ATTORNEY–CLIENT ACCESS IN DELAWARE DOC CUSTODY

ODS team access • multiple verified attorneys • confidential communications • Delaware APA • multistate models

LEGAL RESEARCH REPORT
Current through August 28, 2026

Prepared as an issue-spotting and policy-analysis resource.
Not legal advice and not a substitute for reviewing the exact written policy, denial, custody status, court orders, and case posture.

Executive conclusion

A Delaware correctional facility may impose reasonable, neutral security and scheduling conditions on legal communications. It may verify an attorney's identity, license, relationship to the person, and the client's wishes. It may respond to a genuine emergency or attorney misconduct. But a blanket "one attorney" or "one legal telephone number" rule—especially one that prevents an actual ODS lawyer, co-counsel, covering lawyer, conflict lawyer, appellate or postconviction lawyer, or authorized legal-team representative from communicating confidentially—would face serious constitutional, statutory, administrative-law, privilege, and professional-responsibility objections if it materially denies meaningful access and lacks an adequate alternative.

The conclusion is deliberately narrower than "any lawyer can call any incarcerated person at any time." The legal system protects bona fide and prospective legal representation, not unrestricted social contact disguised as legal contact. Nor does an indigent defendant ordinarily have an unconditional right to demand multiple publicly funded appointed lawyers. The critical point is that when multiple lawyers or authorized representatives actually serve the same client, a numeric cap is a poor proxy for security and can obstruct the representation itself.

> *"their friends and counsel may, on reasonable conditions, have access to them"* **— *Delaware Constitution, art. I, § 12(c)***

Authorities: Delaware Constitution art. I, §§ 7, 9, 12(c); Sixth Amendment; Bailey v. State; State v. Sells; State v. McCoy

Question	Best-supported answer
Can DOC deny every requested call from a verified lawyer?	Generally no if calls are necessary for meaningful representation and no adequate confidential alternative exists; a case-specific restriction may be lawful.
Must DOC recognize more than one lawyer?	It should recognize every verified lawyer who actually represents, seeks authorized prospective representation of, or is assigned to the person—subject to client consent and neutral security checks.
Does ODS equal one individual lawyer?	No. Delaware law creates an institutional defense service with assistants and conflict counsel, and ODS itself describes clients speaking with assigned and other attorneys plus staff.
Is telephone access always constitutionally required?	Not in every setting. The question is whether the total system—calls, visits, video, and mail—provides timely, confidential, meaningful access for the legal need.

Question	Best-supported answer
Does the Delaware APA automatically invalidate an unwritten employee rule?	Not automatically. The classification, agency coverage, adoption history, publication, security basis, timing, and remedy matter. A generally applicable substantive cap has the strongest APA vulnerability.

1. Scope, assumptions, and the decisive factual questions

This report evaluates the alleged practice as described: a Delaware Department of Correction (DDOC) employee or facility permits only one attorney or one legal telephone number for an incarcerated person, and the practice blocks other ODS or non-ODS counsel from calling. No exact policy text, denial letter, facility name, custody status, or adopting order was supplied. A search of DDOC's public inmate-communication pages did not locate a published statewide attorney-call policy establishing such a cap. That does not prove the practice does not exist; it means the precise instrument and its authority should be demanded.

The answer can change materially with these facts:

- **Custody and case stage.** Pretrial detention and pending criminal proceedings present the strongest Sixth Amendment and Delaware constitutional claim. Direct appeal, postconviction, parole, civil litigation, and prospective representation invoke different combinations of rights.
- **Identity and role.** Is the caller counsel of record, appointed counsel, ODS covering or supervisory counsel, conflict counsel, retained co-counsel, appellate counsel, prospective counsel, or an investigator/paralegal acting under counsel's direction?
- **Client choice.** Does the client want the communication, and has representation ended or changed? DOC may verify the client's consent; it should not decide who is "really" counsel based solely on a one-name database.
- **Actual burden.** Were confidential visits, video, mail, and timely calls truly available? Deadlines, segregation, transfer, disability, distance, and repeated failures can turn a nominal alternative into no meaningful alternative.
- **Restriction and reason.** Was the denial a uniform numeric cap, a scheduling delay, a temporary emergency measure, or an individualized response to verified misconduct or security evidence?
- **Harm.** What consultation, filing, plea decision, investigation, hearing preparation, or court deadline was impaired? Some claims require actual injury or prejudice; some Sixth Amendment denials are evaluated differently.

Authorities: DDOC public inmate communication page

2. The governing rights and legal doctrines

2.1 Delaware's unusually direct constitutional text

Delaware provides more direct textual support than the federal Constitution for access to people confined before conviction. Article I, § 12(c) expressly says that counsel may have access, while allowing "reasonable conditions." Article I, § 7 separately guarantees an accused

the ability to defend "by counsel," and § 9 protects access to courts and a remedy by due course of law. These provisions make two points at once: access is not optional, and it may be regulated reasonably.

> *"allowed to appear and defend in person and by counsel"* ***— Delaware Constitution, art. I, § 7***

A categorical "one lawyer only" rule is vulnerable because it classifies by number rather than by security risk, actual representation, client consent, urgency, or availability of confidential alternatives. The State would need to explain how excluding the second verified lawyer rationally advances safety and why a less restrictive verification procedure would not work.

Authorities: Official Delaware Constitution

2.2 Sixth Amendment: attachment, critical stages, consultation, and counsel of choice

The Sixth Amendment right to counsel attaches after adversarial judicial proceedings begin and protects the accused at critical stages. Its purpose is practical assistance—investigation, advice, plea consultation, preparation, and advocacy—not merely the appearance of a lawyer's name on a docket. A prison rule that substantially prevents timely consultation can therefore impair the right even if a lawyer is formally appointed.

- **Pending charges.** Access needed to investigate, advise about pleas, prepare testimony, review discovery, and respond to deadlines receives the strongest protection.
- **Retained counsel of choice.** A defendant who can retain counsel has a qualified right to chosen counsel. It is not absolute: conflicts, scheduling, licensure, and orderly administration can justify limits.
- **Multiple appointed lawyers.** The Sixth Amendment does not ordinarily entitle an indigent defendant to multiple publicly funded lawyers simply on request. But that is different from DOC refusing to communicate with lawyers already authorized or assigned as part of the defense representation.
- **Brief restrictions.** Context matters. A blanket overnight ban on consultation during trial is constitutionally different from a narrow restriction during a short recess while the defendant is testifying.
- **Remedy.** Courts tailor remedies to the violation. Not every intrusion produces dismissal or automatic reversal; prejudice, use of confidential information, and available corrective measures may matter.

Authorities: Constitution Annotated: Sixth Amendment; right to choose counsel; restrictions on counsel's function and consultation

2.3 Delaware case law: Bailey, Sells, and McCoy

In Bailey v. State, correctional officials repeatedly interrupted attorney calls, destroyed preparation materials, and disobeyed an access order. The Delaware Supreme Court treated consultation with counsel as fundamental and affirmed strong judicial protection. Bailey is powerful where obstruction is concrete, repeated, and tied to a criminal case or order.

> *"fundamental constitutional right to consult with his attorney"* ***— Bailey v. State, 521 A.2d 1069 (Del. 1987)***

In State v. Sells, Superior Court found that restrictive segregation practices made counsel access arduous and compromised privacy. It emphasized that incarcerated persons retain constitutional rights and ordered a remedy designed to restore meaningful access. Sells supports evidence-based challenges to practices that work as a practical barrier, even if access exists on paper.

> *"do not leave their constitutional rights at the prison gate"* ***— State v. Sells, 2013 WL 1143614 (Del. Super. Ct.)***

State v. McCoy supplies the limiting principle. The Delaware Supreme Court held that a criminal court may protect Sixth Amendment access with a tailored remedy but may not simply take over DDOC's housing classification authority. The correct demand is ordinarily confidential and timely access—not a preferred housing unit unless that is genuinely necessary and legally supported.

Authorities: Bailey opinion; Sells opinion; McCoy opinion

2.4 Meaningful access to courts

The First and Fourteenth Amendments protect meaningful access to courts. This doctrine is broader than a pending criminal prosecution but is not a free-standing right to every preferred communication method. For many access-to-courts claims, the incarcerated person must identify an actual injury—for example, loss or frustration of a nonfrivolous criminal appeal, habeas claim, or civil-rights action. Repeatedly blocking counsel calls near a deadline, intercepting privileged communications, or making every available channel ineffective can supply that injury. A single inconvenience without legal harm may not.

Legal-mail cases are not telephone cases, but they reinforce the institutional importance of confidentiality and the chilling effect of routine government access to attorney communications. Any reliance on those cases should be framed as analogy, not a categorical rule that every phone restriction is unconstitutional.

Authorities: Constitution Annotated: prisoners and court access

2.5 Attorney–client privilege and confidentiality

Delaware Rule of Evidence 502 protects confidential communications made for legal services. The rule is especially important to the multiple-lawyer issue because it expressly recognizes communications among lawyers and their representatives who represent the same client. Privilege is therefore organized around the representation, not around a single lawyer's telephone number.

> *"among lawyers and their representatives representing the same client"* ***— Delaware Rule of Evidence 502(b)(5)***

A privilege rule primarily governs evidentiary protection, not the whole constitutional entitlement to telephone access. Still, a system that records ordinary prison calls and offers no reliable unrecorded legal channel forces a damaging choice: forgo necessary consultation or risk confidentiality. ODS itself warns that ordinary prison calls are recorded, underscoring the need for a distinct verified legal channel.

Authorities: Delaware Rule of Evidence 502; ODS: How to Get an Attorney

2.6 Professional duties and government interference

Delaware Lawyers' Rules of Professional Conduct require diligence, consultation about objectives and means, keeping the client reasonably informed, responding to reasonable requests, explaining matters sufficiently for informed decisions, and reasonable safeguards against unauthorized access to confidential information. These rules regulate lawyers, not DDOC directly. They do not independently create a prisoner cause of action. But a correctional practice that makes compliance impossible is evidence of a serious interference with the legal system and may support a court's assessment of whether access is meaningful.

- **Rule 1.3—diligence.** Counsel must act with commitment despite opposition or obstruction.
- **Rule 1.4—communication.** Counsel must consult, inform, respond, and explain enough for the client to make informed decisions.
- **Rule 1.6—confidentiality.** Counsel must not disclose protected information and must make reasonable efforts to prevent unauthorized disclosure or access.

Authorities: Official Delaware lawyer-conduct rules

2.7 Prison deference is real, but not a blank check

Under Turner v. Safley, a prison rule burdening constitutional rights is generally evaluated for a rational relationship to a legitimate penological objective, considering alternative means, impact on guards and resources, and obvious less restrictive alternatives. Security, identity verification, staffing, movement control, and emergency operations are legitimate interests. "One lawyer only" is still vulnerable if the facility can cheaply verify several legitimate counsel, schedule calls, use a confidential phone, and document individualized restrictions.

A strong challenge should therefore propose workable alternatives rather than deny security concerns: verified lawyer registration, client confirmation, call scheduling, visual but not auditory observation, time-limited emergency suspension, and review of individualized denials.

Authorities: Constitution Annotated discussion of Turner

2.8 Disability, language, and equal access

Title II of the Americans with Disabilities Act applies in state prisons. If a hearing, speech, cognitive, mobility, or other disability makes ordinary calls, mail, visits, or video ineffective, DDOC may need reasonable modifications or auxiliary aids. Similar effective-communication questions can arise for limited-English-proficient clients under applicable federal funding and due-process rules. These are fact-specific additional claims, not automatic grounds in every case.

Authorities: United States v. Georgia / Yeskey ADA materials

3. Why ODS representation cannot reasonably be reduced to one lawyer

The Delaware Office of Defense Services (ODS) is an institutional provider, not a collection of isolated solo practices. Title 29, chapter 46 creates three branches, authorizes the Chief Defender to appoint as many assistant attorneys, investigators, and other employees as necessary, directs representation at every stage and on appeal, and provides for conflict representation through the Office of Conflicts Counsel or other qualified counsel. The statutory design anticipates division of labor, coverage, supervision, conflicts, and changing case stages.

ODS's own public description says a client will talk with the assigned attorney "as well as other attorneys," and identifies investigators, specialists, paralegals, and other team members. ODS's employment materials describe post-disposition counsel maintaining telephone, video, and in-person communication across state facilities while collaborating with a team. These statements do not themselves create a constitutional cause of action, but they are strong evidence that a "one ODS attorney only" database does not match the agency's legally authorized operating model.

> *"assigned attorney as well as other attorneys"* ***— Delaware ODS, How to Get an Attorney***

Authorities: ODS enabling act, 29 Del. C. ch. 46; ODS client information; ODS employment and post-disposition practice

3.1 Legitimate reasons more than one lawyer or representative needs access

Role or event	Why a one-person cap can obstruct representation
Co-counsel and team assignment	Complex, serious, or conflict-sensitive matters may be handled by more than one lawyer with divided responsibilities.
Covering / duty attorney	The assigned lawyer may be in trial, unavailable, ill, or unable to respond before a deadline; institutional representation requires coverage.
Supervising or consulting ODS lawyer	Supervision, plea consultation, strategy review, and quality control may require direct client communication.
Conflict counsel / successor counsel	ODS may have a conflict, representation may change, or a new lawyer may need to determine whether to enter the case.
Appellate and postconviction counsel	Different lawyers may handle direct appeal, Rule 61 proceedings, federal habeas, sentence review, or conditions litigation.

Role or event	Why a one-person cap can obstruct representation
Investigator, mitigation specialist, paralegal, interpreter	Authorized representatives gather facts and enable counsel to provide legal services; privilege can extend to necessary representatives.
Witness interview or prospective representation	A licensed lawyer may need to interview the person as a witness or evaluate representation before becoming counsel of record.
Transfer between facilities	A statewide representation should not disappear because a client moves and a facility database has only one stale entry.

3.2 What multiple access does not mean

- It does not require DDOC to accept an unverified caller's assertion that the caller is a lawyer.
- It does not require simultaneous calls, unlimited duration, unrestricted hours, third-party calls, or evasion of security procedures.
- It does not let a lawyer override the client's decision to decline communication or terminate representation.
- It does not automatically require appointment or public funding of several lawyers.
- It does not immunize an attorney or representative from individualized restrictions for documented misconduct, threats, contraband, or abuse—provided meaningful legal access remains and review is available.

4. Every major way the alleged policy could be unlawful

Theory	Why a blanket cap is vulnerable	Necessary qualification / proof
Delaware Constitution art. I, § 12(c)	Directly protects pre-conviction counsel access, subject only to reasonable conditions.	Show pretrial status, bona fide counsel, denial, and why the condition is unreasonable in operation.
Delaware Constitution art. I, §§ 7 and 9	A cap may impair defense by counsel and due course of law.	Connect the barrier to defense preparation, decision-making, or court access.
Sixth Amendment	Material interference with timely confidential consultation can deny assistance at critical stages.	Right must have attached; context, alternatives, prejudice, and remedy matter.
First/Fourteenth Amendment court access	Blocking counsel can frustrate nonfrivolous appeals, habeas, or civil-rights claims.	Many claims require identified actual injury, not abstract inconvenience.

Theory	Why a blanket cap is vulnerable	Necessary qualification / proof
Privilege / confidentiality	A single approved number or recorded ordinary line can expose protected team communications.	Privilege alone does not guarantee every requested phone call; show confidentiality was unavailable or compromised.
Turner reasonableness	A numerical cap may lack a rational fit where verification, scheduling, or individualized restrictions are ready alternatives.	DDOC receives deference on genuine safety, staffing, movement, and emergency concerns.
Contrary to ODS statute and court appointment	The cap may obstruct authorized institutional, conflict, successor, or appellate representation.	Identify the caller's actual assignment, authorization, or prospective role.
Violation of court order / contempt	An employee cannot override an access or appointment order.	Order language and notice control; seek enforcement in the issuing case.
Ultra vires / delegated authority	A line employee may not create a generally binding statewide substantive rule beyond delegated authority.	Identify who adopted it, under what statute or directive, and whether it is a rule or a single decision.
Delaware APA	A generally applicable substantive cap may require authorized adoption, notice, comment, findings, filing, and publication.	APA coverage and exemptions are technical; see Section 5. Unwritten action is not automatically a "regulation."
Arbitrary or unequal application	Recognizing one similarly situated lawyer but excluding another without reason can be arbitrary; discriminatory or retaliatory selection adds claims.	Equal-protection claims usually require relevant comparators and intent; retaliation needs protected activity and causation.
ADA / effective communication	A rigid channel may deny equal access where disability requires modification or auxiliary aids.	Requires disability, notice/obvious need, and a reasonable effective accommodation.
Professional and institutional integrity	The practice can force counsel to breach communication, diligence, or confidentiality duties and disrupt courts.	Ethics rules bind lawyers and inform the analysis; they do not alone make DDOC civilly liable.

4.1 Why a one-number database is not a sufficient legal justification

Administrative convenience is not the same as a security necessity. A database can be designed to store multiple verified lawyers, organizations, roles, telephone numbers, effective dates, and facility-wide status. New Jersey expressly allows attorneys to be added at any time. Federal, Ohio, California, New Mexico, and Texas systems verify status and relationship without collapsing a representation to one individual. Those functioning alternatives weaken a claim that a one-lawyer cap is unavoidable.

A system may designate a primary lawyer for notices while permitting additional verified counsel and authorized representatives. That distinction preserves orderly administration without excluding the defense team.

5. Delaware Administrative Procedure Act analysis

The statement “an employee made it up, so it violates the APA” is directionally understandable but legally incomplete. The analysis requires identifying the instrument, deciding whether it is a regulation, determining what APA provisions apply to DDOC, testing any exemption or confidentiality claim, and selecting the correct review path.

5.1 Step one: obtain and classify the rule

- **Ad hoc decision.** A one-time denial by an employee may be unauthorized, arbitrary, contrary to superior policy, or unconstitutional without being a “regulation.”
- **Facility procedure.** A written local operating procedure may still require delegated authority, consistency with statewide rules and law, distribution, and any mandatory filing or publication.
- **Statewide standard.** A uniform directive applied to a class of people is more likely a “regulation,” especially if it forbids conduct otherwise permitted or imposes binding criteria.
- **Internal management.** An agency may argue the instruction concerns internal management or procedure. The response is that a rule directly restricting outsiders’ and incarcerated persons’ legal communications has external, substantive effect.

Demand: title, policy number, full text, version history, effective date, author, approving official, delegated legal authority, adopting order, Registrar filing, public notice, response-to-comments record, emergency status, and the specific security determination relied upon.

5.2 Which Delaware APA provisions reach DDOC

DDOC is not one of the agencies listed in 29 Del. C. § 10161(a). Section 10161(b), however, subjects unlisted state agencies to APA Subchapters I and II and to §§ 10141, 10144, and 10145. That makes the definitions and rulemaking provisions—including § 10113—central, and it permits declaratory review under § 10141. It also means the ordinary § 10142 case-appeal route is not automatically available for DDOC decisions; Fatir confirms the distinction.

Authorities: APA definitions and purpose; APA rulemaking; Declaratory review, § 10141; Agency coverage, § 10161; Fatir v. Delaware DOC

5.3 Substantive regulation versus practice/procedure rule

The APA broadly defines a regulation as an agency statement of law, procedure, policy, right, requirement, or prohibition that implements or applies law or prescribes agency organization, procedure, or practice. A “substantive regulation” includes one that creates rights, imposes

duties, or forbids conduct otherwise free. A categorical limit on which verified attorney may contact a client plausibly has substantive external effect and therefore a strong notice-and-comment argument.

Section 10113(b)(2) allows rules of practice or procedure to be adopted informally, but it still calls for filing the rule with the Registrar of Regulations and an order explaining the agency action. Thus, even if DDOC characterizes the cap as procedure, the questions do not end: Where is the filed text and adopting order? If neither exists, what valid superior policy authorizes the employee's conduct?

For a substantive regulation, the report should test statutory authority, notice containing the full proposed text or adequate summary, opportunity for public comment, consideration of submissions, findings, adopting order, final publication, and consistency between the proposal and final rule. Emergency rulemaking has its own findings and time limits; "security" is not a universal exemption from procedure.

Authorities: 29 Del. C. §§ 10102, 10113, 10115, 10118; Rulemaking subchapter

5.4 The Jackson v. Danberg issue—and why 2022 matters

In Jackson v. Danberg (2008), the Court of Chancery relied on the then-existing version of 11 Del. C. § 4322, which treated DDOC policies and procedures as confidential, to reject a public APA-promulgation challenge to the lethal-injection protocol. That decision is an important adverse authority and should never be ignored.

But the General Assembly amended § 4322 in 2022. Current subsections (c) and (d) protect only policies or portions whose disclosure "could jeopardize" safety, security, or other specified protected interests; House Bill 394's synopsis explains the narrowing. Current subsection (j) also provides a route to seek relief under Delaware FOIA § 10005 when access is denied under those provisions. A routine attorney-registration or numeric-cap rule may contain sensitive operational details, but DDOC would need to identify what disclosure could jeopardize security; non-sensitive portions should be segregable.

No post-2022 controlling Delaware decision was located that definitively resolves how the amended § 4322 affects Jackson's APA reasoning. The correct conclusion is therefore: Jackson creates litigation risk, but it does not justify assuming every current DDOC policy is wholly secret or wholly exempt from rulemaking.

Authorities: Jackson v. Danberg; Current 11 Del. C. § 4322; 2022 House Bill 394

5.5 APA and related remedies

- **Declaratory review.** Section 10141 permits a challenge to the validity or application of a regulation, subject to its timing and procedural requirements. The statute generally uses a 30-day period after publication, while allowing validity to be raised as a defense to enforcement.
- **Mandamus / equitable relief.** A court may compel a clear nondiscretionary legal duty or enjoin unlawful action, but mandamus is narrow and not a vehicle for judicial management of discretionary prison classifications.
- **FOIA.** Seek non-sensitive policy text, adopting documents, and segregable portions; use § 4322(j) and 29 Del. C. § 10005 where applicable.

- **Criminal-case motion.** For an accused person, a tailored access order in the pending criminal case may be faster and more directly connected to the Sixth Amendment than a broad administrative suit.
- **Federal civil rights.** 42 U.S.C. § 1983 may provide relief for federal-right violations, but defenses, personal involvement, immunity, exhaustion, causation, and remedy limits require careful pleading.

For federal prison-condition litigation, the Prison Litigation Reform Act generally requires exhaustion of available administrative remedies and limits prospective relief to what is narrowly drawn and necessary. Counsel should preserve urgent constitutional motions while also documenting and exhausting the DDOC grievance path when required.

Authorities: 42 U.S.C. § 1997e; 18 U.S.C. § 3626

6. What other jurisdictions do

The following current primary materials show a common model: verify the lawyer and relationship; protect confidentiality; permit several legal modalities; schedule and impose individualized security controls; and avoid a numeric “one lawyer only” rule. These policies are persuasive comparisons, not binding law in Delaware. The Maine Legislature’s 2022 fifty-state survey is a useful historical map, but each jurisdiction’s current primary source must control because policies change.

Jurisdiction	Policy mechanics and short controlling quotation	Why / relevance to Delaware
New Jersey	An incarcerated person “may add attorneys to their phone list at any time.” Designated legal calls are private and not recorded; public-defender calls are free. Attorney visits use identification and client confirmation; security restrictions may be individualized.	The clearest direct answer to a one-attorney cap: plural attorneys can be added at any time while verification and security remain.
Pennsylvania	DOC publicly commits to “confidentiality of attorney-client communications” and offers mail, telephone, and visits. Statewide visiting rules aim at fair and consistent implementation and supersede local rules on the subject.	Shows a neighboring Third Circuit state using multiple channels plus standardized statewide policy rather than improvised facility barriers.

Jurisdiction	Policy mechanics and short controlling quotation	Why / relevance to Delaware
Texas	For a registered attorney of record, calls are not recorded or monitored. Other attorney-call requests may be submitted in writing; timing, frequency, and duration are evaluated case by case, with identity and representation checks.	Illustrates primary-attorney registration without treating every other lawyer as categorically forbidden.
Washington	DOC describes unmonitored legal calls to a recognized legal number as protection for constitutional rights. Attorneys may schedule telephone meetings by written notice.	Pairs a validated-number system with attorney scheduling and constitutional confidentiality—not a single-person rule.
California	Penal Code § 5058.7 says the department “shall approve an attorney’s request” for a confidential call with the represented person, at least 30 minutes monthly per inmate per case unless less is requested. Regulations permit approved attorneys and representatives, and confidential calls are not monitored or recorded.	A statutory minimum and a verification process. “Per case” matters where different lawyers handle different proceedings.
New Mexico	Current Policy CD-150300 directs an unmonitored call for an attorney or attorney representative, with identity verification, privacy, visual observation if needed, and efforts to arrange it promptly—generally within two working days.	A practical service standard that accommodates representatives, confidentiality, speed, and security at once.
Ohio	Ohio Admin. Code 5120-9-20 permits counsel of record and also prospective/non-record counsel supported by a written client or family request. It recognizes supervised law students and investigators, and legal conversations are not monitored.	Strong evidence that verification can cover prospective counsel and team representatives without limiting access to one name.

Jurisdiction	Policy mechanics and short controlling quotation	Why / relevance to Delaware
Federal BOP	Properly placed attorney calls may not be monitored. Frequency limits should not apply when normal calls, correspondence, or visits are inadequate. Visits include retained, appointed, and prospective attorneys; verification may address identity, bar status, and relationship, not case substance.	A mature national model: layered modalities, no general visit-frequency limit, prospective counsel, confidentiality, and misconduct-specific restrictions.

6.1 New Jersey: multiple attorneys may be added at any time

New Jersey's public corrections page is the most direct comparator. It allows attorneys—plural—to be added at any time and states that attorney and designated legal-service calls are private and unrecorded. The companion visitation page permits identity checks and confirmation that the incarcerated person wants the meeting, while reserving contact restrictions for danger or security. This is the balance Delaware should emulate.

Authorities: NJ phone policy; NJ attorney-visitation rules

6.2 Pennsylvania: statewide channels and consistency

Pennsylvania publicly states that it is committed both to attorney access/confidentiality and to facility safety. It provides multiple avenues—mail, telephone, and visits. Its statewide DC-ADM 812 states that standardized rules facilitate fair and consistent implementation and that the statewide document supersedes facility procedures on the subject. This is useful administrative design: frontline staff follow a published hierarchy rather than inventing incompatible caps.

> *"multiple avenues for attorney-client communication"* ***— Pennsylvania Department of Corrections***

Authorities: PA attorney-client communication; PA DC-ADM 812

6.3 Texas: attorney of record plus case-by-case requests

Texas protects registered attorney-of-record calls from recording and monitoring. Its handbook also describes written requests by other attorneys and case-by-case evaluation of frequency and duration, including urgency. The model is not perfect for every circumstance, but it demonstrates that a system can have an "attorney of record" category without treating that category as an exclusive bar to all other legitimate lawyers.

Authorities: TDCJ orientation handbook; TDCJ attorney forms

6.4 Washington: recognized legal numbers and scheduled meetings

Washington uses recognized legal telephone numbers to create an unmonitored channel and separately instructs attorneys how to schedule telephone meetings. The design ties

confidentiality to validated contact information, not to a permanent one-lawyer limitation. Delaware could maintain an organization-level ODS directory plus individual verified numbers.

Authorities: Washington DOC phone calls; Washington attorney FAQ

6.5 California: statutory confidential-call floor and representatives

California enacted a statutory minimum for confidential attorney calls and its regulations describe attorney and attorney-representative clearance. The regulation keeps confidential calls off the ordinary incarcerated-person telephone and prohibits monitoring or recording. CDCR's current statewide clearance materials also address short-term attorney and representative access for calls, video, and visits. This is a useful example of legislatively secured access combined with administrative verification.

Authorities: Cal. Penal Code § 5058.7; Cal. Code Regs. tit. 15, § 3282; CDCR statewide attorney clearance

6.6 New Mexico and Ohio: representatives and prospective counsel

New Mexico's 2026 policy and Ohio's administrative rule are particularly helpful to the user's broader point. Both go beyond a single counsel-of-record concept. New Mexico includes an attorney representative and supplies a prompt scheduling benchmark. Ohio recognizes prospective/non-record counsel when the client or family requests services, plus supervised students and investigators. Both retain identity and security checks.

Authorities: New Mexico Policy CD-150300; Ohio Admin. Code 5120-9-20

6.7 Federal BOP: confidentiality, inadequacy test, and tailored restrictions

Federal regulations provide a strong model across facilities. Staff may not monitor a properly placed attorney call. Special calls should not be limited by ordinary frequency rules when correspondence, visits, or normal calls are inadequate. Attorney visits cover retained, appointed, and prospective counsel; identity, bar status, and relationship may be verified without demanding case substance. Restrictions for attorney misconduct should be tailored, with limitation preferred over total denial and an appeal path.

> *"Staff may not monitor an inmate's properly placed call to an attorney"* ***— 28 C.F.R. § 540.102***

In 2024, the Bureau expanded pretrial attorney access after a Department of Justice advisory group emphasized that counsel is critical to fairness and accuracy and that attorney preference and practical access matter. That is an express policy rationale, not merely an inference.

Authorities: 28 C.F.R. § 540.102; 28 C.F.R. § 540.103; 28 C.F.R. § 543.13; 28 C.F.R. § 543.14; 28 C.F.R. § 551.117; 2024 DOJ/BOP rule rationale

6.8 Why jurisdictions choose these policies

Where an agency or legislature states a reason, the reason is quoted or summarized above: constitutional protection, fairness and accuracy, confidentiality, consistent statewide administration, and balance with safety. For policies that do not contain legislative findings, the following are clearly identified inferences from their structure:

- **Confidentiality improves legal accuracy.** Clients can disclose facts, evaluate pleas, correct errors, and assist investigation without fear of routine recording.

- **Verification is more precise than a numeric cap.** Bar status, relationship, client consent, and validated numbers screen misuse while allowing legitimate teams.
- **Multiple modalities create resilience.** When segregation, lockdown, distance, disability, transfer, or technology makes one channel ineffective, another can preserve access.
- **Statewide standards prevent arbitrary local practice.** A published approval and review process reduces inconsistent employee-by-employee decisions.
- **Individualized restrictions preserve security.** Facilities can respond to actual misconduct or emergency conditions without burdening every client and lawyer.

Authorities: Maine Legislature 2022 fifty-state survey (historical overview)

7. A legally safer Delaware model policy

The following model would open legitimate communication channels while preserving DDOC's security and operational authority. It is a policy proposal, not a statement of current Delaware law in every detail.

7.1 Covered legal professionals

- Retained, court-appointed, and prospective attorneys; ODS and Office of Conflicts Counsel attorneys; co-counsel, covering, supervisory, appellate, postconviction, civil, and successor counsel.
- Authorized investigators, mitigation specialists, paralegals, law students, interpreters, experts, and other representatives acting under a verified lawyer's direction when reasonably necessary for legal services.
- A client may have more than one verified legal professional and more than one verified legal telephone number. A "primary attorney" field may be used for routing but may not exclude additional authorized counsel.

7.2 Verification without forced disclosure of strategy

- Verify identity, bar status, office affiliation, telephone number, role, and client/case relationship through bar and court or ODS records.
- Confirm that the client wishes to communicate. Permit prospective counsel to use a client or family request, court request, or signed consultation authorization.
- Do not require disclosure of the subject matter, strategy, anticipated testimony, or substance of confidential communications.
- Create organization-level preverification for ODS and conflicts counsel, while retaining individual accountability and updated contact records.

7.3 Confidential telephone, video, visit, and mail channels

- Permit attorney-initiated scheduling and client-initiated requests. Maintain a dedicated legal call process separate from ordinary recorded calls.
- Do not record or auditorily monitor approved legal calls or meetings. Visual observation may be used when reasonably necessary so long as staff cannot hear or read the communication.
- Post clear notice stating which channel is confidential and which ordinary calls are recorded. Accidental recording must trigger preservation, access restriction, notice, investigation, and deletion/remedial procedures consistent with litigation duties.
- Offer confidential in-person and video meetings, privileged mail, accessible equipment, interpreters, relay services, and reasonable disability modifications.

7.4 Timing, frequency, transfer, and emergencies

- Routine request: schedule as soon as practicable, presumptively within two business days. Urgent deadline, plea, hearing, safety, medical, or transfer request: same day or earliest operationally safe opportunity.
- Use reasonable durations and schedules. Do not impose an arbitrary frequency cap when mail, visits, video, or ordinary calls are inadequate for the legal need.
- Make verification portable across DDOC facilities and automatically preserve all approved legal contacts after transfer, reclassification, hospitalization, or segregation.

- An emergency suspension must be authorized by a designated official, state its factual basis and scope, expire at a defined time, and provide the earliest safe alternative channel.

7.5 Denials and review

- A denial must be written promptly and identify the decision-maker, factual ground, legal/policy authority, duration, and available alternative—without exposing protected security details more than necessary.
- Numeric limits alone are not a sufficient reason. Individualized restrictions must be tied to demonstrated risk, misconduct, client choice, or concrete operational necessity.
- Provide rapid supervisory and legal review, an emergency escalation for imminent court deadlines, and notice to counsel and client.
- Prefer limitation to total denial. Preserve meaningful communication with other verified team members when a particular individual is restricted.
- Publish the non-sensitive policy, version history, forms, appeal route, aggregate performance data, and adopting authority. Follow all applicable Delaware APA filing, notice, and order requirements.

7.6 Proposed operative language

> *"No numerical limit shall exclude an otherwise verified legal professional or authorized representative from confidential communication with a willing client."* ***— Proposed Delaware policy—not current law***

Suggested continuation: "The Department may impose reasonable time, place, manner, identity-verification, and individualized security conditions. Any restriction shall be no broader or longer than necessary, shall preserve a timely confidential alternative, and shall be subject to prompt written review."

8. Evidence and action plan for an actual denial

The fastest route depends on urgency and case posture. For an accused person with a near hearing or plea deadline, a targeted motion in the criminal case may be more effective than beginning with a broad policy suit. For systemic relief, build an administrative and factual record.

1. **Get the exact rule.** Request the policy, directive, memorandum, vendor setting, facility procedure, telephone list criteria, version history, approval chain, adopting order, APA record, security determination, and appeal process.
2. **Document every event.** Record client name/ID, facility and housing, lawyer and role, dates/times, numbers used, requester, employee/decision-maker, stated reason, alternatives offered, duration, deadline, witnesses, and copies/screenshots.
3. **Prove representation and client consent.** Provide appearance, appointment, ODS assignment or supervisor confirmation, conflict appointment, engagement letter, or prospective consultation request without disclosing strategy.
4. **Use ODS institutional escalation.** Ask the Chief Defender or designee to demand a statewide written protocol or memorandum of understanding recognizing ODS team access and an emergency contact path.
5. **Seek a tailored court order.** Ask for prompt confidential calls/visits by named counsel and authorized representatives, preservation across transfer, no recording, and a written denial/review process. Cite Bailey, Sells, and McCoy's tailored-remedy framework.

6. **Preserve privilege.** Do not discuss strategy on a line known to be recorded. Give written notice that the call is legal, request the unrecorded channel, and document that no adequate confidential alternative was offered.
7. **Use grievances and exhaustion.** File and appeal DDOC grievances when available and required; describe urgency and actual injury. Keep proof of submission, response, nonresponse, and unavailability.
8. **Use FOIA and § 4322(j).** Request segregable non-security portions and the legal authority. If withheld under § 4322(c) or (d), evaluate Delaware FOIA § 10005 relief.
9. **Choose the legal vehicle.** Depending on facts: criminal-case motion, declaratory action under § 10141, mandamus/injunction, state constitutional claim, § 1983, ADA relief, or enforcement of an existing order.
10. **Request narrow, measurable relief.** Specify who must be added, the confidential channels, response time, portability, duration, reviewer, and reporting. Narrow relief is more enforceable and fits prison-litigation limits.

8.1 A concise demand for correction

A written demand can state: “Please identify the written authority for limiting this client to one attorney or one legal telephone number. The client is represented or being consulted by the listed verified counsel/team members and consents to communication. Add each verified contact to the confidential legal-call system, preserve access at every DDOC facility, and provide a prompt confidential call. If denied, provide the written factual and legal basis, duration, alternative channel, approving official, and review procedure. This request does not seek unrestricted contact; it seeks reasonable, confidential, timely access consistent with Delaware Constitution article I, §§ 7 and 12(c), the Sixth Amendment, Bailey, Sells, McCoy, DRE 502, and applicable administrative requirements.”

9. Bottom line

Delaware law does not support treating the constitutional word “counsel” as a database field permanently limited to one individual. DDOC can regulate legal communication reasonably, verify every participant, schedule calls, protect safety, and respond to misconduct. It should not use a blanket single-attorney or single-number cap to exclude legitimate members of the defense or legal team when the result is delayed, recorded, chilled, or unavailable communication.

For pretrial clients, the combination of Delaware’s express access clause, the right to defend by counsel, Bailey, Sells, and the Sixth Amendment is particularly strong. For ODS, the institutional statute, published team practice, and DRE 502’s express recognition of communications among lawyers and representatives undermine the premise that only one ODS lawyer can be recognized. For administrative law, a generally applicable substantive cap is vulnerable if it lacks delegated authority and required adoption, filing, notice, findings, or publication—but Jackson and the technical limits of APA coverage require a careful, not categorical, argument.

The legally durable solution is straightforward: no numeric cap; verification of every legitimate lawyer and authorized representative; client consent; unrecorded channels; reasonable scheduling; statewide portability; individualized and time-limited security restrictions; written reasons; and rapid review.

Source guide: primary authorities and official policies

Links were checked during research in August 2026. Statutes, rules, and policies can change. The short quotations in this report are selective; consult the linked full text and current official publication before filing or relying on any proposition.

1. Delaware Constitution, art. I, §§ 7, 9, 12(c)
2. U.S. Constitution Annotated, Sixth Amendment
3. Constitution Annotated, right to choose counsel
4. Constitution Annotated, restrictions on counsel's function and consultation
5. Constitution Annotated, prisoners and access to courts
6. Bailey v. State, 521 A.2d 1069 (Del. 1987)
7. State v. Sells, 2013 WL 1143614 (Del. Super. Ct.)
8. State v. McCoy, 143 A.3d 20 (Del. 2016)
9. Delaware ODS Act, 29 Del. C. ch. 46
10. Delaware ODS, How to Get an Attorney
11. Delaware ODS employment materials
12. Delaware Lawyers' Rules of Professional Conduct
13. Delaware Rule of Evidence 502
14. DDOC statutory authority, 11 Del. C. § 6504
15. DDOC visits and correspondence, 11 Del. C. § 6537
16. Delaware APA Subchapter I—purpose and definitions
17. Delaware APA Subchapter II—rulemaking
18. Delaware APA § 10141—declaratory review
19. Delaware APA § 10161—agency coverage
20. 11 Del. C. § 4322—current DDOC policy confidentiality limits
21. Delaware HB 394 (2022)
22. Jackson v. Danberg (Del. Ch. 2008)
23. Fatir v. Delaware Department of Correction
24. Constitution Annotated—Turner prison-restriction standard
25. Federal BOP attorney-call regulation, 28 C.F.R. § 540.102
26. Federal BOP special calls, 28 C.F.R. § 540.103
27. Federal BOP attorney visits, 28 C.F.R. § 543.13
28. Federal BOP attorney restrictions, 28 C.F.R. § 543.14
29. Federal BOP pretrial access, 28 C.F.R. § 551.117
30. Federal Register, 2024 BOP attorney-visit rule and rationale
31. New Jersey DOC, Staying Connected
32. New Jersey DOC, Visitation
33. Pennsylvania DOC, Attorney-Client Communication
34. Pennsylvania DC-ADM 812
35. Texas TDCJ Offender Orientation Handbook

36. Texas TDCJ attorney forms and procedures
37. Washington DOC phone calls
38. Washington DOC attorney FAQ
39. California Penal Code § 5058.7
40. California regulation, tit. 15, § 3282
41. California CDCR statewide attorney clearance
42. New Mexico Corrections Policy CD-150300 (2026)
43. Ohio Admin. Code 5120-9-20
44. Maine Legislature 2022 fifty-state survey
45. 42 U.S.C. § 1997e—PLRA exhaustion
46. 18 U.S.C. § 3626—limits on prison-condition relief