


<b>DEPARTMENT OF CORRECTION</b> 	<b>Division of Prisons</b>	<b>DIRECTIVE NUMBER:</b> 319.02.01.002 v2.0	<b>PAGE NUMBER:</b> 1 of 10
		<b>SUBJECT:</b> Offenders Under Sentence Of Death	Reviewed: 07-15-04 Revised: 10-22-04 Changed page 8, Administrative Segregation Review on: 04-27-07

## **01.00.00. POLICY OF THE DEPARTMENT**

It is the policy of the Board of Correction that the Department of Correction ensure adequate security, supervision and programmatic opportunities for inmates housed in administrative segregation, disciplinary segregation, protective custody, in confinement under sentence of death, or in any other restrictive housing setting. While services can not be identical, there should be no differences that would endanger life, health, or safety of the offender or staff.

### **01.01.00. Purpose**

The purpose of this division directive is to establish procedures and criteria for the housing and administrative review of offenders under sentence of death in accordance with Idaho Code Section 19-2706. All placement decisions must be in accordance with the provisions set forth in this directive. Offenders under sentence of death cannot be classified or housed in any manner less than close-restricted custody at Idaho Maximum Security Institution (IMSI) or Pocatello Women's Correctional Center (PWCC).

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**03.00.00. REFERENCES**

Attachment A, Waiver of Liability.

Attachment B, Status Report.

Department Policy 303, Offender Classification.

Department Policy 319, Restrictive Housing.

Department Policy 320, Control Of Offender Property.

Department Policy 510, Searches Of Persons/Vehicles Entering Correction Facilities.

Division Directive 303.02.01.001, Offender Classification.

Division Directive 319.02.01.001, Restrictive Housing.

Division Directive 320.02.01.001, Control Of Offender Property.

Division Directive 405.02.01.001, Access To Courts.

Division of Prisons Directive 604.02.01.001, Visiting.

Idaho Code Section 19-2706.

IDAPA 06.01.01, Rules Of The Board Of Correction, Section 010, Definitions, Sub-Section 22, Immediate Family.

IDAPA 06.01.01, Rules Of The Board Of Correction, Section 135, Executions.

IDAPA 06.01.01, Rules Of The Board Of Correction, Section 405, Attorney Visits And Court Proceedings.

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IDAPA 06.01.01, Rules Of The Board Of Correction, Section 510, Searches Of Persons And Vehicles Entering Department Facilities.

Standards for Adult Correctional Institution, Fourth Edition, Standard Numbers 4-4249, 4-4250, 4-4254 through 4-4256, 4-4258, 4-4260 through 4-4264, 4-4266 through 4-4270, and 4-4273.

#### **04.00.00. DEFINITIONS**

**Approved Spiritual Advisor.** An Idaho Department of Correction (IDOC) trained volunteer associated with a specific religion.

**Attorney of Record.** An attorney appointed by a court or retained by an offender in a legal action.

**Board.** The state Board of Correction.

**Central Office Review Committee.** A committee comprised of the administrator and deputy administrators of operations.

**Contact Visiting.** Visiting with an offender where there are no physical barriers between the visitor and the offender, and the offender and visitor may be allowed to touch.

**Department.** The state Department of Correction.

**Director.** The director of the Department of Correction.

**Facility.** A building or residence, including the property and land where the building or residence is located, owned or leased and operated or managed by the Board or Department.

**Facility Head.** The person with primary responsibility to oversee, manage or operate a Department facility.

**Immediate Family.** The immediate family of an offender is: the mother or father of the offender, including step parent; the brother or sister of the whole or half (½) blood or by adoption or the stepbrother or stepsister of the offender; the wife or husband of the offender, as proved by marriage license or other operation of law; the natural child, adopted child or stepchild of the offender; the grandparents of blood relation to the offender; or the grandchildren of blood relation to the offender.

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Inmate. An individual in the physical custody of the Board. (See also Offender.)

Offender. A person under the legal care, custody, supervision or authority of the Board including a person within or without the state pursuant to agreement with another state or a contractor. (See also Inmate.)

Professional Expert. A person who possesses scientific, technical or other specialized knowledge, education and credentials, and who has been retained by an attorney of record for an offender, or by Idaho Department of Correction, to assist in an offender's criminal case.

Restrictive Housing. A housing assignment in which an offender is separated from the general offender population for administrative or disciplinary purposes, for security purposes, for investigative purposes, or pending a transfer, as set forth in Division Directive 319.02.01.001, Restrictive Housing.

Treatment Staff. Psychosocial rehab specialists, clinicians, psychologists, substance abuse counselors, and religious activity coordinators that are employed by the Department or the medical provider.

#### **05.00.00. SCOPE**

The scope of this division directive includes all offenders under the sentence of death committed to the Department, all offenders previously under the sentence of death whose sentences have been rescinded and are awaiting a new sentence, the staff at Idaho Maximum Security Institution (IMSI) and Pocatello Women's Correctional Center (PWCC), and the central office review committee.

#### **06.00.00 RESPONSIBILITY**

The facility heads at IMSI and PWCC are responsible to implement and follow this division directive.

#### **07.00.00. PROCEDURE**

With the exception of the procedures annotated in this division directive, offenders under the sentence of death housed in restrictive housing will be subject to the standard conditions of confinement described in Division Directive 319.02.01.001, Restrictive Housing. Conditions of confinement for those offenders under sentence of death who are released to general population are found in Division Directive 303.02.01.001, Offender Classification, and Division Directive 320.02.01.001, Control of Offender Property.

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**07.01.00. Facility Restrictive Housing Committee For Offenders Under The Sentence Of Death**

The facility head will designate the chairperson and restrictive housing committee members for offenders under sentence of death. This committee will be comprised of at least three (3) people including a security staff member who has the rank of lieutenant or higher, a mental health professional, and a deputy warden.

**07.02.00. New Admissions Placement Procedure, Including Release To Restricted Close Custody**

Newly committed offenders under sentence of death will be placed directly into restrictive housing, men at Idaho Maximum Security Institution (IMSI) and women at Pocatello Women's Correctional Center (PWCC). Such offenders shall not be housed in a receiving and diagnostic unit (RDU), but shall receive initial medical and psychological screens similar to those completed in RDU.

The case management team (TCM) working in restrictive housing will record their observations and contacts with the offender and make recommendations regarding the offender's needs, as well as housing placement. Within fifteen (15) days of admittance, the TCM will submit a report to the facility's investigation staff.

Investigation staff will have fifteen (15) days to review the information provided by the TCM and complete a referral file that contains specific information regarding the offender's current behavior, past behavior, disciplinary offense report history, and other pertinent information obtained through the investigation office. The facility head will ensure that the completed referral file is forwarded to the restrictive housing committee for offenders under sentence of death.

The restrictive housing committee for offenders under sentence of death has two (2) weeks to review the file submitted by the investigation staff, the offender's central record, and other pertinent information.

Within seventy-two (72) hours following the two (2) week review period, the chairperson will schedule a restrictive housing hearing. Forty-eight (48) hours before the hearing, the chairperson will ensure that the offender signs the Acknowledgement of Receipt and receives a copy of the Restrictive Housing Referral Notice form. (Refer to 319.02.01.001, Restrictive Housing.)

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At the conclusion of the hearing, a Restrictive Housing Report of Hearing form will be completed, noting the recommendations from each committee member. (Refer to 319.02.01.001, Restrictive Housing)

The committee chairperson will forward the investigation referral file, the Restrictive Housing Referral Notice, and the Restrictive Housing Report of Hearing to the facility head for review. The chairperson will ensure that the offender's central file is returned to the facility records clerk.

The facility head will review the restrictive housing committee's findings and recommendations. If the facility head decides that the offender should be housed in administrative segregation, he will indicate that information on the form.

The facility head will forward the original Restrictive Housing Report of Hearing form to the records clerk and a copy of the form to the chairperson of the restrictive housing committee.

The records clerk will file the original form in the offender's central file.

The committee chairperson will inform the offender of the facility head's decision.

If facility head recommends release to general population as close-restricted custody, he will make his recommendation for placement and forward the information to the central office administrative review committee.

The central office administrative review committee will review the facility head's placement recommendations, and may requested additional information to include psychological testing.

The administrator of operations will forward the central office administrative review committee's recommendations to the director.

The director will review all of the information and make a decision regarding the offender's housing placement, then notify the administrator of operations of his decision.

The administrator of operations will notify the facility head of the decision. If the release to close-restricted custody is not approved, the offender will remain unclassified in administrative segregation.

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If the release is approved, the offender will be classified as close-restricted custody and released from administrative segregation.

#### **07.02.01. Special Procedures For Offenders Admitted Prior To December 1, 2003**

The following conditions affect offenders committed to the Department before December 01, 2003, under sentence of death and offenders who have had their death sentences vacated or their convictions overturned and are now waiting re-sentencing or re-trial.

Offenders identified above who are placed or retained in administrative segregation will keep the same property that was previously approved for offenders under sentence of death. These privileges will be grandfathered until November 1, 2005. On November 2, 2005, grandfathered privileges will be revoked, and any such offender remaining in administrative segregation will be subject to the standard conditions of confinement for restrictive housing as identified in Division Directive 319.02.01.001, Restrictive Housing, and Division Directive 320.02.01.001, Control Of Offender Property.

Before November 2, 2005, these privileges will be revoked if the offender is found guilty of a Class A Disciplinary Offense Report. Property levels and privileges will be reduced to the standard conditions of confinement for restrictive housing as identified in Division Directive 319.02.01.001, Restrictive Housing, and Division Directive 320.02.01.001, Control Of Offender Property.

When property limits are reduced on November 2, 2005, or because of a conviction of a class A DOR, property items that are not allowed in administrative segregation will be handled in accordance with Division Directive 320.02.01.001, Control Of Offender Property, Section 05.02.03. Excess Or Unauthorized Property (Non-Criminal).

#### **07.03.00. Procedures For Offenders Receiving A Death Warrant**

Whenever an offender receives a death warrant, the condemned person will be placed in solitary confinement until execution. No person shall be allowed access to the condemned person except the following:

- law enforcement personnel investigating matters within the scope of their duties;
- the condemned person's attorneys of record;
- the agents of the condemned person's attorneys of record;
- attending physicians;

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spiritual advisers of the condemned person's choosing; and  
members of the condemned person's immediate family.

During the seven (7) days immediately preceding the scheduled execution, the condemned person may have contact visits with the condemned person's attorneys of record, the agents of the condemned person's attorneys of record, spiritual advisers of the condemned person's choosing, and members of the condemned person's immediate family.

Not to exceed seventy-two (72) hours, but at least twenty-four (24) hours before a scheduled execution, the condemned person will be housed in a cell isolated from other offenders. Staff will be assigned to observe the offender at all times and a separate log will be kept of that watch.

If a death warrant is stayed, the offender will be reviewed using the procedure in section 07.01.00. New Admissions And Placement Procedure, Including Release To Close Restricted Custody.

#### **07.04.00. Administrative Segregation Review Process**

Offenders under sentence of death housed in administrative segregation will be reviewed as follows:

A mental health specialist will review each offender every ninety (90) days. If the mental health specialist has any concerns, he will contact the facility head. If the concerns are of an emergent nature, the mental health specialist will contact the shift commander.

The facility restrictive housing committee for offenders under sentence of death will review such offenders at least annually, and the chairperson will forward status reports to the facility head (See Attachment B, Status Report); and

Recommendations for release to close-restricted custody will be handled in accordance with section 07.01.00 of this directive.

#### **07.05.00. Documentation**

All documentation will be completed in compliance with Division Directive 319.02.01.001, Restrictive Housing. Offender reviews will be documented in the weekly TCM meeting minutes.

#### **07.06.00. Offenders Awaiting Re-Sentencing**

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If an offender under sentence of death has said sentence revoked, commuted or repealed, the facility head shall:

contact the Office of the Attorney General to confirm the action;

if the action is confirmed, convene the facility restrictive housing committee identified in this directive to review the offender's placement;

review the committee's recommendations and decide the offender's placement; and

notify the operations division administrator and the director of the placement decision.

#### **07.07.00. Death Sentence Vacated**

If the death sentence is vacated, the facility head will confirm the action, then immediately contact the administrator of operations or duty officer.

The administrator of operations or duty officer will immediately convene Department leadership to determine the legal status of the offender.

If the offender is to be transported back to the county of origin, the administrator of operations, or designee, will contact the county sheriff to arrange for transport.

The administrator of operations, or designee, will notify the facility head regarding the decision.

#### **07.08.00. Access To Offender By Court Appointed Professional Expert**

If so ordered by the court, professional experts may have contact visits and may request removal of restraints. Before removal of restraints, the court ordered expert must sign a waiver of liability (See Attachment A, Waiver of Liability).

Court approved professional experts may be allowed to bring professional testing equipment and supplies. Only testing equipment and supplies specifically listed in the court order will be allowed.

At least forty-eight (48) hours before the testing, the institution must receive by mail or facsimile, on the expert's professional letterhead, a list of the equipment, a written description of how the equipment will be used, a description of how the offender will be in contact with the equipment, the purpose of the equipment, and an estimate of the time needed for the procedure.

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All testing equipment and supplies will be searched upon entering and exiting the facility. All electronic equipment must be turned on and demonstrated briefly as requested by facility staff.

**07.09.00. Offender Conduct**

Offenders under sentence of death, whether housed in close-restricted custody general population or administrative segregation, will be held to the same rules and standards of conduct as other offenders in the same housing unit.

**07.10.00. Offender Work Opportunities**

Offenders under sentence of death assigned to close-restricted custody general population will have a sixty (60) day waiting period before applying for any offender worker position. The hiring department's supervisor will review the TCM contact sheet information and request a referral from the TCM. To be considered for hire, the TCM must give a positive recommendation for the offender. The appropriate deputy warden will make the final decision to hire.

**08.00.00. FLOWCHART**

Not applicable to this directive.

**09.00.00. SIGNATURE**

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**Administrator, Operations**

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**Date**

**IDAHO DEPARTMENT OF CORRECTION**  
**Waiver of Liability**

I, \_\_\_\_\_,  
have been approved by a court of competent jurisdiction as an expert witness to examine  
and test offender \_\_\_\_\_,  
sentenced to death under the laws of the state of Idaho and housed at the Idaho Maximum  
Security Institution or Pocatello Women's Correctional Center. I understand that normal  
and prudent security practices would require that during the time that I am testing and  
examining this offender, the offender would be fully restrained. The tests for which I have  
been retained and approved to conduct require that the offender participate with one or  
both hands left unshackled. I understand that this is contrary to and inconsistent with  
sound correctional security practices and that I am at higher risk for injury or death to my  
person and damage to my equipment with the offender not fully restrained. Nevertheless, I  
request that \_\_\_\_ one or \_\_\_\_ both of the offender's hands remain unshackled during my  
testing and examination.

I knowingly and voluntarily assume any and all risk associated with this testing and,  
on behalf of myself, my heirs and my assigns, agree to release, indemnify and hold  
harmless the Idaho Department of Correction, its employees, agents heirs and assigns for  
any and all injuries or damages of any kind whatsoever to my person or equipment as a  
result of the examination and testing of the offender contemplated by this Waiver of  
Liability.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name (printed or typed)

**IDAHO DEPARTMENT OF CORRECTION**  
**Status Report**  
**Offenders Under Sentence of Death in Restrictive Housing**

Facility: \_\_\_\_\_ Review Date: \_\_\_\_\_ Review Time: \_\_\_\_\_  
Offender Name: \_\_\_\_\_ IDOC Number: \_\_\_\_\_

Staff comments (Observed behavior): \_\_\_\_\_  
\_\_\_\_\_

Offender's comments: \_\_\_\_\_  
\_\_\_\_\_

Recommended disposition:

\_\_\_\_\_ Continued administrative segregation placement  
\_\_\_\_\_ Release to close-restricted custody

Rationale: \_\_\_\_\_  
\_\_\_\_\_

Committee individual recommendations:

Chairperson: \_\_\_\_\_  
Member: \_\_\_\_\_  
Member: \_\_\_\_\_

Facility head recommendations:

\_\_\_\_\_ Continued administrative segregation placement  
\_\_\_\_\_ Release to close-restricted custody

Rationale: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Facility Head \_\_\_\_\_ Date \_\_\_\_\_

Administrative review committee's recommendations:

\_\_\_\_\_ Continued administrative segregation placement  
\_\_\_\_\_ Release to close-restricted custody

\_\_\_\_\_  
Chairperson \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Approved  
\_\_\_\_\_ Denied

\_\_\_\_\_  
Director of Correction \_\_\_\_\_ Date \_\_\_\_\_