



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

APPLICABILITY  
**DEPARTMENT WIDE**

REVISION DATE  
4/1/15

PAGE NUMBER  
1 of 6

NUMBER  
**DOC 130.200**

**POLICY**

TITLE  
**LAWSUIT PROCESSING/LIABILITY PROTECTION**

**REVIEW/REVISION HISTORY:**

- Effective: 7/1/83 DOC 809.010
- Revised: 10/1/85
- Revised: 11/1/88 DOC 130.200
- Revised: 3/5/01
- Revised: 10/25/06
- Revised: 10/4/07
- Revised: 2/6/09
- Revised: 12/13/10
- Revised: 4/1/13
- Revised: 4/1/15

**SUMMARY OF REVISION/REVIEW:**


Policy title change  
 I.B.1. and V.A.2. & D. - Adjusted language for clarification  
 V.A.1. - Added clarifying language  
 V.A.1.e. & B. - Added that the Attorney General's Office may notify personnel to preserve documents related to litigation  
 Attachment 2 - Adjusted throughout to reflect current organizational structure

**APPROVED:**

Signature on file

\_\_\_\_\_  
**BERNARD WARNER**, Secretary  
 Department of Corrections

3/9/15  
 \_\_\_\_\_  
 Date Signed

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**REFERENCES:**


DOC 100.100 is hereby incorporated into this policy; [RCW 4.92.060](#); [RCW 4.92.070](#); [RCW 4.92.075](#); [ACA 4-4023](#); [ACA 4-4041](#); [Records Retention Schedule](#)

**POLICY:**


- I. [4-4023] The Attorney General's Office may represent an employee/volunteer, at state expense, when s/he is named as a defendant in a lawsuit related to his/her official duties and the request for defense is approved by the Attorney General's Office. Employees/volunteers whose request for representation is granted are required to assist in the defense of the lawsuit.
  - A. Failure to cooperate with the defense may result in the Attorney General's Office withdrawing as counsel, and the employee/volunteer will be responsible for the costs of his/her defense and any judgment rendered against him/her.
- II. Failure to respond timely to an initial legal pleading, such as a complaint, could result in a default judgment against the Department or the employee/volunteer.
- III. When an employee/volunteer has been represented by the Attorney General's Office and a judgment has been entered against him/her, the judgment will be satisfied by the state and will not become a lien upon any of his/her property pursuant to RCW 4.92.075. [4-4041]
- IV. Employees/volunteers are required to produce, through the Attorney General's Office, any and all documents and/or data in their possession pursuant to a lawful request for discovery. Employees/volunteers are required to preserve documents related to ongoing or anticipated litigation, which includes suspending the Records Retention Schedule, if necessary, to prevent the scheduled destruction of those specific documents. Preservation will continue until the conclusion of the litigation.

**DIRECTIVE:**

- I. Initial Notification of a Lawsuit
  - A. An employee/volunteer may be notified of a lawsuit by being personally given a copy of the Summons and Complaint or receiving any legal pleading initiating an action. Notification may be made by any means and may be made at the employee/volunteer's workplace or residence.
  - B. Once an employee/volunteer is notified of a lawsuit, s/he must immediately notify his/her chain of command and the Legal Liaison Officer.

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1. The employee/volunteer or the Legal Liaison Officer will ensure that a copy of the complaint or legal pleading is emailed to the [Corrections Division](#) and the [Torts Division](#) of the Attorney General's Office by the next business day after the employee/volunteer is notified of a lawsuit.
- C. Discussion and correspondence regarding lawsuits, including email, should be limited to those necessary to respond to the Attorney General's Office in compliance with this policy.
- II. Request for Individual Defense by the Attorney General
- A. An employee/volunteer requesting defense by the Attorney General's Office must submit AG 163 Request for Individual Defense by the Attorney General (Attachment 1) to the appropriate signing authority, along with the following documents, as outlined in Attachment 2:
    1. Memo of Involvement, and
    2. Copy of the Summons and Complaint or other legal pleadings.
  - B. By signing the request form, the employee/volunteer agrees to cooperate fully in the defense of the lawsuit.
  - C. The signing authority or the Legal Liaison Officer will forward the completed form and the supporting documents to the Attorney General's Office – Corrections Division, P.O. Box 40116, Olympia, WA 98504-0116.
  - D. The Attorney General's Office will only grant a defense to employees/volunteers who acted in good faith and within the scope of their employment/service while performing their duties.
  - E. When defense and indemnification by the state is offered by the Attorney General's Office and accepted by the employee/volunteer, the Department or the state, acting through the Attorney General's Office, will make all final decisions on legal strategy and case settlement.
- III. Memo of Involvement
- A. If an employee/volunteer is named as a defendant in the Summons and Complaint or other legal pleading, s/he must complete a Memo of Involvement.
    1. To ensure Attorney-Client Privilege, the Memo of Involvement will be addressed to the Attorney General's Office and include:
      - a. Factual statements and information concerning the employee/volunteer's involvement, if any, in each of the allegations contained

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in the complaint or legal pleading and whether they are true, partly true, or false.

- b. Identification of any documentation, paper or electronic, of the incident(s) alleged. All documents identified should be attached, if possible.
- c. Identities of any witnesses or other individuals involved in the allegations.
- d. Any other information the employee/volunteer deems necessary or helpful in formulating a response to the allegations.

2. The Memo of Involvement should not include:

- a. Speculation as to why the lawsuit was filed or why events occurred.
- b. Opinions or conclusions concerning any allegations.

B. Each page of the Memo of Involvement will be marked "ATTORNEY-CLIENT PRIVILEGED."


IV. Subsequent Notification

A. The employee/volunteer should forward any further pleadings received in the case to the appropriate Division of the Attorney General's Office or to the Assistant Attorney General assigned to the case, as well as the Legal Liaison Officer, within 2 business days.


V. Discovery

A. The employee/volunteer will preserve documents and other physical evidence related to litigation when s/he knows that litigation has been initiated or is anticipated. This includes documents and/or data stored on electronic media.

- 1. Electronic media includes, but is not limited to, email, web pages, word processing files, computer databases, cellphones/smartphones, servers, audio/video recordings, and voicemails. This duty to preserve documents extends to work-related documents and/or data stored on employees/volunteers' personally owned computers, cellphones/smartphones, and other electronic media.
- 2. Knowing that litigation has been initiated or is anticipated may include, but is not limited to:

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- a. Receiving a Summons and Complaint or other legal pleading by personal service, by U.S. Mail requesting a waiver of service, or by other means.
  - b. Being informed that a potential plaintiff/claimant has taken substantial steps toward filing a lawsuit or a tort claim.
  - c. Being informed that a tort claim has been filed.
  - d. Being involved in an administrative complaint process (i.e., Internal Discrimination Complaint, Equal Employment Opportunity Commission, Human Rights Commission, or Board of Industrial Insurance Appeals).
  - e. Being informed through the chain of command or the Attorney General's Office, in writing, to preserve documents related to litigation.
3. The employee/volunteer will preserve documents by segregating the paper documents and/or data stored in electronic media into a separate paper or electronic file marked "In Anticipation of Litigation." The documents will be preserved until the conclusion of the litigation.
  4. The employee/volunteer's duty to preserve documents, paper and electronic, also includes suspending the Records Retention Schedule, if necessary, to prevent the scheduled destruction of those specific documents.
  5. The employee/volunteer will preserve any and all physical evidence (e.g., use of force video) by turning it over to the Legal Liaison Officer.
- B. The appropriate Department personnel will be notified, in writing, through the chain of command or the Attorney General's Office to suspend the destruction of relevant documents per the Department's document retention policy in an effort to preserve documents related to litigation. The written notice will identify documents by subject matter. The employee/volunteer will segregate these documents from other non-related documents maintained in the ordinary course of business.
  - C. When an employee/volunteer transfers or leaves the Department while s/he or his/her unit is involved in ongoing litigation, the supervisor or manager will notify local Information Technology and the Legal Liaison Officer to prevent the destruction of related electronic data and documents.

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- D. When appropriate, the Chief Information Officer will be notified, in writing, to preserve documents and/or data stored in electronic media that is the subject of litigation or where litigation is anticipated. The Chief Information Officer will develop a formal procedure for preserving and segregating documents and/or data stored in electronic media related to initiated or anticipated litigation.
- E. Employees/volunteers who receive a request for discovery (i.e., interrogatories, requests for production of documents, or requests for admissions) will provide all responsive documents to the Assistant Attorney General assigned to the case for the purpose of responding accurately and timely to a request for discovery.
  - 1. When a request for discovery asks for electronic documents and/or data in its original electronic format, Information Technology will provide the electronic documents and/or data in its original electronic format, if possible. If the discovery request does not ask for documents in their original electronic format, documents may be produced in electronic or hard copy format.
- F. Failure to preserve and/or produce documents or other physical evidence in compliance with this policy may result in disciplinary action and subject the Department, the Assistant Attorney General handling the case, and/or the employee/volunteer to judicial sanctions.

**DEFINITIONS:**

Words/terms appearing in this policy may be defined in the glossary section of the Policy Manual.

**ATTACHMENTS:**

[AG 163 Request for Individual Defense by the Attorney General \(Attachment 1\)](#)  
[Signature Authority for Request for Individual Defense by the Attorney General \(Attachment 2\)](#)

**DOC FORMS:**

None