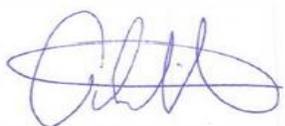


 <p>NEW YORK STATE Corrections and Community Supervision</p> <p>DIRECTIVE</p>	TITLE		NO. 4404
	Incarcerated Individual Legal Visits		DATE 09/18/2019
SUPERSEDES DIR. #4404; Dated 11/02/17	DISTRIBUTION A B	PAGES PAGE 1 OF 4	DATE LAST REVISED
REFERENCES (Include but are not limited to) 7NYCRR Part 200 & 201; Public Health Law §206(15); Judiciary Law §484; ACA Standards 4-4274, 4-4275, 4-4500, 4-JCF-3A-01, 4-JCF-3A-19; Directive #4421, #4900, #4910; National PREA Standards; CPLR 4510	APPROVING AUTHORITY 		

- I. **PURPOSE:** To provide a uniform manner in which incarcerated individual legal visits are to be conducted throughout the Department in conformance with statutory and case law regarding incarcerated individual access to the courts.

This directive contains the guidelines which govern legal visits within a facility or institution under the control of the New York State Department of Corrections and Community Supervision.

II. DEFINITIONS

- A. **Legal Visit:** A visit between an incarcerated individual and an Attorney, approved legal representative, or Attorney's authorized representative for the purpose of discussing confidential legal matters, or a visit between an incarcerated individual who is a foreign national and the authorized diplomatic representative of their country of citizenship, or a visit between an incarcerated individual and a representative, including an employee or registered volunteer, of a rape crisis program.
- B. **Attorney:** One who is duly admitted to the practice of law in this State or another jurisdiction; he or she need not be formally retained or be the Attorney-of-record for the incarcerated individual.
- C. **Approved Legal Representative:** Second or third-year law school students and law school graduates approved by order of the appropriate Appellate Division (see Judiciary Law §484).
- D. **Attorney's Authorized Representative:** Paralegals, law students, and investigators, or any other individuals identifiably employed by or under the supervision of, and responsible to an Attorney.
- E. **Rape Crisis Program:** Any local, State, or National organization authorized to provide rape crisis services, victim advocacy services, and emotional support services, including, but not limited to, organizations approved to provide such services in New York State by the Department of Health pursuant to Public Health Law §206(15).
- F. **Diplomatic Representative:** An agent or representative of a foreign nation who, as confirmed by the U.S. Department of State and/or the foreign nation's embassy, has the authority to represent, supervise and/or transact the affairs of the foreign nation.

III. POLICY

- A. The right of meaningful access to the courts, and the right to counsel are rights an incarcerated individual clearly retains upon incarceration. Accordingly, an incarcerated individual retains the right to legal visits.

- B. A legal visit may be used solely for the purpose of discussing confidential legal matters.
- C. A legal visit by an Attorney's representative (e.g., an investigator, unaccompanied by an Attorney) will only be authorized if:
 - 1. The Attorney for whom the representative is employed certifies to the Department that such visit is necessary, in connection with his or her legal services, to the incarcerated individual being visited; and
 - 2. The legal services relate to a specific and unresolved matter.
- D. A facility or institution may not impose any further restrictions without the prior approval of the Counsel to the Department.
- E. The Department strongly supports access to rape crisis services, victim advocacy services, and emotional support services for incarcerated survivors of sexual victimization. As required under the National PREA Standards 28 C.F.R. §§115.53, 253, and 353, each facility shall enable reasonable communication between incarcerated individuals and outside victim advocates for emotional support services related to sexual abuse in as confidential a manner as possible. Further, communications with a Rape Crisis Counselor are confidential under CPLR 4510. Accordingly, a certified Rape Crisis Counselor employed by or registered to volunteer with a Rape Crisis Program is entitled to a legal visit with an incarcerated individual for the purpose of discussing confidential matters.

IV. PROCEDURE

- A. Attorneys and their representatives are expected to give at least 24 hours notice, to a facility, indicating the incarcerated individual(s) requested to be seen. This notice may be in writing or by telephone. The 24 hours notice requirement may be waived for good cause. However, all requests to see an incarcerated individual, including those made on the day of the visit, shall be complied with in the same manner as a request for a non-legal visit.
- B. The Superintendent may deny legal visits of any Attorney or representative for good cause if such action is necessary to maintain the safety, security, and/or good order of the facility. However, prior to each such denial, the opinion of Counsel's Office must be received.
- C. Rape Crisis Counselors are expected to schedule legal visits upon at least 24 hours notice through the facility's Assistant Deputy Superintendent PREA Compliance Manager or the Superintendent's designee. The notice may be in writing (including via email) or by telephone. A legal visit may be scheduled upon less than 24 hours notice for good cause.
- D. Legal visits are to be conducted Monday through Friday except holidays, during the normal facility visiting hours. A denial of a legal visit on a Saturday during normal Saturday visiting hours must be approved by the Watch Commander. Attorneys and their representatives should be advised of the times when incarcerated individuals are eating meals and/or count times and should be discouraged from arriving at these times. Consideration for after-hour, holiday, or Sunday visits, based on special circumstances, shall be given on a case-by-case basis.

- E. In general, all legal visits shall be contact visits. The Superintendent must obtain the opinion of Counsel's Office prior to suspending contact visit privileges for any incarcerated individual and Attorney or approved legal representative.
- Regular procedures apply to the suspension of an incarcerated individual's contact visit privileges with Attorney's authorized representatives.
- F. If an Attorney or representative requests to see a large number of incarcerated individuals, efforts shall be made to provide the greatest number of visits possible. Subject to considerations of safety, security, and good order of the facility and the legal necessity for such a visit, a limited number of incarcerated individuals may be allowed to meet simultaneously with an Attorney, approved legal representative, or authorized representative.
- G. Legal papers may be exchanged during a legal visit and may be left with an incarcerated individual by an Attorney or representative subject to inspection for contraband. Such inspection shall be done in the presence of the Attorney and the incarcerated individual. Care must be taken not to read the content of the papers during the inspection.

In the event that the legal materials to be exchanged are voluminous, the facility may either:

1. Conduct an inspection of the legal papers in the package room at the conclusion of the visit, provided that the removal of the papers from the visiting room and inspection in the package room can be done in the presence of the incarcerated individual, unless both the incarcerated individual and the Attorney or representative consent to such inspection out of the presence of the incarcerated individual; or
2. Have a supply of blank envelopes available in the visiting room into which the legal papers can be placed and sealed for subsequent reopening and inspection in the presence of the incarcerated individual, consistent with the procedures for handling legal mail set forth in Directive #4421, "Privileged Correspondence."

The intention to leave legal papers with the incarcerated individual should be communicated by the Attorney or representative to the visiting room Correction Officer. These procedures shall also be followed if an incarcerated individual wishes to leave legal papers with an Attorney or representative.

- H. In emergency situations, or when a substantial threat exists to the safety, security, or operations of the facility, or to the visiting Attorney or representative, legal visits may be suspended. This is to be done for the duration necessary to ensure the safety and security of the facility and of the visitor.
- I. Nothing in this directive is to be construed to countermand procedures as found in Departmental Directives #4900, "Security in Gate Areas/Secure Posts," and #4910, "Control of & Search for Contraband."
- J. An incarcerated individual has the right to attend and the right to refuse any legal visit. Any refusal must be in writing and signed by the incarcerated individual in duplicate; one copy to be given to the Attorney requesting the legal visit and the other copy to be placed in the incarcerated individual's file. When an incarcerated individual refuses a legal visit, and refuses to sign such a statement, the refusal shall be documented and witnessed by two Department employees. (See [Form 4404A](#), "Sample Letter".)

- K. The Superintendent shall designate an area for legal visits. Such area should ensure the confidentiality of all communications during the visit.