

# STATE OF NEBRASKA

## DEPARTMENT OF CORRECTIONAL SERVICES

Scott R. Frakes

Director



Pete Ricketts  
Governor

Policy Directive 016-044

DATE: October 31, 2016  
TO: Executive Steering Council  
FROM: Scott R. Frakes, Director  
RE: Administrative Regulation 201.04, Inmate Classification and Assignment -  
Reclassification

Effective immediately, the following changes will be in effect concerning the above mentioned Administrative Regulation. These revisions will be incorporated into AR 201.04 during the next scheduled review. You may contact Layne Gisser at 479-5723 or at [layne.gisser@nebraska.gov](mailto:layne.gisser@nebraska.gov) with questions on these changes.

Page 10 of 11; add new language as Section IX. And renumber accordingly.

### IX. JOB ASSIGNMENTS

The warden/designee must approve all job assignments/changes. Inmates who have an escape/attempted escape within the last 10 years are prohibited from being classified to off-unit work assignments (except education). Both institutional and criminal history will be considered with the exception of absconds/escape from a community center/parole (non-secure) or flight to avoid arrest. Inmates who have a history of assaultive behavior within the last five years are prohibited from being classified to off-unit work assignments (except education). Assaultive behavior is defined as any class 1 misconduct report for Assault, Murder/Manslaughter, Sexual Assault or Mutinous Actions or Part 1 offense conviction(s) (1<sup>st</sup> Degree Murder, 2<sup>nd</sup> Degree Murder, Manslaughter, 1<sup>st</sup> Degree Assault, 1<sup>st</sup> Degree Sexual Assault, 1<sup>st</sup> Degree Sexual Assault of a Child, Robbery). This policy does not apply to inmates housed at a community corrections center or the Work Ethic Camp. Any Warden requesting an exception to this policy must get approval from their respective Deputy Director by requesting such in a memorandum listing the reason(s) an exception is warranted. A list of all job changes must be distributed to the warden, deputy warden, major, unit administrator, unit manager's and the respective work supervisors whenever job changes are approved.

### X. INMATE APPEALS OF CLASSIFICATION DECISION

SRF/lag

Attachments: none

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This Administrative Regulation is to be made available in law libraries or other inmate resource centers.

EFFECTIVE: June 15, 1985  
 REVISED: November 8, 2007  
 REVISED: December 28, 2007  
 REVISED: August 11, 2008  
 REVISED: July 26, 2009  
 REVISED: July 28, 2010  
 REVISED: July 27, 2011  
 REVISED: August 24, 2011  
 REVISED: August 13, 2012  
 REVIEWED: August 2, 2013  
 REVISED: October 11, 2014  
 REVIEWED: July 31, 2015  
 REVISED: October 30, 2015  
 REVISED: June 30, 2016

#### SUMMARY of REVISION/REVIEW

Multiple revisions throughout to include: Page 2 changed definition of long term inmate and added criteria for long term, medium custody inmates to go to OCC. Added additional eligibility for promotion to Community A custody, Section II.B.2. Incorporated the WORK RELEASE portion of AR 209.02. Incorporated Policy Directive 015-040 - Revised.

APPROVED:

  
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 Scott R. Frakes, Director  
 Nebraska Department of Correctional Services

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## PURPOSE

This policy establishes guidelines and procedures governing the eligibility of inmates for review and consideration for promotion and demotion of certain custody grades.

## GENERAL

Each institution, consistent with its function and the nature of its inmate population and programs, shall develop its own version of this regulation within the limits and guidelines that follow.

## PROCEDURE

### I. PROMOTION TO MEDIUM CUSTODY

- A. The institution classification authority for each institution designated to house maximum custody inmates (with the exception of the Diagnostic and Evaluation Center) shall establish a procedure whereby maximum custody inmates are reviewed in a regular and continuous basis for consideration for promotion to medium custody.
- B. Maximum Custody inmates, whose tentative release date or parole eligibility date is within the next 10 years, are immediately eligible for medium custody as their factor rating score and other circumstances dictate. Long term inmates will be eligible for medium custody after serving four calendar years and as their factor rating score and other circumstances dictate. A long term inmate is defined as any inmate whose tentative release date or parole eligibility date is greater than 20 years. Exceptions to the requirement for long term inmates to serve a minimum of four calendar years at maximum custody may be authorized by the Deputy Director – Institutions.

Maximum custody inmates found guilty within the last two years of a Class I misconduct report or a misconduct report resulting in disciplinary segregation or loss of good time, may be denied promotion to medium custody. Such instances shall be considered on a case-by-case basis.

- C. Medium custody inmates must meet the following criteria to be considered for transfer to the Omaha Correctional Center.
  1. Tentative Release Date must be within eight years.
  2. Exhibited no predatory behavior during the past three years.
  3. No escape or attempted escape from a secure institution within the past five years. This does not include absconding parole or probation, nor walk-aways from the community corrections center.
  4. No misconduct reports within three years for assault resulting in bodily injury.

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5. No misconduct reports within three years for use or possession of a weapon.

Longer term medium custody inmates whose Tentative Release Date is over 8 years may be considered for placement at OCC if they meet the above criteria and:

- Have a Factor Rating Score of 30 or greater
- Are eligible for parole
- Are compliant with programming
- Have no program requirements that are not available at OCC (i.e., VRP/iHeLP etc.)
- Have no detainers for a capital offense
- Request or are willing to transfer

## II. PROMOTION TO MINIMUM CUSTODY

The institution classification authority for each institution designated to house medium custody inmates shall establish a procedure whereby medium custody inmates are reviewed on a regular and continuous basis for consideration for promotion to minimum custody. The various unit classification committees or the institution classification committee (whichever is appropriate) shall review eligible medium custody inmates who are within three years of their tentative release date or set for a parole hearing at intervals not to exceed six months. Committee recommendations to promote an inmate to minimum custody shall be referred to the appropriate approving authority for final action.

### A. Central Office Review Committee

Inmates in the following categories shall not be promoted to minimum A custody except after review by and upon approval of the Central Office Review Committee.

1. Inmates with a history of sexual assault, violence or other serious assaultive behavior.
2. Inmates who have a documented escape or attempted escape.
3. Inmates currently on any restrictive housing status.

No inmate shall be promoted through reclassification to minimum B custody except after review by and upon approval of the Central Office Review Committee.

### B. Consideration For Promotion

Upon reviewing a medium custody inmate for promotion to minimum custody, the appropriate classification authority shall consider the nature of the offense, time remaining to be served, past history of criminal conduct, record of institutional behavior and adjustment, the results of physical and mental health examinations, the threat to the public safety, risk of escape, and such other factors as may be relevant to minimum custody housing.

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The following criteria shall be applied in the determination of an inmate's eligibility for minimum custody:

1. Except as otherwise provided by this section, no inmate shall be considered for promotion to minimum custody unless such inmate is within 60 months of a tentative release date or is set for a parole hearing. If an inmate does not meet these time frames, his/her promotion to minimum custody may be denied by the Warden as the final classification authority, regardless of the factor rating score.
2. Detainer custody level assignments are to be carefully reviewed by the Warden. Those inmates having a Misdemeanor or felony detainer, and the disposition is a fine and/or costs only, or is for non-violent crimes and does not require additional incarceration upon release, eligible for Community A custody. Those inmates having an Immigration and Customs Enforcement (ICE) detainer, eligible for Minimum A custody. Misdemeanor or felony detainer for a low severity offense, eligible for Minimum A custody. Felony detainer for moderate, high or highest severity offense, eligible for Medium custody. Those inmates having serious detainers/pending charges shall not be promoted to minimum custody (See AR 201.01, *Inmate Classification and Assignment - Administrative Organization*) and the Warden as the final classification authority may deny such promotion regardless of the factor rating score. Inmates who have detainers in which the jurisdiction states they won't extradite are eligible for Minimum B or lesser custody.
3. Inmates whose current or past convictions and criminal behavior is non-violent, limited to crimes against property and have no history or record of escape shall be eligible for minimum custody review after serving a minimum of 30 days at the reviewing institution prior to consideration for promotion by the appropriate classification authority.
4. Jail time credits authorized by the court shall be considered as time served toward eligibility for minimum custody review; however, an inmate must serve a minimum of 30 days at the reviewing institution prior to consideration for promotion by the appropriate classification authority.

C. Levels of Minimum Custody

Inmates assessed or promoted to minimum custody shall be assigned to either level A or B. The following definitions shall be used in determining the appropriate level.

1. Level A: Inmates assigned to minimum custody level A status may be permitted access outside the security perimeter without restraints, provided they are under direct and constant supervision of a correctional employee, other authorized employee or agent authorized by the Director.
2. Level B: Inmates assigned to minimum custody level B status may be permitted access outside the security perimeter with intermittent supervision of a correctional employee, other authorized employee or agent authorized by the Director. Inmates assigned to minimum custody level B may be assigned to various work details on and/or off the institutional grounds outside the security perimeter, provided regular and intermittent visual supervision is maintained. (Visual observation and count at least hourly.)

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Inmates may be temporarily assigned to minimum B custody for medical furlough purposes. All promotions to minimum B custody must be approved by the Director's Review Committee.

### III. PROMOTION TO COMMUNITY CUSTODY

The institution classification authority for each institution designated to house minimum custody inmates shall establish a procedure whereby minimum custody inmates are reviewed on a regular and continuous basis for consideration for promotion to community custody.

#### A. Central Office Review Committee

No inmate shall be promoted through reclassification to community custody except after review by and upon approval of the Central Office Review Committee.

#### B. Considerations For Promotion

Upon reviewing a minimum custody inmate for promotion to community custody, the appropriate classification authority shall consider the nature of the offense, time remaining to be served, past history of criminal conduct, record of institutional behavior and adjustment, the results of physical and mental health examinations, the threat to the public safety, risk of escape and such other factors as may be relevant to community custody housing and assignments.

The following criteria shall be applied in the determination of an inmate's eligibility for community custody review:

1. Except as otherwise provided by this section, no inmate shall be considered for promotion to community custody unless such inmate is within 36 months of tentative release date or is set for a parole hearing. Unless there is available bed space, inmates who have less than 90 days until their tentative release date or scheduled parole hearing will not be transferred to a community corrections center and their name shall be removed from the transfer list.
2. All inmates eligible for community custody review who have detainers filed against them are to be carefully reviewed by the appropriate classification authority (See page 3, number 2).
3. Inmates whose current or past convictions and criminal behaviors are non-violent, and have no history or record of escape shall be eligible for community custody review after serving a minimum of 30 days at the reviewing institution or facility, regardless of their maximum sentence length.
4. Jail time credits authorized by the court shall be considered as time served toward eligibility for community custody review; however, an inmate must serve a minimum of 30 days at the reviewing institution prior to consideration for promotion by the appropriate classification authority.

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5. Only community A inmates currently housed in a community corrections center will be considered for a promotion to community B custody. Inmates from all other NDCS facilities will be approved for community A custody only.

C. Levels of Community Custody

Inmates assessed, promoted or demoted to community custody shall be assigned to either level A or B. The following definitions shall be used in determining the appropriate level:

1. Level A: Inmates assigned to community custody level A status shall work on an inmate work detail in the community or at a correctional center. Inmates assigned to community custody level A shall be under the supervision of a correctional or authorized employee or agent authorized by the Director while engaged in the daily work assignment. Inmates assigned to community custody level A status may also be authorized temporary leave from the community center.
2. Level B: Inmates assigned to community custody level B status must be approved for work release and hold employment in the community, or be approved for educational release and attend a community educational institution. Removal from work and/or educational release status, for whatever the reason, shall require a demotion in custody.

Inmates assigned to community custody level B status may also be authorized temporary leave from the community center.

D. Work Release

1. Responsibility

It is the responsibility of the institutional staff through proper use of the classification system to regularly review their caseloads and identify those inmates eligible for placement in a community corrections center and participation in the work release program.

2. Criteria

Minimum criteria for selection of inmates to participate in the work release program include:

- a. Community "B" custody;
- b. Be within 12 months of his/her tentative release date or be scheduled for a parole hearing.
- c. Able to meet all essential program eligibility requirements.
- d. Have on file a current (within past 12 months) psychological evaluation if past criminal history or current conviction is for taking the life of another or for a sexual offense.

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- e. Demonstrate a level of responsible performance, which provides reasonable assurance that he/she will comply with the policies, rules, and regulations of the Work Release Program. This includes consideration of his/her institutional adjustment, disciplinary record, escape history and past community placement.
- f. Inmates who are within 60 days or less of their tentative release or parole hearing dates will not be considered for transfer to the work release program unless there is a verifiable job offer or exceptional circumstances that may be considered on a case by case basis.

3. Approval Process

- a. With the assistance of the unit case manager, the inmate submits a Work/Education Release Application form (Attachment A) to the Unit Classification Committee. The application will be checked for detainers and outstanding warrants. All inmates applying for work release who have detainers or warrants are to be carefully reviewed. The inmate may be required to pay fines and/or court costs to such authority holding the detainer as a condition of work release. Inmates having serious detainers or detainers which will likely result in additional incarceration shall not be approved by the Warden for work release. If approval is recommended by the Warden, it is forwarded with a Reclassification Action form (Attachment B), Transfer Order form (Attachment C) and Inmate Readiness Inventory (Attachment D) to the Department's Classification Manager.
- b. The custody reclassification will be reviewed by the Director's Review Committee (DRC). If the custody promotion is denied, the Work Release Application is void. If the custody promotion is approved, the Work Release Application is submitted to the Director for action.
- c. The Director/designee will review the application and any other pertinent information, approve or deny the request, and forward it to the Board of Parole.
- d. The Board of Parole will approve or deny the request and return it to the classification manager. Upon receipt of the application, the classification manager will send notice of disposition to the inmate, with a copy to the records office of record. If approved, a third copy will be sent to the receiving community center. It is the responsibility of the receiving institution to coordinate the transfer of the inmate with the sending facility.

IV. Mission Specific Housing

Mission Specific Housing focuses on individual needs and demographics to provide effective living conditions and programming for specific populations. Mission specific housing includes residential treatment and responses to cognitive disabilities as well as prosocial options for inmates with common interests and challenges, to reduce behaviors that otherwise might

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lead to restrictive housing and provide risk- and needs- responsive options to facilitate transitions from restrictive housing to the general population.

Inmates identified as qualifying for an alternative housing assignment will be assigned to an appropriate mission specific living unit within a facility. Identified rationale for assigning an inmate to a mission specific unit would include, but not be limited to: inmates who have documented security/safety concerns with other inmate(s), active senior inmates, veterans, inmates with medical needs, residential treatment needs, and other needs identified by the Warden/designee. The rationale used for assigning an inmate to a mission specific unit will be noted on the Notice/Waiver of Classification Hearing form. Inmates housed in mission specific living units will have approximately the same amount of out-of-cell time and access to activities as inmates in the general population.

V. **INMATES SERVING LIFE SENTENCES**

For the purposes of inmate classification and assignments, the following criteria will be the minimum standard to meet prior to consideration for custody promotion beyond medium custody for inmates serving life sentences.

A. Life to Life (Class IA Felony)

Inmates sentenced to a life sentence for a Class IA felony, in which the minimum sentence is also life, shall not be eligible for consideration for promotion to minimum or community custody until they have been granted a sentence commutation to a definite term of years by the Board of Pardons.

B. Ten Years to Life (Class IB Felony)

Inmates serving a life sentence for a Class IB felony, in which the minimum sentence is 10 years, shall not be eligible for consideration for promotion to minimum or community custody until they have a parole hearing date set.

VI. **PSYCHOLOGICAL EVALUATIONS**

Psychological evaluations are defined as any summative report generated by a psychologist about an offender for the purpose of providing recommendations for treatment, management, and appropriateness for transition. The evaluation can be based on an interview, formal assessments, file review or any combination of those.

Any inmate who is currently serving a life sentence shall have a current psychological evaluation prior to promotion to minimum custody grade. Any inmate whose past criminal history or current conviction is for taking the life of another human being or a sexual offense shall have a psychological evaluation prior to promotion to Minimum B or lesser custody level. Convictions that occurred as a juvenile will be excluded from past criminal history and a psychological evaluation will not be needed for promotion to Minimum B or lesser custody level.

For those inmates whose most current psychological evaluation is positive, no additional psychological evaluation is necessary. Those inmates whose most current psychological evaluation indicates problem areas shall have a current psychological evaluation completed prior to promotion in custody. If staff at a community corrections center have concerns about

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an inmate's mental health, a referral should be readily made to the Mental Health Department for evaluation. A psychologist shall determine if an existing psychological evaluation sufficiently reflects an inmate's current status. A recommendation or assessment from a Clinical Review Team (i.e., Clinical Sex Offender Review Team (CSORT), Clinical Violent Offender Review Team (CVORT), or Mental Illness Review Team (MIRT)) can be used in lieu of a complete psychological evaluation. In these cases documentation must be included indicating that a psychologist has reviewed the case and determined that the review team's recommendation is appropriate.

The need for a positive psychological evaluation for those inmates who are convicted of a "conspiracy" or "attempted" crime will be considered by Mental Health clinical staff on a case-by-case basis.

**VII. POST DISCIPLINARY REVIEW**

If a Class I violent disciplinary infraction is received within the first six months of the date of the initial classification a second initial classification instrument shall be completed, which sets the date for the next custody assessment six months from the date of original initial classification decision.

**VIII. DEMOTIONS OF MINIMUM AND COMMUNITY CUSTODY GRADES**

Inmates considered for demotion to a greater custody grade may be temporarily transferred to a more secure institution pending a classification hearing, but no decision to change custody grade is to be made until final approval is given by the Director's Review Committee.

Where the Warden determines that an inmate's continued presence in minimum or community custody poses a threat to the security of the institution, the community or the inmate, a classification hearing may be held and a recommendation made to the Director's Review Committee for demotion to a greater custody grade and transfer to an appropriate security level institution. Any such recommendation by the appropriate classification committee shall clearly document the reasons why demotion should be considered.

The Warden of a community corrections center has the authority to temporarily demote an inmate from 4B to 4A (for seasonal/temporary layoffs, medical reasons, or failure to secure employment) and then return the inmate to 4B when appropriate.

**A. Classification Demotion Procedures**

1. Every inmate considered for a custody demotion shall be entitled to an impartial hearing before an appropriate classification committee. The inmate will receive written notice of the hearing at least 48 hours prior to the hearing. This written notice must reasonably inform the inmate of the reason(s) that he/she is being considered for a custody demotion. At the hearing, the inmate will be confronted with any relevant information tending to indicate that the demotion is necessary. The content of psychiatric, psychological and mental health reports will not be disclosed to the inmate. The identity of a confidential informant will not be disclosed to the inmate. Confidential information shall be withheld from the written notice and oral explanation. The inmate will be given an opportunity to refute the information presented and may submit any relevant information in his/her own behalf.

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2. If the inmate has been found guilty of a major disciplinary infraction by a disciplinary committee as a result of the incident from which the classification hearing arises, the classification committee may rely on these findings without making further factual determinations.

Otherwise, the committee must make its own findings of fact. These findings must be documented on the appropriate classification action form.

3. After the hearing, the inmate may be excused and the classification committee will discuss factors relevant to a final recommendation. If the majority of the members of the committee determine that, based upon the disciplinary committee findings or the information presented, a custody demotion is appropriate, the committee shall document their recommended action on the classification action form and submit it along with relevant materials to the Central Office Review Committee for final approval and authorized transfer of the inmate. If it is determined by the committee that demotion and transfer are not appropriate, they shall document their action on the appropriate classification action form and reinstate the inmate to his/her former position and status.
4. Each inmate receiving a custody demotion shall be reviewed by the appropriate classification committee within six months of the demotion action.

**B. Exception for Demotion from Minimum Custody**

A demotion from minimum custody does not require the approval of the Central Office Review Committee if such demotion would not require a transfer to another institution or facility, i.e., the Omaha Correctional Center and the Nebraska Correctional Center for Women, where multiple custody grade inmates are housed.

**IX. INMATE APPEALS OF CLASSIFICATION DECISION**

- A. Within 15 calendar days after receipt of a classification decision an inmate may file an appeal by giving his/her unit staff a written notice of appeal. (Attachment E)
- B. The notice of appeal shall identify the decision being appealed; the date of the decision, the date on which the inmate received a copy of the decision and the reasons why the inmate contends the decision was incorrect.
- C. Within 10 working days after receiving the written notice of appeal, the case manager shall send the notice of appeal and a copy of the complete record of the classification proceeding being appealed to the Classification Manager in Central Office.
- D. A classification decision made by the Warden Central Office Review Committee.
- E. There shall only be one appeal for each classification decision.
- F. If an inmate appeals a classification decision, the classification decision will be in effect while the appeal is pending.

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- H. For additional information concerning the Restrictive Housing Review Board and the classification appeal process involving placement on, continuation on, or removal from Restrictive Housing, refer to AR 201.05, *Inmate Classification and Assignment – Special Management Inmates*.

REFERENCE

I. ATTACHMENTS

- A. Program Request (DCS-A-clc-010-pc)
- B. Reclassification Action Form (DCS-A-clc-028)
- C. Inmate Transfer Order (DCS-A-adm-011)
- D. Inmate Readiness Inventory
- E. Classification Appeals Form

II. ACA STANDARDS

- A. Standards for Adult Correctional Institutions (ACI) (4th edition): 4-4296
- B. Performance Based Standards for Adult Community Residential Services (ACRS) (4th edition): 4-ACRS 2A-07, 4-ACRS-2A-08, 4-ACRS-5A-06 and 4-ACRS-6A-12