

Australian Capital Territory

Corrections Management (Investigator Interviews with Detainees) Policy 2019

Notifiable instrument NI2019-660

made under the

Corrections Management Act 2007, s14 (Corrections policies and operating procedures)

1 Name of instrument

This instrument is the *Corrections Management (Investigator Interviews with Detainees) Policy 2019*.

2 Commencement

This instrument commences on the day after its notification day.

3 Policy

I make this policy to facilitate the effective and efficient management of correctional services.

3 Revocation

This policy revokes the *Corrections Management (Police Interviews with Detainees) Policy 2019* [NI2019-176].



Jon Peach
Executive Director
ACT Corrective Services
11 October 2019

INVESTIGATOR INTERVIEWS WITH DETAINEES

POLICY NO. D8

ACT CORRECTIVE SERVICES



ACT
Government

Justice and Community Safety

Contents

1	PURPOSE	4
2	SCOPE.....	4
3	DEFINITIONS	4
4	PRINCIPLES	4
5	PRIOR TO AN INTERVIEW	5
6	RECORDING OF INTERVIEWS.....	6
7	DETAINEE LEAVE TO ASSIST AN INVESTIGATOR.....	6
8	RELATED DOCUMENTS.....	7

1 PURPOSE

This policy establishes instructions for the management of investigator access to detainees in the custody of ACTCS.

2 SCOPE

This policy applies to all correctional centres in the ACT.

3 DEFINITIONS

Investigator

A sworn member of the Australian Federal Police (AFP), a State or Territory police force, or investigative body authorised under legislation.

4 PRINCIPLES

- 4.1 The General Manager Custodial Operations will ensure that investigators are provided with access to detainees in a correctional centre in accordance with this policy and any current agreement between ACTCS and the investigative body.
- 4.2 Investigators may enter a correctional centre to:
 - a. conduct an interview with a detainee;
 - b. issue or serve judicial notices or documents on a detainee; or
 - c. obtain a court sanctioned or legislated forensic sample from a detainee.
- 4.3 A detainee has the right to:
 - a. decline participation in an interview or leave of absence at any time;
 - b. communicate with a legal representative; and
 - c. Aboriginal and Torres Strait Islander detainees have the right for an interview friend to be present during an interview.
- 4.4 It is the responsibility of the investigator to ensure a detainee is aware of their rights prior to the commencement of an interview.
- 4.5 The General Manager Custodial Operations will oversee locations for investigator interviews in a correctional centre.
- 4.6 The Executive Director may approve a detainee to be absent from a correctional centre to assist an investigator under section 7, where:
 - a. the purpose of the leave cannot be met at a correctional centre; and
 - b. appropriate risk assessment procedures are in place.

- 4.7 The General Manager Custodial Operations will ensure that a copy of any judicial notice or document served on a detainee under this policy is stored on the detainee's electronic record system and a relevant case note is recorded.
- 4.8 A custodial officer:
- a. must not listen to or record any communications between a detainee and their legal representative in accordance with section 51 of the Corrections Management Act 2007 (ACT); and
 - b. must not listen to or record any communications between a detainee and an investigator, unless the investigator has provided prior express agreement relating to the interview.

5 PRIOR TO AN INTERVIEW

- 5.1 Where a detainee indicates their refusal to participate in an interview, staff must inform the investigator of the detainee's refusal as soon as practicable and record the outcome on the detainee's electronic record system.
- 5.2 Prior to an interview, the Officer-in-Charge of the area is responsible for ensuring that (D8.F2: Investigator Interview Form):
- a. the detainee must be informed of their right to legal representation;
 - b. a telephone call must be facilitated if legal representation or other assistance is requested by the detainee; and
 - c. Aboriginal and Torres Strait Islander detainees must be informed of their right to be accompanied by an interview friend.
- 5.3 The following are not permitted to act as an interview friend for a detainee;
- a. any ACTCS employee; or
 - b. a detainee; or
 - c. a current offender.

Declining legal representation and other assistance

- 5.4 Detainees can decline to have a legal representative or interview friend present during an interview.
- 5.5 Staff must record each time a detainee declines under section 5.4, and provide a copy of the D8.F2: Investigator Interview Form to the investigator.
- 5.6 A detainee who has declined legal representation retains the right to contact a legal representative at any time during an interview.

6 RECORDING OF INTERVIEWS

- 6.1 An investigator must provide their own audio and/or video recording equipment in order to record an interview in a correctional centre, in accordance with the *Prohibited Things, Restricted, Excess and Non-Standard Items Operating Procedure*.
- 6.2 Any recording of an interview provided to a detainee, including a disc recording, will be seized by staff in accordance with the *Prohibited Things Declaration*, stored in the detainee's property and a *D9.F1: Seizure Receipt* provided to the detainee.
- 6.3 Detainees can request access to listen to an interview recording by completing a *Detainee Request Form*.

7 DETAINEE LEAVE TO ASSIST AN INVESTIGATOR

- 7.1 An investigator may request leave for a detainee to be absent from a correctional centre in order to assist the investigator under sections 204 or 208-209 of the *Corrections Management Act 2007 (ACT)*. Leave can be local or interstate.
- 7.2 All requests must be submitted using a *D8.F1: Investigator Leave Permit Application* at least seven (7) days prior to the leave unless exceptional circumstances exist.
- 7.3 The investigator should apply directly to the Executive Director via email to ACTCS-Intelligence@act.gov.au and include a briefing on the reasons why the purpose of the leave cannot be met at the correctional centre.
- 7.4 When deciding whether to grant or refuse a request, the Executive Director will consider section 4.6.
- 7.5 Where leave is approved, the Executive Director will complete a *D8.F3: Detainee Investigator Leave Permit*.
- 7.6 The Admissions Supervisor will ensure that an investigator is provided with appropriate contact details for ACTCS in the event of an incident or emergency.
- 7.7 An investigator must complete the relevant sections of the *D8.F1: Investigator Leave Permit Application* when returning a detainee to the correctional centre, to identify any immediate risk:
 - a. to or from the detainee; and/or
 - b. of suicide or self-harm,

relating to or identified as a result of the leave.

- 7.8 Where there are confidential security or sensitivity concerns that are not immediate risks under section 7.7, the investigator must provide this information in a sealed envelope addressed to the Head of Security.
- 7.9 The Manager, Intelligence and Integrity Unit will contact the investigator within two (2) days of the return of a detainee to ascertain any risks resulting from the leave.
- 7.10 Custody of a detainee remains with ACTCS at all times during leave under this section in accordance with section 217 of the Corrections Management Act 2007 (ACT).

8 RELATED DOCUMENTS

- A – D8.F1: Investigator Leave Permit Application
- B – D8.F2: Investigator Interview Form
- C – D8.F3: Detainee Investigator Leave Permit
- D – D9.F1: Seizure Receipt
- E – Prohibited Things, Excess and Non-Standard Items Operating Procedure
- F – Prohibited Things Declaration
- G – Detainee Request Form



Jon Peach
Executive Director
ACT Corrective Services
11 October 2019

Document details

Criteria	Details
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Document owner/approver:	Executive Director, ACT Corrective Services

Criteria	Details
Date effective:	The day after the notification date
Review date:	Three years after the notification date
Compliance with law:	This policy reflects the requirements of the <i>Corrections Management (Policy Framework) Policy 2019</i>
Responsible officer:	Executive Director

Version Control			
Version no.	Date	Description	Author
V2	July-19	Update	L Kazak
V1	January-19	First Issued	L Kazak