


PROCEDURES NORTH DAKOTA STATE PENITENTIARY  NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION		PROCEDURE NUMBER: 5D-1
		APPENDICES: A. Inmate's Consent to Meet With Media B. Inmate Grievance Form-Informal Resolution/Step One C. Inmate Grievance Form-Step 2
		ACA/PbS RELATED STANDARDS: ACI 4-4274 through 44-4277, 4-4279 through 4-4284
CHAPTER TITLE: 5. Facility Operations	SECTION: D. Offender and Juvenile Rights	SUBJECT: Inmate Rights
DATE ISSUED: November 30, 2011	DATE(s) REVISED: July 16, 2012	

1. **APPLICABILITY:** All employees of the North Dakota State Penitentiary.
2. **DEFINITIONS AND ACRONYMS:**
 - A. **Civil Procedure:** Civil procedure includes a summons, complaint, applications for writs, motions, pleadings, discovery request, subpoenas, orders, judgment, notices of appeal, and appeals procedures.
 - B. **Corporal Punishment:** Any act of inflicting punishment directly on the body causing pain or injury.
 - C. **Grievance for Inmates and Juveniles:** A circumstance or action considered unjust and grounds for complaint or resentment or a response to that circumstance in the form of a written complaint filed with the appropriate body.
 - D. **Habeas Corpus:** Writ or legal action through which a prisoner can be released from unlawful detention.
 - E. **Inmate:** An offender housed in a Department of Corrections and Rehabilitation facility or the Dakota Women's Correctional and Rehabilitation Center.
 - F. **Law Library:** An area set aside for legal research and the use of legal materials for inmates representing themselves in criminal cases, direct appeals, state and federal post-conviction and habeas proceedings and appeals, or challenging conditions of confinement on state and federal grounds. The law library includes space for preparing legal documents.
 - G. **Legal Representative:** An employee of municipal, state or federal courts; any licensed attorney or trained paralegal employed by a licensed attorney, or a member of a legal advocacy group to lawfully assist offenders in legal matters.
 - H. **Public Information Officer:** Official spokesperson for the Department of Corrections and Rehabilitation.

- I. Retaliation: Any adverse action taken against complainants who have alleged discrimination or have participated in the investigation of a complaint for unlawful discrimination.
- J. AS: Administrative Segregation
- K. COS: Chief of Security
- L. DD: Disciplinary Detention
- M. DOCR: Department of Corrections and Rehabilitation
- N. NDSP: North Dakota State Penitentiary (maximum security facility)
- O. PIO: Public Information Officer

3. **PROCEDURES:**

A. Access to Courts:

- 1. Inmates are entitled access to the courts. (4-4274)
 - a. To work on the legality of their conviction or confinement.
 - b. To seek review for illegal conditions of confinement or treatment while under correctional control.
 - c. To assert against any lawful authority, any rights protected by constitutional or statutory law, relating to the inmate's conviction, sentence, or conditions of confinement.

B. Access to Counsel:

- 1. The NDSP ensures inmates have access to counsel and assists inmates in making confidential contact with attorneys and their authorized representatives; such contact includes, telephone communications, uncensored correspondence, and visits. (4-4275)
 - a. Access to counsel includes:
 - 1.) Access to a licensed attorney, a paralegal employed by a licensed attorney, or an authorized representative of a legal advocacy group.
 - 2.) Protected incoming and outgoing legal mail and the right to confer with a licensed attorney, a paralegal employed by a licensed attorney, or an authorized representative of a legal advocacy group by telephone during reasonable hours.
 - 3.) Attorney visitation will be held during regular business hours and will not be monitored.
 - b. Attorney visitation will be unrestricted during business hours unless the Warden specifies otherwise, in writing, based on

legitimate penological reasons. An attorney's briefcase, legal material, and person are subject to inspection for contraband. Restricted attorney visitation may be required if the Warden determines after investigation, that the attorney visitation presents a threat to the safety and security of the facility.

- 1.) Inmate access to legal counsel must include:
 - a.) A licensed attorney who represents the inmate, including retained or appointed attorneys; or
 - b.) A legal representative of a legal advocacy group.
 - c.) Legal assistants employed by a licensed attorney or legal advocacy group.
- c. Visiting hours for attorneys will be Monday through Friday for any period of time during regular business hours. Special visiting hours may be approved by the shift supervisor. Attorneys must be included on the inmate's visiting list prior to being allowed the visit. Inmates may add attorney names to their visiting list through normal channels.
- d. The NDSP provides a confidential visitation area for inmates and their legal representatives. The supervising officer is able to visually observe the conduct of the visit while allowing legal representatives to confer with inmates without fear of any monitoring or recording of the discussion.

C. Access to the Law Library:

1. A law library is provided along with access to paper, typewriters or typing service, and other supplies and services, related to legal matters. When an inmate is unable to make meaningful use of the law library on his own, the additional assistance necessary for effective access is provided. (4-4276)
 - a. The law library uses an electronic system and books for access to the following:
 - 1.) Federal and state case law
 - 2.) Federal and state statutes
 - 3.) Federal and state rules of Civil and Criminal Procedures, Rules of Evidence, and Rules of Court
 - 4.) Federal and state Rules of Appellate procedures
 - b. Federal habeas corpus forms and supplies to prepare legal documents are available for use.
 - c. Six inmates are allowed to use the law library at each recreation period.

- d. An inmate must sign up for scheduled times periods at traffic control.
- e. If an inmate is on the list for the law library and they do not arrive within 15 minutes, the staff member assigned to the area may allow another inmate to fill that slot.
- f. Inmates are only allowed to sign up for the law library daily. No additional days in advance are allowed.
- g. The law library is open to the general population during morning, afternoon and evening recreation times.
- h. Inmates are assigned to work in the law library as law library clerks. All inmates may request assistance from the law library clerks in representing themselves in criminal prosecutions, direct appeals, state and federal post-conviction and habeas proceedings and appeals, and in challenging conditions of confinement on state and federal grounds.
- i. Law library clerks may not represent inmates or prepare an inmate's legal work. Law library clerks may only assist in research and drafting legal documents for inmates representing themselves in criminal prosecutions, direct appeals, state and federal post-conviction, habeas proceedings and appeals, and in challenging conditions of confinement on state and federal grounds. Law library clerks are prohibited from charging for legal assistance. Inmates who cannot read or write or only have limited English proficiency will receive help from the law library clerks.
- j. Inmates in AS may request legal materials, through the case manager. A law library clerk may be requested to assist, if needed. Approval shall come from the case manager.
- k. Damage to or loss of law library materials or equipment will be investigated. If an inmate is found to be responsible for the loss or damage, an incident report may be issued. If it is not determined who damaged or took the materials or equipment, the replacement costs may be taken from the inmate betterment fund. If an inmate destroys law library equipment, references, or materials, the inmate may be banned from access to equipment and materials, except when under direct staff supervision and only in case of a documented court deadline.
- l. Inmates with limited English proficiency or other disability that impairs their ability to use the law library will be offered assistance.
- m. General rules are posted in the law library.
- n. The procedures for Service of Civil Process are located in the DOCR Inmate Handbook.

D. Access to Programs and Services:

1. Staff is prohibited from basing administrative and programming decisions on an inmate's race, religion, national origin, sex, disability, or political views. (4-4277)

E. Access to Media:

1. Refer to Policy 1A-5, Public Information/Media Access.
2. Media requests for interviews and the inmates consent are in writing, except in emergencies. (4-4279)
 - a. A news media representative who wishes to conduct an interview with an inmate must make a verbal or written request to the Warden, who will notify the PIO when such a request is made.
 - 1.) If the inmate agrees to be interviewed and the Warden approves, the news media representative will coordinate arrangements with the Warden. A copy of the inmate's response should be provided to the Warden and the PIO.
 - 2.) An inmate who wishes to be interviewed must notify the Warden and then make a written request to the news media representative. The news media representative will coordinate arrangements with the Warden.
 - 3.) An inmate may not be employed or act as a reporter or publish under a by-line.
 - 4.) An inmate may not receive compensation or anything of value for interviews.
 - b. The Warden normally shall approve or disapprove of an interview request within three business days.
 - c. The inmate and news media representative must complete the Inmate's Consent to Meet with Media form, prior to the personal interview. The Inmate's Consent to Meet with Media form must be forwarded to administrative services, immediately after the interview.
 - d. The inmate has full discretion for consent for photographs, answering questions or being recorded by the media representative. All photographs of any part of the facility must have prior approval from the COS.
 - e. Interviews by reporters and others may be permitted, only by special arrangement and with approval of the Warden.
 - f. The Warden shall document any disapproval. A request for interview may be denied for any of the following reasons:

- 1.) The news media representative or the news organization represented does not agree to the conditions established or has, in the past, failed to abide by the required conditions.
 - 2.) The inmate is physically or mentally unable to participate.
 - 3.) The inmate's written consent is not completed.
 - 4.) The interview, in the opinion of the Warden, would endanger the health or safety of the interviewer, or would adversely affect the good order of the institution.
 - 5.) The inmate is involved in a pending court action and the court, having jurisdiction, has issued an order forbidding such interviews.
 - 6.) The inmate is a protection case and notice of his whereabouts would endanger the inmates' safety. The inmate is a transfer from another jurisdiction.
- g. Interviews are normally held in the NDSP visiting room. Times are approved by the Warden. The Warden may:
- 1.) Determine that another location is more suitable for conducting the interview.
 - 2.) Limit the interview time for the entire institution, if the Warden determines the interviews are imposing a serious drain on staff time or use of the facility.
 - 3.) Limit interview length for those inmates with special needs, such as segregation or hospital status.
 - 4.) Limit the amount of audio, video and film equipment or number of media personnel entering the institution, if the Warden determines that the requested equipment or personnel would create a disruption.
- h. Interviews may be subject to supervision, at the discretion of the Warden.

F. Foreign National Detainees:

1. Foreign National inmates are informed of their rights to have their government informed of their arrest, during orientation at the NDSP. (4-4280)

G. Protection from Harm:

1. Staff is trained in security, control, use of force, harassment, to assist in protecting inmates from personal abuse, corporal punishment, personal injury, disease, property damage, and harassment. (4-4281M) Refer to NDSP Procedure 5D-3, (PREA) Prison Rape Elimination Act of 2003.

H. Protection from Unreasonable Searches:

1. Frequent unannounced searches of inmates, inmate's quarters, and other areas of the facility shall be conducted, as often as necessary, to ensure the safety and security of the facility. Searches are conducted to deter and prevent the introduction of contraband, to recover missing or stolen property, and to prevent escapes and other disturbances. Searches shall be conducted in a manner that will avoid unnecessary force, embarrassment, or indignity to the inmate and will never be used as a form of punishment or harassment.
2. The Warden shall authorize all searches, relating to any incident that may result in a new crime or possible prosecution of any individual. Preservation of evidence and the legal protection of individual rights shall be afforded to anyone involved.
3. Searches of inmates and inmate property will only be conducted, in accordance, with those requirements set forth in the Control of Contraband policies. Refer to NDSP Procedure 5A-8, Control of Contraband.

I. Freedom in Personal Grooming: (4-4283)

1. Inmates will be allowed freedom to adopt any hairstyle provided they keep it clean. When the length or style of their hair is found to present a health, sanitation, or safety problem, they may be required to trim or cut their hair or wear a hair net or other covering to alleviate the problem. The inmate barber provides haircuts, at no cost, to the inmate. Haircuts are limited to one per month. A trimmed mustache is permitted. Beards shall be neatly trimmed and clean. The COS will screen atypical haircuts, such as shaving the head and leaving a small patch of hair. Haircuts that provide identification or affiliation with security threat groups will be removed immediately. The same standard applies to beards and other areas such as eyebrows. Haircuts are not allowed outside the designated barber area.
2. Personal cleanliness is the inmate's responsibility and will be enforced by institution regulations. New identification photographs will be required if an inmates' appearance changes or is altered significantly during incarceration, as a result of change in hairstyle, hair length, or beards. If a change in appearance requires a photograph, inmates will be assessed an appropriate fee for processing the photograph. The photograph will be placed in the inmates file.

J. Grievance Procedures:

1. A grievance process is available to all inmates that provide a review of complaints. Internal problem solving is encouraged at the level of most direct inmate contact. Additionally, the process offers the facility a means of continuous review of administrative policy and decision, as well as written documentation of incidents that may be the subject of future litigation. (4-4284)
 - a. An inmate may only pursue a grievance about a problem that affects the inmate personally including:

- 1.) Policies, rules, and procedures enforced within the institution.
 - 2.) Reprisals or retaliatory actions against the inmate for filing a grievance, under the inmate grievance procedure or for participation in an inmate grievance proceeding.
 - 3.) A lack of a policy, regulation, rule or procedure that affects the living conditions of an inmate.
 - 4.) Actions of inmates or staff that directly affect the inmate (exceptions noted in item 2.) below).
 - 5.) Concerns with personal needs and service (religious, recreational, medical, treatment, or education matters).
- b. Issues that are not subject to the grievance process:
- 1.) Any process with an established, formalized appeal or review process.
 - a.) Disciplinary proceedings
 - b.) Classification proceedings
 - c.) AS placement
 - d.) Medical payment committee or co-pay decisions
 - 2.) Actions of persons or entities outside the jurisdiction of the institution.
 - a.) The enactment of state or federal laws, treaties, or administrative rules and regulations.
 - b.) Court decisions
 - c.) Parole Board decisions
 - d.) Pardon Advisory Board recommendations and the Governor's decisions
- c. Inmate problems and complaints must be resolved by staff and the inmate through discussion (informal resolution), whenever possible.
 - d. Those problems not resolved with staff will have additional means of internal resolution to improve communication.
 - e. Retaliation against an inmate for good faith use of the grievance procedure is prohibited.
 - f. The administrative staff officer shall be responsible for the grievance program coordination. All time lines are listed in the DOCR Inmate Handbook.

- 1.) Inmates are to submit a completed Inmate Grievance Form-Informal Resolution/Step One to the case manager of the housing units.
 - 2.) The case manager ensures informal resolution has been attempted.
 - 3.) The grievance form is sent to the administrative staff officer for logging and then returned to the case manager.
 - 4.) The case manager investigates the grievances, answers the grievances, and submits the form to administrative services for placing in the inmate's file.
 - 5.) After the form is scanned into the inmate's file, the original or a copy is given to the inmate.
 - 6.) Procedures for filing an Inmate Grievance Form-Step Two and then an appeal to the Director of DOCR are located in the DOCR Inmate Handbook.
 - 7.) Step Two grievances are investigated by the administrative staff officer and turned in to the Warden to include their comments.
 - 8.) The Inmate Grievance Form-Step Two is scanned into the inmate's file, with the original or a copy given to the inmate.
 - 9.) Appeals to the Director of DOCR are submitted to administrative services so that a copy of the Inmate Grievance Form-Informal Resolution/Step One and the Inmate Grievance Form-Step Two is attached and forwarded to the Director.
- g. Abuse of the grievance procedure:
- 1.) Grievances containing profanity, threats, or abusive and demeaning language are an abuse of the procedures and may be rejected and not processed. An inmate may resubmit any rejected grievance with the noted errors corrected.
 - 2.) An inmate may not submit a grievance referencing an issue that has been previously addressed through the grievance process. The grievance will be rejected and returned to the inmate, noting the abuse and that it will not be processed any further.
 - 3.) An inmate who submitted multiple frivolous grievances that are abusive, harassing, in bad faith, or deliberately false (demonstrating bad faith use of the system) may have limited use of the grievance procedure, as directed

by the Warden. Notice of a limitation shall be made to the inmate, in writing.

- h. If an inmate's complaint is sensitive and the inmate reasonably fears possible adverse affects if it is known at the institution, the inmate may file a grievance directly with the Director of DOCR through the mail. The inmate shall explain clearly the reason for not submitting the grievance to the institution. The Director will normally reply to the grievance within 30 days, excluding weekends and holidays.
 - i. A log is maintained by administrative services of all inmate grievances to include date of Inmate Grievance Form-Informal Resolution/Step One; date grievance was answered and if upheld or denied and by whom; short description of grievance; date of Inmate Grievance Form-Step Two and date Inmate Grievance Form-Step Two was answered; date of appeal to the Director of DOCR. This log is maintained and is open for review by the Warden or the Director of DOCR.
4. **SIGNATURE:** These procedures become effective when signed by the Director of the Department of Corrections and Rehabilitation.

This copy has been approved by the Director with the original signature on file.