

Pete Ricketts, Governor

Policy Directive 021-010

DATE: May 11, 2021
TO: Executive Steering Council
FROM: Scott R. Frakes, Director
RE: Policy 205.01 *Inmate Mail*

Effective May 17, 2021, the following changes will be in effect concerning the above-mentioned policy. These changes will be piloted at facilities identified by the Deputy Director-Prisons and if adopted, will be incorporated into the respective Policy during the next scheduled review. You may contact Deputy Director-Prisons Robert Madsen with questions regarding these changes.

Page 8, PROCEDURE I.E.1., replace current language with the following.

E. Privileged Mail (ACI-3D-02, ACI-7D-06)

1. Inmates may send and receive sealed letters to and from the following entities:
 - a. All federal and state officials – A federal or state official is a person elected or appointed to carry out a governmental function
 - b. Director, Deputy Director and Assistant Director
 - c. Warden of any facility of the Department of Correctional Services
 - d. Office of Public Counsel/Ombudsman
 - e. Judges
 - f. Members of the Parole Board and members of the Pardons Board
 - g. Inspector General
 - h. Active Licensed Attorneys

Scott R. Frakes, Director

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Mail from these individuals will be treated as confidential and opened and inspected only in the presence of the inmate, unless waived in writing. The warden of the facility from which such mail originates may choose to stamp any such outgoing mail disclaiming any administrative responsibility for the nature or contents of such mail.

Page 9, PROCEDURE I.E., add new sections I.E.2., I.E.3., and I.E.4., then renumber remaining sections.

2. Incoming Process

All incoming privileged mail will be logged upon receipt by the mailroom Supervisory Sergeant or the mailroom personnel on the Privileged Mail Delivery Form (Attachment D). Mailroom personnel must sign and list the name of the addressee and sender on the Privileged Mail Delivery Form. The staff member who delivers the privileged mail to an inmate must list their name and rank/position on the Privileged Mail Delivery Form. Upon delivery of any privileged mail, staff will provide the Privileged Mail Delivery Form to the inmate. If the inmate refuses to sign this form, another staff member will note "inmate refused to sign" on the Privileged Mail Delivery Form and sign as a witness. The privileged mail will then be opened in the presence of the inmate. Mail opened and inspected under these circumstances will not be read or censored. All outgoing privileged mail will be logged upon being sent from the institution. The log shall contain the inmates name and number, attorney/agency name, address, certified number (if applicable), date out, and cost of postage.

- a. All incoming privileged mail will be screened by a member of the facility Intel Team for unusual odor, stains, feel/touch, mailing address and/or postage discrepancies before being processed for distribution.
- b. If any discrepancies are noted, the item will be tested for illicit substances through the outside of the unopened envelope.
- c. If the envelope tests positive for an illicit substance, it will be held as evidence and the NDCS Investigations Coordinator will be notified immediately.
- d. If the discrepancy is based on visual observation or how the envelope is addressed, the team member will initiate contact with the office of the addressee to verify if the privileged mail was sent by the addressee.
- e. If the privileged mail was not sent from the addressee listed on the envelope, it will not be considered privileged correspondence. The contents will be inspected for contraband and tested for illicit substances. If contraband or illicit substances are detected, all items will be held as evidence and the NDCS Investigations Coordinator will be notified immediately. If no contraband or illicit substances are detected the mail will be treated as held mail in accordance with policy.

3. Contraband

To prevent contraband or illicit substances from entering the facility that were not detected from the process outlined above, the following will occur:

- a. All prescreened privileged mail will be delivered to the Mailroom Supervisory Sergeant or Shift Supervisor's office and will be distributed to the inmate(s) by a member of the Intel Team, a Security Supervisor or the Supervisory Sergeant assigned to the mailroom.
- b. A secure location will be identified that has access to a photocopier and a document shredder.
- c. Inmates assigned to general population housing will be placed on pass to receive their privileged mail. For individuals assigned to non-general population housing, staff will deliver the mail to the inmate in the housing unit in accordance with these procedures.
- d. Inmates must present their inmate ID to receive their privileged mail and will be presented with the Privileged Mail Delivery Form for signature of receipt of the privileged mail. If the inmate refuses to sign the form, another staff member will note "inmate refused to sign" on the Privileged Mail Delivery Form and sign as a witness.
- e. The privileged mail will be opened in the presence of the inmate and inspected for contraband or illicit substances. The contents of the privileged mail will not be read.

4. Illicit substances

- a. If no illicit substances are detected:

The privileged mail will be photocopied in the presence of the inmate, the photocopies will be provided to the inmate, and the original documents will be shredded immediately while the inmate is present.

- b. If there is evidence of illicit substances:

- 1) The mail will be tested for illicit substances in the presence of the inmate.
- 2) If the mail tests positive for illicit substances, it will be held as evidence and the NDCS Investigations Coordinator will be notified immediately.
- 3) If the test is negative for illicit substances, the contents and envelope will be photocopied in the presence of the inmate. The photocopies will be provided to the inmate and the original documents will be shredded immediately while the inmate is present.


Any contraband other than illicit substances which is removed from incoming privileged mail which is not returned to the sender may be turned over to law enforcement authorities for possible prosecution. Contraband not returned to the sender or given to law enforcement will be disposed of according to facility procedures.

If the privileged mail is found to contain items with a raised seal, identification, car titles, birth certificates, etc., these items will be forwarded to the addressee's central file in the Records Office.

Page 11, REFERENCE, III. ATTACHMENTS, add new Attachment D.

III. ATTACHMENTS

- A. NDCS Rules and Regulations (12/21/2013) – Chapter 3 – Mail Privileges.
- B. Notice of Held Mail – DCS-A-adm-099 (2/02)
- C. Notice of Returned/Damaged Mail – DCS-A-adm-008 (rev. 5/10)
- D. NDCS Privileged Mail Delivery Form

 <p>Good Life. Great Mission.</p> <p>DEPT OF CORRECTIONAL SERVICES</p>	POLICY		
	INMATE MAIL		
	REVISION DATE July 31, 2020	NUMBER 205.01	PAGE 1 of 11
STATEMENT OF AVAILABILITY *This Policy is to be made available in law libraries or other inmate resource centers.			

EFFECTIVE: March 1, 1980
 REVISED: September 30, 2010
 REVISED: September 27, 2011
 REVISED: September 21, 2012
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 REVISED: September 30, 2015
 REVIEWED: September 30, 2016
 REVIEWED: September 30, 2017
 REVIEWED: December 31, 2018
 REVISED: December 31, 2019
 REVISED: July 31, 2020


SUMMARY of REVISION/REVIEW

PURPOSE – Language updated. GENERAL – Language updated.

APPROVED:



 Scott R. Frakes, Director
 Nebraska Department of Correctional Services

 <p>NEBRASKA Good Life. Great Mission. DEPT OF CORRECTIONAL SERVICES</p>	POLICY		
	INMATE MAIL		
	REVISION DATE July 31, 2020	NUMBER 205.01	PAGE 2 of 11
STATEMENT OF AVAILABILITY *This Policy is to be made available in law libraries or other inmate resource centers.			

PURPOSE

To provide Nebraska Department of Correctional Services policy for inmate mail.

GENERAL

Each institution, consistent with its function and the nature of its inmate population and programs, shall develop its own Procedure within the limits and guidelines of this Policy.

There shall be no restrictions on the number of letters, length, language, content or source of mail or publications, except when there is a reasonable belief that the limitation is necessary to protect public safety or institutional order and security. (7D-02)

As used herein, the term "mail" shall include packages unless otherwise specified.


The current version of Title 68 Chapter 3 - MAIL PRIVILEGES of the Rules and Regulations of the Nebraska Department of Correctional Services promulgated under the Administrative Procedures Act is herewith incorporated into this Policy. This document will be referred to as Chapter 3 below.

This Policy and Chapter 3 shall be reviewed annually and updated as needed.

PROCEDURE

I. MAIL PRIVILEGES

- A. In addition to contraband specified in Chapter 3, contraband includes any items which are not acquired by inmates through authorized institutional channels or sources.
- B. The Warden may allow certain published materials to be stored by the facility and viewed privately but not retained by the inmate.
- C. Outgoing Mail Procedures - United States Postal Service (USPS)
 1. Inmates may send mail or electronic messages to any person or organization they choose, except as prohibited by Chapter 3 (Attachment A) or this policy.
 2. If the Warden has reasonable cause to believe that an inmate is using the mail to engage in an unauthorized business enterprise or to defraud the public, the Warden should document the facts that led to that conclusion and a direct order should be given to the inmate to discontinue the practice. Evidence that the inmate has not complied with the direct order may cause the inmate to be subject to disciplinary action.
 3. Outgoing inmate mail will be stamped with the following disclaimer: NOTICE! This correspondence was mailed by an inmate confined in a facility operated by the NDCS. Its contents are uncensored.
 4. In all cases of internal facility correspondence, must contain the inmate's committed name and NDCS ID number. An inmate may also sign the communication with a recognized alias, such as a Muslim name. If inmates have legally changed their names, both the committed name and the legal name will be


 <p>NEBRASKA Good Life. Great Mission. DEPT OF CORRECTIONAL SERVICES</p>	POLICY		
	INMATE MAIL		
	REVISION DATE July 31, 2020	NUMBER 205.01	PAGE 3 of 11
STATEMENT OF AVAILABILITY *This Policy is to be made available in law libraries or other inmate resource centers.			

shown, and the legal name must be signed. Inmates may use only their legally changed name and number on the envelope of outgoing mail. (7D-01)

5. If an inmate attempts to send mail to an inmate in another facility or in the same facility, the Warden at the sending facility shall have the authority to intercept the mail and return it to the sender under the same standards as provided for incoming mail in paragraph D.1, below.
6. Inmates will not be permitted to use the state's inter-office mail system to send mail to NDCS staff, except for these exceptions:
 - a. When such mail involves applications for a speedy trial directed to the NDCS' Special Services Unit
 - b. Appeals to the Appeals Board
 - c. Requests to NDCS Accounting
 - d. Good Time Restoration Appeals
 - e. Step 2 Grievance Procedures
 - f. Appeals of Classification Actions
 - g. Requests to the ADA Coordinator
 - h. Requests to Mental Health Practitioner Supervisor/Inpatient Healthy Lives Program
 - i. NDCS Social Worker
 - j. NDCS Reentry Unit
 - k. NDCS Adult Parole Administration

Employees should not assume responsibility for mailing these materials for inmates through interoffice mail except for disciplinary and/or classification. This mail must either be folded or stapled with the proper return address. On the return address, the inmate must use his/her number, committed name or legally changed name and the name of the facility where the inmate is assigned. Inmates must use the U.S. Mail Service for all other correspondence.

7. Contraband, which is removed and confiscated from outgoing inmate correspondence, other than money, will be disposed of unless it is needed as evidence for prosecution. The method of disposition will be decided by the Warden. Disposition of money orders will be in accordance with Policy 113.02, *Inmate Accounting*. (7D-05)
8. All properly stamped and addressed mail will normally leave the facility no later than 24 hours after the sender has deposited it for mailing, and packages will leave the facility no later than 48 hours after deposit, with the exception of weekends and


 <p>NEBRASKA Good Life. Great Mission. DEPT OF CORRECTIONAL SERVICES</p>	POLICY		
	INMATE MAIL		
	REVISION DATE July 31, 2020	NUMBER 205.01	PAGE 4 of 11
STATEMENT OF AVAILABILITY *This Policy is to be made available in law libraries or other inmate resource centers.			

holidays. Outgoing electronic messages will generally be delivered within the same time frame as mail through the United States Postal Service. Mail or packages may be delayed when mail/packages contain suspected contraband, additional postage is required, a facility emergency exists, and so forth. Emails that are flagged for review may take longer and are not reviewed on weekends and/or holidays. They will generally be reviewed within two (2) business days from receipt. (7D-09)

9. Inmates may not possess postage stamps. Pre-stamped envelopes will be available for purchase in the facility canteens. Inmates will be allowed to possess up to 40 pre-stamped envelopes. A 10" pre-stamped envelope will be sold. Inmates may receive self-addressed stamped envelopes when these come from government agencies, an attorney, a publisher, vendor, religious headquarters, or an educational facility (so long as the envelopes are enclosed as part of a bona fide approved correspondence course). The Assistant/Associate Warden must approve all correspondence courses and will work with designated Education staff. Self-addressed stamped envelopes may also be received in legal mail. Self-addressed stamped envelopes may not be mailed in from any other source and for any purpose other than as stated herein. All other pre-stamped envelopes must be purchased from the facility canteen. A supply of stamps will be maintained in each canteen for use by inmates who purchase special events cards, such as birthdays, anniversaries and holidays.
10. When an inmate purchases a special event card and necessary postage, the canteen staff will affix the necessary postage on the envelope after the card and postage are purchased by the inmate. The inmate will not be given the loose stamp for the inmate to place on the envelope. Since Community Corrections Center – Omaha (CCC-O) has no canteen, inmates there may possess up to 40 stamps.
11. Inmates are not permitted to enclose postage or stamped envelopes in outgoing mail, except when requesting return mail from government agencies, or when approved by the Warden for special circumstances, such as facilitating family correspondence with children.
12. Disclaimer stamping of inmate mail as described in I.C.3 above and search of outgoing mail as described in I.C.7 above will not be done at community corrections facilities.
13. Inmates are not allowed to receive communication by facsimile machine or by telegram.

D. Incoming Mail Procedures (7D-04)


1. Letters, Publications, Commercial Items
 - a. All publications, including but not limited to, newspapers, magazines, soft-back books, paperbacks and hardbound books, must be prepaid and sent to the inmate directly from the publisher. Prepaid publications received from bookstores will be permitted. Such items shall be received in envelopes or packages which display a commercially printed or stamped return address. Items which contain an invoice or packing slip showing an amount due will be returned to the sender at the inmate's expense. The

 <p>NEBRASKA Good Life. Great Mission. DEPT OF CORRECTIONAL SERVICES</p>	POLICY		
	INMATE MAIL		
	REVISION DATE July 31, 2020	NUMBER 205.01	PAGE 5 of 11
STATEMENT OF AVAILABILITY *This Policy is to be made available in law libraries or other inmate resource centers.			

inmate will be required to complete an institutional check for the cost of returning the items. Items shipped from a commercially printed or stamped return address are assumed to have been prepaid unless a billing is included.

- b. Any publication or photograph that contains pornographic material shall not be permitted. Pornographic material is material containing full or partial nudity and/or sexually provocative poses. A notice of withholding will be completed and a copy sent to the inmate. The inmate may request a review through the warden/designee. The warden/designee will provide a notice of decision to the inmate after review.
 - c. Religious publications, tapes and CD's may be received directly from churches or other religious bodies after being screened by the religious coordinator.
 - d. If an inmate is denied a publication and subsequently files a grievance, the content of the publication will be reviewed by the Warden or designee. The reviewer shall not have participated in the original decision to deny the publication. The grievance response must cite the specific reasons for denial of the publication.
 - e. If facility staff can determine the inmate for whom the mail is intended, such mail must be delivered. Mail must be delivered if it contains only the inmate's legally changed name and institutional number.
- All incoming letters to inmates will be stamped with a receiver stamp near the inmate's name, when possible. This stamp will include a date that the material was received and the facility that received it.
- f. All incoming mail will normally be delivered to the inmate within 24 hours and packages within 48 hours after its receipt at the facility, except during weekends and holidays. Incoming electronic messages will generally be delivered within the same time frame as mail through the United States Postal Service. Mail or packages may be delayed when mail/packages contain suspected contraband; a facility emergency exists, and so forth. (7D-09)
 - g. If an inmate's mail is held for not complying with policy, a "Notice of Held Mail" form (Attachment B) shall be completed. The inmate will receive a copy of the form noting the reason the mail was held.
 - h. Cards containing inserts including, but not limited to, buttons and recording devices are not allowed. Inserts or items that create an open or hollow space in a card shall be removed.
 - i. Photographs

- 1) Inmates may receive photographs through U.S. Postal Mail Service or the contracted electronic system. Photographs or electronically transmitted screen shots sent that do not meet the below criteria will not be forwarded to the inmate:

 <p>NEBRASKA Good Life. Great Mission. DEPT OF CORRECTIONAL SERVICES</p>	POLICY		
	INMATE MAIL		
	REVISION DATE July 31, 2020	NUMBER 205.01	PAGE 6 of 11
STATEMENT OF AVAILABILITY *This Policy is to be made available in law libraries or other inmate resource centers.			

- a) No hand signs: including peace signs and middle fingers
- b) No items that depict violent or illegal activity
- c) No pictures of individuals with large amounts of money
- d) No items that might incite violent or illegal activity
- e) No nude or partially nude males or females, including infants/newborn pictures, and including such drawings/cartoons
- f) No individual clothed in panties/underwear, bras sheer negligees or nightgowns, including bathing suits, for adults and children
- g) No clothing that would be deemed unacceptable for wearing in public
- h) No sexual gestures, even when clothed
- i) No drug use
- j) No images of offenders or offender information
- k) No images of social media or text
- l) Screen shots shall not contain any text

2) Photographs Sent that Violate NDCS Criteria

a) Electronically Transmitted Photographs


Photographs that are sent electronically via the contracted electronic system that do not comply with 1) above shall be not be forwarded to the inmate. The contractor does not provide refunds to the sender for such photographs.

b) Photographs Sent through the U.S. Mail Service

Photographs that are sent via the US Postal Mail Service will be held for 60 days and can be returned to sender at the inmate's expense. After 60 days, any photographs not returned to sender will be destroyed.

2. Inmate-to-Inmate Mail

- a. Mail from inmates in other correctional facilities or the same facility is presumed to constitute a threat to the safety, security or good order of the


 <p>NEBRASKA Good Life. Great Mission. DEPT OF CORRECTIONAL SERVICES</p>	POLICY		
	INMATE MAIL		
	REVISION DATE July 31, 2020	NUMBER 205.01	PAGE 7 of 11
STATEMENT OF AVAILABILITY *This Policy is to be made available in law libraries or other inmate resource centers.			

facility where the addressee resides. Such mail can be used to communicate escape plans, to arrange assaults and other violent acts, and to facilitate the development of informal organizations that threaten the security of correctional facilities. Electronic messages between inmates will not be allowed.

- b. The Wardens of the facilities where the inmates reside may issue written permission for inmate to inmate correspondence. Such permission may be granted when the inmates are immediate family (immediate family is defined as spouse, parent, step-parent, person acting in the place of parent as documented in the facility file, sibling, step-brother, step-sister, half-brother, half-sister, child, step-child, grandparent, grandchild) or the inmates have a common interest in a legal matter and the Warden determines that the addressee's receipt of such correspondence will neither threaten the safety, security or good order of the facility nor jeopardize the rehabilitative process of the addressee. Inmates who are not immediate family and who desire to correspond regarding a parental interest in a child must show evidence of financial support of that child. Inmates approved for inmate-to-inmate correspondence may include appropriate photographs with their correspondence. Once both Wardens agree to allow two inmates to correspond, this permission to correspond will be honored by other NDCS facilities/programs to which the inmate(s) may transfer. Permission to correspond is always subject to review and may be cancelled for good cause.
 - c. When incoming mail from another inmate is denied, the mail will be returned to the sending facility along with a Notice of Returned/Damaged Mail (Attachment C). A copy of the Notice of Returned/ Damaged Mail will be given to the inmate to whom the mail was addressed. If either the sender or the addressee wishes to challenge the Warden's decision to return the mail, the inmate may use the NDCS grievance mechanism set forth in NDCS Chapter 2.
 - d. Inmates may be allowed to correspond through the mail with other inmates "out on bond." However, if there is a safety or security concern, such mail may be read by authorized staff. An inmate out on bond may not send money to incarcerated inmates. When mail is received from an inmate out on bond, any letter will be given to the addressee, however, any enclosed money order or check will be returned to the sender.
3. Contraband (7D-05, 7D-08)

Contraband which is removed from incoming inmate mail which is not returned to the sender may be turned over to law enforcement authorities for possible prosecution. Contraband not returned to the sender or given to law enforcement will be disposed of according to facility procedures.

Chapter 3, Mail Privileges (Section 006.04). Inserts in publications may be removed from the publication if the inserts are contraband. This includes, but is not limited to fragrance and lotion samples. The inserts may be removed without notice

 <p>NEBRASKA Good Life. Great Mission. DEPT OF CORRECTIONAL SERVICES</p>	POLICY		
	INMATE MAIL		
	REVISION DATE July 31, 2020	NUMBER 205.01	PAGE 8 of 11
STATEMENT OF AVAILABILITY *This Policy is to be made available in law libraries or other inmate resource centers.			


to the inmate. After the inserts that are contraband are removed from the publication, the publication can be delivered to the inmate.

4. Funds Received

- a. Money orders or checks found to be contained in any incoming mail, such will be credited in accordance with Policy 113.02, *Inmate Accounting*. Notification of such credit will be provided to the inmate by the Business Manager/designee of the appropriate facility. Senders of checks or money orders must be certain that their first and last names and complete address appear on the check, money order or envelope. A receipt will be issued to the inmate by the Business Manager/designee of the appropriate facility.
- b. Travelers checks found in any incoming mail will not be accepted by the facility. Cash/coin will be placed on the inmate's confiscated account. Inmates shall be instructed to inform family and friends of these requirements. The inmate will be notified of this action. A receipt will be issued to the inmate by the business manager/designee of the appropriate facility. (7D-07)
- c. Inmates may not receive money or money equivalent (in any form) from family/friends or other inmates or any persons on the approved visiting list of other inmates.

E. Privileged Mail (3D-02, 7D-06)

1. Inmates may send and receive sealed letters to and from the following entities:
 - a. Judge of any court
 - b. Clerk of any court
 - c. Licensed attorneys
 - d. Organizations that provide legal, advocacy or civil rights services (e.g. ACLU, Legal Aid of Nebraska, NAACP, Death Penalty Litigation Clinic, Social Security Administration)
 - e. Ombudsman /Office of Public Counsel
 - f. Federal agency chief administrative or grievance officer
 - g. State agency chief administrative or grievance officers
 - h. Federal and state officials – A federal or state official is a person elected or appointed to carry out a governmental function
 - i. Law enforcement agencies or officials
 - j. Nebraska Health and Human Services Division of Public Health


 <p>NEBRASKA Good Life. Great Mission. DEPT OF CORRECTIONAL SERVICES</p>	POLICY		
	INMATE MAIL		
	REVISION DATE July 31, 2020	NUMBER 205.01	PAGE 9 of 11
STATEMENT OF AVAILABILITY *This Policy is to be made available in law libraries or other inmate resource centers.			

- k. Nebraska Health and Human Services Licensure and Investigations Division
- l. Nebraska Health and Human Services administrators or department heads
- m. Director, Deputy Directors and the Warden of any Nebraska Department of Correctional Services facility
- n. Members of the Nebraska Parole and Pardons Boards
- o. Health care providers (e.g. private physicians, Veterans Administration)
- p. State and U.S. Senators

Mail from these individuals will be treated as confidential and opened and inspected only in the presence of the inmate, unless waived in writing. The Warden of the facility from which such mail originates may choose to stamp any such outgoing mail disclaiming any administrative responsibility for the nature or contents of such mail.

All incoming privileged mail will be logged in upon receipt. The log shall contain the inmates name and number, attorneys name, address, and date. All outgoing privileged mail will be logged upon being sent from the institution. The log shall contain the inmates name and number, attorney/agency name, address, certified number (if applicable), date out, and cost of postage.

2. Inmates in Restrictive Housing will observe the following procedures when sending privileged mail:
 - a. Prior to sealing the envelope, the inmate will show the contents to a staff member through the cell door window.
 - b. Staff are only inspecting for contraband, they will not read the letter/contents. (7D-05)
 - c. The inmate will pass the envelope to staff after sealing it.
3. Mail addressed to or from individuals must include the name and title of that person. Mail addressed to an organization is not required to contain the name of an individual. Mail from an organization to an inmate must include the name and title of an individual employed by the organization.
4. The name or firm affiliation of the sender must appear in commercial printing on the envelope, or the incoming mail will not be considered privileged mail. Any sender using envelopes which do not contain commercially printed names or official status who desires to have his or her mail to an inmate treated as privileged mail, must acquire the approval of the Warden. Without approval, such mail marked "Privileged" will be handled as standard, incoming mail.

 <p>NEBRASKA Good Life. Great Mission. DEPT OF CORRECTIONAL SERVICES</p>	POLICY		
	INMATE MAIL		
	REVISION DATE July 31, 2020	NUMBER 205.01	PAGE 10 of 11
STATEMENT OF AVAILABILITY *This Policy is to be made available in law libraries or other inmate resource centers.			

5. Any incoming mail marked "Attorney-Client," or which in some other fashion is clearly indicated to be attorney-client communication, shall be opened only in the presence of the inmate-addressee.

F. Mail Constituting Threats to the Facility

With respect to the reading of incoming or outgoing mail, the Warden shall issue guidelines defining the types of mail that could constitute a threat to the safety, security, or good order of that facility. Whenever such mail is read, the reader shall record the name and institutional number of the sender/addressee, the date of the reading, and the reasons why the mail was read.

After an item is read, it may be copied only if the Warden or designee determines that the mail does in fact contain statements or information which could threaten the safety or security of persons or property outside the facility. Copies of any such mail shall be retained only so long as they are needed to complete an investigation of the apparent threat, or so long as they are needed as evidence in a disciplinary proceeding or criminal action.

G. Indigent Inmates (7D-03)


1. Indigent inmates shall receive five, first class, U.S. postage embossed envelopes per month or the equivalent in metered mail to send letters in order to maintain community ties. Indigent inmates are those who have not had a balance of \$10.00 or more in their institutional and/or regular savings account during the past thirty days. Inmates shall have access to the courts for the sending of correspondence and pleadings regardless of their ability to pay postage. See Policy 116.01, *Inmate Rights*.
2. Indigent status inmates will be allowed to write insufficient fund checks for postage in order to mail tort claims to the Office of Risk Management. Said mail will not be handled as privileged mail and may not be sealed by the inmate prior to placing it in the outgoing mail. Responses to the inmate will not be opened in the presence of the inmate.
3. Indigent postage does not include specialized USPS services (certified, return receipt).

H. Unwanted Correspondence

Inmates may not send correspondence to a person who has notified the Warden's office verbally or in writing that such correspondence is unwelcome. The inmate will be given a direct order not to send the unwelcome correspondence and such order will be documented in an incident report. The inmate who persists in writing after the direct order has been given is subject to a misconduct report for violation of Rule II.E. Outgoing mail addressed to an individual from an inmate who has been directed not to send mail based on the individual's request will be stopped and may be used as part of the disciplinary process.

II. FORWARDING MAIL (7D-10)

When an inmate has been transferred to another correctional facility, the inmate's First Class mail will be forwarded. After an inmate is released, First Class mail will be forwarded if the Department

 <p>NEBRASKA Good Life. Great Mission. DEPT OF CORRECTIONAL SERVICES</p>	POLICY		
	INMATE MAIL		
	REVISION DATE July 31, 2020	NUMBER 205.01	PAGE 11 of 11
STATEMENT OF AVAILABILITY *This Policy is to be made available in law libraries or other inmate resource centers.			

has a forwarding address. If an inmate has been released and the Department does not have a forwarding address for the inmate, the mail will be returned to the sender.

REFERENCE

- I. STATUTORY REFERENCE – None noted
- II. NDCS POLICIES
 - A. Policy 113.02, *Inmate Accounting*
 - B. Policy 116.01, *Inmate Rights*
- III. ATTACHMENTS
 - A. NDCS Rules and Regulations (12/21/2013) – Chapter 3 – Mail Privileges.
 - B. Notice of Held Mail – DCS-A-adm-099 (2/02)
 - C. Notice of Returned/Damaged Mail – DCS-A-adm-008 (rev. 5/10)
- IV. AMERICAN CORRECTIONAL ASSOCIATION (ACA)
 - A. Expected Practices for Adult Correctional Institutions (ACI) (5th edition): 5-ACI-3D-02, 5-ACI-7D-01, 5-ACI-7D-02, 5-ACI-7D-03, 5-ACI-7D-04, 5-ACI-7D-05, 5-ACI-7D-06, 5-ACI-7D-07, 5-ACI-7D-08, 5-ACI-7D-09, 5-ACI-7D-10
 - B. Standards for Adult Community Residential Services (ACRS) (4th edition): 4-ACRS-6A-01, 4-ACRS-6A-06, 4-ACRS-6A-07, 4-ACRS-6A-08, 4-ACRS-6A-09