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SUMMARY OF REVISION/REVIEW


Reviewed, no changes.

APPROVED:

Rob Jeffreys

[Rob Jeffreys \(Mar 31, 2025 17:53 CDT\)](#)

Rob Jeffreys, Director
Nebraska Department of Correctional Services

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PURPOSE

It is the policy of the Nebraska Department of Correctional Services (NDCS) that the rights guaranteed through statutes, the constitution, and state and federal case law are granted to all incarcerated individuals. Limitations are placed thereon only to the extent necessary to maintain facility order and security and meet NDCS' objective of providing a safe and humane environment for incarcerated individuals, team members, 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. NDCS is committed to ensuring all incarcerated individuals are advised of all afforded basic rights.

PROCESS

I. PROMULGATED WRITTEN RULES

The Department shall promulgate written rules and regulations governing the rights of committed persons.

II. NEBRASKA REVISED STATUE


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 include:

- A. Criteria concerning disciplinary procedures and a code of offenses for which discipline may be imposed
- B. Criteria concerning grievance procedures (ACI-3D-19, ACRS-6B-03)
- C. Criteria concerning good time credit
- D. Criteria concerning mail and visiting privileges
- E. Criteria concerning rehabilitation opportunities


III. ADDITIONAL RIGHTS

In addition, incarcerated individuals 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 (ACI-2C-05)
 - 4. Adequate lighting, ventilation, and heating (ACI-2D-01, ACI-2D-02, ACI-2D-08, ACI-2D-09, ACRS-1A-07, ACRS-1A-08)

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5. Compliance with applicable state, federal, and local fire safety regulations
 6. A wholesome and nutritionally adequate diet
 7. Clean, fitted, and seasonable clothing
 8. Mattress and suitable bedding materials (ACI-5D-12)
 9. Access to writing and seating space (ACRS-1A-13)
 10. Showers and running water (ACI-2C-07, ACI-2C-09)
 11. Appropriate living temperatures to seasonal comfort zones (ACI-2D-10)
- B. Be governed by reasonable policies and procedures regarding searches and the preservation of evidence where a new crime is suspected. Searches are to be authorized only by the warden/designee. (ACI-3D-17)
- C. Be governed by reasonable policies and procedures regarding individual privacy, including the following:
1. Any team member conducting a routine pat search shall refrain from the deliberate searching of an incarcerated individual's genitals or anus. In addition, team members conducting a pat search should refrain from the deliberate searching or touching of the breast area. Any touching of those areas of the body should be brief and incidental. Team members shall be permitted to perform pat searches on incarcerated individuals under all circumstances. They shall not be required to ask the incarcerated individual's permission to perform pat searches. Team members shall not conduct cross-gender pat searches of female incarcerated individuals, absent exigent circumstances. All cross-gender pat searches of female incarcerated individuals will be documented in an Incident Report. The report shall be maintained by the facility PREA Compliance Manager.
 2. Team members shall not conduct cross-gender safety 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 safety 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 incarcerated individuals to shower, perform bodily functions and change clothing without nonmedical team members 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 team members of the opposite gender will announce their presence when entering an incarcerated individual housing unit. Written notice to incarcerated individuals shall be posted prominently in all units indicating team members of the opposite gender may be present at any time.

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4. It is also necessary to make a verbal announcement when a team member of the opposite gender is assigned to work on a housing unit or when a team member of the opposite gender enters a housing unit where incarcerated individual sleeping/showering quarters are located. For example, if a female team 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 regard to that person's presence. In addition, any time an opposite gender team member who is not assigned to that unit enters an area of the housing unit where sleeping/showering quarters are located, a verbal announcement of his or her presence must be made. The announcement shall be made in such a manner that is most likely to be heard, such as the intercom system, and shall make it clear that a team member of the opposite gender has entered the unit (appropriate language includes but is not limited to "A male/female team member is on the floor/unit."). In the event of exigent circumstances (i.e., a medical emergency, altercation, team member assault, etc.) the announcement of cross gender team member is not necessary.
5. When team members make routine checks and counts of rooms and galleries, they shall make minor accommodations of courtesy to avoid the viewing of incarcerated individuals 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. (ACI-3D-04, ACRS-6B-01)
- E. Freedom in personal grooming. This choice is limited only by institutional requirements for safety, security, identification, or hygiene. (ACI-3D-18)
- F. Where male and female incarcerated individuals 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. (ACI-3D-05)
- G. Freedom from the exercise of supervision and/or control by other incarcerated individuals. (ACI-3A-08)
- 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. Access to the courts and legal counsel or their authorized representative by a variety of methods including, but not limited to: (ACI-3D-01)
 1. Access to uncensored telephone and mail services for the conduct of legal affairs, as well as visits from legal counsel. (ACI-3D-02, ACRS-6A-01)


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- a. Access to U.S. mail for the correspondence with courts shall be available regardless of incarcerated individual's ability to pay for postage. Indigent individuals as defined in Policy 205.01 *Incarcerated Individual 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 incarcerated individual accounting division and funds will be collected to cover the checks as funds become available on the incarcerated individual's accounts.
 - b. The Inmate Calling System is provided to contact attorneys, state senators, the Ombudsman and related individuals such as paralegals and law clerks. For specific policy guidelines related to legal telephone calls, see Policy 205.03 *Inmate Calling System*.
 - c. Court telephonic or video hearings will be coordinated by designated team member at each facility.
2. Access to typing equipment or services, supplies, materials, and notary services enabling incarcerated individuals to prepare legal documents challenging their sentences or conditions of confinement in a court of law. Incarcerated individuals shall also have access to photocopy services for legal documents at a cost established by the Department's central administration.
 - a. Indigent incarcerated individuals may receive photocopies of legal documents by demonstrating a substantial need for the photocopies. Such incarcerated individuals 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 individuals' accounts.
 - b. Money received from incarcerated individuals 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 incarcerated individual if the use of such services is more convenient for the facility and still provides the individual with necessary photocopies within two weeks of the request.
 - c. As used in this paragraph, the term "legal documents" refers to a complaint or petition, prepared by the incarcerated individual, and any attached exhibits prior to filing of a lawsuit, and pleadings, motions, requests for discovery, responses to requests for discovery, and exhibits needed for the prosecution or defense of a pending civil case or criminal case. Incarcerated individuals shall not be permitted to obtain photocopies of materials that are protected by copyright except as permitted by fair use. Incarcerated individuals are prohibited from photocopying specific cases; quotes/cites are sufficient when preparing a court brief. Incarcerated

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individuals are prohibited from printing material from electronic legal databases.

3. Use of law library and assistance in using the library. Each law library should have available one or more self-help manual on legal research, and one or more form book on pleadings and practice. Each facility with a law library should also provide one or more incarcerated individual who has training and experience in the use of the law library and research to serve as legal aides for those incarcerated individuals whose reading, writing, or cognitive skills limit their ability to use the law library effectively. Incarcerated individuals are not permitted to copy/print material from law library computer databases (e.g. Lexis or Westlaw), and are not permitted to obtain copies of policies or procedures from the facility law library. The only exception is if there is a court rule or order that requires the incarcerated individual to submit copies of policies or procedures to a court, then the incarcerated individual shall submit a request for the copies, citing the relevant court rule/order. If approved, the incarcerated individual will submit a completed facility check for the copies. The incarcerated individual does not have the right to the assistance of a specific legal aide. All incarcerated individuals in the custody of NDCS shall not commit the unauthorized practice of law by giving legal advice or drafting legal documents for another incarcerated individual. (ACI-3D-02)
4. Incarcerated individuals who are removed from general population who wish to use the law library should submit a written request to the appropriate team member according to facility procedures. Team members will arrange for time in the law library under team member supervision if the incarcerated individual is eligible to be brought there. Team members may also arrange for an incarcerated individual legal aide to provide assistance to the individual in restrictive housing. Such legal assistance may include arranging for law books to be checked out to restrictive housing individuals from the law library. Incarcerated individual legal aide assistance may include suggestions for materials to review, suggestions for search terms, assistance in transcribing documents, providing legal forms and other appropriate assistance consistent with the function of the incarcerated individual legal aide as well as assistance with transcribing/word processing for individuals with a physical disability preventing them from writing or individuals who are not proficient in English. Services by the incarcerated individual legal aide to a restrictive housing individual will always be under team member supervision. The incarcerated individual 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 incarcerated individuals should have the opportunity to visit a facility law library to conduct their own research no less than one hour per week. Only individuals who have been in restrictive housing status for at least one week should be permitted to request routine visits to a law library. If an incarcerated individual 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.

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6. Incarcerated individuals in restrictive housing, who request visits to the law library, should be placed in restraints as appropriate for each individual's custody classification and history of violent or destructive behavior. If an incarcerated individual has both hands restrained in the law library, a team member or legal aide should assist the individual in retrieving books, turning pages, and taking notes.
7. Any incarcerated individual 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 team members, may be restricted from direct access to a law library. Any such restriction on the incarcerated individual'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 incarcerated individuals 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 division head.
- K. Policy and procedure shall be designed to protect incarcerated individuals from corporal punishment, personal abuse, personal injury, disease, property damage, harassment, and the use of unnecessary force. (ACI-3D-08, ACRS-6A-03)
- L. All incarcerated individuals will be addressed by name, rather than number. If an incarcerated individual has legally changed his/her name, team members will make an effort to address the individual by his/her legally changed name.
- M. Participation in the classification process.
- 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 incarcerated individual's privacy. Media requests for interviews and incarcerated individual consent shall be in writing. (ACI-3D-06, ACRS-7F-03)
- Q. Comprehensive counseling for pregnant incarcerated individuals 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 incarcerated individuals who are foreign nationals. (ACI-3D-07)

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S. Be free from sexual harassment, sexual abuse, and sexual assault. (ACRS-6A-05)

IV. RULES AND REGULATIONS

The rules and regulations developed pursuant to the statutory guidelines described in subsection II, above, shall not deprive an incarcerated individual of any rights or privileges to which he or she is otherwise entitled.

V. ADMINISTRATIVE PROCEDURE ACT

Promulgation of such rules and regulations shall be made pursuant to the Administrative Procedure Act, Neb. Rev. Stat. §84-901 to §84-920.

Complete copies of promulgated rules and regulations shall be made available to incarcerated individuals 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 incarcerated individuals shall receive a copy of the NDCS Rules and Regulations promulgated under the Administrative Procedure Act.

VI. ORIENTATION

During the admission process, each incarcerated individual shall receive orientation regarding the promulgated rules and regulations. They shall receive orientation in their own language from team members, tape recordings, literature, and/or other appropriate sources.

VII. TEAM MEMBER TRAINING

All team members having direct incarcerated individual contact shall become familiar with such rules and regulations through the training process.

REFERENCE

I. STATUTORY REFERENCE AND OTHER AUTHORITY

- A. Administrative Procedure Act: Neb. Rev. Stat. §84-901 to §84-920
- B. Nebraska Revised Statute: §83-4,111
- C. Title 68: Chapter 6

II. NDCS POLICIES

- A. Policy 205.01 *Incarcerated Individual Mail*
- B. Policy 205.03 *Inmate Calling System*

III. ATTACHMENTS – None noted

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IV. AMERICAN CORRECTIONAL ASSOCIATION (ACA)

- A. Expected Practices for Adult Correctional Institutions (ACI) (5th edition): 5-ACI-2C-05, 5-ACI-2C-07, 5-ACI-2C-09, 5-ACI-2D-01, 5-ACI-2D-02, 5-ACI-2D-08, 5-ACI-2D-09, 5-ACI-2D-10, 5-ACI-3A-08, 5-ACI-3D-01, 5-ACI-3D-02, 5-ACI-3D-03, 5-ACI-3D-04, 5-ACI-3D-05, 5-ACI-3D-06, 5-ACI-3D-07, 5-ACI-3D-08, 5-ACI-3D-17, 5-ACI-3D-18, 5-ACI-3D-19, 5-ACI-5D-12
- B. 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, 4-ACRS-7F-03