

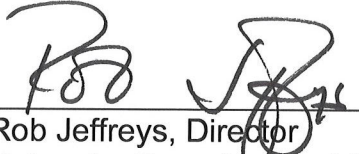
 Good Life. Great Mission. DEPT OF CORRECTIONAL SERVICES	POLICY		
	INMATE RULES AND DISCIPLINE		
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SUMMARY OF REVISION/REVIEW

PURPOSE – Language updated. PROCESS – VIII. - NDCS does not utilize disciplinary segregation or solitary confinement. IX.D. - Language updated. Minor grammar changes throughout.

APPROVED:



 Rob Jeffreys, Director
 Nebraska Department of Correctional Services

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PURPOSE

It is an objective of the Nebraska Department of Correctional Services (NDCS) to maintain a safe, secure, and humane environment for incarcerated individuals, team members and the public. In furtherance of this objective, the Department shall promulgate a set of rules governing incarcerated individual conduct which shall be called the Code of Offenses. The Code of Offenses is promulgated as Title 68, Nebraska Administrative Code, Chapter 5 which establishes penalties for violation of such rules. The Department shall further promulgate a set of rules governing incarcerated individual disciplinary procedures which shall be called Inmate Disciplinary Procedures. The Inmate Disciplinary Procedures is promulgated as Title 68, Nebraska Administrative Code, Chapter 6 which establishes incarcerated individual disciplinary procedures. These rules are incorporated into this Policy by reference. This Policy is reviewed at least annually and updated, if necessary. (ACI-3C-01, ACI-3C-02, ACRS-3A-01, ACRS-3A-02)

PROCESS

I. AVAILABILITY OF RULEBOOK

Title 68, Nebraska Administrative Code, Chapters 5 and 6 which contain all chargeable offenses, ranges of penalties and disciplinary procedures, shall be given to each incarcerated individual and team member. Title 68, Nebraska Administrative Code, Chapters 5 and 6 shall be translated into those languages spoken by significant numbers of incarcerated individuals. Signed acknowledgement of receipt of the rulebook shall be maintained in the incarcerated individual's file. When a literacy or language problem prevents an incarcerated individual from understanding the rulebook, a team member or translator shall assist the individual in understanding the rules and this action shall be documented in the individual's institutional file. Visually impaired individuals will have access to an audiotape of Title 68, Nebraska Administrative Code, Chapters 5 and 6. (ACI-3C-03)

II. TEAM MEMBER TRAINING


Team members working with incarcerated individuals shall receive training in the Code of Offenses, the rationale for these rules, and the sanctions available. (ACI-3C-04)

III. INFORMAL RESOLUTION

Often incarcerated individual misconduct can be handled informally. The team member observing the misbehavior will decide if the misbehavior is best handled by writing an incident report, writing a warning log entry and/or discussing the behavior with the individual informally. The team member should consult with the supervisor as needed. If a misconduct report is not written, it is advisable to write an incident report.

IV. DISCIPLINARY COMMITTEES


- A. Each institution shall have an Institutional Disciplinary Committee (IDC). An IDC shall hear misconduct reports for major rule infractions. "Major Rule Infractions" are those infractions that are likely to result in the loss of good time. (ACRS-6C-02)
- B. Each institution shall have Unit Disciplinary Committee(s) (UDC). UDC shall hear minor misconduct reports for rule infractions. "Minor UDC Infractions" are those infractions that are not likely to result in the loss of good time. (ACI-3C-05, ACRS-6C-01)

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- C. As part of the investigatory hearing, see (VI.C.) below, the warden’s designee(s) shall refer cases of incarcerated individual infractions to either IDC or UDC as follows:
1. Review the report and determine the offense(s) allegedly committed.
 2. Determine whether the hearing on the report shall be conducted by the IDC or the UDC.
 - a. Factors to be considered to determine whether alleged offenses are minor infractions to be heard by the UDC or major infractions to be heard by IDC include but are not limited to the incarcerated individual’s disciplinary history, the nature of the alleged offense(s) and the likelihood loss of good time being imposed.
 - b. Each warden will develop guidelines for his/her facility to assist the warden’s designee in determining which incarcerated individual infractions will be managed by the UDC and which by the IDC.

V. REPORT AND INVESTIGATION (IDC AND UDC)

- A. If a team member witnesses or has a reasonable belief that an infraction of the Code of Offenses has been committed by an incarcerated individual, the team member shall prepare a written misconduct report (MR). The report shall be filed with the warden/designee, within 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 team member. The report shall be placed in the files of the facility and logged in the facility records. The report shall be logged within 24 hours after the report is filed, which commences the investigation. (ACI-3C-05, ACI-3C-07, ACI-3C-08, ACI-3C-09, ACI-3C-10, ACI-3C-11)
- Misconduct reports shall not be issued for self-harm/suicide attempts.
- B. After a MR is logged, an appropriate investigation will be completed without unreasonable delay, unless there are exceptional circumstances. Any exceptional circumstances shall be documented. (ACI-3C-09)
- C. An investigatory hearing provided in Title 68, Nebraska Administrative Code, Chapter 6 shall be held regardless of whether the disciplinary matter will be assigned to UDC or IDC. The incarcerated individual shall be notified by the warden’s designee whether the case will be heard by the UDC or IDC.
- D. Identification of Confiscated Medications
1. The evidence custodian/designee will take all confiscated medications needing identification and photograph each pill (both sides), ensuring that each photo is clearly visible for identification purposes.
 2. The *Identification of Confiscated Medication form* (Attachment A) will be completed for each medication confiscated.


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3. The photo(s) and corresponding form(s) for each confiscated medication will be scanned to a PDF and e-mailed to the “DCS Pharmacy” group within three working days of being placed into evidence.
4. An assigned team member at the NDCS Pharmacy will review and provide the completed form(s) back to the respective facility evidence custodian/designee within three business days of receipt.

VI. HEARING PROCEDURES FOR UDC (ACRS-6C-03)

After the investigatory hearing, cases assigned to UDC shall follow these rules:

- A. The UDC hearing shall be held within seven days, excluding weekends and holidays, after the occurrence or discovery of an infraction. (ACI-3C-05, ACI-3C-13)
- B. The person conducting the UDC hearing may grant a continuance of the UDC hearing for good cause shown for a reasonable period of time. (ACI-3C-14)
- C. The person conducting the UDC hearing shall not have first-hand knowledge of the rule violation. (ACI-3C-05, ACI-3C-15)
- D. The incarcerated individual has a right to 24 hour notice of the UDC hearing and a right to be present at that hearing. The individual may waive either or both of these rights. (ACI-3C-05, ACI-3C-12, ACI-3C-13, ACI-3C-16)
- E. The Chairperson may decide to allow and appoint a representative(s) when it is apparent that an incarcerated individual is not capable of collecting and presenting evidence effectively on his or her own behalf. (ACI-3C-18)
- F. No witnesses, including the reporting team member, are permitted at the UDC hearing.
- G. The UDC decision shall be in writing. A copy of the UDC decision shall be given to the incarcerated individual.
- H. The warden/designee shall review and approve UDC decisions to assure conformity with policy and regulations. The warden/designee may modify or decrease sanctions imposed by the UDC, but may not increase the severity of the sanctions. (ACI-3C-22)
- I. If the warden/designee reverses the UDC decision, the warden/designee will state a reason for his/her action and ensure that records of the disciplinary action are removed from the incarcerated individual’s record.
- J. UDC decisions cannot be appealed to a NDCS Appeals Board. However, incarcerated individuals may request a Central Office review of a UDC decision if that decision disqualifies them for sentence reduction available under Neb. Rev. Stat. § 83-1,107(2)(b) (commonly referred to as LB 191). That statute states in part: the department shall reduce the term of a committed offender by three days on the first day of each month following a 12 month period of incarceration within the department during which the offender has not been found guilty of any Class I or Class II offenses or more than three Class III offense under NDCS disciplinary code.

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The incarcerated individual must initiate a Central Office review of a UDC decision within 15 days of the date of the decision by sending an Inmate Interview Request (IIR) form to the facility records manager. The incarcerated individual shall indicate in the IIR a desire to have the identified misconduct report undergo the Central Office review. The facility records manager will verify that the decision proposed for review is the fourth UDC decision regarding a Class III offense and would prevent a three day sentence reduction (provided there have been no Class I or Class II misconduct reports). If eligible, the facility records manager will forward the IIR and a legible copy of the UDC action to the Central Office assistant deputy director-programs within six days and provide written response to the incarcerated individual that the request was forwarded. If the UDC decision is not eligible for review, the request will be returned to the incarcerated individual with explanation of same. The assistant deputy director-programs will consider the record of the UDC decision being reviewed and determine if the original decision should stand, and will advise the incarcerated individual of same within 15 days of the receipt of the request.

VII. HEARING PROCEDURES FOR IDC (ACRS-6C-03)

A. Scheduling/Notification

Incarcerated individuals charged with a rule violation referred to IDC shall be scheduled for a hearing as soon as practicable, but no later than seven working days (excluding holidays and weekends) after the alleged violation. Incarcerated individuals shall be notified of the time and place of the hearing at least 24 hours before the hearing. (ACI-3C-13)


B. Waivers

The incarcerated individual may waive or consent to the denial of any of the procedures mentioned in Title 68, Nebraska Administrative Code, Chapter 6 but only if such waiver is voluntarily made. *Nebraska Department of Correctional Services Inmate Waiver-Disciplinary Committee* (Attachment B) Waivers and consents shall be reduced to writing and reviewed by the warden/designee. (ACI-3C-12)

C. Requests For Documents, Representatives And/or Witnesses

Requests for documents, representatives and/or witnesses to appear at a disciplinary hearing must be made at the time of the Investigating Officer's hearing, or must be in writing and received by appropriate team member at least 24 hours in advance of the disciplinary hearing. If a timely request is not made, the requested documents, representatives and/or witnesses may be denied. Witnesses from outside the facility may not be present. An incarcerated individual may obtain a written statement from a witness from outside the facility who has relevant knowledge of the incident. The incarcerated individual requesting the statement is responsible for obtaining any such statement in time for the scheduled hearing. (ACI-3C-17)

If a requested statement is from an incarcerated individual in another NDCS facility, such statement will be requested by and sent to the Disciplinary Committee Coordinator. Failure to receive a requested statement does not require a continuance.

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D. Warden's Review

The warden/designee shall review and approve IDC decisions to assure conformity with policy and regulations. It is expected that the warden/designee will review all IDC actions within 5 days of the IDC decision. The warden/designee may modify or decrease sanctions imposed by the IDC, but may not increase the severity of the sanctions. (ACI-3C-22)

VIII. SANCTIONS (IDC AND UDC)


NDCS does not utilize disciplinary segregation or solitary confinement. (ACI-3D-08, ACI-4A-04, ACI-4A-06, Title 68, Nebraska Administrative Code, Chapter 6)

A. Neither the IDC nor the UDC shall impose changes in work, education, or other program assignments as disciplinary sanctions. Actions of this nature are administratively decided by classification teams.

B. IDC may impose any of the sanctions set forth in Title 68, Nebraska Administrative Code, Chapter 6. Loss of Good Time may be imposed if the committee finds the violation 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 incarcerated individuals; (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. Non-Restorable Loss of Good Time may only be imposed for assaults resulting in serious injury to a person. For the purposes of sanctioning non-restorable good time, a serious injury involves a substantial risk of death involving serious, permanent disfigurement or long-term loss or impairment of the function of any body part or organ.

C. UDC may impose the sanctions of:

1. A verbal reprimand
2. A written warning
3. Extra duty without pay for up to 20 hours
4. Room restriction of up to 21 days
5. Restrictions from any correctional activities, 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 21 days for all violations arising out of one incident. Restrictions on clothing, bedding, mail, visitation, use of toilets, washbowls, scheduled showers or facilities and materials needed for access to the courts shall be imposed only for abuse of such privileges or facilities.
6. Restitution of up to \$100.00
7. Restrictions from tablet/kiosk access
8. Restrictions from canteen access


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- 9. Restrictions from telephone access
- 10. Restrictions from housing unit lobby access
- 11. Restrictions from yard and recreation access

- D. When an incarcerated individual is on IDC room restriction, the incarcerated individual shall not attend his/her institutional work assignment.
- E. When an incarcerated individual is on UDC room restriction, the incarcerated individual shall attend his/her institutional work assignment.
- F. Incarcerated individuals on room restriction shall be afforded at least 24 hours of out of cell time within a seven day period.
- G. When imposing extra duty or room restriction, the IDC and the UDC shall specifically state the number of hours of extra duty and/or the number of days the incarcerated individual shall be on room restriction.
- H. When imposing the loss of good time, the IDC shall specifically state the amount of good time being taken.
- I. The IDC and the UDC shall impose disciplinary sanctions in a progressive manner as appropriate. (ACRS-6C-04)

IX. DECISION AND DOCUMENTATION (IDC AND UDC) (ACRS-6C-03)

- A. The decisions of the IDC or UDC shall be based solely on information obtained in the hearing process. (ACI-3C-19)
- B. The proceedings before the IDC shall be digitally recorded and that recording shall be retained by the institution for at least two years. Hearings before UDC need not be recorded (ACI-3C-15).
- C. A written record of the decision of the IDC or UDC and the supporting reasons shall be made and a copy given to the incarcerated individual. For MRs processed on paper, the written record of the hearing and supporting documents are to be kept in the incarcerated individual master records file. For MRs processed via the Nebraska Inmate Case Management System (NICaMS), the Misconduct Report Routing System (MRRS) application will store electronic records in lieu of paper ones. (ACI-3C-20)
- D. If an IDC, UDC or an appellate body dismisses or reverses all charges on a misconduct report, all records of the disciplinary action, regardless of disposition, shall be removed from the incarcerated individual's misconduct report history; however, NDCS may preserve such records to be used for statistical/research purposes in a location which is separate and apart from the incarcerated individual's misconduct report history. When an incarcerated individual is found guilty of only some of the rule violations he or she was originally charged with, the disciplinary record must show which charges were dismissed. This provision includes misconduct reports dismissed at UDC or IDC, by the

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warden/designee, or overturned on appeal by the NDCS Appeals Board, the District Court, Court of Appeals, or Supreme Court. (ACI-3C-21)

X. RIGHTS OF APPEAL (IDC ONLY) (ACRS-6C-03)

D. NDCS Appeals Board

Incarcerated individuals found guilty of offenses by IDC shall be informed of their right to appeal the decisions to the NDCS Appeals Board. These procedures are outlined in Title 68, Nebraska Administrative Code, Chapter 6, Inmate Disciplinary Procedures, of the Inmate Rules and Regulations Book. (ACI-3C-23)

B. Administrative Procedure Act

If an IDC imposes a loss of good time as a sanction, the incarcerated individual has the right to appeal the action to the State District Court under the Nebraska Administrative Procedure Act (APA). If the incarcerated individual chooses to appeal under the APA, he or she may file a petition in State District Court within 30 days after the service of the Department Appeals Board's final decision.

C. Team Member Summons/Notification

A summons will be served on the defendants after the filing of the petition. Any department team member who receives such summons shall immediately notify the litigation contact person for the institution, who shall immediately notify the department's Appeals Board staff.

D. Certified Transcripts

When ordered by the Nebraska Department of Justice, a certified transcript of the disciplinary record reviewed by the Appeals Board and a transcript of the digitally recorded hearing will be transmitted to the State District Court by the Appeals Board staff or NDCS Legal Division within 30 days after the service of the summons in an appeal under the APA absent a court ordered extension of time. The Assistant Attorney General assigned to the appeal will be notified promptly by the Appeals Board staff or NDCS Legal Division of any need for an extension of these time limits so that additional time may be requested from the court.

XI. INTOXICANT

For purposes of incarcerated individual discipline, intoxicant means any substance whose purpose is to induce a condition of intoxication, stupefaction, depression, giddiness, paralysis, inebriation, excitement or irrational behavior or in any manner change, distort or disturb the auditory, visual mental or nervous processes.

REFERENCE

I. STATUTORY REFERENCE AND OTHER AUTHORITY

- A. Neb. Rev. Stat. § 83-1,107(2)(b)

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- B. Title 68, Nebraska Administrative Code, Chapter 5
- C. Title 68, Nebraska Administrative Code, Chapter 6
- II. NDCS POLICIES – None noted
- III. ATTACHMENT
 - A. Identification of Confiscated Medications (DCS-A-adm-062-pc)
 - B. Nebraska Department of Correctional Services Inmate Waiver-Disciplinary Committee
- IV. AMERICAN CORRECTIONAL ASSOCIATION (ACA)
 - A. Expected Practices for Adult Correctional Institutions (ACI) (5th edition): 5-ACI-3C-01, 5-ACI-3C-02, 5-ACI-3C-03, 5-ACI-3C-04, 5-ACI-3C-05, 5-ACI-3C-07, 5-ACI-3C-08, 5-ACI-3C-09, 5-ACI-3C-10, 5-ACI-3C-11, 5-ACI-3C-12, 5-ACI-3C-13, 5-ACI-3C-14, 5-ACI-3C-15, 5-ACI-3C-16, 5-ACI-3C-17, 5-ACI-3C-18, 5-ACI-3C-19, 5-ACI-3C-21, 5-ACI-3C-22, 5-ACI-3C-23, ACI-3D-08, ACI-4A-04, ACI-4A-06
 - B. Standards for Adult Community Residential Services (ACRS) (4th edition): 4-ACRS-3A-01, 4-ACRS-3A-02, 4-ACRS-6C-01, 4-ACRS-6C-02, 4-ACRS-6C-03, 4-ACRS-6C-04