

**NORTH DAKOTA CORRECTIONAL FACILITY RULES  
PREPARED BY THE NORTH DAKOTA  
DEPARTMENT OF CORRECTIONS AND REHABILITATION**

March 20, 2014

Per the directive of the Director of Corrections and Rehabilitation

**Administration**

- Rule 1** Each facility shall make every reasonable effort to substantially comply with model correctional facility standards such as the standards published by the American Correctional Association.
- Rule 2** The Director of the Department of Corrections and Rehabilitation (“DOCR”) shall determine the grade classification of each facility and shall also determine how many classifications of inmates or detainees may be housed in each facility.

**Application Procedure for Correctional Facility  
Classification and Inmate Categories**

- Rule 3** The administrator of each correctional facility shall submit an application for a grade classification which shall specify that the correctional facility is to be considered for a grade one, grade two, grade three, grade four or juvenile detention center. Each correctional facility shall also specify the number of classifications of inmates, as set out in North Dakota Century Code, Section 12-44.1-09, the correctional facility will detain.
- Rule 4** Within a reasonable period of time, the Director of the Department of Corrections and Rehabilitation shall notify the administrator of the approved correctional facility classification and the approved number of classifications of inmates that may be detained in the correctional facility. The Director of the Department of Corrections and Rehabilitation shall also notify the administrator of the terms of any variances that have been granted.

**Inspections**

- Rule 5** Inspections of correctional facilities must be made pursuant to North Dakota Century Code Chapter 12-44.1 and these rules.
- Rule 6** Agents (designees) of the Director of the Department of Corrections and Rehabilitation may enter any correctional facility in this state at any time without prior notice, must be admitted without unnecessary delay, and may confer privately with any employee or inmate about the facility and facility operations.

**Rule 7** All construction plans or renovation plans with an estimated expenditure of more than fifty thousand dollars must have approval from the office of the Director of the Department of Corrections and Rehabilitation before commencement of the project.

## **Physical Plant**

**Rule 8** All plans for the construction or major renovation of correctional facilities must be substantially in accordance with model correctional facility standards such as those published by the American Correctional Association. Unless otherwise noted, the square footage requirements apply to plans approved after January 1, 1992.

**Rule 9** Facilities must have a policy and procedure that requires separate male and female housing and includes visual and physical separation between male and female inmates.

**Rule 10** All single cells must provide a minimum of 60 square feet. A single cell must provide 70 square feet if confinement exceeds ten hours in a 24-hour period. All single cells must provide a minimum of 35 square feet of unencumbered space.

**Rule 11** A multiple occupancy room may be used for medium or minimum custody inmates. Correctional staff shall classify and screen inmates before housing in multiple occupancy rooms. A multiple occupancy room must contain 25 square feet of unencumbered space per inmate.

**Rule 12** Grade one facilities must provide an outdoor recreation area that allows a minimum of 15 square feet of space per inmate. Grade one facilities may utilize opening louvered vented rooms that allow outside air in as outdoor recreation.

**Rule 13** Grade one and two facilities must provide an indoor recreation made up of a minimum of 100 square feet with a minimum of 15 square feet per inmate using the area at the same time. Inmates using this area may not have access to other inmates in their cells.

**Rule 14** Grade one facilities must provide dayrooms that are separate from indoor recreation areas.

**Rule 15** Grade one and two facilities must provide secure visitation areas, including attorney-client visitation.

**Rule 16** Each facility must have a booking area that is separate and secure from the public and inmate housing areas.

- Rule 17** Each facility must provide heating and ventilation systems sufficient to maintain humane comfort.
- Rule 18** A correctional facility may have a cell, or cells, without an above-floor toilet or wash basin when in the discretion of the facility administrator it is necessary for the temporary housing of an inmate who is under close observation because of destructive or self-destructive behavior.
- Rule 19** Grade one, two, and three facilities must provide adequate showers that are available to all inmates.
- Rule 20** Grade four facilities
- a. Grade four facilities must be staffed by a licensed peace officer or a trained correctional officer.
  - b. Grade four facilities may not detain an inmate for more than eight hours or overnight.
  - c. Grade four facilities shall provide meals to inmates detained more than four hours.
  - d. Grade four facility staff shall personally observe each inmate at least every thirty minutes on an irregular basis and shall document when they observed each inmate and what they observed.
  - e. Grade four facilities may not detain an inmate under the age of eighteen.

## **Admissions**

- Rule 21** Health trained staff shall perform medical screening on all inmates at intake. Staff shall record their findings on medical screening forms approved by the facility health care administrator. The facility must have written policy and procedure that include:
- a. Inquiry into:
    1. Current illness and health problems, including dental problems, sexually transmitted diseases and other infectious disease;
    2. Medication taken and special health requirements;
    3. Use of alcohol and other drugs, which includes types of drugs used, mode of use, amounts used, frequency used, date or time of last use and history of problems that may have occurred after ceasing use;
    4. Past and present treatment or hospitalization for mental disturbance or suicide;
    5. Other health problems designated by the responsible physician;
    6. Mental illness.
  - b. Observations of:
    1. Behavior, which include state of consciousness, mental status, appearance, conduct, tremor and sweating;

- c. Body deformities, trauma markings, bruises, lesions, jaundice, ease of movement, or other observed injuries or conditions that appear to be irregular or unusual.
- d. Dispositions to:
  - 1. General population;
  - 2. General population and referral to appropriate health care service;
  - 3. Referral to appropriate health care service on an emergency basis.

**Rule 22** A facility housing an inmate who shows signs of mental illness or emotional disturbance or who is detained pursuant to a court-ordered emergency commitment under N.D.C.C. chapter 25-03.1 shall place the inmate under close personal supervision, including frequent personal observation. Staff shall document the frequent personal observation, including time and condition of the inmate.

**Rule 23** The facility staff shall establish individual files at intake. The following minimum identification data and information must be recorded for each inmate in the facility:

- a. Name (and aliases, if any);
- b. Address;
- c. Date of birth;
- b. Sex;
- c. Identifying marks, including scars, marks, and tattoos (location and description);
- d. Name, address and phone number of person to be contacted in case of an emergency. (Parent or guardian, if juvenile);
- e. Employment;
- f. Time and date of admission to the facility;
- g. Authority for admission;
- h. Offense;
- i. Name of delivering officer and arresting officer;
- j. Medical screening form;
- k. Reads and understands English;
- l. Digital photos front and side, indicating height;
- m. Cell assignment;
- n. Date of release or transfer;
- o. Name of person recording the data;
- p. Name and contact information of the victim(s), (or the parent or guardian of the victim(s), if juvenile);
- q. PREA notification, screening and acknowledgment.

**Rule 24** A facility may require an inmate to wear facility clothing. Correctional staff, at their discretion, may permit inmates to wear their own clothing.

- Rule 25** Facility staff shall inventory all personal property taken from an inmate on a receipt form made out in the name of the inmate.
- Rule 26** Facility staff shall allow the inmate to contact an attorney, a family member, friend, next of kin, or bondsman upon completion of admission or as soon as practical after completion of admission. Facility staff shall allow a reasonable number of attempts to complete a telephone call.
- Rule 27** Upon admission, or as soon thereafter as is practical, staff shall provide inmates orientation information in language the inmate understands, to include:
- a. Visitation;
  - b. Mail;
  - c. Contraband;
  - b. Prohibited acts and penalties that may be imposed;
  - c. Grievance procedures;
  - d. Health care procedures;
  - e. Inmate cell care responsibilities;
  - f. PREA notification, screening and acknowledgment
- Staff shall document completion of the orientation and shall obtain inmate signature and date. If the inmate refuses, or is unable to acknowledge, the completion of orientation, correctional facility shall document the inmate's refusal or inability to acknowledge completion of orientation.

## **Supervision and Security**

- Rule 28** Each Facility must have a policy and procedure in place for notification to the DOCR Office of Facility Inspections within one hour after the occurrence of any of the following events:
- a. The escape or attempted escape by an inmate from custody, including during transport.
  - b. Death or attempted self-harm or suicide of any inmate.
  - c. Any incident involving inmate assault, disturbance, riot or hunger strike.
  - d. Any incident involving staff injury requiring outside medical attention.
  - e. The refusal of an inmate to undergo necessary medical care.
- Rule 29** Each facility that has a secure outdoor recreational area for inmate use must have trained staff in the outdoor recreational area with the inmates at all times during outdoor recreation times.
- Rule 30** A facility may not detain an inmate without a trained person on duty capable of responding to the reasonable needs of the inmate. When both males and females are housed in the facility, at least one female staff person must be available. An inmate may not be placed in a supervisory capacity over other inmates.

- Rule 31** Each facility must have a written policy and procedure for inmate observation. Correctional staff shall personally observe each inmate during each hourly period on an irregular basis. Correctional staff or a responsible person the administrator may designate shall personally observe inmates who exhibit suicidal tendencies, self-destructive behavior, emotional distress, or have specialized medical problems, at more frequent intervals as the inmate's condition requires.
- Rule 32** The facility shall maintain a daily written record, including the date and time and the name of staff who completed the record, with the following information:
- a. Personnel on duty;
  - b. Inmate population count, which must be conducted at least three times in a 24 hour period;
  - c. Admissions and releases of inmates, including SAVIN notification;
  - d. Shift activities;
  - e. Entry and exit of physicians, attorneys, and other visitors;
  - f. Unusual occurrences, including any of the events in Rule 28
- Rule 33** In order to control contraband, each facility must have a written policy and procedure governing searches of: the facility; inmate cells and inmate property, dayrooms, recreation areas, vehicles used to transport inmates, and visitation areas; inmates; and visitors.
- Rule 34** Each facility must have a written policy and procedure for clothed and unclothed searches. The policy and procedure must include the following:
- a. Only trained medical personnel may conduct manual, visual, or instrument searches of body cavities. Trained medical personnel may only conduct body cavity searches when there is a reasonable suspicion that the inmate is concealing drugs, weapons, or other contraband and only upon the prior authorization of the correctional facility administrator. Correctional facility staff shall document their grounds for the search and the trained medical personnel shall document their actions.
  - b. Correctional staff may only conduct unclothed body searches of an inmate who will not be placed in the general population, including visual inspections of anal or vaginal areas, when the individual is in the facility for a crime of violence, a crime involving illegal drugs, or the unclothed body search is based on reasonable suspicion the inmate may be concealing drugs, weapons, or other contraband.
  - c. Correctional staff may conduct unclothed body searches, including visual inspections of anal or vaginal areas, of inmates who will be placed in general population.
  - d. Correctional staff may conduct unclothed body searches, including visual inspections of anal or vaginal areas, of inmates who have had

contact visitation or who have returned to the facility after work release, work details, court appearances, or for medical care.

- e. Unclothed body searches must be conducted where they cannot be observed by any other individuals not involved in the search. Visual inspections must be non-intrusive and not involve touching the inmate.
- f. Unclothed cross-gender body searches may not be conducted on female inmates absent exigent circumstances. Facility staff shall document all cross-gender unclothed searches of female inmates, including the exigent circumstances for the search.
- g. Cross-gender pat-down searches may not be conducted on female inmates absent exigent circumstances. Facility staff shall document all cross-gender pat-down searches of female inmates, including the exigent circumstances for the search.

**Rule 35** Each facility must have a written policy and procedure governing the use, storage, inspections and training for authorized weapons.

**Rule 36** Each facility must have a written policy and procedure governing use of force. The written policy and procedure must restrict the use of force to the safety and security of staff, inmates, and the public, protection of property, prevention of escapes, prevention of crime, when necessary to enforce facility rules and restore order, and only in accordance with legal authority. Staff shall document any use of force and submit a written report to the administrator by the end of the employee's shift. The facility shall make a reasonable attempt to video tape all use of force situations. The facility shall report the use of force that results in injury to any individual to law enforcement.

**Rule 37** Each facility must have a written policy and procedure to provide medical care for any injury inmates or staff may sustain.

**Rule 38** Each facility must have a written policy and procedure for a current accounting, security, control and use of keys, tools, culinary and medical supplies and equipment.

**Rule 39** Each facility must have a written policy and procedure for every security post. The facility shall review the policies and procedures annually and update, if necessary. All staff shall read, sign and date the post orders annually, before beginning a new assignment or when the post orders are updated.

**Rule 40** Each facility must have a written policy and procedure regarding actions to be taken in the event of an escape or attempted escape. The facility shall review these policies and procedures annually and update, if necessary.

- Rule 41** Each facility must have a written policy and procedure to be followed in situations including riots, hunger strikes, hostages, and disturbances, including power outages and storms or other acts of nature that may affect facility operations, safety, and security. The facility shall review these plans annually and update, if necessary.
- Rule 42** Each facility must have a written policy and procedure governing temporary space arrangements in case of arrests that exceed the maximum capacity of the facility.
- Rule 43** Each facility must have a written policy and procedure for the use of restraint devices. Restraint devices may only be used as a precaution against escape, during transports, for medical reasons by direction of the medical personnel, and as a prevention against inmate self-injury, injury to others, or property damage. Restraints may never be applied as punishment.
- Rule 44** Each facility must have a written policy and procedure governing the transportation of inmates outside the facility, including the equipment used in transport vehicles, the qualifications for transport officers and the use of firearms, the use of restraints and inmate transport clothes, and the use of escort vehicles.
- Rule 45** Each facility must have a written policy and procedure governing the notification of victims and witness. At minimum, it must include a process for ensuring the collection, storage, and accuracy of offender and victim/witness information; the confidentiality of victim/witness information; a timely notification method; a way to document notification; and a process to follow up with notifications, if needed, and in compliance with the statewide automated victim information and notification system. The facility shall review these policies and procedures annually and update, if necessary.

## **Health Care**

- Rule 46** The administrator shall designate a licensed physician, nurse practitioner, physician's assistant, or registered nurse or a county or state health authority to be the health care administrator. The health care administrator shall be responsible for health care administration and development of health care policies and procedures.
- Rule 47** Each facility must have a written policy and procedure to provide that inmates have access to necessary medical care including physical, mental health, eye care and dental care. The cost of such medical care is subject to payment by or reimbursement from the inmate. Adequate staff, space, equipment, supplies and materials must be provided if health care is delivered in the correctional facility.

- Rule 48** A licensed physician, nurse practitioner, physicians' assistant, or registered nurse must be available on-call on a 24-hour basis. Procedures to notify a licensed physician, nurse practitioner, physician's assistant, or registered nurse on duty at a hospital are sufficient. Correctional facilities in communities without a licensed physician, nurse practitioner, physician's assistant or registered nurse must have arrangements to provide health care to an inmate on the same basis as any resident of the community. That is, the inmate must be transported to an appropriate health care facility or a licensed physician, nurse practitioner, physician's assistant, or registered nurse must be brought to the correctional facility.
- Rule 49** Each facility must have a written policy and procedure for transportation to a medical facility in case of a medical emergency. Emergency communication information must be readily available to correctional officers.
- Rule 50** A facility shall transfer inmates who require necessary health care beyond the resources available in the correctional facility to a facility where the necessary health care is available.
- Rule 51** Each facility must have a training program in which the health care administrator in cooperation with the facility administrator provides instruction in the following areas:
- a. Response to emergency health related situations;
  - b. Recognition of signs and symptoms and knowledge of action required in potential emergencies;
  - c. Administration of first aid and cardiopulmonary resuscitation;
  - d. Methods of obtaining assistance;
  - e. Recognition of signs and symptoms of mental illness, intellectual disability, emotional disturbance, and chemical dependency;
  - f. Procedures for patient transfers to appropriate medical facilities or health care providers.
  - g. If medications are delivered to inmates by staff within the facility, staff must be trained in and currently certified in a North Dakota Department of Health-approved medication assistant I or medication assistant II program for correctional facility staff.
- Rule 52** Each facility shall maintain a first aid kit, emergency medical supplies equipment, and automatic external defibrillator (AED). The health care administrator shall determine the contents, locations and procedures for inspection of the kits.
- Rule 53** Each facility shall maintain the confidentiality of an inmate's medical, psychological, and treatment records. The medical records file must be separate from the correctional facility confinement records

- a. The inmate's medical, psychological, and treatment records, may only be disclosed in accordance with NDCC 12-44.1-28, which requires that a court may order the inspection of the records, or parts of the records, upon an application to the court and a showing there is a proper and legitimate purpose for the inspection and the provision of written authorization from the inmate for the inspection.
- b. Except for drug and alcohol treatment records, this requirement does not apply to criminal justice agencies, the Department of Corrections and Rehabilitation, other federal, state, or local correctional facilities receiving custody of the inmate, a municipal or state district court, the Department of Human Services, public hospitals or treatment facilities, or licensed private hospitals or treatment facilities.
- c. Records of an inmate's identity, charges, criminal convictions, bail information, and intake date and projected release dates are open records
- d. Records of a sentenced inmate's institutional discipline and conduct and protective management are exempt records under North Dakota Century Code Section 44-04-17.1
- e. Institutional discipline and conduct and protective management records of all other inmates are confidential records and may only be disclosed in the same was applicable to an inmate's medical, psychological, and treatment records.

**Rule 54** Inactive medical, psychological, and treatment records must be retained as permanent records for a period as provided by law. All records of sex offenders for violations of North Dakota Century Code Chapter 12.1-20 and 12.1-27.2 must be maintained for a period of fifty years.

**Rule 55** A licensed physician, nurse practitioner, physician's assistant, registered nurse, or other qualified person the health care administrator may authorize, shall perform a health appraisal for each inmate detained in a grade one or grade two facility within fourteen days of the inmate's admission. The health care administrator shall determine the nature and extent of the health appraisal. The health care administrator may require a health appraisal at an earlier date if the health care administrator determines it is necessary. The health appraisal must include, at a minimum:

- a. Tuberculosis testing;
- b. Review of health screening;
- c. Collection of additional data to complete the medical, eye care, dental, mental health, and immunization histories;
- b. Recording of height, weight, pulse, blood pressure and temperature;
- c. Laboratory or diagnostic tests and examinations as deemed appropriate by the health care administrator;
- d. Review of medical examination results;
- e. Every inmate who is convicted of a crime and imprisoned for fifteen days or more in a grade one or grade two jail or regional correctional

center must be tested for the presence of antibodies to or antigens of the human immunodeficiency virus (HIV). The results of any positive test or reactive result must be reported to the North Dakota Department of Health and to the inmate tested.

The facility shall document an inmate's refusal to participate in the health appraisal in whole or in part, and the documentation placed in the inmate's medical records. If the health care administrator determines that the inmate's refusal presents a risk to the health or safety of other inmates or staff, the inmate may be administratively segregated from the inmate population until such time as the health care administrator determines that the risk no longer exists.

- Rule 56** The facility shall establish procedures to carry out the orders of the health care administrator relating to an inmate's medical care. Staff shall document all treatment administered to inmates pursuant to orders of the health care administrator.
- Rule 57** The facility shall make arrangements for notification of the next of kin or legal guardian of an inmate in case of death. The facility shall notify the county coroner or the state's forensic examiner in the event of an inmate death.
- Rule 58** The facility must have a written policy and procedure for detoxification if the facility holds persons for detoxification. A facility may not hold a person for detoxification for more than 24 hours. Before a facility may hold a person for detoxification, the facility must be able to provide a staff person or designee within constant hearing distance of the intoxicated person and must be able to provide necessary medical services.
- Rule 59** Grade one and grade two correctional facilities must have a written policy and procedure for sick call. Sick call must be provided by a physician or other qualified personnel at least once per week.
- Rule 60** Each facility must have a written policy and procedure for receiving and documenting inmate health complaints on a daily basis.
- Rule 61** At least one staff person must be on duty at all times in each facility who has received and has current certification in basic first aid training and basic cardiopulmonary resuscitation training (CPR).

### **Safety and Emergency Procedures**

- Rule 62** Each facility must have access to equipment necessary to maintain essential lights, power, and communications in an emergency.

- Rule 63** Each facility must have a written evacuation plan prepared in case of fire or major emergency. The facility shall review the plan with the state fire marshal or local fire jurisdiction annually and update the plan, if necessary. The plan must include:
- a. Location of building and room plans;
  - b. Use of exit signs for traffic flow;
  - c. Location of publicly posted evacuation plans;
  - d. At least semi-annual fire drills in all facility locations;
  - e. Procedures to account for all staff, inmates, and visitors.
- Rule 64** All facility personnel must be trained in the implementation of written emergency plans. These plans must be reviewed annually and documentation of the review in place.
- Rule 65** Each facility must have a written policy and procedure governing the storage and use of all flammable, toxic, and caustic materials. These policies and procedures must be in accordance with all applicable laws and regulations.
- Rule 66** Each facility must have documentation by an independent, qualified source that the facility complies with applicable fire safety codes.
- Rule 67** Each facility must have a written policy and procedure specific to the facility for fire prevention to ensure the safety of staff, inmates and visitors. These must include:
- a. Provision for an adequate fire protection service;
  - b. A system of fire inspection and testing of equipment at least annually;
  - c. Availability of fire hoses or extinguishers at appropriate locations throughout the facility.

## **Sanitation and Hygiene**

- Rule 68** Bedding and inmate clothing must be kept clean and laundered at least weekly. Pillows, blankets and mattresses must be sanitized, as often as correctional facility usage and the promotion of inmate health require. The health care administrator must approve delousing materials and procedures.
- Rule 69** The facility shall provide each inmate with clean and suitable bedding and sufficient blankets to provide comfort under existing temperature controls. The facility may remove inmate clothing or bedding from an inmate's cell when it determines it is necessary under the circumstances. The facility shall have written procedures in place for the removal and return of inmate clothing and bedding from an inmate's cell. The facility shall document the date, time, items, and reason for removal, along with the date, time, and items returned to the inmate.

- Rule 70** All mattresses must be of an approved nontoxic fire-retardant material.
- Rule 71** Inmates detained for more than twenty-four hours must be provided personal hygiene items such as soap, towels, toothbrush, toothpaste and access to a shower at designated intervals to be determined by the administrator.
- Rule 72** An inmate's hair length may not be restricted if it would violate a sincerely held religious belief unless the restriction is necessary for identification, safety, or security purposes.

### **Food Service**

- Rule 73** In grade one and two facilities, the facility's food service system must be reviewed at least annually by a registered dietician to ensure compliance with nationally recommended food allowances. This review must be documented.
- Rule 74** In grade one and two facilities, all menus must be planned, dated, and available for review. The facility shall document any substitutions in the meals actually served, and substitutions must be of equal nutritional value. Each facility shall maintain accurate records of all meals served.
- Rule 75** Each facility must have a written policy and procedure that provide for:
- a. Special diets as approved by the appropriate medical or dental personnel;
  - b. Special diets for inmates whose religious beliefs require the adherence to religious dietary laws;
  - c. Prohibitions of the use of food as a reward or disciplinary measure.
- Rule 76** Each facility shall provide inmates at least three meals, of which one is a hot meal, at regular meal times during each twenty-four hour period, with no more than fourteen hours between the evening meal and breakfast. So long as nutritional requirements are met, variations may be allowed for inmates on work release and based on weekend and holiday food service demands.
- Rule 77** Food service facilities, equipment, and employees must meet all applicable health, safety, and sanitation laws and regulations. The administrator shall make a written request to the agency that inspects local restaurants to inspect the correctional facility food service annually. This inspection report must be on file.
- Rule 78** If food is prepared inside the facility, the facility must have a written policy and procedure that provides for weekly inspection of all food service areas, including dining and food preparation areas and equipment by administrative, medical or dietary staff.

## Telephone and Visitation

- Rule 79** An inmate must be allowed to make telephone calls to the inmate's attorney at reasonable times. These calls may not be monitored. The telephone number of an attorney who has called an inmate must be obtained and the inmate must be permitted to return the call at a reasonable time.
- Rule 80** An inmate may be allowed to make telephone calls to persons other than the inmate's attorney within limitations set by the administrator. The correctional facility shall post a notice in a conspicuous place that it may monitor and record non-attorney telephone calls.
- Rule 81** Each inmate must be allowed visits from legal counsel. Upon an inmate's request, legal counsel is permitted to visit an inmate after admission or as soon as reasonably possible. All subsequent visits by legal counsel may be restricted to reasonable hours.
- Rule 82** Each facility must have a written policy and procedure for inmate visitation. A facility may deny visitation or place restrictions on visitors whenever the administrator has reasonable grounds to believe the visitor presents a threat to correctional facility safety, security, order or inmate rehabilitation. A facility may deny visitation to juveniles who are not members of an inmate's immediate family. A facility may deny visitation to juveniles who are victims of the inmate. The facility shall document the grounds for restricting or denying visitation.
- Rule 83** Visiting hours must be reasonably convenient but within such limitations as established by the administrator. Visiting hours must be posted in a conspicuous place.
- Rule 84** Written policy and procedure on visitation must include clear instructions to staff relating to visitor search procedures, including electronic scanning, and pat or frisk searches.
- a. Visitor unclothed body searches must be based on a reasonable suspicion the visitor to be searched is concealing drugs, weapons, or other contraband. If the visitor refuses to submit to an unclothed body search and there is reasonable suspicion the visitor is concealing drugs, weapons, or other contraband, no search may be conducted, but the facility may refuse to allow visitation. The facility shall document the grounds for denying visitation.
  - b. A correctional facility may prohibit a visitor from bringing any property into a correctional facility.
  - c. A correctional facility may prohibit any visitor, including attorneys, from bringing any wireless electronic communications or recording device,

including a cellular phone, laptop computer, or digital or electronic notepad, into a correctional facility.

- d. Correctional facility staff may search an attorney's portfolio or brief case for contraband, but may not read any legal materials.

## **Mail**

**Rule 85** Each facility must have a written policy and procedure to govern incoming and outgoing mail. Official correspondence means correspondence to or from elected or appointed officials of the federal government or any state or political subdivision; or to the North Dakota parole board or pardon advisory board. Legal correspondence means correspondence to or from licensed attorneys, legal advocacy organizations, or judges or clerks of court of municipal, state, or federal courts.

- a. Outgoing official or legal correspondence may not be opened, inspected, or censored. Outgoing official or legal correspondence initiated by an indigent inmate who is not represented by legal counsel in a case and which contains legal documents must be mailed without charge to the inmate. This extends only to first-class postage for legal mail and does not include registered, certified, or insured mail. Indigent inmates must also be provided free envelopes and writing materials for the mailing and drafting of legal documents. Indigent inmates must be provided a reasonable amount of stamps, envelopes and writing materials for other privileged correspondence.
- b. Incoming correspondence may be treated as official or legal correspondence only if the name and official or legal status of the sender is clearly identified on the envelope. All incoming official and legal correspondence may be opened and examined for contraband, but only in the presence of the inmate. In no case may the official or legal correspondence be read or censored.

**Rule 86** Each facility must have a written policy and procedure to provide for inmate access to reading materials, magazines, newspapers, and periodicals. Inmates may receive books, magazines, newspapers and other printed materials that have been sent directly to the inmate by the publisher, subject to correctional facility and public safety, security, deterrence, order and inmate rehabilitation needs. Items not sent directly by the publisher may be allowed in by the discretion of the correctional facility administrator. Non-solicited bulk mailing materials may be rejected.

**Rule 87** Each facility must have a written policy and procedure to provide that mail may be read, censored, or rejected based on legitimate facility interests of safety, security and order. In each case where it is necessary to remove any item, reject or censor a written record must be made of such action to include:

- a. The inmate name and number;

- b. A description of the mail in question;
- c. A description of the action taken and the reason for such action;
- d. The disposition of the item(s) involved;
- e. Signature of the acting officer;
- f. Written notification to the inmate and due process and item not destroyed.
- g. Packages mailed to an inmate in a correctional facility must be handled the same way as mail or publications.

## **Reading and Legal Materials**

**Rule 88** Each facility must have a written policy and procedure to provide inmates who are not represented by legal counsel or by standby legal counsel reasonable access to adequate legal materials or adequate assistance from persons trained in the law for purposes of preparing a defense in a criminal prosecution, for challenging a criminal conviction on direct appeal, post-conviction, habeas proceedings, and for challenging conditions of confinement. A list of persons trained in the law must be available to the inmates. Adequate legal materials include: a current edition of a leading legal dictionary; North Dakota and federal rules of civil, criminal and appellate procedure; rules of court for North Dakota and for the United States District Court for the district of North Dakota; chapters of the North Dakota century code relating to criminal procedure, substantive criminal law, and state habeas and post-conviction relief; North Dakota cases related to criminal law and procedure reported in the Northwest Reporter, 2d; United States district court forms for 28 U.S.C. & 2254 habeas proceedings; and federal cases and statutes related to federal habeas corpus and federal civil rights. A facility may provide access to adequate legal materials through any source, including: the law library of the state's attorney, the law library of the district court; and may include photocopies of legal materials from any sources.

**Rule 89** Inmates may be permitted to purchase or receive legal materials from sources approved by the administrator. Facilities should:

- a. Have state and federal court forms available
- b. Have prisoner self-help manuals and access to a basic law library (e.g. local district court library, states attorney library)
- c. Have unmonitored telephone access to attorneys and unmonitored attorney visits at reasonable times
- d. Provide access to notary

## **Exercise and Recreation**

**Rule 90** Grade one and grade two correctional facilities shall provided inmates a minimum of one hour daily physical exercise outside their cells. The facility may provide physical exercise within the cell if the administrator has

reasonable grounds to believe that the release of an inmate from the cell may jeopardize correctional facility safety, security or order. The facility shall document any grounds for not allowing an inmate physical exercise outside the inmate's cell. The indoor recreation area must be separate from the dayroom in grade one correctional facilities.

**Rule 91** Inmates in grade one correctional facilities who are detained for more than thirty consecutive days must be provided a minimum of one-hour daily physical exercise in a secure outdoor recreation area or louvered outside air accessible recreation. Physical exercise within the living space or indoor recreation area may be provided if the administrator has reasonable grounds to believe that the release of an inmate to an outdoor area would jeopardize correctional facility security or based on inclement weather. Such reasonable grounds must be documented. This one-hour outdoor daily physical exercise may be in lieu of the physical exercise provided for in Rule 87. The administrator may require that inmates exercise outdoors when the administrator has determined the weather is adequate. Administrators in all correctional facility classifications are encouraged to provide for physical exercise in a secure outdoor recreation area for all inmates.

**Rule 92** The minimum space requirements for exercise areas are as follows: (Post 1992 construction)

- a. Outdoor exercise area—15 square feet per inmate for the maximum number of inmates expected to use the space at one time, but not less than 1,500 square feet of unencumbered space;
- b. Covered/enclosed exercise areas in facilities of 100 or more inmates—15 square feet per inmate for the maximum number of inmates expected to use the space at one time, with a minimum ceiling height of 18 feet, but not less than 1000 square feet of unencumbered space;
- c. Covered/enclosed exercise areas in facilities of less than 100 inmates expected to use the space at one time, with a minimum ceiling height of 18 feet, but not less than 500 square feet of unencumbered space.

## **Inmate Rights**

**Rule 93** Each facility must have a written policy and procedure for the practice of religion. Inmates have the right to reasonable opportunities to exercise their religious beliefs, subject to limitations reasonably related to correctional facility safety and security.

**Rule 94** Each inmate is entitled to necessary medical care including physical, psychiatric, psychological, eye care and dental care.

**Rule 95** Each facility must have a written policy and procedure to protect inmates from personal abuse, corporal punishment, personal injury, disease, property damage and harassment.

**Rule 96** Each facility must have a written policy and procedure to allow all inmates to file grievances. A correctional facility may not subject an inmate to disciplinary action for reporting a grievance. The policy and procedure must include:

- a. Forms on which an inmate may report a grievance;
- b. The facility shall provide a written report setting forth the results of the investigation and any recommendation for the disposition of the grievance to the inmate and shall file the report in the correctional facility records;
- c. The inmate may file a response within a prescribed reasonable time limit, with special provisions for responding to emergencies;
- d. The facility shall provide at least one level of appeal which may not be reviewed by the same individual who initially reviewed the grievance. The reviewing authority shall document the findings and the disposition of the appeal. The facility shall provide a copy of the appeal report to the inmate and shall file the appeal report in the correctional facility records.

### **Inmate Responsibilities**

**Rule 97** Inmates shall keep their cell and living areas clean and orderly.

**Rule 98** The correctional facility administrator may require sentenced inmates to perform work. The correctional facility may not require a pre-trial detainee to perform work other than routine general housekeeping duties. The correctional facility administrator may allow a pre-trial detainee to perform work only upon the request of the pre-trial detainee.

### **Inmate Rules and Discipline**

**Rule 99** Each facility must have written rules of inmate conduct that specify acts prohibited in the correctional facility and the disciplinary sanction that may be imposed for facility rules violations. The facility shall make these rules available to all inmates and establish procedures to ensure that all inmates understand the rules and sanctions that may be imposed. Facility staff shall document disciplinary action of any kind and the administrator shall review the disciplinary action.

**Rule 100** Disciplinary reports must include the following information:

- a. Specific rules violated;
- b. A formal statement of the charge, or charges;

- c. An explanation of the violation, which must include: who, what, when, where, why and how, and any immediate action taken by staff. The inmate should receive a summary of the evidence that will be used against the inmate in the disciplinary proceeding;
- d. Disposition of any physical evidence;
- e. Staff and inmate witnesses and statements;
- f. Date and time the report is completed and reporting staff signature.
- g. Information that may identify confidential informants must be separately documented along with an explanation why the confidential informant information is reliable and credible, and not provided to the inmate, although a summary of non-identifying evidence must be provided to the inmate

**Rule 101** Each facility must notify inmates that in instances where an inmate is alleged to have committed a crime, the case may be referred to appropriate law enforcement officials for possible prosecution in addition to facility discipline.

**Rule 102** In grade one and grade two correctional facilities, an inmate accused of violating a correctional facility rule which could result in disciplinary segregation must receive a twenty-four hour notice of the charges prior to the disciplinary hearing.

**Rule 103** Emergency circumstances may require that an inmate be placed in administrative segregation for a violation of the facility rules prior to a disciplinary hearing. Such emergency and administrative action must be documented. A disciplinary hearing must follow such administrative action as soon as possible.

**Rule 104** Each facility must have a written policy and procedure to provide that:

- a. The disciplinary hearings are conducted by an impartial person or panel of persons;
- b. The inmate has the right to appear at the hearing and testify;
- c. The inmate must be allowed to call witnesses and present documentary evidence in the inmate's defense if permitting the inmate to do so will not jeopardize security, order, or rehabilitation. Reasons for not allowing the inmate to call witnesses must be documented in the hearing record;
- d. A written record must be made of the disciplinary hearing decision. The disciplinary hearing decision must include a summary of the evidence, findings of fact that establish the guilt or innocence of the inmate, and an explanation for disciplinary sanctions imposed. Any confidential informant information must be separately documented. A copy of the disciplinary hearing decision, but excluding confidential informant information must be given to the inmate;

- e. Inmates have the right to appeal decisions of the disciplinary hearing officers(s) to the administrator or an independent authority;
- f. Any disciplinary action recommended by the hearings officer(s) may be reduced on appeal but not increased.

### **Special Management Inmates**

- Rule 105** If a facility has segregation units, it must have a written policy and procedure to govern the supervision of inmates under administrative segregation, protective custody, and disciplinary detention.
- Rule 106** The facility administrator or designee may order immediate segregation when it is necessary to protect the inmate or others. This action must be reviewed within three working days by the classification, disciplinary or appropriate authority.
- Rule 107** Except for emergencies, a correctional facility may place an inmate in disciplinary detention for a rule violation only after it provides the inmate a due process hearing.
- Rule 108** A correctional facility shall review the status of inmates in administrative segregation every seven days to determine if continued administrative segregation is appropriate.
- Rule 109** The facility shall have a review process that is used to release an inmate from administrative segregation.
- Rule 110** A facility may only admit an inmate to the segregation unit for purposes of protective custody when there are reasonable grounds establishing that protective custody is warranted and no reasonable alternatives are available. Facility staff shall document the grounds for placing an inmate in a segregation unit for purposes of protective custody.
- Rule 111** Whenever an inmate in segregation is deprived of any usually authorized item or activity, facility staff shall make a report of the action and provide the report to the facility administrator.
- Rule 112** Inmates in segregation must have the opportunity to shave and shower at least three times per week.
- Rule 113** Inmates in segregation are entitled to the issue and exchange of clothing, bedding, and linen and for laundry, barbering, and hair care services on the same basis as inmates in the general population. Exceptions may be permitted only where found necessary by the shift commander and are recorded in the unit log.

**Rule 114** A facility may provide inmates in segregation with opportunities for visitation, unless the facility has legitimate penological reasons for denying visitation. Facility staff shall document the grounds for denying inmates in segregation opportunity for visitation.

**Rule 115** Inmates in disciplinary detention may be allowed limited telephone calls related specifically to access to the courts and family emergencies as determined by the facility administrator.

## **Training and Staff Development**

**Rule 116** Each facility must have a written policy and procedure requiring that all correctional officers participate in an orientation training program prior to independent assignment. The orientation program must meet the particular needs of the correctional facility and must include at a minimum:

- a. Facility policy and procedures;
- b. All emergency procedures to include basic first aid and CPR;
- c. Classification of prisoners;
- d. Booking procedures to include health screening;
- e. Use of force to control inmates;
- f. Suicide behavior and actions required if suicidal behavior is encountered.
- g. Victim notification in accordance with the Statewide Automated Victim Information and Notification (SAVIN).

**Rule 117** All administrators and correctional staff who work in direct and continuing contact with inmates shall within their first year of employment receive training determined and approved by the North Dakota Peace Officer Standards and Training (P.O.S.T.) Board and shall receive an additional forty-eight hours of training during every three year period following the first day of January after the date of employment.

**Rule 118** All personnel authorized to use firearms, chemical agents or other weapons must be trained on a continuing, in-service basis. Personnel must be required to qualify annually. All training must be documented.

## Juvenile Detention Centers

- Rule 119** Juvenile detention centers must meet, at a minimum, the regulations contained in these rules. The Director of the Department of Corrections and Rehabilitation shall determine, for each juvenile detention facility in this state, whether county, city or privately administered, the maximum number of hours or days that juveniles may be detained. In addition, the Director of the Department of Corrections and Rehabilitation may impose other conditions to the authorization for such facility, including, but not limited to, physical plant requirements of such facility.
- Rule 120** Juvenile detention facilities may only detain juveniles who have been taken into custody for a delinquent offense or who have been adjudicated delinquent by the Juvenile Court, except in those instances where a juvenile has been placed pursuant to the Interstate Compact on Juveniles or has ran from a pre-adjudicatory non-secure placement.
- Rule 121** Juvenile detention facility administrators shall follow all rules applicable to adult correctional facilities unless otherwise provided for under the rules specifically applicable to juvenile detention facilities or unless the department has granted a variance pursuant to North Dakota century code section 12-44.1-26.
- Rule 122** Juvenile detention centers must be secure but every effort must be made to minimize the appearance of a correctional facility.
- Rule 123** Coeducational programs and activities may be utilized in juvenile detention centers if adequate supervision is maintained.
- Rule 124** A juvenile detained for more than ninety-six hours must be given reasonable assistance in obtaining educational materials and assignments necessary to keep the juvenile current in regular school studies.
- Rule 125** All juvenile detention centers must have an administrator appointed by the governing authority and a budget separate from adult corrections, detention or correctional facilities.
- Rule 126** The facility must be secured in such a way that juveniles remain within the security perimeter and that access by the general public is denied without proper authorization. Sight and sound separation must be maintained between juvenile detainees and all persons not authorized to be present within the juvenile detention facility, including adult inmates and adult inmate trustees.
- Rule 127** Each facility shall house juveniles placed on a preadjudicated status separate from state and federal custody juveniles. In addition, juveniles

under state custody must be housed separately from federal custody juveniles.

- Rule 128** All classifications of juveniles in juvenile detention centers authorized to detain juveniles for more than ninety-six hours must have equal access to a dayroom. If more than one classification of juveniles has access to the same dayroom, then the dayroom must be separated from the juvenile cells or dormitories.
- Rule 129** All classifications of juveniles in juvenile detention centers authorized to detain juveniles for more than ninety-six hours must have equal access to an exercise room. Inmate physical exercise in a juvenile detention center may be provided in a separate exercise room or in the dayroom. If more than one classification of juveniles will have access to the same exercise room, then the exercise room must be separated from the juvenile cells or dormitories.
- Rule 130** Juvenile detention centers authorized to detain juveniles for more than ninety-six hours must provide services that address identified medical, mental health, chemical dependency, and educational needs to all classifications of juveniles. There must be adequate and secure space for these services.
- Rule 131** Juvenile detention centers shall follow a recognized program that measures continuous quality improvement, including but not limited to, safety, security, health and mental health measures for youth.
- Rule 132** Juveniles shall be allowed to complete at least two telephone calls as soon as practical after admission into the facility.
- Rule 133** Facilities must have a policy and procedure for juvenile observation. Correctional staff shall observe each juvenile during each half-hour period on an irregular basis. Correctional staff shall personally observe juveniles who exhibit suicidal tendencies, emotional distress, or have specialized medical problems at more frequent intervals, as their condition requires.
- Rule 134** Each facility must have a policy and procedure for sick call. Sick call is provided at least once per week.