

**64-13-40 Worship for native American inmates.**

- (1) As used in this section:
  - (a) "Items used in religious ceremonies" includes cedar, corn husks, corn pollen, corn meal, eagle and other feathers, sage, sweet grass, tobacco, pipes, willow, drums, gourds, lava rock, medicine bundles, bags or pouches, staffs, and other traditional items and materials.
  - (b) "Native American" means an individual who is eligible for membership in a tribe recognized by the federal government.
  - (c) "Native American religion" means a religion or religious belief that is practiced by a native American, the origin and interpretation of which is from a traditional native American culture or community.
  - (d) "Native American spiritual advisor" means a person who leads, instructs, or facilitates a native American religious ceremony or service, or provides religious counseling, and includes a sweat lodge leader, medicine person, traditional religious practitioner, or holy man or woman.
  - (e) "Site of worship" means a site indoors or outdoors where a person can pray or meditate, or where a sweat lodge ceremony, talking circle, or individual prayer can be made.
- (2)
  - (a) At the request of any native American inmate, a state correctional facility shall reasonably accommodate the practice of the native American inmate's religion including a native American religion at each state correctional facility, unless the inmate is a maximum security inmate and accommodating the maximum security inmate would threaten the reasonable security of the state correctional facility.
  - (b) In accommodating a native American religion, the state correctional facility shall:
    - (i) permit access on a regular basis to:
      - (A) a native American spiritual advisor; and
      - (B) a site of worship on the grounds of the correctional facility, unless the inmate is a maximum security inmate and permitting access would threaten the reasonable security of the state correctional facility;
    - (ii) permit access to items used in religious ceremonies during the religious ceremonies; and
    - (iii) provide a secure place at the site of worship to store the items used in religious ceremonies.
- (3) Notwithstanding Subsection (2)(b)(iii), the state correctional facility is not required to provide to the inmate any item used in religious ceremonies.
- (4) A native American spiritual advisor shall have any privilege of access to inmates and sites of worship provided to an individual functioning as a religious leader or advisor at a state correctional facility.
- (5) An inmate claiming to be a native American for purposes of this section shall bear the burden of establishing to the state correctional facility that the inmate is a native American.
- (6) The department may not require a native American inmate to cut the inmate's hair if it conflicts with the inmate's traditional native American religious beliefs.
- (7) A state correctional facility is required to comply with this section only to the extent that it does not threaten the reasonable security of the state correctional facility.
- (8) This section may not be construed as requiring a state correctional facility to permit access to peyote by a native American inmate.

Enacted by Chapter 88, 1996 General Session