

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES  
NOTICE OF PUBLIC HEARING

January 4, 2023  
10:00 a.m. Central Time  
Nebraska Department of Correctional Services (NDCS) Central Office  
801 West Prospector Place, Building 1, Lincoln, Nebraska 68509  
Conference Room Lower Level

The purpose of this hearing is to receive comments on proposed changes to Title 68, Chapters 2, 3, 5, and 6 of the Nebraska Administrative Code (NAC) and the proposed adoption of Title 68, Chapter 10 into the NAC. Chapter 2 governs grievance procedures for all institutions operated by NDCS. Chapter 3 governs mail privileges for all institutions operated by NDCS. Chapter 5 establishes the Code of Offenses for all institutions operated by NDCS. Chapter 6 establishes the Inmate Disciplinary Procedures for all institutions operated by NDCS. The proposed changes remove unnecessary language, reflect current policy, and update terminology. The adoption of Chapter 10 promulgates rules and regulations that provide for petitions for declaratory orders as required pursuant to Neb. Rev. Stat. § 84-912.01(2). There is no expected fiscal impact on state agencies, political subdivisions, or persons being regulated as a result of these changes and adoption.

Authority for these regulations is found in Neb. Rev. Stat. § 83-4,111, Neb. Rev. Stat. § 84-907 and Neb. Rev. Stat. § 84-912.01.

All interested persons are invited to attend and make oral or written comments at the hearing. Interested persons may also submit written comments, which will be made part of the record if received prior to the hearing, to: NDCS General Counsel, PO Box 94661, Lincoln, NE 68509-4661 or [ryan.gilbride@nebraska.gov](mailto:ryan.gilbride@nebraska.gov).

A copy of the proposed changes is available from the office of the Secretary of State, Regulations/Licensing Division, 1201 N Street, Suite 120, Lincoln, Nebraska 68508 and online at <http://www.sos.ne.gov>.

If auxiliary aids or reasonable accommodations are needed to participate in the hearing please contact Ryan Gilbride at (402) 479-5735 or email [ryan.gilbride@nebraska.gov](mailto:ryan.gilbride@nebraska.gov) to request such accommodation at least 14 days prior to the hearing.

## FISCAL IMPACT STATEMENT

Agency: Nebraska Department of Correctional Services	
Title: Title 68	Prepared by: Ryan Gilbride
Chapter: Chapters 2, 3, 5, 6, and 10	Date prepared: November 17, 2022
Subject: Grievance Procedures, Mail Privileges, Code of Offenses, Inmate Disciplinary Procedures and Petitions for Declaratory Orders	Telephone: 402-479-5735

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	( )	( )	( )
Decreased Costs	( )	( )	( )
Increased Revenue	( )	( )	( )
Decreased Revenue	( )	( )	( )
Indeterminable	( )	( )	( )

Provide an Estimated Cost & a Description of Impact:

State Agency:

Political  
Subdivision:

Regulated  
Public:

If indeterminable, explain why:

Title 68 - Nebraska Department of Correctional Services  
Chapter 2 - Grievance Procedures

001 Applicability. This rule applies to all institutions operated by the Nebraska Department of Correctional Services (NDCS).

002 Department Policy. ~~The Department~~ NDCS provides an inmate with a procedure for the administrative settlement of a legitimate grievance.

002.01 A grievance is not a formal grievance until the inmate submits a Step-One Grievance Form to the Warden or designee of the facility to which the inmate is assigned.

002.02 Any topic, including a request for an accommodation under the Americans with Disabilities Act (ADA), may be the subject of a grievance, except matters over which ~~the Department~~ NDCS has no control, classification actions, and inmate disciplinary actions.

003 Grievance Principles. These guidelines apply to the grievance procedure.

003.01 Any inmate in the custody of ~~the Department~~ NDCS may file a grievance.

003.02 An inmate shall submit an Informal Grievance Resolution Form to designated unit staff.

003.03 If an inmate is dissatisfied with the response to the Informal Grievance, the inmate may file a Step-One Grievance with the Warden. The Step-One Grievance Form must be used and the Informal Grievance with the response thereto must be attached.

003.04 No one shall alter, interfere with, or delay the transmittal of an inmate grievance.

003.05 No inmate who uses the grievance procedure shall be subject to any type of disciplinary sanction or other adverse action for filing grievances- unless a determination has been made that the inmate is abusing the grievance process, then a reasonable limitation may be placed on the number of grievances that may be filed by the inmate for a specified period of time.

003.06 Language used in grievances is subject to the Inmate Code of Offenses and Inmate Disciplinary Procedures. ~~DCS Rules 5 and 6.~~

003.07 Each grievance will be reviewed and, if necessary, investigated. The inmate shall receive a prompt written response. Circumstances such as illness, injury, or unavailability of a witness may lengthen the response time.

003.08 Inmate grievances shall be confidential. ~~Only those individuals whose involvement is needed to complete the investigation of the grievance shall be made aware of the grievance. Individuals contacted during the investigation shall only be made aware of the information needed to allow them to contribute to the investigation.~~ Consistent with ensuring confidentiality, staff that participating es in

the disposition of a grievance shall have access to records needed to respond to the grievance.

003.09 An inmate may not address a grievance to a particular staff member.

004 Grievance of a Sensitive Nature. If the inmate believes that a grievance is of a sensitive nature, the grievance may be filed directly with the Director or designee.

004.01 A grievance of a sensitive nature may be mailed as privileged mail or sent to the Director or designee by interoffice mail on a Step-One or a Step-Two grievance form and must be marked "Sensitive Nature" at the top of the form.

004.02 The inmate must clearly explain the nature of the grievance and the reasons for not following the regular grievance procedure.

004.03 If the Director or designee determines that the grievance is not of a sensitive nature, the grievance shall be returned to the inmate- with direction to use the regular grievance process.

004.04 If the Director or designee determines that the grievance is of a sensitive nature, the Director or designee shall conduct any necessary investigation. If the investigation indicates that action should be taken, the Director or designee shall cause the appropriate steps to be taken to resolve the grievance. The Director or designee has twenty working days to respond to a grievance submitted as a grievance of a sensitive nature.

005 Informal Grievance Procedures. The following procedures apply to inmate informal grievances:

005.01 When an inmate submits an Informal Grievance Resolution Form, unit staff will log and receipt the Informal Grievance Resolution Form. ~~and investigate the grievance.~~ The receipt, containing the grievance log number, will be forwarded to the inmate. Unit staff shall review, and if necessary, investigate the grievance.

005.02 The Informal Grievance Resolution Form may be obtained from unit staff.

005.03 The Informal Grievance Resolution Form must be filed within three calendar days of the date of the incident.

005.04 Unit staff shall prepare a written response within ~~ten~~ 10 working days- of the date the Informal Grievance was logged and receipted.

006 Step-One Grievance Procedures. The following procedures apply to Step-One Grievances:

006.01 The Step-One Grievance Form may be obtained from the inmate's case manager or designee.

006.02 The Step-One Grievance Form must be filed within 15 calendar days of the date the inmate receives ~~of the receipt of~~ the informal grievance response, or

if no response was received, within 20 calendar days of the incident giving rise to the grievance.

006.03 The inmate may address only one issue on a formal grievance, or it will be returned to the inmate.

006.04 The Informal Grievance Resolution Form and response, if received, must be attached to the Step-One Grievance Form.

006.05 The formal grievance process begins when the inmate completes the inmate portion of the Step-One Grievance Form and submits it to the Warden or designee.

006.06 Upon receipt of the Step-One Grievance Form from the inmate, the Warden's designee shall log, and receipt sign and date the Step-One Grievance Form. The receipt for the Step-One Grievance Form shall contain the grievance log number and shall be sent to the inmate.

006.07 The Warden's designee shall review and, if necessary, investigate the grievance. The results of the investigation shall be communicated to the Warden and include a proposed response to the grievance. The Warden or designee will review the suggested response and will send a written response to the inmate within ~~ten~~ 10 working days ~~after of the receipt of the grievance date~~. The response shall include a brief statement of the reason or reasons for the decision.

007 Step-Two Grievance Procedures. The following procedures apply to Step-Two Grievances:

007.01 If the inmate wants to appeal the response to the Step-One Grievance, then the inmate must obtain a Step-Two Grievance Form from the inmate's case manager or designee.

007.02 The inmate shall submit the Step-Two Grievance Form to the Director by interoffice mail within 10 calendar days after receipt of the Warden's response to the Step-One Grievance. If the grievance is in an envelope, it shall be clearly marked to indicate that it contains a Step-Two Grievance Form. The Step-Two Grievance Form may be mailed in compliance with ~~the Department's~~ NDCS rules governing privileged mail.

007.03 ~~A copy of the~~ The Informal Grievance Resolution Form and the Step-One Grievance Form and responses must be attached to the Step-Two Grievance Form.

007.04 Upon receipt of the Step-Two Grievance Form, the Director's designee shall log and receipt the Step-Two Grievance Form. The receipt for the Step-Two Grievance Form may be delivered to the inmate by interoffice mail. The inmate may include additional information on the Step-Two Grievance Form. The inmate must also submit the additional information to the Warden.

007.05 The Director or designee shall respond to the Step-Two Grievance Form within ~~twenty~~ 20 working days of the receipt date. The Director or designee may

rely upon the information compiled by the Warden's investigation or conduct an additional investigation. The Director may modify, affirm or reverse the response of the Warden.

007.06 The decision of the Director or designee is final.

008 Limitations on Grievances. An inmate may file no more than two Step-One Grievances per week (Monday through Sunday), except for valid emergency grievances.

009 Emergency Grievances. Emergency Grievances are those matters that must be resolved quickly because if the standard grievance time limits were used the inmate would be subjected to substantial risk of personal injury or other serious or irreparable harm.

009.01 Emergency Grievances shall be filed on Informal Grievance Resolution Forms.

009.02 Emergency Grievances shall be filed with unit staff.

009.03 Unit Staff, or Shift Supervisory staff, outside of regular business hours, shall respond to Emergency Grievances.

010 Abuse of the Grievance Process. If an inmate files frivolous, nuisance or duplicative grievances at any level, a designee of the Warden will conduct a classification hearing to determine whether the inmate is abusing the grievance process. If it is determined that the inmate is abusing the grievance process, a reasonable limitation may be placed on the number of grievances the inmate is allowed to file for a specified period of time.

011 Other Remedies. Inmates may communicate grievances to persons outside ~~the~~ Department NDCS.

011.01 An inmate may communicate a grievance to the Office of Public Counsel/Ombudsman, legislators, attorneys, courts or others. If an inmate chooses to send an unprocessed grievance to an entity outside NDCS, the grievance will not be considered to be filed with NDCS and will not be entitled to a response by NDCS.

011.02 Claims against NDCS ~~the Department~~ involving miscellaneous or tort claims for money may be filed pursuant to the State Tort Claims Act.

011.03 Each facility shall ensure that inmates have reasonable access to courts and ~~to~~ legal services and materials.

~~012 – Petitions. Inmates may circulate petitions for signatures.~~

~~012.01 The petitions cannot violate or propose a violation of the Department's rules or state or federal law, or interfere with the security or good order of the facility.~~

~~012.02 Inmates may petition the Warden or the Director requesting specific relief concerning a grievance involving a Department policy or practice. The petition~~

~~must state the proposed change in Department policy or practice, the reason for the proposed change; and the circulator's full name and inmate number.~~

~~012.03 Inmates supporting the petition may sign the petition. An inmate filing signing the petition shall give his/her inmate number and the date of the signature. The signatures must be legible.~~

~~012.04 The petition shall be attached to a Step One Grievance Form and submitted to the Warden within the time limits for filing Step One Grievances.~~

~~012.05 The Warden shall consider the petition when responding to the grievance that the petition concerns.~~

~~012.06 If the inmates want to appeal from the decision of the Warden, the inmates shall attach the petition, the Step One Grievance Form and the Warden's response to a Step Two Grievance Form and submit it to the Director within the time limits established for grievance appeals.~~

~~012.07 The Warden and Director will keep a copy of the petition with the record of the grievance that the petition concerns.~~

Title 68 - Nebraska Department of Correctional Services  
Chapter 3 – Mail Privileges

001 Applicability. This rule applies to all facilities operated by the Nebraska Department of Correctional Services (NDCS).

002 Departmental Policy. An inmate's access to the mail will be limited only if the access constitutes a violation of state law, federal law, regulations governing mail or threatens the security, safety or good order of the facility

003 Contraband in the Mails. Contraband, for purposes of this Chapter, includes but is not limited to:

003.01 Any drugs that cannot be legally possessed under Nebraska law.

003.02 Tobacco or tobacco products.

003.03 Information on escape routes.

003.04 Information on the manufacture of weapons, incendiary devices, drugs or alcohol.

003.05 Alcoholic beverages.

003.06 Weapons of any type.

003.07 Perishable goods, unless approved by the Warden of the facility.

003.08 Maps that constitute a threat to the security of the facility or the public because the map could be used as an escape tool.

003.09 Cash.

003.10 Any items that would cause a violation of the Code of Offenses if possessed by an inmate.

003.11 Any item that promotes gangs or gang activities.

003.12 Postage stamps (except as allowed in ~~Rule Chapter 3, § 3-0121.07~~ Chapter 3, § 3-0121.07 of this Title and in Community Corrections facilities).

003.13 Any item that would constitute a threat to the safety, security or good order of the facility including printed, published, recorded or photographed material.

003.14 Any publication, writing or recording that advocates or is likely to incite violence or illegal activities.

003.15 Any publication or item that advocates or is likely to incite violent or illegal activity, including materials which advocate or depict violent or illegal sexual activity.

003.16 ~~Any other printed, published, recorded or photographed material that the Warden~~



~~determines is a threat to the safety, security or good order of the facility.~~

#### 004 Contraband in Outgoing Mail

004.01 All non-privileged outgoing mail will be examined for enclosures and contraband except in community corrections facilities. The Warden of a community corrections facility may have outgoing mail examined at his or her discretion.

004.02 Any contraband found in outgoing mail will be seized and a receipt will be given to the inmate.

004.03 Official government money confiscated from an inmate's outgoing mail will be placed in the inmate's confiscated cash account and will be returned to the inmate upon release from the custody of the ~~Department~~ NDCS.

004.04 At the conclusion of any disciplinary action involving contraband in outgoing mail, the seized contraband shall be destroyed, retained, or referred to a law enforcement agency, as appropriate.

004.05 If an inmate wants to challenge the seizure of contraband found in outgoing mail, the inmate shall use the grievance procedures.

#### 005 Contraband in Incoming Mail.

005.01 All non-privileged incoming mail will be opened and examined for enclosures and contraband.

005.02 ~~All contraband found in incoming mail shall be removed. A written statement shall be prepared for all C~~contraband found in incoming mail, ~~will normally be returned to the sender with a A~~ copy of the written statement ~~shall be~~ given to the inmate. The statement shall include a description of the contraband and why it was removed.

005.03 If the contraband in incoming mail violates state or federal law, the contraband and the letter will be referred to a law enforcement ~~authority~~. If contraband in incoming mail is seized for prosecution purposes, the sender and the inmate will be notified.

005.04 An inmate can challenge the seizure of contraband in incoming mail by filing a grievance.

005.05 A sender can challenge the seizure of contraband in incoming mail by contacting the Warden of the facility in writing.

#### 006 Contraband Publications.

006.01 ~~If a publication that is contraband is found in an inmate's incoming mail, the An~~ inmate will ~~be given~~ receive written notice if a publication is deemed to be contraband. The notice shall state why the publication is not being delivered and why it is contraband.

006.02 The publication will be held until the grievance procedure is exhausted or the time for filing a grievance has expired, ~~before~~ Afterward, the publication is shall be destroyed or returned to the sender at the inmate's expense.

006.03 An inmate may request that the publication be immediately returned to the sender at the inmate's expense.

006.04 Inserts in publications may be removed ~~from the publication~~ if the inserts are contraband. The inserts may be removed without notice to the inmate. After the inserts that are contraband are removed from the publication, the publication can be delivered to the inmate.

#### 0087 Inmate-to-Inmate Mail.

0087.01 Inmate-to-inmate mail is presumed to be a threat to the safety, security or good order of the facilities and is presumed to jeopardize the rehabilitation of the inmates.

007.02 Inmate-to-inmate correspondence may be allowed only if the inmates or parolees are immediate family or have a common interest in a legal matter and the correspondence will not threaten the safety, security or good order of the institution or jeopardize the rehabilitative process of the inmates or parolees.

0087.023 An inmate cannot send mail to or receive mail from:

0087.023A A parolee without the approval of the Warden and the Parole Administrator.

0087.023B An inmate at another correctional institution without the approval of the Wardens of both institutions.

0087.023C An inmate in the same institution without the Warden's approval.

0087.034 Approval of ~~inmate-to-inmate~~ inmate-to-inmate correspondence shall be in writing.

~~008.04 Inmate-to-inmate correspondence may be allowed if the inmates or parolees are immediate family or have a common interest in a legal matter and the correspondence will not threaten the safety, security or good order of the institution or jeopardize the rehabilitative process of the inmates or parolees.~~

0087.05 Staff designated by the Warden(s) may read incoming or outgoing mail sent from one inmate/parolee to another inmate/parolee.

#### 0098 Outgoing Mail Procedure.

0098.01 The amount of mail an inmate can send will not be limited unless the inmate has violated the Department's NDCS rules and regulations or policies relating to mail.

0098.02 Inmates cannot establish credit with sellers of merchandise, or establish or conduct business enterprises, ~~without the approval of the Warden.~~

0098.03 Inmates cannot send mail to persons who have given written notification to the Warden objecting to receiving mail from the inmates.

0098.04 The Warden will designate employees to process outgoing mail.

0098.05 All outgoing mail will be stamped with a statement that the mail came from a correctional institution.

0098.06 All outgoing mail will be examined for enclosures and contraband except in community corrections facilities. The Warden of a community corrections facility may determine when outgoing mail will be examined at his/her discretion.

0098.07 Outgoing mail may be read only when there is clear and convincing evidence that the outgoing mail could constitute a threat to the safety, security, or good order of the facility.

0098.08 The envelopes for outgoing mail shall not be sealed by the inmate, unless the mail is privileged.

0098.09 The inmate's name, number and institutional address shall be on the upper left-hand corner of each piece of outgoing mail. The inmate shall use his/her legal name or legally changed name. If the inmate's name is not on outgoing mail, the mail will be retained for ~~sixty~~ 60 days. If the inmate does not claim the mail within ~~sixty~~ 60 days, the mail will be destroyed.

0098.10 If any outgoing mail is not allowed to leave the facility, the mail will be returned to the inmate, with a written explanation of why the mail was returned.

#### 0409 Incoming Mail Procedures.

0409.01 Inmates may receive mail from any person or organization they choose except as prohibited by NDCS rules, and regulations, policies or state ~~or~~ and federal law.

0409.02 There is no limit on the number of letters an inmate may receive, the length of an incoming letter, or the language used to write the letter, unless the incoming letter violates the ~~Department's~~ NDCS rules, regulations, ~~or~~ policies or ~~Sstate or~~ and federal law.

0409.03 All items received through the mail must be paid for in advance. If an item is not paid for in advance, the item will be returned to the sender and the inmate will be given written notice that the item has been returned.

0409.04 Any publication that does not comply with this rule or any ~~Department~~ NDCS rule, regulation or policy will be returned to the sender. The inmate will be given written notice that the publication has been returned.

0409.05 All publications must be prepaid and shipped directly from the publisher or ~~bookstore~~ vendor approved by NDCS.

0409.06 A church or other religious organization may send religious publications or ~~tapes~~ audio/video recordings to an inmate. The items will be reviewed by the religious coordinator and must be approved by the religious coordinator before the religious publications or ~~tapes~~ audio/video recordings are delivered to the inmate. If the religious publications or ~~tapes~~ audio/video recordings are not approved by the religious

coordinator, the publication or ~~tape~~ audio/video recordings will be returned to the sender and the inmate will be given written notice that the item has been returned.

0409.07 Free advertising materials, fliers, and other bulk mail without the inmate's name and number will not be delivered. This mail will be returned to sender, if possible, or will be destroyed without notice to the inmate.

0409.08 The Warden will designate employees to process all non-privileged incoming mail.

0409.09 All non-privileged incoming mail will be opened and examined for enclosures and contraband.

0409.10 Incoming mail may be read only when there is clear and convincing evidence that such mail constitutes a threat to the security, safety, or good order of the facility.

0409.11 All incoming mail ~~will normally~~ shall be subject to photocopy, with a photocopy of the mail, rather than the original, being delivered to the inmate at the discretion of the Warden. All incoming mail, or a photocopy thereof, will normally be delivered to the inmate within ~~twenty-four~~ 24 hours after its receipt at the facility, except weekends and holidays, or when mail contains contraband. Packages will usually be delivered within ~~forty-eight~~ 48 hours.

0409.12 All incoming mail must have the name and address of the sender on the envelope. Any mail that does not have the name and address of the sender on the envelope may be read. If the sender of such incoming mail can be determined, the mail will be delivered to the inmate, unless the incoming mail violates another ~~of the Department of Correctional Services~~ NDCS rule.

0409.13 An inmate may receive mail only if it is addressed to the inmate in ~~his or her~~ their individual capacity.

0409.14 When an inmate has been transferred to another correctional facility the inmate's First Class mail, or a photocopy thereof, will be forwarded. After an inmate is released, First Class mail will be forwarded if ~~the Department~~ NDCS has a forwarding address. If an inmate has been released and ~~the Department~~ NDCS does not have a forwarding address for the inmate, the mail will be returned to the sender.

0140 Limitations. Inmates may use the U.S. Mail for correspondence. ~~The Department of Correctional Services~~ NDCS will not send or receive facsimile transmissions, telegrams, express mail, e-mail or any other electronic transmission of correspondence for an inmate.

0121 Privileged Mail.

0121.01 Inmates may send sealed letters to all federal and state officials, the Director, Chief of Operations, Deputy Director, ~~any Assistant Director~~, and the Warden of any NDCS facility ~~of the Department of Correctional Services~~; the Office of Public Counsel/Ombudsman; judges; members of the Parole Board and members of the Pardons Board; and ~~members of local, state, and national bar associations~~ active licensed attorneys.

0121.02 The Warden may attach to any outgoing privileged mail, a notice disclaiming responsibility for the nature or contents of outgoing privileged mail.

0121.03 Incoming mail marked as privileged/confidential from one of the persons listed in subparagraph 0121.01 of this rule may be opened only in the inmate's presence.

0121.04 Incoming privileged mailed will be examined for contraband when it is opened.

0121.05 Incoming privileged mail will not be read unless there is clear and convincing evidence that the incoming privileged mail threatens the safety, security, or good order of the institution.

0121.06 The name or firm affiliation of the sender of incoming privileged mail must appear in commercial printing or stamp on the envelope or the incoming mail will not be considered privileged mail. Any incoming mail marked "Attorney-Client", or which in some other fashion is clearly indicated to be attorney-client communication, shall be opened only in the presence of the inmate addressee.

~~012.07 A sender of incoming privileged mail who does not use envelopes with commercially printed return addresses may request prior written approval from the Warden to send privileged mail to an inmate in an envelope without a commercially printed return address. Unless this permission is received the incoming mail will not be considered privileged.~~

~~0121.087 Attorneys of record representing the inmate may send the an inmate one self-addressed stamped envelope in each item of privileged incoming mail.~~

Title 68 - Nebraska Department of Correctional Services  
Chapter 5 – Code of Offenses

001 Applicability. This rule applies to all facilities operated by the Nebraska Department of Correctional Services (NDCS).

002 Departmental Policy. All inmates in the custody of or under the supervision of the Department shall be subject to the Code of Offenses. Any violation of the Code of Offenses may result in disciplinary action pursuant to Chapters 5 and 6. No conduct of an inmate constitutes an offense unless it is defined as such in the Code of Offenses.

003 Notice of Code of Offenses. The Warden shall ensure that all inmates are informed of the Code of Offenses. Any changes in the Code of Offenses shall be prominently posted.

004 Standard of Proof Required. An inmate may be found guilty of a rule violation only when substantial evidence exists that he or she engaged in conduct that fulfills all the necessary elements of the offense. The conduct must be voluntary and be intentional, reckless or grossly negligent. The accused must have had notice that the conduct was proscribed by the Code of Offenses. An inmate may be found guilty of committing an offense, aiding and abetting in the commission of an offense or attempting to commit an offense.

004.01 Aiding and Abetting. An inmate may be disciplined if the institutional disciplinary committee finds that he or she knowingly commanded, induced, procured or aided another person in the commission of the offense. No inmate shall be disciplined if the inmate withdrew from participation in the offense and made a reasonable effort to prevent its commission. In any disciplinary hearing under this section, it is not a complete defense that charges against another inmate were dismissed.

004.02 Attempt. An inmate may be disciplined for attempting to commit an offense if: (1) The inmate Aactings with the kind of culpability required for commission of such offense, ~~the inmate or~~ engages in conduct that constitutes all of the acts necessary for the commission of the offense except its completion; (2) The inmate willfully provides substantial and knowing assistance to a person attempting to commit an offense under the Code of Offenses; or (3) The inmate agrees with one or more persons to engage in or cause the performance of such conduct. An inmate found guilty of an attempt shall be subject to the same penalties that correspond to the offense attempted.

004.03 ~~In a~~ Any or all inmates assigned to a cell, room, bay, school or work area occupied by more than one inmate, an inmate will be presumed to have possession of all items found in ~~the that cell,~~ part of the room, bay, work or school area assigned to the inmate(s), including, but not limited to, the bed, locker, desk, and ~~work station~~ workstation.

005 Offenses. Following are acts and behaviors that are prohibited and subject to disciplinary sanctions.

I [A] Murder/Manslaughter. The killing of another person.

I [B] Mutinous Actions. Mutiny; inciting to riot; insurrection; taking hostages or arson.

I [C] Assault. Physical attack on another person; continuing a fight after the opponent is no longer participating; spitting or throwing bodily waste or bodily fluids on another person; or using a weapon, object, a substance as a weapon in an assault or fight.

I [D] Possession or Manufacture of Dangerous Contraband. Possessing or manufacturing any weapon, explosive, or incendiary device; or possessing a caustic or flammable material without authorization.

I [E] Escape. Unauthorized departure from any part of a facility; departure from any work assignment or any extended limits of a facility with the intent to remain away; or failure to return from a pass or furlough with the intent to remain away.

I [F] ~~Omitted. Work Stoppage/Work Strike. Joining others in an unauthorized work stoppage; encouraging other inmates to refuse to work or participate in designated programs; or~~

I [G] Interference with or Refusal to Submit to a Search. Refusing to submit to a search of person, clothing, property, or living quarters when ordered by authorized personnel; interfering with or delaying such a search; disposing of or concealing any article after being ordered to submit to a search; fleeing to avoid a search; or teasing, harassing, agitating or distracting a canine during a search.

I [H] Drug or Intoxicant Abuse. Using, possessing, manufacturing, selling, giving or being under the influence of a medication, controlled substance or inhalant not prescribed for the possessor; using, possessing, manufacturing, selling, giving or being under the influence of an intoxicant; refusing to submit to a drug test upon instruction from authorized personnel; failing to comply with drug test procedures; contaminating the substance to be tested or intentionally invalidating a drug test in any manner; or failing to submit a urine specimen for testing within five hours.

I [I] Escape Paraphernalia. Possessing, manufacturing, or using escape paraphernalia.

I [J] Destruction of Property Over \$500. Destroying, altering, or wasting property valued over \$500 that belongs to the state or another person; or using such property without authorization.

I [K] Extortion. Demanding or receiving anything from another person in exchange for a favor or for protection from another person; demanding or receiving anything in exchange for not informing on another person; or threatening to inform on another person unless demands are met.

I [L] ~~Omitted.~~ Possession of Unauthorized Electronic Communication Devices. Possessing cellular telephones or other electronic communication devices without authorization.

I [M] ~~Omitted.~~ Stalking. Engaging in a course of conduct directed at a specific person with the intent to injure, terrify, threaten, or intimidate such person.

I [N] Omitted.

I [O] Sexual Assault. Sexually penetrating or having sexual contact with another person

without that person's consent; or pressuring someone to engage in sexual activities.

I [P] Cruelty to Animals. Kicking, beating or otherwise inflicting any harm on an animal.

II [A] Bribery. Offering to sell, give, or loan any item or to perform any service for the benefit of any person in exchange for a person's deviation from assigned authorized duties or institutional rules.

II [B] Drug Paraphernalia. Possessing or manufacturing any drug or narcotic paraphernalia.

II [C] Sexual Activities. Consensual intercourse, sodomy, kissing (except as authorized in the visiting room) or touching another person's intimate parts; or allowing another inmate to touch one's intimate parts; touching another person with one's intimate parts; or intentionally exposing one's sexual organs to another person in a location or manner where such exposure has no legitimate purpose.

II [D] Destruction of Property Valued Between \$100 and \$500. Destroying, altering, or wasting property valued between \$100 and \$500 that belongs to the state or another person; or using such property without authorization.

II [E] Disobeying an Order. Disobeying a verbal or written order from an employee; or refusing to comply immediately with an order.

II [F] Forgery or Possession of Forged Documents. Knowingly possessing a falsified or altered paper or document; signing another inmate's name or number; or altering or falsifying a document with the intent to deceive or defraud.

II [G] Theft. Taking property from another person or from the state with the intent to deprive the owner of the use of the property; or possessing stolen property.

II [H] Use of Threatening Language or Gestures/~~Fighting~~. Using language or gestures threatening physical harm to another person; ~~or fighting not covered by 7 [C].~~

II [I] Gambling or Promoting Gambling. Promoting gambling; possessing gambling devices or records; or betting on the outcome of a future event such as a game of skill or chance.

II [J] Unauthorized Areas. Being in or reporting to any area without proper authorization; or loitering. ~~or failing to report to a work assignment, program assignment,<sup>1</sup> or other designated area without permission.~~

II [K] Improperly Handling Funds. Failing to turn over all incoming monies to the Department's accountant or designee for processing; cashing payroll checks; diverting incoming monies; making unauthorized deductions from payroll checks; or possessing official government money without authorization or in excess of the amount authorized by the Warden.

II [L] Improper Use of Transportation. Operating a motor vehicle without authorization from the Department; operating a company-owned, job-related vehicle for any purpose other than work; or riding in any vehicle without authorization.



II [M] Failure to Report Law Enforcement Contacts. Failing to promptly notify Department authorities of any contact with law enforcement officials.

II [N] Failure to Report Work. Failing to report to a work or program assignment without proper authorization.

II [O] Medication Abuse. Using or possessing authorized medication contrary to prescription; possessing expired medication; possessing authorized medication not in its original container; or possessing nonprescription medication without authorization.

II [P] Piercing, Branding or Mutilation of Self or Others. Intentionally piercing, branding, or cutting any portion of ~~one's body or another's body~~; or intentionally piercing or branding any portion of one's own body. ~~mutilating another's body or causing injury to one's self~~.

II [Q] Tattoo Activities. Performing tattoo services; possessing tattoo paraphernalia; or receiving a tattoo.

II [R] Gang/Security Threat Group Activity. Communicating involvement in a gang or security threat group through any verbal or written means; flashing gang or security threat group signs; dressing in a manner associated with a gang or security threat group or wearing gang colors; possessing any materials depicting symbols or signs associated with a gang or security threat group; or drawing or marking any surface with symbols or signs associated with a gang or security threat group.

II [S] False Reporting. Giving false information to state personnel; falsely implicating an inmate; planting evidence/contraband; turning in a false alarm; diverting attention of staff; or concealing one's identity.

II [T] Violation of Passes or Furloughs. Failure to return to a community facility within the time prescribed, or going anywhere while on pass or furlough without authorization. Failure to remain within the extended limits of confinement, or unauthorized absence from an approved location.

II [~~U~~] ~~Possession of Unauthorized Electronic Communication Devices~~. ~~Possessing cellular telephones, pagers, personal digital assistants (PDA's), or other electronic communication devices without authorization~~. Fighting. ~~Fighting not covered by Rule 5-I-[C]~~ Assault.

II [V] Sexual Harassment. Making sexual gestures, or any other communication, or conduct of a sexual nature directed toward staff or another inmate not covered by 5-II-[C] Sexual Activities.

II [W] Refusing to Submit to DNA Test. Refusing to submit to a buccal cell collection or blood draw for DNA identification purposes upon instruction from authorized personnel; failing to comply with buccal cell collection or blood draw procedures; or contaminating the buccal cell collection or blood to be tested.

III [A] Flare of Tempers/Minor Physical Contact. Displaying a flare of tempers; horse-playing; or having minor physical contact where the contact is offensive or inappropriate.

III [B] Destruction of Property Under \$100. Destroying, altering, ~~using~~, or wasting property

valued under \$100 that belongs to the state or another person; or using such property without authorization.

III [C] Possessing or Receiving Unauthorized Articles. Possessing unauthorized articles or receiving articles from another person without the approval of the Warden. Any item that is altered or that has not been issued to an inmate, purchased by him/her through proper institutional channels or otherwise specifically approved for his/her possession by the Warden is an unauthorized article.

III [D] Swearing, Cursing, or Use of Abusive Language or Gestures. Swearing or cursing at another person; directing abusive gestures or language at another person; or intending to harass, demean, or cause alarm in another person by words or actions.

III [E] Tobacco Products. Smoking or using tobacco products inside any building or vehicle owned, leased or controlled by the Department of Correctional Services; or possessing smoking material including but not limited to tobacco, pipes, matches or lighters contrary to DCS regulations.

III [F] Selling, Loaning, or Giving Items to Others. Selling, loaning, or giving anything to another person without the prior approval of the Warden or designee.

III [G] Violation of Sanctions. Violating disciplinary restrictions or sanctions.

III [H] Violation of Any Signed Program Agreement. Violating a term or condition of a signed program agreement.

III [I] Omitted.

III [J] Sanitation. Failing to maintain a clean or sanitary living or work area; or littering.

III [K] Disruption. Disrupting duties of staff or inmates; creating a disturbance; causing a delay; delaying count; tampering with locks; creating excessive noise by any means or creating or maintaining a health, safety or fire hazard.

III [L] Omitted.

III [M] Omitted.

III [N] Violation of Regulations. Failing to adhere to any written or posted order or regulation.

III [O] Misuse of a Computer. Accessing directly or indirectly any computer or altering, damaging, deleting or destroying any computer, computer system, computer software, computer network, computer program or data without authorization.

Title 68 - Nebraska Department of Correctional Services  
Chapter 6 – Inmate Disciplinary Procedures

001 Applicability. This rule applies to all facilities operated by the Nebraska Department of Correctional Services (NDCS).

002 Departmental Policy. The Warden of each facility shall maintain a clearly defined disciplinary procedure that complies with the provisions of this Rule and is consistent with guidelines issued by the Director. The disciplinary procedure shall be designed to contribute to the efficient operation of the facility and to be conducive to the successful re-socialization of the inmates confined therein.

~~003~~ ~~Pre-hearing Detention. Inmates charged with a rule violation may be held on immediate segregation status. The inmate's status shall be reviewed within seventy-two hours by the Warden or designee.~~

0043 Disciplinary Principles. In every disciplinary action the following principles apply.

0043.01 Disciplinary action is used to regulate an inmate's behavior within acceptable limits. Disciplinary sanctions are imposed to ~~punish~~ hold the inmate accountable for his/her misconduct and to deter that inmate and other inmates from engaging in similar misconduct in the future. Each disciplinary sanction imposed must be proportionate to the seriousness of the inmate's misconduct, ~~giving~~ ~~consideration to~~ considering all aggravating and mitigating circumstances and prior offenses for the same or similar behavior.

0043.02 The behavior of inmates committed to the custody of ~~the Department~~ NDCS shall be controlled in an impartial and consistent manner.

0043.03 Disciplinary action shall not be capricious, retaliatory or revengeful.

0043.04 Corporal punishment of any kind is prohibited.

003.05 Withholding or modifying meals shall not be administered as discipline.

~~0043.056~~ Disciplinary committees may request investigations, but cannot conduct investigations themselves.

0043.067 A finding that a person has committed an act prohibited by the Code of Offenses must be based upon information obtained in the hearing process.

0043.078 Records of all disciplinary actions shall be kept.

003.09 NDCS does not utilize disciplinary segregation.

003.10 NDCS does not utilize solitary confinement.

~~0054~~ Notice of Disciplinary Procedures. The Warden or designee shall give inmates notice of ~~the Department's~~ NDCS disciplinary procedures. The rulebook containing all chargeable offenses, penalties and disciplinary procedures shall be given to each inmate and staff member. The rulebook is translated into those languages spoken by significant numbers of inmates. When a literacy or language problem prevents an inmate from

understanding the rulebook, a staff member or translator shall assist the inmate in understanding the rules. This information may be given either at the time of admission to the facility or during reception and orientation.

0065 Filing and Logging of Misconduct Reports. If an employee witnesses or has a reasonable belief that an infraction of the Code of Offenses has been committed by an inmate, the employee shall prepare a written report. The report shall be filed with Warden or designee, within ~~seventy-two~~ 72 hours of the occurrence of the infraction or the discovery of it. The point of discovery of a drug violation based on a laboratory drug test is when the result of the laboratory test is received by the facility's designated staff member. The report shall be placed in the files of the facility, and logged in facility records. The report shall be logged within 24 hours after the report is filed, which commences the investigation.

0076 Disciplinary Committees. Each facility shall have institutional and unit disciplinary committees. After a misconduct report is filed and logged pursuant to ~~Chapter 6, section 006~~ of these rules, the Warden or designee shall review the report, and determine the offenses allegedly committed and determine whether the hearing on the report shall be conducted by an institutional disciplinary committee or a unit disciplinary committee. The factors to be considered include but are not limited to the inmate's disciplinary history, the nature of the alleged offense(s), and the likelihood of ~~disciplinary segregation and/or~~ loss of good time being imposed.

0076.01 Unit disciplinary committees shall follow the rules and use the Code of Offenses established by Chapter 5 of these rules.

0076.02 Unit disciplinary committees may not order the loss of good time or ~~impose disciplinary segregation.~~

0076.03 The procedures for unit disciplinary committee hearings and the sanctions that may be imposed by a unit disciplinary committee shall be established by NDCS policies and procedures ~~Administrative Regulations and Operational Memorandum.~~

0076.04 The institutional disciplinary committee may transfer cases to a unit disciplinary committee and a unit disciplinary committee may transfer cases to the institutional disciplinary committee.

0076.05 None of the rules or procedures set forth below in this chapter apply to unit disciplinary committees.

0087 Institutional Disciplinary Committee or Hearing Officer. The Warden shall establish one or more disciplinary committees. The Warden may appoint a single hearing officer in lieu of a "committee" and where the term "committee" is used herein it refers to individual hearing officers as well as committees composed of two or more members. To the extent possible, a person representing the treatment or counseling staff of the facility shall participate as a member of the facility disciplinary committees. No person shall maintain a position on a disciplinary committee during a hearing if that person has ~~first-hand~~ first-hand knowledge of the charges brought against the accused inmate, either as an eyewitness or as the reporting officer or investigating officer. However, an employee may be a member of a disciplinary committee when the incident is so widely witnessed that virtually every employee has witnessed it in whole or in part. Records of disciplinary proceedings shall be maintained in the inmate's institutional file-jacket unless dismissed on appeal.

0098 Institutional Disciplinary Committee Procedures. Institutional Disciplinary ~~e~~Committees shall hold hearings that comply with these rules and regulations and Nebraska statutes.

0098.01 Before an inmate can be disciplined for a drug or alcohol violation, the inmate may request and ~~the Department~~ NDCS shall provide independent confirmation testing of positive results of urinalysis testing. If the confirmation test is positive, the inmate may be required to pay the cost of the confirmation test.

0098.02 Investigatory Hearing. Upon receipt of a Misconduct Report, the Warden or designee shall designate an investigating officer(s). The investigating officer shall not be the employee reporting and shall not have been involved in the ~~particular~~ incident in question. After an alleged rule violation is logged, an investigating officer will meet with the accused inmate, give the inmate written notice of the allegations, an opportunity to make a statement about the allegations, and an opportunity to request representation and/or witnesses at the disciplinary hearing. The investigating officer shall interview the inmate and may interview other persons with relevant knowledge to determine whether there is some evidence that an offense was committed. The investigation should be completed promptly unless exceptional circumstances necessitate a delay. The investigating officer shall forward the misconduct report to the disciplinary committee with a recommendation on whether ~~or not~~ the report should be dismissed.

0098.03 Notice of Hearing. No less than ~~twenty-four~~ 24 hours before the hearing is scheduled to be held, each inmate charged with an offense shall be given written notice of the date of the hearing. The inmate may waive this ~~twenty-four~~ 24-hour requirement in writing.

0098.04 Notice of Charges. No less than ~~twenty-four~~ 24 hours before the hearing is scheduled to be held, each inmate charged with an offense shall be given written notice of the alleged misconduct and the rules such conduct is alleged to violate. The inmate may waive this ~~twenty-four~~ 24-hour requirement in writing.

0098.05 Hearings. An institutional disciplinary hearing shall be held within seven days, excluding weekends and holidays, after the occurrence or discovery of an infraction.

0098.06 Opportunity to Appear. An inmate charged with an offense shall have an opportunity to appear before and address the institutional disciplinary committee unless the inmate waives this right in writing or is excluded because of his or her behavior. An inmate may be excluded during the testimony of any inmate whose testimony must be given in confidence. Reasons for the inmate's absence or exclusion must be documented.

0098.07 Reporting Employee. The Reporting Employee shall appear at the disciplinary hearing unless the inmate waives his/her presence in writing.

0098.08 Presentation of Witnesses and Documentary Evidence. An institutional disciplinary committee may compel an employee with relevant information to appear as a witness. An institutional disciplinary committee shall also allow the

inmate charged to call witnesses with relevant knowledge and present relevant documentary evidence in the inmate's defense when permitting the inmate to do so will not be unduly hazardous to institutional safety or correctional goals. Requests for witnesses or documentary evidence must be made at the time of the investigatory hearing, or must be in writing and received by designated staff at least 24 hours in advance of the hearing. An institutional disciplinary committee shall state its reasons in writing for refusing to allow a witness to testify or to have requested documentary evidence at the hearing. When it would compromise safety or security to allow a person to appear as a witness, the person may submit a written statement to the committee. The refusal of an inmate to make a written statement or to testify shall be documented.

0098.09 Written Statement of Decision. The institutional disciplinary committee shall give the inmate a written statement of the decision. This statement shall include the basis for the decision and any disciplinary action imposed.

0098.10 Change of Work, Education or Program Assignment. A change in work, education or other program assignment shall not be used for disciplinary purposes.

0098.11 Preparation of Inmate's Defense. The inmate charged shall have an adequate opportunity to prepare a defense. Such opportunity shall include the right to assistance and advice in preparing and presenting a defense from any inmate in general population or staff member at the facility where the hearing is held. The inmate or staff member may serve only in an advisory capacity for the inmate so charged. The inmate or staff member may not coach, prompt or verbally assist the charged inmate in communicating their defense during the hearing. A representative will be appointed when it is apparent that an inmate is not capable of collecting and presenting evidence effectively on his or her own behalf or when the inmate or staff member chosen by the charged inmate is unavailable. No inmate or staff member shall be recruited to serve in such an advisory capacity involuntarily. A request for a representative must be made at the time of the investigatory hearing, or must be in writing and received by designated staff at least 24 hours in advance of the hearing.

0098.12 Waiver. The inmate may waive the right to have the reporting employee at the hearing, the right to twenty-four hours' notice of the hearing, the right to twenty-four hours' notice of the charges, the right to a representative, the right to request witness and the right to be present at the hearing. Waivers and consents shall be in writing, signed by the inmate and reviewed by the Warden or designee. A signed waiver may be rescinded only for good cause as determined by the institutional disciplinary committee.

0098.13 Continuances. The institutional disciplinary committee may grant a continuance or postponement of the disciplinary hearing. A request for a continuance may be made by either institutional staff involved in the discipline process or the inmate. A continuance may be granted only for good cause shown for a reasonable period of time, and shall be made in writing and made part of the disciplinary record.

00409 Review by Warden. ~~An inmate may not be disciplined without the approval of the Warden or designee.~~ The Warden or designee shall review the decision of the institutional disciplinary committee. The Warden may modify or decrease the sanctions imposed by the disciplinary committee, but may not increase the severity

of those sanctions. The Warden's responsibilities under this paragraph may not be delegated to anyone who served as a member of the disciplinary committee hearing the case to be reviewed.

00140 ~~Loss of Good Time and Disciplinary Segregation~~. Institutional disciplinary committees may impose the following penalties for violations of the Code of Offenses if the committee finds the violations to be serious or flagrant. Flagrant or serious misconduct shall include: (1) Major disruption to the operation of the institution; (2) Threats to the safety or security of the institution, public visitors, staff and/or other inmates; (3) Violence; (4) Substantial destruction of property; 5) Escape or attempted escape; or (6) Repeated violations of the same offense in the past 12 months.

00140.01 Class I offenses (those preceded by a Roman Numeral I in the Code of Offenses).

~~0011.01A Confinement in disciplinary segregation for a definite period of time not exceeding sixty days, and/or~~

00140.01BA Loss of good time not exceeding ~~six months~~ 180 days for violations not involving assault or injury to a person. Loss of good time not exceeding ~~two years~~ 730 days for violations involving assault or injury to a person. The Disciplinary Committee may designate loss of good time involving assault or injury to a person as non-restorable.

00140.02 Class II offenses (those preceded by a Roman Numeral II in the Code of Offenses).

~~0011.02A Confinement in disciplinary segregation for a definite period of time not exceeding forty-five days, and/or~~

00140.02B A Loss of good time not exceeding ~~three months~~ 90 days.

00140.03 Class III offenses (those preceded by a Roman Numeral III in the Code of Offenses).

~~0011.03A Confinement in disciplinary segregation for a definite period of time not exceeding thirty days, and/or~~

00140.03BA Loss of good time not exceeding ~~two months~~ 60 days.

~~The maximum sanction involving disciplinary segregation shall not exceed sixty days for all violations arising out of one incident. The maximum sanction involving loss of good time shall not exceed six months~~ 180 days for all charges arising out of one incident except for violations involving assault or injury to a person.

0121 Other Penalties. In addition to the penalties set out above, a disciplinary committee may impose the following penalties. A combination of penalties may be imposed for each offense contained in the Code of Offenses.

0121.01 Extra Duty. An inmate may be assigned additional work duties without pay during a period of time not to exceed ~~thirty~~ 30 days. Work assignments need

not be in the area of the inmate's present work assignment. Extra duty shall not exceed 120 hours for all violations arising out of one incident.

0121.02 Restriction. An inmate may be restricted from any correctional facility activities for disciplinary reasons except the recognized worship activity for his/her religious faith group, dining hall, designated group or individual therapy, and school, for a period of time not to exceed ~~ninety~~ 90 days for all violations arising out of one incident. Restrictions on clothing, bedding, mail, visitations, use of toilets, wash bowls, scheduled showers or facilities and materials needed for access to the courts shall be imposed only for abuse of such privileges or facilities.

0121.03 Reprimand. An inmate may be reprimanded verbally or in writing for violating the Code of Offenses.

0121.04 Restitution. An inmate may be required to make restitution for: an amount up to the actual value of property intentionally or recklessly destroyed belonging to the state or any other person; an amount up to the actual cost to the state for injuries, repairs or other damages caused by intentional acts of the inmate; and for the reasonable costs incurred by the state when returning the inmate to the correctional facility after an escape. Before restitution can be ordered for disciplinary reasons, the inmate must be found to have violated a pertinent rule, and a disciplinary committee must determine the amount of restitution based on substantial evidence introduced at a disciplinary committee hearing. Restitution monies may be taken only from the inmate's institutional account.

0132 Criminal Offenses. Criminal prosecution does not stay disciplinary actions.

0143 Records. If an Institutional Disciplinary Committee dismisses or an appellate body reverses all charges on a misconduct report, the misconduct report ~~all records of the disciplinary action~~ shall be removed from the inmate's misconduct report history file. When an inmate is found guilty of only some of the rule violations he or she was originally charged with in a misconduct report, the disciplinary record must show which charges were dismissed.

0154 Appeals Process. The inmate shall be advised of the right of to appeal at the time he or she is notified of a ~~the Institutional~~ Disciplinary Committee's decision. Appeals must be in writing and must state the charge(s) to be reviewed and the reason(s) why the charge(s) should be reversed. The inmate shall submit the appeal to designated unit management staff within ~~fifteen~~ 15 days after receiving notice of a disciplinary committee's decision.

014.01 Timeframes and Contents. Within ~~ten~~ 10 days after receiving the inmate's appeal, unit management ~~designated~~ staff will send a complete copy of the disciplinary committee record; and the inmate's appeal to the Appeals Board. The complete disciplinary committee record includes the misconduct report, disciplinary action sheet, and other relevant documents. The Appeals Board will render a decision based on this evidence. The Appeals Board will review and analyze due process, findings of fact, evidence relied upon, and the impartiality of the decision-making process. Appeals Board staff will send the inmate a copy of the Appeals Board decision within ~~thirty~~ 30 days after receipt of the appeal.

~~016~~ Disciplinary Segregation. Disciplinary segregation is the status of confinement in a cell



~~or other control unit facility separated from general population members insofar as practicable, as a result of a hearing on charges of misconduct pursuant to this Rule. Inmates housed in disciplinary segregation will have significantly fewer privileges than those housed in administrative detention.~~

~~017 Solitary Confinement. Solitary confinement is the status of confinement in an individual cell having solid, soundproof doors, and depriving the inmate of all visual and auditory contact with other persons. No inmate shall be placed in solitary confinement for disciplinary reasons.~~

0185 Room Restriction. Room restriction is the status of being restricted from certain privileges normally afforded members of the general inmate population. It does not consist of total separation from the general population and does not constitute disciplinary segregation.

Title 68 - Nebraska Department of Correctional Services  
Chapter 10 – Petition for Declaratory Order

001 Definitions. As used in this chapter:

001.01 Agency shall mean the Nebraska Department of Correctional Services (NDCS).

001.02 Agency director shall mean the Nebraska Department of Correctional Services Director.

001.03 Argument shall mean the oral statement of the petitioner or any other party which explains his or her view of the facts and issue to be decided, the law applicable to the question presented, and the reasoning that connects the facts and law.

001.04 Contested case shall mean a proceeding before the agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after hearing before the agency.

001.05 Declaratory order proceeding shall mean a proceeding initiated by a petitioner seeking issuance of a binding order by the agency as to the applicability of specified circumstances to a statute, rule, regulation, or order within the primary jurisdiction of the agency.

001.06 Hearing officer shall mean the person or persons conducting a declaratory order proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title.

001.07 Intervenor(s) shall mean persons, political subdivisions, corporations, organizations, or other entities who have or claim to have any interest, legal right, duty, privilege, or immunity, which would be directly affected by the agency's issuance of a binding declaratory order.

001.08 Necessary party shall mean a person who or an entity which has a specific interest in the applicability of the statute, rule, regulation, or order, as distinguished from a general interest such as may be the concern of the public at large. A necessary party is one which is or would be adversely affected in a legally cognizable way by the uncertainty sought to be resolved.

001.09 Parties shall mean persons, political subdivisions, corporations, organizations, or other entities subject to the jurisdiction of the agency who are involved in a declaratory order proceeding according to the procedures set forth in this chapter.

001.10 Petition shall mean the document filed in accordance with this chapter to initiate a declaratory order proceeding.

001.11 Petitioner(s) shall mean a party or parties who have filed a petition with the agency seeking issuance of a declaratory order.

001.12 Pleading shall mean any written petition, answer, or motion used in any declaratory order proceeding before the agency as set forth in this chapter.

002 Petition for Declaratory Order.

002.01 Generally. A request for a declaratory order must be made by a petition that meets the requirements of this section.

002.02 Who May File. Any person may petition the agency for issuance of a declaratory order as to the applicability to specified circumstances of a statute, rule, regulation, or order which is within the primary jurisdiction of the agency.

002.03 When Orders Appropriate. A declaratory order may be requested on the applicability of a statute, rule, regulation, or order enforced by the agency. "Applicability" refers to the appropriateness of the relation of the law to the person, property, or state of facts, or its relevance under the circumstances given. It may include such questions as whether the law applies at all, to whom it applies, when it applies, how it applies, or which law applies. Considerations as to whether issuance of a declaratory order is appropriate include:

002.03A A declaratory order may be requested only on the applicability of existing statutes and rules and regulations.

002.03B A declaratory order may be requested to obtain a determination of proposed conduct, not to obtain a determination of the effect of conduct that has already occurred.

002.03C A declaratory order is not a mechanism for review or appeal of a decision made by the agency in a contested case.

002.03D A declaratory order may not be requested to obtain a declaration by the agency that a statute or regulation is unconstitutional or that a regulation of the agency is invalid.

002.03E A declaratory order may not be issued by the agency that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

002.04 Form of Petition. A petition for declaratory order shall be in the form of either a pleading or letter which shall contain each of the following:

002.04A A caption, which shall include:

002.04A1 The venue: BEFORE THE NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES, STATE OF NEBRASKA;

002.04A2 A heading specifying the subject matter and the name of the petitioner;  
and

002.04A3 The name of the pleading: PETITION FOR DECLARATORY ORDER.

002.04B The statements required in subsection 002.05 of this chapter.

002.04C The signature of the petitioner, or when represented by an attorney, the signature of the attorney.

002.04D The name and address of the petitioner, and when represented by an attorney, the name, address, telephone number, and bar number of the attorney.

002.04E Size and Paper. The petition shall be made on white, letter-sized (8- ½ " x 11") paper.

002.04F Print. The petition shall be legibly typewritten, photostatically reproduced, printed, or handwritten. If handwritten, the petition must be written in ink. Only one side of a page shall contain any writing.

002.04G Attachments. Any documents attached to a petition shall be securely fastened to the pleading and shall meet the requirements of 003.04E and 003.04F and, when possible, be reproduced on 8- ½ " x 11" paper or placed in an 8- ½ " x 11" envelope and clearly marked as an attachment to the petition.

002.05 Contents of Petition. To be considered, the petition shall include the following:

002.05A The name and address of the petitioner;

002.05B The name and address of all persons or entities, known to the petitioner, who may have a specific interest in the applicability of the statute, rule, regulation, or order or who may be adversely affected by the issue sought to be resolved by the petitioner.

002.05C The statute, rule, regulation, or order upon which the petitioner seeks issuance of a declaratory order;

002.05D A detailed statement of all of the material facts and specific circumstances which apply to petitioner's request for issuance of a declaratory order;

002.05E All propositions of law or contentions asserted by the petitioner;

002.05F A demand for the relief to which the petitioner alleges entitlement. The petition shall state the petitioner's position as to how the agency should rule and why the agency should rule in the manner requested; and

002.05G Any documents pertinent to the petition that the petitioner wishes to be considered by the agency.

002.06 The petition shall be subscribed and verified by the petitioner. If the petitioner is a corporation, political subdivision, or other entity, then the petition shall be subscribed and verified by a duly authorized agent of the petitioning entity.

002.07 Sample Petition. The petitioner may use the sample form of a petition which is attached as "Appendix A" and incorporated within this chapter. The petitioner may also prepare a reasonable facsimile of "Appendix A" so long as the requirements of subsections 002.04, 002.05, and 002.06 of this chapter are satisfied.

002.08 Written Consents. The petitioner shall also attach to the petition any written consents obtained from any necessary party that the petition may be determined by use of a declaratory order proceeding.

003 Submission of Service of Declaratory Order Petition.

003.01 The original petition for declaratory order shall be filed with the agency director by mail or in person during the agency's normal business hours.

003.02 The petition shall be deemed as filed when it is actually received by the agency. The agency shall date stamp all petitions upon receipt.

003.03 At the same time the petition is filed with the agency, the petitioner shall serve a copy of the petition, by certified mail, return receipt requested, on all necessary parties, including all persons, political subdivisions, corporations, organizations, or other entities who are known to have or claim any interest, legal right, duty, privilege, or immunity which would be directly affected by issuance of a declaratory order in this matter by the agency.

004 Disposition of the Petition.

004.01 Generally. Upon the filing of a petition, the agency director may consider the petition, refer the petition to an appropriate licensing or governing board, or delegate the matter to a designated hearing officer, board, or agency employee to consider the petition and recommend a decision to the agency director. In reviewing the petition, the agency may, in its discretion, do one or more of the following:

004.01A Require that additional information be submitted before the petition will be further considered;

004.01B Require a petitioner to provide notice to persons or entities who may be necessary parties and other persons that a request for a declaratory order has been filed with the agency;

004.01C Schedule a date, time, and location at which the petitioner and any other parties to the proceeding may make an oral presentation on the petition;

004.01D Consider the petition and any attachments without oral presentation.

004.02 Within thirty (30) days after the petition is filed, the agency shall, in writing:

004.02A Issue an order declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

004.02B Agree to issue an order by a specified time declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

004.02C Set the matter for specified proceedings as set forth in subsection 004.01 of this Chapter; or

004.02D Decline to issue a declaratory ruling, stating the reasons for the agency's decision.

004.03 Notwithstanding section 004.02 of this rule, the agency may determine at any time that it will not issue a declaratory order if issuance of an order under the circumstances would be contrary to any provisions of section 008 of this Chapter. The agency shall notify the petitioner and, if applicable, any intervenor or necessary party in writing when the agency determines not to issue a declaratory order.

005 Intervention in Declaratory Order Proceeding.

005.01 Intervention by any person or entity in a declaratory order proceeding shall be allowed when the following requirements are met:

005.01A. A petition for intervention must be submitted in writing to the agency. Copies must be mailed to all parties to the proceeding.

005.01B. The contents of the petition must be as specified in 005.02.

005.01C. The agency must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

005.02 Contents of Petition. The petition for intervention shall be submitted to the agency, in writing, on 8 ½ " x 11" white paper, and shall include each of the following:

005.02A The statute, regulation, rule, or order that may apply to or effect the person, property, entity, or facts at issue in the matter;

005.02B A statement of facts sufficient to show the intervenor's interest;

005.02C A statement of facts which demonstrate that the intervenor's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the intervenor may intervene pursuant to a provision of law;

005.02D All propositions of law or contentions asserted by the intervenor; and

005.02E A statement of the specific relief requested by the intervenor.

005.03 The agency may, at its discretion, invite any person or entity to file a petition for intervention.

005.04 The agency shall grant a petition for intervention if the requirements of § 005.01 and § 005.02 are satisfied.

005.05 The agency shall deny a petition for intervention upon determining that the interests of justice or the orderly and prompt conduct of the proceedings would be impaired by allowing the intervention.

005.06 The agency's decision to grant or deny a petition for intervention shall be in writing and served upon all parties.

## 006 Declaratory Order Proceeding

006.01 Oral Argument, When. Oral argument shall be had only on specific order of the agency. A petitioner, intervenor, necessary party, or the agency may submit a motion for oral argument to the agency director. If opportunity for oral argument is granted, then argument shall be scheduled to be conducted not more than forty-five (45) days after filing of the petition. Petitioner and all other parties or, when represented, their attorneys, shall be served by the agency with a notice of the date, time, and location for oral argument. The agency shall provide each of the parties with notice of the proceeding not less than seven (7) days in advance of the scheduled date. Service shall be made by certified mail, return receipt requested.

006.02 Oral Argument, Procedure. Oral argument will be made before a hearing officer or before any representative of the agency who is authorized to render or to recommend a decision to the agency. The hearing officer or agency representative shall be in control of the proceeding and shall:

006.02A Identify the proceeding and introduce himself or herself and identify each party for the record;

006.02B Hear the oral argument of the petitioner, intervenor, or necessary parties;

006.02C Close the proceedings.

006.03 At the declaratory order proceeding, agency staff shall have the right to present oral argument.

006.04 The hearing officer or representative may impose reasonable time limits on the amount of time allocated to each party for oral argument.

006.05 The parties and agency staff may file briefs in support of their respective positions. The hearing officer may fix the time and order of filing briefs and may direct that briefs be submitted prior to the date of oral argument.

006.06 The oral argument may be conducted either in person or by telephone conference call.

007 Issuance of Declaratory Order.

007.01 The agency shall issue its declaratory order within sixty (60) days of the date on which the petition was filed.

007.02 The declaratory order shall be in writing and shall include the following:

007.02A The names of all parties to the proceeding upon which the order is based;

007.02B The facts upon which the order is based;

007.02C The statute, regulation, rule, or order at issue in the matter;

007.02D The agency's conclusion as to the applicability of the statute, regulation, rule, or order to the facts;

007.02E The agency's conclusion as to the legal effect or result of applying the statute, regulation, rule, or order to the facts; and

007.02F The reasons relied upon by the agency to support its conclusions.

007.03 A copy of the declaratory order shall be served upon each party by certified mail, return receipt requested.

007.04 Effect of Declaratory Order. A declaratory order shall have the same status and binding effect as any other order issued in a contested case.

007.05 No Response within 60 Days. If the agency has not issued a declaratory order within sixty (60) days after the petition has been filed, then the petition shall be deemed to have been denied by the agency.

008 Circumstances Under Which Agency will not Issue Declaratory Orders

008.01 Grounds upon which the agency shall refuse to issue a declaratory order include, but are not limited to, the following:

008.01A The petition requests a declaratory order on a matter that is outside the scope of authority of the agency;

008.01B The petition requests review or appeal of a decision made by the agency in a contested case;

008.01C The petition requests a declaratory order on the effect of past conduct;

008.01D An investigation for purposes of a formal adjudication, a contested case, or a petition to issue, amend, or repeal regulations is pending before the agency involving the petitioner on substantially the same or similar facts or issues raised in the petition;

008.01E The petition seeks a declaration that a statute or rule or regulation is unconstitutional or invalid;

008.01F The issue raised in the petition has been settled by a change in circumstances or other means so as to render moot the need for a declaratory order;

008.01G An order would substantially prejudice the rights of a person or entity who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding;

008.01H An order would not resolve the controversy or uncertainty; or

008.01I The question posed or facts presented are insufficiently specific, overly broad, or are otherwise inappropriate as a basis upon which to decide the matter.

008.02 Grounds upon which the agency may determine to refuse to issue a declaratory order include, but are not limited to, the following:

008.02A Refusal is necessary to assure adequate allocation of agency resources are available for issuing rulings on petitions raising questions of greater urgency or significance;

008.02B The question presented is of such complexity that the agency has had insufficient opportunity or resources to develop a fully matured ruling;

008.02C The petitioner fails to submit any additional information requested by the agency or submits such information after the date established by the agency;

009 Appeal.



009.01 A declaratory order is subject to review in the manner provided for review of contested cases by the Administrative Procedure Act, Neb. Rev. Stat. § 84-901 - § 84-920. Specific procedures for appeal are set forth in Neb. Rev. Stat. § 84-917.

**APPENDIX "A"**

BEFORE THE NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES, STATE OF  
NEBRASKA

In the matter of )  
the application of [name ]  
 )  
 )  
 )  
 )

PETITION FOR  
DECLARATORY ORDER

1. Petitioner's name and address;
2. The name and address of all persons who or entities which may have a specific interest in the applicability of the statute, rule, regulation, or order, or who may be adversely affected by the issue sought to be resolved;
3. All material facts and specific circumstances;
4. All rules of law which apply;
5. Petitioner's demand for relief;

DATED on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

VERIFICATION

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) ss.  
 )

[name], being first duly sworn, states that he/she is the petitioner/petitioner's agent in the above entitled matter; that he/she has read the foregoing Petition For Declaratory Order; and that the allegations of fact therein are true.

\_\_\_\_\_  
[Petitioner's signature]

SUBSCRIBED and sworn to before me on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

NOTARY SEAL

\_\_\_\_\_  
[Notary signature]