INMATE CLASSIFICATION and ASSIGNMENT

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

EFFECTIVE: April 30, 2017
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SUMMARY of REVISION/REVIEW

Incorporated Policy Directives 017-011, 017-030, & 017-039. Added definitions for maximum, medium, and minimum custody inmates. Other minor changes throughout.

APPROVED:

Scott R. Frakes, Director
Nebraska Department of Correctional Services
PURPOSE

This policy establishes guidelines and procedures governing the eligibility of inmates for review and consideration for custody classification/reclassification promotion and demotion.

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. VIOLENT/MAXIMUM CUSTODY

Inmates who score as violent risk level on the classification instrument will be considered maximum custody. A maximum custody determination indicates the inmate is most suitable for housing at a maximum security facility and whose movement and activities within that facility are highly structured and closely monitored.

A. Inmates whose tentative release date is greater than 20 years and have not served at least two calendar years shall be assigned to maximum custody.

B. Inmates sentenced to life to life or de facto life to life (age plus tentative release date (TRD) is equal to or greater than 85) and have not served four years shall be considered maximum custody.

II. SERIOUS/MEDIUM CUSTODY

Inmates who score as serious risk level on the classification instrument will be considered medium custody unless otherwise noted in this section. A medium custody determination indicates the inmate is most suitable for housing at a medium or maximum security facility. Inmates assigned to medium custody have activities and movements moderately controlled and structured. Medium custody inmates are not normally approved to be assigned to an open dormitory living environment.

A. Inmates with a felony detainer for a highest severity offense may not be promoted beyond medium custody.

B. Inmates date greater than 20 years and have served at least two calendar years shall be assigned to medium custody.

C. Inmates who score as serious risk level who are sentenced to life to life or de facto life to life (age plus TRD is equal to or greater than 85) and have served four years will be assigned to medium custody.

III. NON-SERIOUS/MINIMUM A CUSTODY

Inmates who score out as non-serious risk level on the classification instrument will be considered minimum A custody unless otherwise noted in this section. Inmates who have a documented escape or attempted escape must be approved by the Director’s Review Committee.
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(DRC) prior to promotion to Minimum A or lesser custody. A minimum custody determination indicates the inmate is most suitable for housing at a minimum or medium security facility. Inmates assigned to minimum custody will normally be assigned to an open dormitory living environment. Inmates assigned to minimum custody level A status may be permitted access outside the security perimeter, provided they are under direct and constant supervision of a correctional employee, other authorized employee or agent authorized by the Director.

A. Inmates with a misdemeanor or felony detainer for low, moderate or high severity offenses or have an ICE detainer may not be promoted beyond minimum A custody.

B. Inmates who score as non-serious risk level with a tentative release date greater than 20 years and have served at least two calendar years may be assigned to minimum A custody.

C. Inmates who score as non-serious risk level who are sentenced to life to life or de facto life to life (age plus TRD is equal to or greater than 85) and have served four years may be assigned to minimum A custody.

D. Inmates who score as low risk level and their TRD is greater than seven years will be assigned to minimum A custody.

E. Male inmates who score low risk level and whose TRD is over five years but less than seven years and are ineligible for assignment to Work Ethic Camp (WEC) shall be assigned minimum A custody.

IV. LOW RISK/MINIMUM B or COMMUNITY A or COMMUNITY B CUSTODY

Inmates who score out as low risk level on the classification instrument may be considered minimum B, community A or community B custody unless otherwise noted in this section. No inmate shall be promoted to minimum B or lesser custody except after review by and upon approval of the DRC with the exception of those with appropriate factor rating scores at initial classification who may be promoted as part of their initial classification as assigned by the Wardens at the Nebraska Correctional Center for Women (NCCW) or Diagnostic and Evaluation Center (DEC).

A. Male inmates who score low risk level and whose TRD is over five years but less than seven years and meet all eligibility requirements for WEC may be assigned to minimum B custody. Female inmates may be temporarily assigned to minimum B custody for medical furlough purposes. Inmates assigned to minimum B custody 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 B custody 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).

B. Inmates who score low risk level and are within five years of release (TRD or Parole Hearing) will generally be assigned to community A custody, but may be considered for minimum B custody at the discretion of the DRC. Only community A custody inmates who are within one year of release and are currently housed in a community corrections center will be considered for a promotion to community B custody.
C. Inmates assigned to community A custody shall work on an inmate work detail in the community or at a correctional center. Inmates assigned to community A custody 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 A custody may also be authorized temporary leave from the community center.

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

E. Inmates who are removed from a low risk level facility (WEC, Community Corrections Center – Lincoln (CCCL) or Community Corrections Center – Omaha (CCCO)) for disciplinary reasons will be reclassified within 30 days.

F. Inmates who are removed from a community program for disciplinary reasons will not be eligible for return to community custody for 6 months, regardless if they score low risk on the classification tool. Inmates who are removed from community custody (4A or 4B) may be assigned to Minimum B (3B) custody or a higher custody based on all contributing factors for their removal from community custody and the classification tool “Score Risk”.

G. Inmates with a history of escape, absconding from supervision or flight to avoid arrest within the last 2 years shall be assigned to a secure facility (3A or higher custody). For individuals returned to custody for escape or absconding from supervision, the time between dates of escape/abscond and return to custody will not be counted, the 2 years will begin from date of their return to custody.

Inmates considered for demotion to a higher custody level may be temporarily transferred to a more secure institution (DEC/Omaha Correctional Center (OCC) for males; NCCW for females) pending a classification hearing. No decision to change the custody level is to be made until final approval is given by the DRC.

Where the Warden determines 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 DRC 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.

H. Work Release
1. **Responsibility**

It is the responsibility of the community corrections center staff through proper use of the classification system to regularly review their caseloads and identify those inmates eligible for 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 psychological evaluation supporting community custody assignment if past criminal history or current conviction is for taking the life of another or for a sexual offense. 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.

   e. Inmates receiving a positive psychological evaluation in support of community custody do not need another psychological evaluation/review when promoting from minimum B (3B) to community A (4A) or from community A to community B (4B) custody. The most recent psychological evaluation/memorandum should be attached to classification packet.

   f. 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.

   g. Normally 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 G), Transfer Order form (Attachment D) and NDCS Work/Educational Release Application (Attachment C) to the Department’s Classification Manager.

b. The custody reclassification will be reviewed by the 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.

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.

V. 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 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.

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 (within past 12 months) psychological evaluation prior to promotion to minimum or lesser 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. The most recent psychological evaluation/memorandum should be attached to classification packet.

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 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 a psychologist has reviewed the case and determined 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. JOB ASSIGNMENTS

The warden/designee must approve all job assignments/changes. Inmates who have an escape/attempted escape from a secure facility within the last 10 years are prohibited from being classified to off-unit work assignments with exception to education and food service positions that do not require work outside of the confines of the kitchen/dining hall areas (i.e. not allowed to push food carts outside of the kitchen, taking trash to dumpsters, working on the loading dock, etc.). For inmates who have absconds/escape from a community center/parole (non-secure) or flight to avoid arrest conviction within the last three years, the same requirements shall apply.

Inmates who have a history of assaultive behavior within the last three years are prohibited from being classified to off-unit work assignments with exception to education and food service positions. 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) (1st Degree Murder, 2nd Degree Murder, Manslaughter, 1st Degree Assault, 1st Degree Sexual Assault, 1st 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 obtain 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 managers and the respective work supervisors whenever job changes are approved.

VIII. 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 designated NDCS Central Office Classification Manager.

D. A classification is 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.

I. For additional information concerning the Restrictive Housing Multi-Disciplinary Review Team and the classification appeal process involving placement on, continuation on, or removal from Longer-Term Restrictive Housing, refer to AR 210.01, Restrictive Housing.

IX. OVERRIDE

An override provision is an exception to the results of the scored risk/custody level as determined by the use of the classification instrument. Use of mandatory overrides does not require approval from DRC when an inmate is assigned within the same facility or during initial classification at intake facilities.

Mandatory overrides:

A. (MA) Inmates with a misdemeanor or felony detainer for low, moderate or high severity offense, or ICE detainer: Eligible for Minimum A.

B. (MB) Inmates with a felony detainer for highest severity offense: Eligible for Medium.

C. (MC) Tentative Release Date greater than 20 years: Assign to Maximum; If inmate has served at least two calendar years, eligible for promotion.

D. (MD) Low risk inmates with a Tentative Release Date greater than seven years: Eligible for Minimum A.

E. (ME) Low Risk inmates with a Tentative Release Date greater than five years but less than seven years: Eligible for Minimum B.

F. (MF) Inmates sentenced to Life Without Parole (LWOP) or De Facto LWOP (Age + TRD = 85+): Must serve at least four years at Maximum; After serving four years, eligible for promotion.
Discretionary Override:

This is designed to address management issues that warrant attention and possible intervention by staff in the form of special housing, enhanced supervision, or modification of the inmate’s scored risk/custody level. Possible uses may include but are not limited to programming, central monitoring, medical or Security Threat Group (STG) concerns. Any use of a discretionary override must be approved by the DRC, with exception to intake facilities use of the DB override for programming needs (i.e. Violence Reduction Program (VRP), Residential Substance Abuse Treatment (RTC/SAU), or Anger Management).

A. (DA) Recent escape that is not fully accounted for by risk factors requires promotion, demotion or continuation of custody level.

B. (DB) Any recommendation outside of scored risk level that is not accounted for in another override. A detailed explanation and any supporting documentation must be provided when using.

X. DETAINERS

For the purpose of classification, detainer shall mean any demand for physical custody of an inmate by another agency or jurisdiction or detainer entered into the detainer database as the result of the discovery of pending criminal charges or an arrest warrant. Examples include, but are not limited to the following:

- Filed/Reported Detainers
- Filed/Reported Warrants
- Filed/Reported Notifier
- Pending Criminal Charges

Wanted person checks are to be conducted on all inmates being considered for minimum B or lesser custody level. Unit staff are to request these checks before classification and include this information in the classification packet.

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, or are detainers in which the jurisdiction states they won’t extradite: Eligible for Minimum B or lesser custody.

REFERENCE

I. Administrative Regulation

II. Attachments

A. Severity of Offense Scale

B. List of Convictions

D. Inmate Transfer Order (DCS-A-adm-011)

E. Classification Appeals Form

F. Initial Classification Form – Male and Female

G. Reclassification Form – Male and Female

III. AMERICAN CORRECTIONAL ASSOCIATION (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