

	<b>ADMINISTRATIVE REGULATION</b>  Department of Correctional Services State of Nebraska	<b>NUMBER</b>  116.01	Page 1 of 8
		<b>INMATE RIGHTS</b>	

This Administrative Regulation is to be made available in law libraries or other inmate resource centers.

- EFFECTIVE: March 1, 1980
- REVISED: September 24, 2004
- REVISED: September 29, 2005
- REVISED: September 4, 2006
- REVISED: October 8, 2007
- REVISED: October 22, 2008
- REVISED: October 27, 2009
- REVISED: October 27, 2010
- REVISED: October 31, 2011
- REVISED: December 7, 2012
- REVISED: November 20, 2013
- REVISED: December 5, 2014
- REVIEWED: October 30, 2015
- REVISED: October 31, 2016

**SUMMARY of REVISION/REVIEW**

Section III.C. changed to be compliant with the modifications made in AR 203.11, Sexual Assault/Abuse regarding maintenance/copies of the Incident Report.

APPROVED:

  
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 Scott R. Frakes, Director  
 Nebraska Department of Correctional Services

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To provide guidelines that will ensure the individuals who are committed to the Nebraska Department of Correctional Services (NDCS) are accorded and advised of basic rights.

GENERAL

It is the policy of NDCS that the rights guaranteed through statutes, the constitution, and state and federal case law are granted to inmates of all facilities and programs. Limitations are placed thereon only to the extent necessary to maintain facility order and security and meet the Department's objective of providing a safe and humane environment for inmates, staff and the public. The rights enumerated shall not be diminished for disciplinary reasons except as set forth in NDCS Rules and Regulations, Title 68, Chapter 6, because they are necessary for the maintenance of a minimum quality of life.

PROCEDURE

- I. The Department shall promulgate written rules and regulations governing the rights of committed persons.
- II. Those rights included in such rules and regulations shall include, but not be limited to, those rights enumerated in Neb. Rev. Stat. §83-4,111, which are:
  - A. Criteria concerning disciplinary procedures and a code of offenses for which discipline may be imposed.
  - B. Criteria concerning disciplinary segregation.
  - C. Criteria concerning grievance procedures.
  - D. Criteria concerning good time credit.
  - E. Criteria concerning mail and visiting privileges.
  - F. Criteria concerning rehabilitation opportunities.
- III. In addition, inmates shall have the right to:
  - A. A healthy environment including, but not necessarily limited to:
    1. Adequate supervision in all living units.
    2. Clean and orderly surroundings.
    3. Toilet, bathing, hand washing, and laundry facilities.
    4. Adequate lighting, ventilation, and heating.
    5. Compliance with applicable state, federal, and local fire safety regulations.
    6. A wholesome and nutritionally adequate diet.

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7. Clean, fitted, and seasonable clothing.
  8. Mattress and suitable bedding materials.
  9. Access to writing and seating space.
- B. Be governed by reasonable policy and procedures regarding searches and the preservation of evidence where a new crime is suspected. Searches are to be authorized only by the Warden or designee.
- C. Be governed by reasonable policy and procedures regarding inmate privacy, including the following:
1. Any employee conducting a routine pat search shall refrain from the deliberate searching of an inmate's genitals or anus. In addition, any employee conducting a pat search of a female inmate shall refrain from the deliberate searching or touching of the breast area. Any touching of those areas of the body should be brief and incidental. Employees shall be permitted to perform pat searches on inmates under all circumstances. They shall not be required to ask the inmate's permission to perform pat searches. Staff shall not conduct cross-gender pat searches of female inmates, absent exigent circumstances. All cross-gender pat searches of female inmates will be documented in an Incident Report. The report shall be maintained by the facility PREA Compliance Manager.
  2. Staff shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners. All cross-gender strip searches and cross-gender visual body cavity searches will be documented in an Incident Report. The report shall be maintained by the facility PREA Compliance Manager.
  3. In order to enable inmates to shower, perform bodily functions and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks, all staff of the opposite gender will announce their presence when entering an inmate housing unit. Written notice to inmates shall be posted prominently in all units indicating staff of the opposite gender may be present at any time.
  4. It is also necessary to make a verbal announcement when a staff member of the opposite gender is assigned to work on an inmate housing unit or when a staff member of the opposite gender enters an inmate housing unit where inmate sleeping/showering quarters are located. For example, if a female staff member is assigned to a male housing unit for the duration of a shift, only one announcement at the beginning of the shift is required in regards to that person's presence. In addition, any time an opposite gender staff person who is not assigned to that unit enters an area of the housing unit where inmate sleeping/showering quarters are located, a verbal announcement of his or her presence must be made. The announcement shall be made in

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such a manner that is most likely to be heard, such as the intercom system, and shall make it clear that a staff member of the opposite gender has entered the unit (appropriate language includes but is not limited to "A male/female staff member is on the floor/unit."). In the event of exigent circumstances (i.e., a medical emergency, inmate altercation, inmate/staff assault, etc.) the announcement of cross gender staff is not necessary.

5. When employees make routine checks and counts of rooms and galleries, they shall make minor accommodations of courtesy to avoid the viewing of inmates who are urinating or defecating or in the state of undress, when such accommodations will not jeopardize security or disrupt count procedures.
- D. Be free of discrimination based on race, nationality, color, creed, religion, sex, age, political belief, or physical disability with regard to program access, work assignments, and administrative decisions.
  - E. Freedom in personal grooming. This choice is limited only by institutional requirements for safety, security, identification, or hygiene.
  - F. Where male and female inmates are housed in the same facility, there shall be equal access to all available services and programs and separate sleeping quarters. Neither sex shall be denied opportunities solely on the basis of their number in the population.
  - G. Freedom from the exercise of supervision and/or control by other inmates.
  - H. The availability of an adequately equipped facility that meets the legal requirements for a licensed health care facility with respect to the services it offers, and the availability of 24-hour emergency medical and dental care.
  - I. Access to recreational opportunities and equipment including, when security and climate permit, outdoor exercise.
  - J. Contact with the courts and legal counsel or their authorized representative by a variety of methods including, but not limited to:
    1. Access to uncensored telephone and mail services for the conduct of legal affairs, as well as visits from legal counsel.
      - a. Access to U.S. mail for the correspondence with courts shall be available regardless of inmate's ability to pay for postage. Indigent inmates as defined in AR 205.01, *Inmate Mail*, who exhaust their five free mailings at first class letter rate per month, may send correspondence and pleadings to the courts at the facility's expense after issuing a check to cover the cost of the postage. Such mail sent at facility expense will be sent first class unless the court requires certified mail. Such checks will be held by the Department's inmate accounting division and funds will be collected to cover the checks as funds become available on the inmate's accounts.

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- b. The inmate calling system is provided to inmates to contact attorneys, state senators, the Ombudsman and related staff such as paralegals and law clerks. For specific policy guidelines related to legal telephone calls for inmates, see AR 205.03, *Inmate Telephone Regulations*.
    - c. Telephone hearings will be coordinated by designated staff at each facility.
  2. Access to typing equipment or services, supplies, materials, and notary services enabling inmates to prepare legal documents. Inmates shall also have access to photocopy services for legal documents at a cost established by the Department's central administration.
    - a. Indigent inmates may receive photocopies of legal documents by demonstrating a substantial need for the photocopies. Such inmates will be required to draw checks for the cost of their photocopies, and funds will be collected to cover such checks as funds become available in the inmates' accounts.
    - b. Money received from inmates or from the public for photocopies should be deposited in a cash fund to enable the receipts to be applied to the Department's photocopy expenses. Nothing herein will prevent a facility from making private photocopy services available to an inmate if the use of such services is more convenient for the facility and still provides the inmate with necessary photocopies within two weeks of the inmate's request.
    - c. As used in this paragraph, the term "legal documents" refers to pleadings, motions, requests for discovery, responses to requests for discovery, and exhibits needed for the prosecution or defense of a pending or proposed civil or criminal case. Inmates shall not be permitted to obtain photocopies of materials that are protected by copyright except as permitted by fair use. Inmates are prohibited from photocopying specific cases; quotes/cites are sufficient when preparing a court brief. Inmates are prohibited from printing material from electronic legal databases.
  3. Use of legal library and assistance in using the library. Each inmate law library should have available one or more self-help manuals on legal research, and one or more form books on pleadings and practice. Each facility with an inmate law library should also provide one or more inmates who have training and experience in the use of the law library and research to serve as legal aides for those inmates whose reading, writing, or cognitive skills limit their ability to use the law library effectively. The inmate does not have the right to the assistance of a specific legal aide.
  4. Inmates who are removed from general population who wish to use the law library should submit a written request to the appropriate staff member according to facility procedures. Staff will arrange for time in the law library under staff supervision if the inmate is eligible to be brought there. Staff may

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also arrange for an inmate legal aide to provide assistance to the inmate in restrictive housing. Such legal assistance may include arranging for law books to be checked out to restrictive housing inmates from the law library. Inmate legal aide assistance may include suggestions for materials to review, suggestions for search terms, assistance in drafting documents, providing legal forms and other appropriate assistance consistent with the function of the inmate legal aide. Services by the inmate legal aide to a restrictive housing inmate will always be under staff supervision. The inmate does not have the right to the assistance of a specific legal aide.

5. In addition to the procedures summarized in the previous paragraph above, restrictive housing inmates should have the opportunity to visit a facility law library to conduct their own research not less than one hour per week. Only inmates who have been in segregated status for at least one week should be permitted to request routine visits to a law library. If an inmate can demonstrate a special need for conducting research in the law library for more than one hour each week, or during the first week of restricted housing, the Warden of the facility shall have authority to grant such access.
  6. Inmates in restrictive housing, except those on protective custody status, who request visits to the law library, should be placed in restraints as appropriate for each inmate's custody classification and history of violent or destructive behavior. If an inmate has both hands restrained in the law library, a staff member or legal aide should assist the inmate in retrieving books, turning pages, and taking notes.
  7. Any inmates in restrictive housing, who abuses visits to the law library by destroying property, committing assaults, attempting an escape, attempting to use the law library for anything other than the intended purpose, or refusing to return to restricted housing when ordered to do so by staff, may be restricted from direct access to a law library. Any such restriction on the inmate's direct access to a law library should be imposed only after a hearing before an institutional classification committee conducted in compliance with the Department's classification procedure. Such restriction shall be reviewed every six months by a classification committee.
  8. Arrangements for the use of a law library will be made for those inmates housed in a community facility. The law library of a nearby NDCS facility may be used and/or the facilities of a local college. The Warden will determine and approve the law library to be used in cooperation with the approval of the appropriate law library administrator/NDCS facility head.
- K. A safe environment. Policy and procedure shall be designed to protect inmates from corporal punishment, personal abuse, personal injury, disease, property damage, harassment, and the use of unnecessary force.
- L. A dignified conversational form of address. All inmates will be addressed by name, rather than number. If an inmate has legally changed his/her name, staff will make an effort to address the inmate by his/her legally changed name.

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- M. Participation in the classification process allowing for input at all stages of programming.
  - N. Access to clergy, spiritual advisors, publications, and services related to the pursuit of approved religious practices.
  - O. Visitation with family members and friends, subject only to limitations necessary to maintain facility order and security.
  - P. Communication or correspondence with persons, organizations, or the media subject only to those limitations necessary to maintain facility order and security and to protect the inmate's privacy. Media requests for interviews and inmate consent shall be in writing.
  - Q. Comprehensive counseling for pregnant inmates which is in keeping with their expressed desires to plan for their unborn children.
  - R. Access to the diplomatic representative of their country of citizenship for inmates who are foreign nationals.
  - S. Be free from sexual harassment, sexual abuse and sexual assault.
- IV. The rules and regulations developed pursuant to the statutory guidelines described in subsection II, supra, shall not deprive an inmate of any rights or privileges to which he or she is otherwise entitled.
  - V. Promulgation of such rules and regulations shall be made pursuant to Chapter 84, Article 9 of the Administrative Procedures Act.
  - VI. Complete copies of promulgated rules and regulations shall be made available to inmates in the libraries, legal libraries, and housing units at each facility. Further, significant portions of the rules and regulations shall be posted in conspicuous places within the facilities. Upon admission to the Department, all inmates shall receive a copy of the NDCS Rules promulgated under the Administrative Procedures Act.
  - VII. During the admission process, each inmate shall receive orientation regarding the promulgated rules and regulations. They shall receive orientation in their own language from staff, tape recordings, literature, and/or other appropriate sources.
  - VIII. All staff having direct inmate contact shall become familiar with such rules and regulations through the training process.

**REFERENCE**

- I. STATE STATUTE - Nebraska State Statute §83-4,111.

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II. ATTACHMENTS – None.

III. AMERICAN CORRECTIONAL ASSOCIATION (ACA) STANDARDS

- A. Standards for Adult Correctional Institutions (ACI) (4th edition): 4-4137, 4-4138, 4-4139, 4-4145, 4-4146, 4-4151, 4-4152, 4-4153, 4-4182, 4-4274, 4-4275, 4-4276, 4-4277, 4-4278, 4-4279, 4-4280, 4-4281, 4-4282, 4-4283, 4-4284, 4-4340.
- B. Performance Based Standards for Adult Community Residential Services (ACRS) (4th edition): 4-ACRS-1A-07, 4-ACRS-1A-08, 4-ACRS-1A-13, 4-ACRS-6A-01, 4-ACRS-6A-03, 4-ACRS-6A-05, 4-ACRS-6B-01, 4-ACRS-6B-03 AND 4-ACRS-7F-03.