March 18, 1996.
See: 28 N.J.R. 25(a), 28 N.J.R. 1543(a).

Amended by R.1997 d.528, effective December 15, 1997.

See: 29 N.J.R. 4238(a), 29 N.J.R. 5302(a).

10A:6-2.16 Department review

Written correctional facility policies and procedures regarding Inmate Legal Services and any new policies and procedures related to this subject shall be submitted to the appropriate Assistant Commissioner for review prior to implementation.

Amended by R.1992 d.470, effective December 7, 1992.

See: 24 N.J.R. 2799(a), 24 N.J.R. 4390(b).

Revised text.

Recodified from 10A:6-2.14 and amended by R.1996 d.163, effective March 18, 1996.

See: 28 N.J.R. 25(a), 28 N.J.R. 1543(a).

Amended by R.1997 d.528, effective December 15, 1997.

See: 29 N.J.R. 4238(a), 29 N.J.R. 5302(a).

SUBCHAPTER 3. RECORDING LEGAL CHANGE OF INMATE'S NAME

10A:6-3.1 Inmate responsibilities

(a) In order to have Department of Corrections' records altered to reflect a new legal name, the inmate must:

1. Legally change his or her name in accordance with N.J.S.A. 2A:52-1 et seq. and Rules of Court 4:72-1 et seq.;
2. Submit an authentic copy of the court order to the Superintendent's office of the correctional facility to which he or she is assigned;
3. Submit verification, to the Superintendent's office of the correctional facility, which documents that a copy of the judgment was published in a newspaper of general circulation in the inmate's county of residence within 20 days of the court judgment. The inmate's county of residence shall be considered the county of his or her last known residence as is reflected in the Department of Corrections' records, unless otherwise specified by a judge's order; and
4. Submit verification, to the Superintendent's office of the correctional facility, which documents that a certified copy of the judgment was filed with the Secretary of State within 45 days of the court judgment.

10A:6-3.2 Amendment of correctional facility records

(a) The Superintendent shall order that the correctional facility records be amended to reflect the inmate's new legal name after the requirements of N.J.A.C. 10A:6-3.1(a) have been satisfactorily fulfilled.

(b) Each department, within the correctional facility, which maintains a record of the inmate shall be notified in writing of the inmate's new legal name. The departments shall be instructed to show the original legal name as an alias.

(c) The Superintendent shall also notify the following of the inmate's name change:

1. The Offender Records Unit, Central Office, Department of Corrections;

2. The Correctional Information and Classification Services (C.I.C.S.) Data Base, Garden State Reception and Youth Correctional Facility; and

3. In the case of male inmates, the Reception Unit at the Garden State Reception and Youth Correctional Facility.

Administrative correction, effective January 27, 1989.

See: 21 N.J.R. 558(a).

Institutional name change.

Amended by R.1989 d.139, effective March 20, 1989.

See: 21 N.J.R. 11(a), 21 N.J.R. 766(b).

(c) Commissioner removed from list of those to be notified when an inmate changes his or her name.

Amended by R.1992 d.470, effective December 7, 1992.

See: 24 N.J.R. 2799(a), 24 N.J.R. 4390(b).

Revised heading; revised (c)1 and 2.

10A:6-3.3 "Common law" change of name

No correctional facility records shall be altered if an inmate decides to change his or her name through the "common law" practice, that is, on the inmate's own authority and without any legal court proceedings.

10A:6-3.4 Inmate handbook

The procedure whereby an inmate can legally change his or her name shall be incorporated into the Inmate Handbook.