

## 1.3.D.2 Capital Punishment Housing

### I Policy Index:



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**Office of Primary Responsibility:** DOC Administration

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### II Policy:

The Department of Corrections (DOC) will arrange for and provide a proper and suitable place within designated DOC institutions for the custody of inmates sentenced to death.

### III Definitions:

#### **Security Perimeter:**

Fences and/or walls (including the exterior wall of a building) that provide for the secure confinement of inmates within a facility. All entrances and exits of a security perimeter are under the control of facility staff, thereby preventing an offender from leaving the facility unsupervised or without permission.

#### **Senior Security Officer:**

The Deputy Warden at the South Dakota State Penitentiary, Mike Durfee State Prison and South Dakota Women's Prison are the Senior Security Officers. The senior security officers are responsible for the same duties at ancillary units that fall within the supervision of their facilities.

### IV Procedures:

#### **1. Establishment of Capital Punishment Housing Unit:**

- A. The South Dakota State Penitentiary (SDSP), which includes the Jameson Annex and the South Dakota Women's Prison (SDWP), will provide a proper and suitable place within the area of the facility designated for maximum custody level inmates to house inmates sentenced to death and to execute the sentence of death. The DOC will ensure a facility is equipped with the proper equipment and appliances for the infliction of the punishment (See SDCL § [23A-27A-33](#)).
1. Male capital punishment inmates will be housed at SDSP. Female capital punishment inmates will be housed at SDWP.
  2. Prior to the execution date, the female capital punishment inmate will be transported to SDSP for housing and execution.

3. The respective Wardens at SDSP and SDWP will designate the specific location within the facility for housing capital punishment inmates.
  4. Capital punishment inmates will be housed in a single person cell.
  5. Any cell housing a capital punishment inmate will be distinctly marked to alert anyone in the area that the inmate housed in the cell is awaiting a sentence of death.
- B. Inmates sentenced to death will be placed in capital punishment housing immediately upon admission to SDSP or SDWP.

## **2. Access to Capital Punishment Housing Inmates:**

- A. Pursuant to SDCL [23A-27A-31.1](#), no one will be allowed access to a capital punishment inmate without an order of the trial court; except for Department of Corrections staff, the inmate's counsel, members of the clergy (if requested by the inmate) and approved members of the inmate's family (See DOC policy 1.5.D.1 [Inmate Visiting](#)).
1. For the purposes of this policy, members of the inmate's family will include father, mother, stepfather, stepmother, brothers, sisters, stepbrothers, stepsisters, biological/legally adopted children, and spouse.
  2. Media representatives are not permitted into the facility to visit capital punishment inmates; however, capital punishment housing inmates may access members of the media by following the procedures set forth for inmate correspondence and access to telephones (See DOC policies 1.5.D.3 [Inmate Correspondence](#) and 1.5.D.4 [Inmate Access to Telephones](#)).
    - a. Limitations necessary to maintain order and security and to protect the inmate may be imposed.
    - b. Media requests for information about capital punishment housing or capital punishment inmates shall be directed to the DOC in accordance with the requirements set forth in DOC policies 1.1.A.4 [Relationship With News Media, Public and Other Agencies](#).

## **3. Capital Punishment Housing Restrictions:**

- A. Capital punishment inmates are barred from attending certain programs, courses or classes, as determined and approved by the inmate's unit team.
- B. Inmates awaiting sentence of death will be maintained on maximum custody level status and will not be employed in any capacity (See DOC policies 1.4.B.2 [Male Inmate Classification](#) and 1.4.B.14 [Female Inmate Classification](#)).
1. Capital punishment inmates will be housed one (1) inmate to a cell.
  2. Unless extenuating circumstances exist which are first approved by the Warden, capital punishment inmates are not allowed personal contact with inmates in general population.
  3. Capital punishment inmates will have meals brought to them by staff. They will eat their meals in their assigned cell.
  4. Capital punishment inmates will be issued clothing and laundry by staff.

- C. The staffing level, restraint, and dress requirements specific to capital punishment inmates described in DOC policy 1.3.A.7 *Inmate Transport & Escort* (See [Attachment 1](#)) will be maintained at all times when a capital punishment inmate is escorted or transported by DOC staff from his/her cell.
  - 1. Escort of a capital punishment inmate within the facility will be scheduled with the Officer in Charge or staff of equal or higher rank and will be scheduled when contact with other inmates can be minimized to the extent possible.
  - 2. Whenever a capital punishment inmate is escorted outside of their assigned housing area/cell, all crash gates within the area occupied by the inmate will be secured and all other doors leading to areas occupied by other inmates will be locked/secured. Doors to areas where only DOC staff are present may remain unsecured.
  - 3. The senior security officer will be notified prior to a capital punishment inmate being transported outside of the secure perimeter. The senior security office will in turn notify the Warden or his/her designee and the Secretary of Corrections and provide all necessary information regarding the transport (See DOC policy 1.3.A.7 *Inmate Transport & Escort*).
- D. Once a capital punishment inmate is moved to the execution housing area, additional restrictions may be imposed by the Warden (See DOC policy 1.3.D.3 *Execution of an Inmate*).

#### **4. Capital Punishment Programs and Services:**

- A. The procedures in this section must be consistent with SDCL § [23A-27A-31.1](#), this policy, and the security and disciplined operation of the respective institution.
- B. Capital punishment inmates will normally receive forty-five (45) minutes out of cell recreation each weekday.
  - 1. Telephones will be available for use during the recreation period.
  - 2. Capital punishment inmates may submit a special phone request through their unit coordinator if they cannot conduct or complete their telephone call during the recreation period.
  - 3. Capital punishment inmates may be issued a tablet.
- C. Correspondence to and from a capital punishment inmate is subject to DOC policy 1.5.D.3 *Inmate Correspondence*. The Warden may order a log be maintained for all incoming and outgoing correspondence. A separate log may be maintained for legal correspondence. Funds received for a capital punishment inmate are subject to DOC policy 1.1.B.2 *Inmate Accounts and Financial Responsibility*.
- D. Capital punishment inmates will be allowed a maximum of two (2) Class II visits per week from pre-approved family members on weekdays (excluding holidays) during designated visiting hours (See DOC policy 1.5.D.1 *Inmate Visiting*). All visits between the capital punishment inmate and authorized visitors will be no contact.
  - 1. Visitors must call the facility control room in advance to schedule a Class II visit.
  - 2. Inmates may have one weekend Class II visit per month. The inmate must schedule the visit in advance through the unit manager. Weekend visits will count against one of the two (2) weekday visits.

3. Capital punishment inmates must remain handcuffed during Class II visits but the waist belt may be removed if approved by the OIC.
  4. Special visits must be approved in advance by the Warden, Deputy Warden or an Associate Warden.
  5. All visits received will be tracked in the Comprehensive Offender Management System (COMS).
- E. Capital punishment inmates shall have access to their attorney and their authorized representatives through telephone communications, uncensored correspondence and visits. Attorney visits will take place within the inmate's assigned housing unit, at times approved by the unit manager. Typically visits are approved to take place is during regular staffing hours when unit staff is available.
1. The senior security officer or unit manager may approve attorney visits during other times.
  2. During the attorney visit, the inmate will be in full restraints.
  3. It is preferable that advance notice be given by the attorney so that security can be arranged.
- F. Capital punishment inmates are eligible for commissary privileges (See DOC policy 1.2.E.1 [Inmate Commissary](#)). Commissary items may be limited to those items which the Senior Security officer has determined do not compromise the security or safety of facility, staff and inmates.
- G. Capital punishment inmates who are indigent may request indigent commissary, in accordance with DOC policy 1.2.E.1 [Inmate Commissary](#). Indigent commissary items available to capital punishment inmates shall include but is not limited to hygiene product and correspondence materials.
- H. Capital punishment inmates may access books from the library by making a request to the library administrator.
1. Unit staff will determine how many books the inmates may request; the length of time the inmate may retain the books, and if a commissary slip must accompany the request.
  2. Except for legal reference books, inmates may only request a general category of book. Inmates may request a specific legal reference book(s) (See DOC policy 1.3.E.4 [Inmate Legal Assistance](#)).
    - a. A computer-assisted legal research service (LexisNexis) is available on the DOC issued tablets to assist inmates in electronically accessing legal and journalistic documents.
  3. Library privileges may be temporarily suspended if books are not returned or are damaged.
- I. Inmates requesting legal assistance or access to the courts may send a legal kite to the contract attorney (See DOC policy 1.3.E.4 [Inmate Legal Assistance](#)).
- J. Capital punishment inmates shall have access to the inmate grievance process (See DOC policy 1.3.E.2 [Administrative Remedy for Inmates](#)).
- K. Inmates requesting attention for a specific health need may send a request to Health Services (See DOH policy P-A-01 [Access to Care](#)). Inmates may kite Behavioral Health Services to request behavioral health services.

- L. Specific religious needs may be addressed to the Cultural Activities Coordinator.
- M. Inmates requesting to see unit staff may submit a kite to the unit coordinator.
- N. Requests for educational materials will be made through education staff. Ordinarily, educational materials will be limited to the resources available at the facility.

## 5. Capital Punishment Housing Property:

- A. Personal property will conform to limitations set forth in DOC policy facility OMs.
- B. The Warden/Deputy Warden may further limit the personal property of capital punishment inmates for security, safety or sanitation reasons.
- C. Limited hobby/craft items will be allowed in capital punishment housing.

## V Related Directives:

SDCL [23A-27A-31.1](#) and [23A-27A-33](#).

DOC policy 1.1.A.4 – [Relationship With News Media, Public and Other Agencies](#)  
DOC policy 1.1.B.2 – [Inmate Accounts and Financial Responsibility](#)  
DOC policy 1.2.E.1 – [Inmate Commissary](#)  
DOC policy 1.3.A.1 – [Unit Plans](#)  
DOC policy 1.3.A.7 – [Inmate Transport & Escort](#)  
DOC policy 1.3.D.3 – [Execution of an Inmate](#)  
DOC policy 1.3.E.2-- [Administrative Remedy for Inmates](#)  
DOC policy 1.3.E.4 – [Inmate Legal Assistance](#)  
DOC policy 1.4.B.2 – [Male Inmate Classification](#)  
DOC policy 1.4.B.14 – [Female Inmate Classification](#)  
DOC policy 1.5.D.1 – [Inmate Visiting](#)  
DOC policy 1.5.D.3 – [Inmate Correspondence](#)  
DOC policy 1.5.D.4 – [Inmate Access to Telephones](#)  
DOH policy P-A-01 – [Access to Care](#)

## VI Revision Log:

**July 2003:** Added references to the DOC *Inmate Living Guide* and policy 1.4.B.2. Reorganized the section on Day-To-Day Guidelines. Deleted the reference to indoctrination services and programs.

**August 2004:** Revised the policy statement. Combined SDSP and SDWP OMs with this policy. Added references to policies 1.1.A.4, 1.1.B.2, 1.2.E.1, 1.3.A.1, 1.5.D.1 and DOH policy PA 01.

**July 2005:** Added reference to DOC policies 1.5.D.3 and 1.5.D.4. Changed "counselor" to "unit coordinator". Clarified that only male inmates can have a razor in their cell for shaving.

**July 2006:** Revised the definitions of Senior Security Officer and Security Perimeter. Added reference to DOC policy 1.3.D.3

**August 2007:** Deleted information regarding showers in the section on Capital Punishment Housing Sanitation.

**July 2008:** Revised formatting of policy in accordance with DOC policy 1.1.A.2. Replaced "23A-27A-16" with "23A-27A-31.1 throughout policy. Replaced "facility" with "penitentiary" staff, added "Department of Corrections staff", deleted "inmate's physician", replaced "a priest/minister or other recognized clergy if the inmate desires one" with "members of the clergy if requested by the inmate" and added language regarding clergy and inmates family members are subject to approval by the Warden before access to the inmate in ss (A of Access to Capital Punishment Housing Inmates) in

accordance with SDCL 23A-27A-31.1. **Added** "DOC policy" when referencing policies in Related Directives section.

**July 2009: Revised** title of DOC policy 1.5.D.3 throughout policy to read Offender Correspondence. **Added** hyperlinks throughout policy.

**July 2010: Revised** formatting of Section 1. **Revised** title of DOC policy 1.4.B.2 and **added** DOC policy 1.4.B.14 to policy. **Added** reference to JPA in ss (A of Establishment of Capital Punishment Housing Unit).

**July 2011: Reviewed with no changes.**

**February 2013: Deleted** "Associate Warden" and **Replaced** with Deputy Warden" in definition of "Senior Security officer" **Added** "biological/legally adopted" to Section 2 A. 1. **Added** "by the attorney" in Section 4 E. 3. **Deleted** "The only" and **Replaced** with "Limited" and **Deleted** "allowed to capital punishment housing inmates will be beadwork" and **Replaced** with "Will be allowed in capital punishment housing" in Section 5 C.

**July 2013: Reviewed** with no changes.

**July 2014: Deleted** "allowed to wear the same clothes as general population inmates" and **Replaced** with "will be issued designated clothing" in Section 3 B. 4.

**July 2015: Deleted** "Capital punishment inmates are not allowed outside recreation" in Section 4 B. **Added** "The senior security office will in turn notify the Warden or his/her designee and the Secretary of Corrections and provide all necessary information regarding the transport" to Section C. 3. c.

**July 2016: Reviewed** with no changes.

**July 2017: Added** 2. and 4. to Section 1 A. **Deleted** B. in Section 2. **Added** a. and b. to Section 2 A. 2. **Added** "which are first approved by the Warden" in Section 3 B. 2. **Added** 3 to Section 4 B.

**Added** "The Warden may order a log be maintained for all incoming and outgoing correspondence. A separate log may be maintained for legal correspondence" in Section 4 C. **Added** "All visits between the capital punishment inmate and authorized visitors will be no contact" in Section 4 D. **Added** "Capital punishment inmates shall have access to their attorney and their authorized representatives through telephone communications, uncensored correspondence and visits" to Section 4 E. **Added** G. to Section 4. **Added** a. to Section 4 H. 2. **Added** 5. to Section 4 D. **Added** "or access to the courts" in Section 4 H. **Added** "Inmates may kite Behavioral Health Services to request behavioral health services" in Section 4 I. **Added** J. to Section 4.

*Denny Kaemingk (original signature on file)*

Denny Kaemingk, Secretary of Corrections

09/26/2017

Date