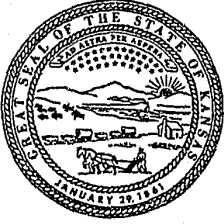




DEPARTMENT  
OF  
CORRECTIONS



STATE OF  
KANSAS

# INMATE RULE BOOK

Office of the:  
Secretary of Corrections

Effective April 20, 1992

138528

**Department of Corrections**

**REGULATIONS**

INMATE CONDUCT, PENALTIES,  
DISCIPLINE PROCEDURE, DISCIPLINARY AND  
ADMINISTRATIVE SEGREGATION,  
GRIEVANCE PROCEDURE, AND  
REPORTING AND CLAIMS PROCEDURE.

ARTICLE 44-12 Through 44-16 of Kansas  
Administrative Regulations

Office of the:  
**SECRETARY OF CORRECTIONS**

**EFFECTIVE: APRIL 20, 1992**

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## **Article 12.—CONDUCT AND PENALTIES**

### **CLOTHING, HYGIENE, SAFETY, APPEARANCE AND LIVING QUARTERS**

**44-12-101. Inmate clothing.** (a) Turn-in and issuance. Inmates shall turn in all personal clothing upon admission to a facility. Clothing furnished by the state facility shall be worn by all inmates unless exception is granted by the principal administrator with the approval of the secretary of corrections. Inmates shall not wear or have in their possession any other clothing, or clothing in excess of the authorized issue, unless specifically authorized by principal administrator's orders.

(b) Principal administrator's orders. Inmates shall follow the principal administrator's orders in regard to the clothing, care, and handling procedure.

(c) No inmate clothing will be given special treatment at the laundry, clothing distribution room, or elsewhere. Exchange of clothing shall be made according to established schedules and procedures. Inmates shall keep their clothing as neat and clean as conditions permit. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-102. Personal cleanliness.** Inmates shall shower or bathe a minimum of once a week. Inmates shall brush their teeth a minimum of once a day. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-103. Tattoos and body markings.** Inmates shall not place on or remove from, or allow to be placed on or removed from their body any tattoo or body marking, nor shall they place on or remove from the body of another inmate any tattoo or body marking. Removal or alteration of tattoos or body markings shall be performed by a medical officer after approval, in writing, has been given by the principal administrator. Violation of this rule shall be a class II offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

**44-12-104. Care of living quarters.** Every inmate shall keep his or her living quarters in a neat, clean and sanitary condition. Clothing shall be neatly hung or stored in designated places. Beds shall be made at all times when not in use. Linens shall be exchanged in accordance with the established facility procedures. Wash basins and toilet bowls shall be kept clean. No alteration, painting of, or addition

to any assigned quarters or its equipment shall be made without approval according to the orders of the institution or facility. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-105. Unsanitary practices.** No inmate shall throw trash of any kind upon the floors, sidewalks, or grounds of any facility. All rubbish shall be placed in the containers provided for that purpose. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-106. Hair standards and appearance.** All inmates shall keep their hair neat and clean and follow reasonable health and safety standards. When working in food services, inmates shall wear cook's hats, or nets or both for sanitary purposes. Males working in food services shall not have facial hair in excess of one inch in length and shall keep such hair neat and clean. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1987.)

**44-12-107. Use of safety devices.** All inmates shall use safety devices provided in accordance with the orders of the principal administrator. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

#### **PROPERTY AND MONEY: OWNERSHIP, POSSESSION, REGISTRATION, CARE AND USE**

**44-12-201. Registration and use of personal property.** It shall be the responsibility of each inmate to make certain that such items of personal property in his or her possession as designated by Department of Corrections Internal Management Policy and Procedure or orders of the principal administrator of the facility are properly registered. Each inmate shall be required, upon demand, to produce any personal property registered in his or her name or issued to him or her, unless previously reported lost according to proper procedure. (See also K.A.R. Article 44-16, reporting lost or damaged property.) Violation of this rule shall be a class II offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended April 20, 1992.)

**44-12-202. Radios, T.V.'s, musical instruments or other sound equipment.** All personal radios, T.V.'s, and other electronic sound equipment shall be played only in accordance with the orders of the principal administrator. Size, type, and

capacity of such equipment shall be limited by internal management policies and procedures issued by the secretary of corrections. All such equipment, as well as all musical instruments, shall be possessed and used in accordance with the orders of the principal administrator. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended May 1, 1985; amended April 20, 1992.)

**44-12-203. Theft.** Theft is any of the following acts done with intent to deprive the owner permanently of the possession, use, or benefit of his or her property: (a) Obtaining or exerting unauthorized control over property; or  
(b) Obtaining by deception control over property; or  
(c) Obtaining by threat control over property; or  
(d) Obtaining control over stolen property knowing the property to have been stolen by another. Violation of this rule shall be a class I offense. (Authorized by K.S.A. 1979 Supp. 75-5210(f); effective May 1, 1980.)

**44-12-204. Taking without permission.** No inmate shall take without permission, regardless of the intent, articles of any kind from any other person or place, nor shall the inmate obtain such articles by fraud or dishonesty. Violation of this rule shall be a class II offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-205. Unauthorized dealing or trading.** Trading, borrowing, loaning, giving, receiving, selling, or buying between, or among inmates without written permission of the principal administrator or designee is prohibited. Violation of this rule shall be a class II offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1988; amended April 20, 1992.)

**44-12-206. Debt adjustment or collection prohibited.** All debt adjustment or collection among inmates is strictly prohibited. Violation of this rule shall be a class II offense. (Authorized by and implementing K.S.A. 1979 Supp. 75-5210(f); effective May 1, 1980.)

**44-12-207. Gambling and bookmaking.** An inmate shall not make any bet, operate or bank any gambling pool or game, keep book, or engage in any form of gambling. An inmate shall not possess, transfer, sell, distribute, nor obtain dice or other gambling paraphernalia. An inmate shall not receive, possess, distribute, sell, nor transfer lottery tickets. Violation of this rule shall be a class II offense. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1988.)

**44-12-208. Misuse of state property.** No inmate shall destroy, damage, deface, alter, or misuse, or fail to return when due any article of any property including clothing and shoes. Violation shall be a class II offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-209. Entering into contracts, incurring financial obligations.** No inmate shall enter into a contract, or incur any financial obligation, including orders by mail, without the principal administrator's approval. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended April 20, 1992.)

**44-12-210. Accounts.** No inmate shall establish any checking or savings account outside the trust fund while confined in a correctional facility unless authorized by the principal administrator. Violation of this rule shall be a class II offense. (Authorized by K.S.A. 1980 Supp. 75-5210, 75-5210(f); effective May 1, 1980; amended May 1, 1981.)

#### **DEPARTMENT, VIOLENCE, DISRUPTIVE BEHAVIOR AND RIOT**

**44-12-301. Fighting.** Fighting or other activity which constitutes violence, or which is likely to lead to violence, is prohibited, unless such activity is in self-defense. Violation of this rule shall be a class I offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-302. Noise.** Inappropriate booing, whistling, shouting, or other loud and disturbing noises are not permitted. Violation of this rule shall be a class III offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

**44-12-303. Lying.** Every inmate shall speak the truth. No inmate shall lie, misrepresent the facts, mislead, or give false or misleading information to an officer, employee, or any other person assigned to supervise inmates or others having a right to know. No inmate shall make any false allegations against any officer, employee, inmate, or other person. Violation of this rule shall be a class II offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

**44-12-304. Disobeying orders.** (a) Each inmate shall promptly and respectfully obey any order, directive, or instruction given to the inmate by any employee of the institution or facility, or by an employee of any other agency in charge

of the inmate. In case of conflicting orders, the last order shall be obeyed. Violation of this rule shall be a class I offense.

(b) When an order is violated, the specific circumstances surrounding the violation charges shall be included in:

- (1) the disciplinary report bringing the charge;
- (2) the investigation report; and

(3) if used, the officer's written statement in lieu of testimony. (Authorized by and implementing K.S.A. 1979 Supp. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-1, Jan. 5, 1983; amended May 1, 1984; amended May 1, 1987.)

**44-12-305. Insubordination or disrespect to officers or other employees.** Inmates shall be attentive and respectful towards employees, visitors, and officials. The showing of disrespect, directly or indirectly, or being argumentative in any manner shall be considered insubordination. This excludes an initial exchange or discussion in a civilized tone for the purpose of clarification of the order so long as not disrespectful or argumentative. Violation of this rule shall be a class II offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

**44-12-306. Threatening or intimidating any person.**

(a) An inmate shall not threaten or intimidate, either directly or indirectly:

(1) any employee of the department of corrections or any of its facilities;

(2) any employee of any contractor;

(3) any state official, volunteer, or person on the premise or functioning as part of the correctional program or criminal justice system;

(4) any official visitor; or

(5) another inmate. This rule shall specifically prohibit conditional threats or intimidation. Violation of section (a) of this rule shall be a class I offense.

(b) A civilized warning by the inmate that the inmate may properly use legal process to enforce rights or redress wrongs, including use of the inmate grievance procedure, shall not be considered a violation of this rule. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1984; amended May 1, 1986.)

**44-12-307. Avoiding an officer.** No inmate shall run from or deliberately avoid any officer or employee when required, ordered, or requested to be present to talk with, accounted for, searched, or questioned by such officer or employee. Violation of this rule shall be a class I offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-308. Improper use of food.** It is the responsibility of every inmate to accept no more food or drink than he or she will consume. No inmate shall wastefully and deliberately destroy food. Inmates shall not carry any food or drink from the dining area or kitchen, except as allowed under the facility orders. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-309. Kitchen utensils or shop tools.** Inmates shall not remove or have in their possession any eating or cooking utensils or tools without proper authorization. Violation of this rule shall be a class II offense. (Note: Possession of utensils or tools may be considered dangerous contraband and punishable as a class I offense.) (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-310. Misconduct in dining room.** All inmates shall enter and leave the dining room in accordance with the established procedure at each institution or facility, and shall conduct themselves in an orderly manner while in the dining room. Violation of this rule shall be a class II offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

**44-12-311. Being in a condition of drunkenness, intoxication, state of altered consciousness.** No inmate shall at any time be drunk, intoxicated, or be in a chemically induced state of altered consciousness. Violation of this rule shall be a class I offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

**44-12-312. Use of stimulants, sedatives, unauthorized drugs, or narcotics, or the misuse, or hoarding of authorized or prescribed medication.** (a) No inmate shall take into his or her bodily system any kind of substance which is capable of producing intoxication, hallucination, stimulation, depression, dizziness, or other alteration of the inmate's state of consciousness or feeling, except accepted foods, such as coffee and tea, and legal drugs, such as medication properly and legally prescribed or authorized for a specific inmate by an authorized licensed physician. Alcohol in any form is specifically declared not to be an accepted food or drink, unless it is a component of authorized or prescribed medication.

(b) Misuse or hoarding of authorized or prescribed medication is prohibited.

(1) "Misuse of medication" means any use other than that for which the medication was specifically authorized or prescribed.

(2) "Hoarding of medication" means having possession or control of or holding any quantity of authorized or prescribed



medication greater than an amount or dosage that has been issued to the inmate by medical staff, or greater than the amount that should be remaining if the inmate has taken the medication in accordance with the prescription and instructions from medical staff.

(c) No inmate shall leave the infirmary or any area where medication is issued while in possession or control of any medication unless removal of the medication from such area has been authorized by medical staff. Violation of this rule shall be a class I offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-313. Obscenity.** (a) No inmate shall have in his or her possession or under his or her control any obscene writing, pictures, items, or devices. Violation of this rule shall be a class III offense unless the obscene material involves children under the age of eighteen years, in which case violation of this rule shall be a class I offense.

(b) Any material is obscene if the average person applying contemporary community standards would find that the material, taken as a whole:

(1) appeals to the prurient interest;

(2) has patently offensive representations or descriptions of (A) ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse or sodomy; or (B) masturbation, excretory functions, sadomasochistic abuse, or lewd exhibition of the genitals; and

(3) would not be considered by a reasonable person to have serious literary, educational, artistic, political, or scientific value. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-314. Sodomy; aggravated sodomy; aggravated sexual act.** (a) No inmate shall commit or induce others to commit an act of sodomy, even with the consent of both parties. Participation in such an act shall be prohibited.

(b) No inmate shall force or intimidate another person to commit any kind of sexual act or sodomy. No inmate shall solicit or arrange for the application of force or intimidation by another person in order to commit any kind of sexual act or sodomy against another person. No inmate shall participate in any scheme or arrangement to force or intimidate another person to commit any sexual act. Sodomy is defined as oral contact or oral penetration of the female genitalia or oral contact of the male genitalia; anal penetration, however slight, of a male or female by any body part or object; or oral or anal copulation or sexual intercourse between a person and an animal. Violation shall be a class I offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1984; amended April 20, 1992.)

**44-12-315. Lewd acts.** No inmate shall engage in a lewd or lascivious manner in any acts of kissing, fondling, touching, or embracing, whether they be with a person of the same or opposite sex.

(b) An inmate shall not intentionally expose a sex organ with the knowledge or reasonable anticipation that the inmate will be viewed by others and with the intent to arouse or gratify the sexual desires of the inmate or another. The first or second violation of this rule shall be a class II offense. A third or subsequent violation of this rule shall be a class I offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended April 20, 1992.)

**44-12-316.** (Authorized by and implementing K.S.A. 1982 Supp. 75-5210; effective May 1, 1980; amended May 1, 1984; revoked April 20, 1992.)

**44-12-317. Falsifying documents.** No inmate shall falsify any document. Violation of this rule shall be a class II offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-318. Disruptive behavior.** No inmate shall start or get others to start, or perform or participate in, or help others to perform or participate in any disruptive behavior. Violation of this rule shall be a class II offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

**44-12-319. Riot or incitement to riot.** (a) Riot is any use of force or violence by three or more persons acting together and without the authority of law which produces a breach of the peace on the premises of a correctional facility whether within or without the security perimeter itself, or any threat to use such force or violence against any person or property, if accompanied by power or apparent power of immediate execution.

(b) Incitement to riot is urging others by words or conduct to engage in riot under circumstances which produce a clear and present danger of injury to persons or property, or a breach of the peace. Violation of this rule shall be a class I offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-320. Interference with official duties.** No inmate shall interfere in any way or ask others to interfere with the performance of official duties by any officer or employee. Violation of this rule shall be a class I offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-7210(f); effective May 1, 1980.)

**44-12-321. Conduct regarding visitors or the public.** Inmates shall treat visitors and members of the public in a respectful and helpful manner. Inmates shall comply with the orders of the principal administrator regarding contact with visitors or the public and shall maintain a dignified and respectful demeanor while in the presence of such individuals. Violation of this rule shall be a class II offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-322. Arson.** Arson is knowingly, by means of fire or explosive, damaging any property. Violation of this rule shall be a class I offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

**44-12-323. Assault.** An assault is an intentional threat or attempt to do bodily harm to another, coupled with apparent or recognizable ability to carry out the threat or attempt, and resulting in immediate apprehension or fear of bodily harm. No bodily contact is necessary. Violation shall be a class I offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-324. Battery.** Battery is the unlawful or unauthorized, intentional touching or application of force to the person of another, when done in a rude, insolent, or angry manner. Violation of this rule shall be a class I offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-325. Inmate activity; limitations.** (a) No proselytizing of religious faiths or beliefs shall be allowed in the facilities. "Proselytizing" is an active effort to persuade one to convert to a religious belief without such person's prior consent. However, nothing herein shall prohibit one to one conversation about religious matters. Violation of this section shall be a class III offense.

(b) Inmates shall not serve in the capacity of clergy or religious instructors at any time except for purposes of K.A.R. 44-7-113, on recommendation of chaplain and the approval of the principal administrator. Violation of this section shall be a class III offense.

(c) Inmates shall not develop, organize, promote or assist any unsanctioned prison group nor engage in any activity calculated to incite a demonstration by any unsanctioned prison group. "Unsanctioned prison group" means any ongoing formal or informal organization, association, or group of three or more persons which have a common name or identifying sign or symbol, and which has not been specifically approved by the principal administrator. Violation of this

section shall be a class I offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended April 20, 1992.)

**44-12-326. Sexual activity.** No inmate shall engage in sexual intercourse with any other inmate, staff member, volunteer, contract employee, or visitor. Violation shall be a class I offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended April 20, 1992.)

**44-12-327. Interference with restraints.** No inmate shall interfere or assist other inmates in interfering in any way with handcuffs or other restraints which have been applied to the inmate by an officer or employee. An inmate shall not remove or attempt to remove himself or another inmate from handcuffs or other restraints without approval of an officer or employee. Violation of this rule shall be a class I offense. (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1988.)

**44-12-328. Relationships with staff.** No inmate shall solicit, encourage, establish, or participate in any type of personal relationship with any staff member. A personal relationship is any relationship involving unnecessary familiarity by the inmate toward the staff member. Any contact between an inmate and staff member other than a polite exchange of remarks or casual conversation shall be limited to that contact necessary to allow the staff member to carry out official duties and provide authorized assistance to the inmate in a professional manner. Violation of this rule shall be a class I offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective April 20, 1992.)

#### **ASSIGNMENTS TO AND PERFORMANCE OF WORK, EDUCATION, TRAINING, OR OTHER DUTY**

**44-12-401. Work performance.** (a) No inmate shall intentionally interfere with, delay, or disrupt work in progress, or sabotage the work, machinery, systems, or products, nor shall any inmate assist or participate in such actions. Violation of this rule shall be a class I offense.

(b) All inmates shall perform work assigned in the manner prescribed and according to the directives of his or her supervisor or other authorized official. Intentional failure to report to or depart from work at the prescribed time and without unnecessary delay enroute is prohibited. Violation of this rule shall be a class II offense.

(c) No inmate shall slow the work progress through carelessness or neglect. Violation of this rule shall be a class II offense.

(d) No inmate shall be tardy for work. Violation of this rule shall be a class III offense.

(e) Work as defined in this rule includes any work assignment, educational, vocational, counseling, or training program to which an inmate has been assigned. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1988; amended April 20, 1992.)

#### **BEING PRESENT AND ACCOUNTED FOR**

**44-12-501. Answering calls or passes.** Inmates shall respond promptly to all calls made for them and shall move from place to place as required by the orders of the facility. No inmate shall destroy or alter a pass issued to him or her. Inmates shall present a pass to the proper person at the time and place indicated on the pass. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-502. Responsibility for counts.** Every inmate shall be present at the proper time and place of counts, in accordance with the orders of the principal administrator. Causing a delay that renders the count inaccurate or more difficult, or failure to be present during the count process shall be considered as fouling count. Violation of this rule shall be a class I offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-503. Restricted area and unauthorized presence or out-of place in assigned domicile.** (a) Restricted area. Each inmate shall make himself or herself aware of all restricted areas. Inmates shall not enter a restricted area without a direct order by a correctional employee authorized to render such order or unless expressly permitted in writing by the principal administrator. Violation of this rule shall be a class II offense.

(b) Unauthorized presence. Inmates shall not be present in any area without authorization. If a pass is required the inmate shall show the pass when required to do so. Specific permission or authorization, whether verbal or written, is required for an inmate to be present at any location at any time. Violation of this section shall be a class III offense.

(c) Out-of-place in assigned domicile. An inmate shall not roam about in the housing unit nor be any place in the housing unit without permission of the unit team. This section applies to conditions where the presence generally in the living unit itself is otherwise authorized. Violation of this section shall

be a class III offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-12-504. Interference with cell operation and visibility.** No inmate shall block or otherwise interfere with the operation of the cell opening and closing mechanism in any way, nor shall any inmate cover his or her cell as to block visibility into the cell, except as allowed by the principal administrator's orders. Violation of this rule shall be a class II offense. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended May 1, 1987.)

**44-12-505. Restriction.** No inmate shall avoid, break or violate the terms of a restriction which has been imposed upon him or her. Violation of this rule shall be a class II offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

**44-12-505b. Medical Restriction.** In order not to aggravate any injury, illness, or other medical condition, inmates shall not participate in any work or recreational activities that violate a documented medical restriction which they have received. Violation of this rule shall be a class III offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective April 20, 1992.)

**44-12-506. Change of name as it appears on journal entry of sentence, convictions.** In all matters an inmate shall respond to officials when addressed by the name under which he or she was committed to the custody of the secretary of corrections until discharged from sentence. An inmate shall be referred to in all official transactions, and all correspondence to and from the inmate, under the name used in the journal entry of convictions and commitment throughout his or her period of incarceration. In the event of a legal name change, the records may reflect the new name as an alias and the inmate may use the alias name in parentheses after the conviction name. All directives to, references to, or orders to an inmate by his or her convicted name shall be complied with regardless of the fact that he or she may have changed his or her name. No charge shall be made against any inmate under this rule because the inmate is the addressee of any mail, phone call, document or other communication under the non-conviction name unless it is alleged and proven that the inmate was knowing and willing conspirator or instigator of such use of non-conviction name. Violation of this rule shall be a class II offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

## INMATE WRITING AND OTHER INMATE COMMUNICATIONS OR PUBLICATIONS

### 44-12-601. Mail. (a) Definitions.

(1) Legal mail means mail which affects the inmate's right of access to the courts or legal counsel. It includes letters between the inmate and any lawyer, a judge, a clerk of a court, or any intern or employee of legal services for prisoners.

(2) Official mail means any mail to an official of the state or federal government who has authority to control, or to obtain or conduct an investigation of, the custody or conditions of confinement of the inmate.

(3) Privileged mail means any mail between the inmate and the inmate's doctor.

(4) Censor means to remove or change any part or all of the correspondence or literature.

(5) Read means to read the contents of correspondence or literature to ascertain the content.

(6) Inspect means to open, shake out, look through, feel or otherwise check for contraband without reading or censoring.

(b) Inmates shall comply with the mail procedures and restrictions established by the order of the principal administrator of the facility. Failure to comply with mail procedures or restrictions, or circumventing or attempting to circumvent mail procedures or restrictions by any means, shall be prohibited. Any delivery of mail through an employee, volunteer, teacher, or any other person who is not authorized to perform functions related to the established mail handling system shall be prohibited.

(c) Contraband. Except as provided in subsection (r), items identified as contraband shall be dealt with as provided in subsections (i) and (j) and then either returned to the sender at the inmate's expense or destroyed, at the inmate's option. Items which are illegal under Kansas or U.S. law shall be seized and held as evidence for other law enforcement officers.

(d) Direct communication with officials. Outgoing official or legal mail sent by any inmate shall not be opened. However, if any inmate threatens or terrorizes any person through such mail, subsequent mail, including official or legal mail, from the inmate to the person threatened or terrorized may, at the request of that person, be read and censored for a time period and to the extent necessary to remedy the abuse.

(e) Incoming mail which is clearly identified as legal, official, or privileged mail shall be opened only in the inmate's presence. Such mail shall be inspected for contraband but shall not be read or censored.

(f) Violation of mail regulations of the department of corrections, orders of the principal administrator, or the laws of Kansas or the United States may result in an investigation. Additional mail restrictions, sufficient to prevent the con-

tinuation or reoccurrence of the violation, may be placed upon the offender.

(g) Incoming or outgoing legal, official, or privileged mail shall not be censored or read unless a previous abuse of the right, or other good cause, is shown and documented. All other mail may be read by a designated official of the facility upon authorization by the principal administrator.

(h) All funds sent to inmates shall be in the form of a money order, a cashier's check, or a certified check.

(i) Any incoming or outgoing mail other than legal, official or privileged mail may be inspected at any time. Such mail may be censored only when there is reasonable belief that:

(1) there is a threat to institutional safety, order, or security;

(2) there is a threat to the safety and security of public officials or the general public; or

(3) the mail is being used in furtherance of illegal activities. Such mail may also be censored if it is obscene and the addressee, or the responsible parent or guardian of any addressee who is a minor, has filed with the principal administrator a written complaint regarding previous correspondence and a request that future correspondence be stopped.

(j) If any communication to or from an inmate is censored, the following procedures shall be conducted:

(1) Each inmate shall be given a written notice of the censorship and the reason for censorship without disclosing the censored material;

(2) each inmate shall be given the name and address of the sender of incoming mail or the addressee of outgoing mail and the date the item was received in the mail room;

(3) the author of the censored correspondence shall be given a reasonable opportunity to protest that decision;

(4) protests shall be referred to a prison official other than the person who originally disapproved the correspondence.

(k) Incoming bulk mail shall not be delivered unless each piece is individually addressed to the inmate by conviction name.

(l) Any outgoing first class letters may be sent to as many people and to whomever the inmate chooses, subject to the foregoing restrictions.

(m) Outgoing inmate mail shall bear the full conviction name, inmate number, and address of the sender and the name and address of the intended recipient. No other words, drawings, or messages shall be placed on the outside of the envelope or package by an inmate except words describing the mail as being legal, official, privileged, or intended to aid postal officials in delivery of the item. Outgoing inmate mail shall be stamped by the institution to indicate that it was mailed from an institution operated by the department of corrections and that it has not been censored.

(n) The facility shall provide reasonable amounts of free writing paper and envelopes to all inmates, except those in



a work release facility or employed by private industry. Inmates may also purchase stationery from the inmate canteen. The facility shall pay postage for the initial two pieces of first class domestic mail weighing one ounce or less each, per week, for each individual inmate, except those in a work release facility or employed by private industry. Postage for any such domestic mail in excess of two pieces per week shall be paid by the inmate. All postage for legal and official mail shall be paid by the institution or facility except for inmates in a work release facility or employed by private industry. The facility shall not pay postage for inmate groups or organizations.

(o) Inmates shall not correspond with any person who has filed a written objection to the correspondence with the principal administrator of the facility. The inmate shall be notified of the objection in writing when it is received, but need not be informed of the exact contents of the objection. In the instance of unwanted correspondence to a minor, the objection shall be filed by the parent or guardian of the minor. The principal administrator of each facility shall develop orders to prevent further correspondence from being sent to those who have filed an objection. This regulation shall not prevent an inmate from writing to the inmate's natural or adoptive child, unless the child was the victim of the crime for which the inmate is incarcerated and the person having legal custody of the child files a written objection with the principal administrator, and the inmate has not obtained a court order permitting such written communication with the child.

(p) Publications.

(1) Any inmate may receive books, newspapers, and periodicals except for those inmates assigned to the reception and diagnostic unit of the Topeka correctional facility for evaluation purposes. Only books, newspapers, or periodicals received directly from a publisher or a vendor shall be accepted.

(2) The procedures for censorship of mail listed in subsection (j) of this regulation shall be used for censorship of publications.

(3) Inmates shall have the option of having censored publications mailed out of the facility at their own expense, or discarded.

(4) Publications which are obscene or otherwise illegal, in whole or in part, or which meet, in whole or in part, the test for censorship of mail in subsection (i) of this regulation, shall not be allowed into the facility.

(5) On transfer between institutions or facilities, the inmate shall arrange change of address for newspapers and periodicals. Newspapers and periodicals shall not be forwarded for more than 30 days after the date of transfer.

(q) Packages. A procedure for the handling of packages, both incoming and outgoing, shall be established by order

of the principal administrator.

(r) Each principal administrator may permit inmates to receive not more than one special holiday package in November or December of each year. These packages shall be processed as follows:

(1) Inmates shall be given written notice of the number and types of items which are authorized to be included in these packages.

(2) Inmates shall be responsible for notifying persons sending packages to them of authorized contents.

(3) The principal administrator may destroy or donate to a charitable organization any unauthorized non-food items included in the packages. However, the inmate may elect to forward the items to another address, at the inmate's expense, within three days after being notified of receipt of the unauthorized items.

(4) The principal administrator may destroy or donate to a charitable organization any unauthorized commercially prepared and packaged food items included in the packages. All homemade foods, fruits, and commercially packaged food not in original packing shall be destroyed.

(s) Violation of this regulation shall be a class II offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended May 1, 1986; amended May 1, 1988; April 20, 1992.)

**44-12-602. Posting notices.** No inmate may post or distribute any written communications without the principal administrator's written approval. Violation of this rule shall be a class II offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

#### **LEGAL WORK; LAW LIBRARY, LEGAL ASSISTANCE**

**44-12-701.** (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980; revoked April 20, 1992.)

**44-12-702. Legal assistance by inmates.** In accordance with applicable rules of the institution or facility an inmate may give, but may not charge for, assistance in legal matters to another inmate but only when such assistance is requested by the other inmate. Violation shall be a class II offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

#### **ADMINISTRATION PUBLICATIONS AND POSTINGS**

**44-12-801. Bulletin boards.** No inmate shall remove any item from any bulletin board. Inmates shall be held respon-

sible for compliance with orders published by posting on the bulletin boards. Bulletin boards shall be used by and be under the exclusive control of the principal administrator or his or her designee. Violation of this rule shall be a class II offense. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

## **CONTRABAND**

**44-12-901. Dangerous contraband.** (a) Dangerous contraband is defined as: (1) Any item or any ingredient or part of or instructions on creation of such item, which is inherently capable of causing serious damage to persons or property, or is capable or likely to produce or precipitate dangerous situations or conflict, and which is not issued by the department of corrections or the facilities, sold through the canteen, or specifically authorized or permitted by order of the principal administrator for use or possession in designated areas of the facility; or

(2) Any item which can be the basis for a charge of felony for its possession under the laws of Kansas or the United States; or

(3) Any item which, although authorized, is misused if the item in its misused form has the characteristics of being able to cause serious damage to persons or property or being likely to precipitate dangerous situations or conflicts; or

(4) Any item which would constitute traffic in contraband in violation of K.S.A. 21-3826.

(b) All contraband shall be confiscated and may be ordered forfeited by the inmate at the discretion of the disciplinary hearing officer.

(c) No inmate shall possess, hold, sell, transfer, receive, control, distribute, or solicit any dangerous contraband. Violation of this rule shall be a class I offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended April 20, 1992.)

**44-12-902. Less dangerous contraband.** (a) Less dangerous contraband is: (1) Any item or any ingredient or part of or instructions for creation of such item, which is moderately dangerous in the facility environment, and which is not issued by the department of corrections, facilities, sold through the canteen, or specifically authorized or permitted by order of the principal administrator for use or possession in designated areas of the facility; or

(2) Any item which, although authorized, is misused in a way which causes some danger to persons or property.

(b) All contraband shall be confiscated, and may be ordered forfeited by the inmate at the discretion of the disciplinary hearing officer.

(c) No inmate shall possess, hold, sell, transfer, receive,

control, distribute, or solicit any contraband. Violation of this rule shall be a class II offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

#### **VIOLATION OF STATUTES, REGULATIONS AND ORDERS**

**44-12-1001. Violation of statutes, other regulations, or orders.** (a) Unless otherwise designated in this rule book, violation of state or federal statutes shall be a class I offense if the statute is a felony crime. A violation shall be a class II offense if the statute designates a misdemeanor criminal offense.

(b) Unless otherwise designated in this rule book, violation of any civil penalty statute or any regulation shall be a class III offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended April 20, 1992.)

**44-12-1002. Violation of published orders.** Violation of published orders of the principal administrator of the facility shall be an offense of the class stated in the order itself, or if no class is stated it shall be a class III offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

#### **ATTEMPT, CONSPIRACY AND ACCESSORY TO COMMISSION OF OFFENSE**

**44-12-1101. Attempt, conspiracy, accessory, and solicitation.** Any attempt or conspiracy to violate any rule, or acting as an accessory for any offense, or soliciting another or other persons to commit any offense, shall carry the same penalty as the offense itself. The specific rule which is the basis of the attempt, conspiracy, accessory, or solicitation shall be stated and described in the disciplinary report.

(a) Attempt.

(1) An attempt is any overt, or clearly evident, act toward the perpetration of an offense by an inmate who intends to commit the offense but fails in the perpetration of the offense or is prevented from or intercepted in executing that offense.

(2) It shall not be a defense to a charge of attempt that the circumstances under which the act was performed or the means employed or the act itself were such that the commission of the offense was not possible.

(b) Conspiracy.

(1) A conspiracy is an agreement with another person to commit an offense or to assist in committing an offense. No inmate may be convicted of a conspiracy unless an overt act furthering that conspiracy is alleged and proved to have been committed by the inmate, or by a co-conspirator.

(2) It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of the accused conspirators, before any overt act furthering the conspiracy was committed by the accused or by a co-conspirator.

(c) Accessory to an offense. Aiding an offender or one charged with an offense is knowingly harboring, concealing, or aiding any inmate who has committed an offense, or one who has been charged with an offense, with intent that such inmate shall avoid or escape from apprehension, disciplinary hearing, conviction, or punishment for such offense.

(d) Solicitation. Solicitation is commanding, encouraging, or requesting another person to commit an offense, attempt to commit an offense, or aid and abet in the commission or attempted commission of an offense for the purpose of promoting or facilitating the offense. It shall not be a defense to a charge of solicitation that the inmate failed to communicate with the person solicited to commit the offense if the inmate's conduct was designed to effect a communication. It shall be a defense to a charge of solicitation that the inmate, after soliciting another person to commit an offense, persuaded that person not to do so or otherwise prevented the commission of the offense, under circumstances manifesting a complete and voluntary renunciation of the inmate's prohibited purposes. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective, E-79-37, Jan. 1, 1979; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended April 20, 1992.)

### INCREASED PENALTIES

**44-12-1201. Increased penalty for involving or victimizing one under 18.** If any inmate who is 18 years of age or older involves, induces, or solicits an inmate who is less than 18 to commit an offense, or if the victim of an offense committed by the older inmate is an inmate who is less than 18, the older inmate may be subject to a penalty which is double the penalty established for the offense under these regulations. A finding that the older inmate is guilty of the same offense committed by the younger inmate, that the older inmate is guilty of a violation of K.A.R. 44-12-1101 with respect to that offense, or that the older inmate is guilty of an offense involving the victimization of the younger inmate shall be necessary in order to invoke the increased penalty. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended April 20, 1992.)

**44-12-1202. Conviction of four offenses in six months.**

Subject to the limitations contained in K.A.R. 44-12-1308, upon conviction of the fourth offense of the same class within the immediate prior six month period, the hearing officer may impose a sentence for such fourth offense not greater than twice the maximum that can be imposed for an offense of that class. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**CLASSIFICATION OF OFFENSES AND PENALTIES**

**44-12-1301. Class I offenses.** (a) Class I offenses are:

(1) Those violations of a very serious nature that are designated in this code as class I offenses, whether or not such offense is also a violation of law;

(2) those violations of law designated by the laws of the state of Kansas as felonies; or

(3) those violations of law designated by the laws of the United States as felonies.

(b) The penalty for a class I offense may be any or all, or any combination of the following:

(1) Disciplinary segregation, not to exceed 45 days;

(2) loss of "good time credits," not to exceed six months;

(3) extra work for up to two hours per day, not to exceed 30 days;

(4) restriction to inmate's own cell, not to exceed a period of 10 days;

(5) restriction from privileges, not to exceed 60 days;

(6) a fine, not to exceed \$20.00;

(7) restitution; or

(8) an oral or written reprimand. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May, 1 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended April 20, 1992.)

**44-12-1302. Class II offenses.** (a) Class II offenses are:

(1) Those offenses of moderate seriousness that are designated in this code as class II offenses, whether or not such offenses are also violations of the law;

(2) those violations of law designated by the laws of the state of Kansas as misdemeanors; or

(3) those violations of law designated by the laws of the United States as misdemeanors.

(b) The penalty for a class II offense may be any, or all, or any combination of the following:

(1) Disciplinary segregation, not to exceed 15 days;

(2) loss of good time credits, not to exceed three months;

(3) extra work for up to two hours per day, not to exceed 20 days;

(4) restriction to inmate's own cell for a period, not to exceed seven days;

(5) restriction from privileges, not to exceed 30 days;

(6) a fine, not to exceed \$15.00;

(7) restitution; or

(8) an oral or written reprimand. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May, 1 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended April 20, 1992.)

**44-12-1303. Class III offenses.** (a) Class III offenses are those offenses of a less serious nature that are designated in this code as class III offenses, whether or not such offense is also a violation of law. Any violation of any published secretary of corrections' regulation or order of the principal administrator which is not otherwise designated in these regulations or principal administrator's orders as a class I or class II offense shall be a class III offense.

(b) The penalty for a class III offense may be any, or all, or any combination of the following:

(1) Restriction to inmate's own cell for a period not to exceed three days;

(2) restriction from privileges for period not to exceed 20 days;

(3) extra work for not more than two hours per day for a period not to exceed 10 days;

(4) a fine, not to exceed \$10.00;

(5) restitution; or

(6) an oral or written reprimand. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May, 1 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended April 20, 1992.)

**44-12-1304.** (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective May 1, 1980; amended May, 1 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; revoked April 20, 1992.)

**44-12-1305. Use of fines.** Fines shall be deposited in the inmate benefit fund. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

**44-12-1306. Use of restitution.** (a) When restitution is used in the disciplinary process the following rules and limitations shall apply:

(1) The amount of and manner of payment of restitution imposed may be appealed in the same manner and to the same extent as any other appeal of sentence in the disciplinary process.

(2) The appropriateness and amount of restitution ordered shall be determined by consideration of the factors set forth in K.A.R. 44-12-1307.

(3) No inmate shall be required to continue payment on any restitution imposed under these rules after the release from incarceration and no portion of the inmate's gate money gratuity as authorized by K.S.A. 75-5211 shall be used toward the payment of such restitution.

(4) Restitution shall continue to be paid out of money earned by the inmate in the work release program, the private nonprison employment program, or any other gainful employment industries program. Restitution payment shall be limited to a reasonable amount and where appropriate shall be made in installments.

(5) The inmate shall be given notice, not later than the beginning of the disciplinary hearing, of the amount of value of the property which will constitute the basis for restitution, and shall be given an opportunity at stage C of the hearing to present contrary evidence regarding such value. The hearing officer shall limit the evidence to a reasonable amount and extent as is appropriate to the nature of the administrative hearing, the level of the offense, and the extent of possible impact on the inmate's resources.

(b) If restitution is to the state, the money shall be deposited to the state general fund. If restitution is to an inmate, the money shall be transferred by the clerk from the account of the inmate payer to the account of the inmate payee after the conclusion of the entire disciplinary process, including any appeal. If restitution is to any other person, the hearing officer shall determine how payment is to be made and the principal administrator or designee shall review the same for approval, conferring with the facility business manager where appropriate. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1981; amended May 1, 1987; amended April 20, 1992.)

**44-12-1307. Fines and restitution, imposition and collection; limits.** Fines shall be fairly and appropriately used. Fines shall not be used in such a way as to disrupt family support payments, tax payments or court-ordered restitution payments, or to interfere with the inmate's ability to purchase basic hygiene items. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1984; amended May 1, 1985; amended April 20, 1992.)

**44-12-1308. Disciplinary segregation; limits.** (a) The maximum sentence of disciplinary segregation for all violations arising out of one incident shall not exceed 60 days.

(b) Continuous confinement in disciplinary segregation for more than 30 days shall require the review and approval of the principal administrator. (Authorized by and implementing 1983 Supp. 75-5210; effective May 1, 1985.)



## **Article 13.—DISCIPLINARY PROCEDURE**

### **PROCEDURE GENERALLY**

**44-13-101. Disciplinary procedure established, general description of system.** (a) The principal administrator of each facility shall establish a disciplinary procedure in accordance with these regulations.

(b) Prosecution by criminal justice agencies in the community is a separate process from this disciplinary procedure and both prosecution and disciplinary procedures may be conducted on matters relating to the same factual situations.

(c) The contract work release center shall not be required to use this disciplinary procedure but may use:

(1) The disciplinary procedures established by the United States bureau of prisons and amendments thereto; or

(2) any other system which is approved by the secretary of corrections and which meets the requirements of the United States constitution as interpreted by the United States supreme court decisions.

(d) Subject to the limitations and guidelines set out in these regulations and subject to the control of the hearing officer exercised within the parameters of the law and these regulations, the inmate shall be entitled:

(1) To receive advance written notice of the charge and a fair hearing by an impartial hearing officer;

(2) to be present at the hearing;

(3) to present documentary evidence;

(4) to testify on the inmate's own behalf;

(5) to have witnesses called to testify on the inmate's behalf;

(6) to confront and cross examine witnesses against the inmate; and

(7) to be represented by counsel or counsel substitute in certain serious cases.

(e) The charge may be amended according to the provisions of these regulations.

(f) When an inmate allegedly commits an act covered by criminal law, the case shall be referred to the appropriate law enforcement or prosecutorial agency as provided in K.A.R. 44-13-103.

(g) There shall be three classes of offenses which shall be processed according to the provisions of these regulations.

(h) The disciplinary hearing process shall be structured as follows:

(1) Stage A of the disciplinary hearing, which shall include the explanation of the charge and the disciplinary process, and the taking of the plea; and

(2) Stage B of the disciplinary hearing, which shall include the fact finding needed to determine guilt or innocence; and

(3) Stage C of the disciplinary hearing, the disposition.

(i) At stage A of the hearing, the inmate shall be advised of the nature of the offense and the nature and extent of the possible consequent discipline, the nature of the disciplinary process and the inmate's rights thereunder. In addition, a plea shall be taken from the inmate during stage A. If a plea of guilty or no contest is entered during stage A, stage B of the final hearing shall not be required to be conducted in full. In lieu of stage B of the hearing, a finding of guilt may be recorded and the process shall go to stage C for disposition. In these cases, stage C may be conducted along with stage A. If a plea of not guilty or no plea at all is entered, the process shall go to stage B for the finding of guilt or innocence.

(j) All stages of the disciplinary hearing shall be conducted by a hearing officer appointed by the principal administrator pursuant to K.A.R. 44-13-302a.

(k) A representative of the institution shall be used in class I cases, and may be used in class II and III cases, to assist the officer in presenting the case against the inmate during the disciplinary process.

(l) A complete log of the disciplinary process shall be maintained. This shall consist of at least the case number, inmate name, rule violated, charging officer, and a list of the nature and date of each action taken from start to finish for each case, including those dismissed and those rejected by the shift supervisor.

(m) The disciplinary hearing shall be conducted within a certain time following notice of the charge as established by these rules and regulations. Continuances of the hearing may be granted. Generally, the inmate shall be permitted to be present at all stages of the hearing, except as provided by these regulations.

(n) Representation for the inmate, provided by Legal Services for Prisoners, Inc., or their designee, shall be permitted only under limited conditions established by these regulations.

(o) A summary record shall be made of all stages of the hearing.

(p) In class I and II offense cases, following an administrative review of the record and any needed adjustments of the disposition by the principal administrator, the inmate may appeal the case to the secretary of corrections on the record. In class III offense cases, an appeal may be made to the principal administrator on the record following an initial review of the record by some person within the facility other than the principal administrator. No appeal to the secretary of corrections shall be permitted.

(q) Nothing in these regulations shall prohibit the assignment or delegation of the disciplinary hearing and review process or any portion of it to the principal administrator of another Kansas state correctional facility for good cause

shown and if justice and fairness will not thereby be infringed. An assignment or delegation shall not be made except by the secretary of corrections or his designee, or by the principal administrator with the secretary of corrections' written approval. This restriction shall not prohibit the holding of hearings at a receiving facility following a transfer based on a classification decision in the sending facility where the offense occurred in the sending facility.

(r) This regulation is intended to summarize the disciplinary procedure and shall not be construed or interpreted as establishing any rights or procedures which are not specifically set forth in article 13. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended, T-85-37, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended April 20, 1992.)

**44-13-101a. Waiver of rights.** (a) The inmate shall be permitted to voluntarily waive the right to any time limit or process afforded by these disciplinary procedure regulations, K.A.R. chapter 44, article 13. The waiver shall be in writing and shall state with specificity the particular time limit or process being waived. The waiver shall be made in the form and manner approved or prescribed by the secretary of corrections. The waiver shall be witnessed by one impartial correctional employee and shall be signed by the inmate and the hearing officer except in cases where the inmate is waiving the right to the disciplinary hearing process by accepting a summary judgment citation as defined in K.A.R. 44-13-201b.

(b) The inmate shall be informed of the nature of the time limit or process being waived and of the impact and consequence of the waiver.

(c) Except in cases where the inmate is waiving the right to the disciplinary hearing process by accepting a summary judgment citation as defined in K.A.R. 44-13-201b, the inmate shall be questioned by the hearing officer prior to accepting the waiver to determine if it is knowingly and voluntarily made. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1984; amended May 1, 1985; amended April 20, 1992.)

**44-13-102.** (Authorized by K.S.A. 1980 Supp. 75-5210; effective, May 1, 1980; amended, May 1, 1981; revoked, T-83-23, Aug. 11, 1982; revoked, T-84-6, May 1, 1983; revoked, May 1, 1984.)

**44-13-103. Prosecution by outside agency.** (a) When an inmate allegedly commits an act covered by criminal law, the case shall be referred to the appropriate law enforcement or prosecutorial agency for consideration for prosecution unless the prosecutor provides a written statement requesting that

certain types or classes of crimes not be reported, or requesting that no report be made.

(b) Notification for prosecution by outside agency shall not preclude a disciplinary charge and proceeding by the correctional facility for the rule infraction arising from the same facts. The hearing officer may proceed or continue the case to await the outcome of the prosecution by the law enforcement agency. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1984; amended April 20, 1992.)

**44-13-104. Contract work release centers, halfway houses, any other facilities; use of other disciplinary procedures.**

(a) In any work release center, halfway house, or other facility operated on contract with the department, the facility administrator, may, in the administrator's discretion, use either the department of corrections' rules of disciplinary procedure or any other disciplinary procedure approved by the secretary of corrections which meets requirements of the United States constitution. Such procedures shall be submitted to the secretary of corrections in writing for approval prior to use for department of corrections inmates.

(b) All inmates entering the work release program, halfway house, or other contract facility shall be notified at the time of application that the disciplinary program used in those facilities may be different from that used by the department of corrections and its other facilities. Upon admission to a work release center, halfway house, or other contract facility, a copy of the disciplinary procedure used at that facility shall be provided to each inmate. This section shall be applicable to all sections of this article. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended April 20, 1992.)

**44-13-105. The disciplinary administrator.** The principal administrator of each facility shall appoint a disciplinary administrator to manage the disciplinary process for the entire facility. The principal administrator may designate any suitable employee to carry out this task on a continuing basis. (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective, T-83-23, Aug. 11, 1982; effective, T-84-6, May 1, 1983; effective, May 1, 1984.)

**44-13-106. Administration of oaths; designation of persons authorized.** (a) The principal administrator, the deputy principal administrators, the disciplinary administrator appointed pursuant to K.A.R. 44-13-105, and those persons serving as hearing officers in the prison disciplinary hearings shall be authorized to administer oaths to witnesses in those proceedings.

(b) Oaths shall be administered in a form and manner that is in accordance with K.S.A. 54-101 et seq. [Authorized by and implementing K.S.A. 1990 Supp. 75-5210 and K.S.A. 1991 Supp. 75-5251; effective, T-85-37, Dec. 19, 1984; effective May 1, 1985; amended April 20, 1992.]

**44-13-107 through 114 inclusive. Reserved.**

**44-13-115.** (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1984; amended May 1, 1987; revoked April 20, 1992.)

### **COMMENCEMENT OF PROCEEDINGS**

**44-13-201. Disciplinary report and written notice.** (a) A disciplinary proceeding shall be commenced upon the making of a charge by a disciplinary report. The inmate shall be notified in writing by personal service of a copy of the request upon the inmate, within 24 hours after the issuance of the disciplinary report, excluding Saturdays, Sundays, and holidays. The report shall not be served upon the inmate by the same officer who brought the charge against the inmate unless no other officer is available to personally serve the inmate. The officer serving the report shall inform the inmate that the inmate may enter a plea of guilty or no contest to the charge at the time of service of the report. In that event, if the officer serving the report has been appointed as a hearing officer by the principal administrator pursuant to K.A.R. 44-13-302a, that officer may immediately, or as soon as possible, accept the inmate's plea of guilty or no contest, conduct a sentencing hearing, and impose sentence by following the procedures established in K.A.R. 44-13-403. If the officer serving the report has not been appointed as a hearing officer by the principal administrator pursuant to K.A.R. 44-13-302, or wishes to refer the case to another hearing officer, then the inmate desiring to plead guilty or no contest to the charge at the time of service of the report shall be brought immediately, or as soon as possible before a hearing officer, who shall accept the inmate's plea of guilty or no contest, conduct a sentencing hearing, and impose sentence by following the procedures established in K.A.R. 44-13-403. If necessary, the hearing officer may accept the inmate's plea of guilty or no contest immediately, or as soon as possible, after service of the report, but delay the sentencing hearing and imposition of sentence for not more than six working days.

(b) If an inmate is transferred to another facility prior to being notified of the issuance of the disciplinary report, service of the report upon the inmate shall be made within 48 hours after issuance of the report, excluding Saturdays, Sundays, and holidays, in the same manner as provided in subsection (a).

(c) The disciplinary report shall be written within 48 hours of the offense, the discovery of the offense, or the determination following an investigation that the inmate is the suspect in the case and is to be named as defendant. The investigation shall be completed as soon as possible under the existing circumstances. If necessary, pending completion of the investigation, the inmate may be held in administrative segregation for a certain period pursuant to K.A.R. 44-14-302(b). The report shall be reviewed and approved or disapproved by the shift supervisor based on whether or not the report is sound, adequate and made in proper manner and form. If the charge is dismissed, or the report is otherwise rejected by the shift supervisor, a written explanation shall be made in the record and filed with the report, with a copy given to the officer. The report shall not be destroyed.

(d) The disciplinary report shall constitute a formal statement of the charge and shall be in a form prescribed by the secretary and shall include:

- (1) The name and number of the inmate;
- (2) the institution;
- (3) the signature and title of the writing officer;
- (4) the date and time of the alleged offense;
- (5) the date and time the report is written;
- (6) the nature of the alleged offense;
- (7) the class, title and number of the rule violated;
- (8) the specific rule which is the basis of an attempt, conspiracy or accessory under K.A.R. 44-12-1101;
- (9) the names of known witnesses;
- (10) a brief description of the circumstances and facts of the violation;
- (11) any unusual inmate behavior;
- (12) disposition of any physical evidence; and
- (13) any immediate action taken, including the use of force.

(e) No inmate shall be charged unless the rule or law has been made in writing and published.

(f) If the offending conduct observed is a class II or III offense, the officer may orally warn or reprimand the inmate instead of writing a report or otherwise documenting the incident. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended April 20, 1992.)

**44-13-201b. Summary judgment procedure.** (a) In any case involving one or more alleged Class III offenses, the reporting officer may offer the inmate the option of resolving the matter through the summary judgment procedure as an alternative to writing a disciplinary report that leads to initiation of the formal disciplinary hearing process.

(b) Officers shall carry with them or have immediate access to summary judgment citation forms.

(c) If an officer observes an inmate in the act of committing one or more Class III offense(s) that the officer believes require more than an undocumented, on-the-spot verbal reprimand, the officer may file a formal disciplinary report against the inmate or offer him summary judgment by issuing a summary judgment citation. Once summary judgment is offered to the inmate by the officer, the offer cannot be withdrawn absent the commission of additional alleged disciplinary offenses by the inmate.

(1) The summary judgment citation shall be written and served on the inmate by the reporting officer within two hours of the alleged incident, and shall include:

(A) the date and time of the alleged offense(s);

(B) the date and time the citation is written;

(C) the name(s) and rule number(s) of the alleged Class III offense(s);

(D) a statement of the facts of the alleged incident, including names of witnesses;

(E) the date and time that the citation is served on the inmate;

(F) the summary judgment sanction; and

(G) the signature of the inmate indicating his acceptance or refusal of the summary judgment.

(2) The officer may impose only one of the following summary judgment sanctions regardless of the number of offenses cited:

(A) restriction from privileges for up to seven days;

(B) a fine of \$5.00; or

(C) extra work for up to two hours per day, not to exceed three days.

(3) The inmate may choose whether to accept the summary judgment or to reject it in favor of the formal disciplinary hearing process. This decision must be made immediately upon the inmate's receipt of the citation or the conclusion of any discussion between the inmate and the officer about the summary judgment sanction to be imposed, or it will be assumed that the inmate refused the summary judgment. The officer may choose to impose a different summary judgment sanction after discussion of the incident with the inmate, and this fact shall be documented on the summary judgment citation if the inmate then accepts the summary judgment.

(A) If the inmate accepts the summary judgment offered, such acceptance shall constitute a waiver of the inmate's right to the benefits of the formal disciplinary hearing process. The acceptance and waiver shall be reflected by the inmate's signature on the summary judgment citation and on the appropriate form for waiver of rights established pursuant to K.A.R. 44-13-101a. Upon the inmate's acceptance of the summary judgment, the sanction shall be immediately imposed and the shift supervisor shall be notified.

(B) If the inmate rejects the summary judgment offered,

the inmate shall receive the hearing process provided for a Class III offense. The summary judgment citation shall be marked and signed by the officer and the inmate to indicate the inmate's refusal. If notarized, the citation may then be used in lieu of the more formal disciplinary report to initiate the formal disciplinary hearing process. In that event all normal applicable time limits shall run from the time the inmate signs the citation indicating his refusal of the summary judgment. This shall constitute service of the disciplinary report on the inmate as required by K.A.R. 44-13-201. The requirement contained in K.A.R. 44-13-201 that an attempt be made to ensure that the officer personally serving the report on the inmate not be the same officer who wrote the report shall not apply when summary judgment has been offered.

(C) If an inmate rejects the summary judgment offered, the inmate may not be charged with a more serious offense or combination of offenses than was alleged in the summary judgment citation.

(4) All summary judgment citations accepted by the inmate shall be documented in the inmate's file. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective April 20, 1992.)

**44-13-202. Amendment of the charge.** (a) Where there is a language defect or omission in the statement of the charge, and the charge is otherwise correct, the language may be amended and the case may proceed if the change in language neither changes the substance of the charge nor adversely affects the defense.

(b) Where the charge is incorrect, or a language change would change the substance of the charge or adversely affect the defense, the charge may be amended and notice given to the inmate. After this notice is given, the inmate shall have the same period of time between notice and hearing to prepare a defense as would have been permitted when the charge was originally made.

(c) When the charge has been dismissed by the hearing officer because of a defect in the charge, the charge may be amended and notice given to the inmate, reinitiating the process.

(d) The same charge shall not be brought twice on same facts under any circumstance where a factual finding of guilt or innocence has been made.

(e) After the hearing officer has begun to hear evidence in the case, the hearing officer may permit amendment at any time before a factual finding of guilt or innocence has been made if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)



**44-13-203. State prosecution and disciplinary hearing.** (a) If the inmate has been charged, convicted, or acquitted in a criminal court of a charge or for a crime arising from the same facts, the disciplinary hearing may be conducted or continued at the hearing officer's discretion.

(b) Where the inmate has been convicted or acquitted in criminal court for a crime arising from the same facts, the hearing officer may rely on the finding made by the jury or judge in conducting or dismissing the disciplinary hearing.

(c) If the disciplinary hearing is conducted while the criminal court case is pending, and the court later renders a decision different from the decision of the hearing officer, the decision of the hearing officer shall remain unaffected unless upon motion to the hearing officer there is a showing that the hearing officer's decision is based on an obviously erroneous fact which affects the substantial rights of the inmate, in which case the hearing officer shall correct its decision on the record. The hearing officer may not change his or her decision in order to convict an inmate following a conviction by the court if the hearing officer acquitted the inmate before the court made its finding, or otherwise change his or her decision to adversely affect the inmate. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

#### **NATURE OF PROCEEDINGS**

**44-13-301.** (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; revoked April 20, 1992.)

**44-13-302.** (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective May 1, 1980; amended T-83-23, Aug 11, 1982 amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; revoked April 20, 1992.)

**44-13-302a. Hearing officers.** (a) The principal administrator shall appoint one or more impartial hearing officers to conduct disciplinary hearings at each department-operated facility.

(1) The minimum qualification for hearing officers shall be satisfactory completion of required training.

(2) Any person who is the reporting officer, investigator, or a witness in a case shall not be the hearing officer in that case. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; amended April 20, 1992.)

**44-13-303.** (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1981; amended T-83-23, Aug 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1986; revoked April 20, 1992.)

**44-13-304. The disciplinary representative.** (a) The disciplinary representative, if appointed, shall present the case against the inmate on behalf of the facility. The principal administrator may appoint the reporting officer to act on the facility's behalf. If needed, the representative or officer may obtain the advice and assistance of the facility's legal counsel.

(b) The hearing officer may bring out the facts by direct or cross examination but shall not act as prosecutor on behalf of the facility or charging officer against the accused inmate, nor on behalf of the inmate. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended April 20, 1992.)

**44-13-305.** (Authorized by K.S.A. 1979 Supp. 75-5210; effective May 1, 1980; revoked, May 1, 1984.)

#### **HEARINGS GENERALLY**

**44-13-401. Hearing within certain time.** (a) Except as otherwise provided in this section, the administrative hearing by a hearing officer of the institution to determine the inmate's guilt or innocence and impose a penalty in the event of a finding of guilt shall be held not less than 24 hours nor more than seven working days after the service of notice of charge on the inmate, subject to authorized continuances. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended April 20, 1992.)

**44-13-401a. Notice to inmate; time and place of hearing.** Each inmate charged with an offense shall be given advance written notice of the time and place of the disciplinary hearing. This notice shall be given not less than 24 hours before the hearing. Notice shall be given by the disciplinary administrator or other responsible person designated by the principal administrator. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1984; amended April 20, 1992.)

**44-13-402. Continuing the hearing; time limits; extensions.** (a) In the event that the employee filing a complaint or the inmate charged is not prepared for the hearing, one continuance of five working days, excluding Saturdays, Sundays and holidays, shall be allowed for each side if requested by the employee at least 24 hours prior to the scheduled hearing.

or if requested by the inmate within 24 hours of the time the inmate receives notice of the hearing, as outlined in K.A.R. 44-13-401a. If the inmate is represented by Legal Services for Prisoners, Inc., and counsel is unavailable for the scheduled hearing, a continuance of five working days, excluding Saturdays, Sundays and holidays, shall be granted if requested at or prior to the scheduled hearing. In addition, one continuance of up to five working days, excluding Saturdays, Sundays and holidays, as requested, may be permitted to each side for good cause shown, at the fair discretion of the hearing officer, or by the disciplinary administrator, if a hearing officer has not yet been appointed for the case. The continuance dates shall be recorded on the institution or facility disciplinary board log, and the inmate shall be notified of the dates. The hearing officer may also continue the case for a reasonable period, as necessary, subject to the hearing officer's review of the status of the case every 30 days, if:

(1) The inmate or the employee is unable to appear for medical or psychiatric reasons as certified by the facility or other licensed physician or psychiatrist;

(2) there is a delay to await determination of whether the case will go to trial in a court of law or to await the outcome of a trial;

(3) there is an unavoidable delay to await the return of evidence from an analysis laboratory;

(4) the inmate is transferred to or from the Topeka correctional facility for diagnostic evaluation, out to court or to a mental hospital before hearing; or

(5) the inmate is on "escape" status. At the hearing officer's discretion the case may be dismissed, or heard *in absentia* on the record, unless the inmate has been apprehended and is available at a known location for return to department of corrections custody for the hearing within six months.

(b) To obtain a continuance in advance of the hearing, the requesting party shall make the request to the hearing officer or to the disciplinary administrator. The continuance shall be granted if it complies with the rules. If there is a hearing officer appointed for the case, the request shall be forwarded to that officer.

(c) All time limits established within these rules and regulations for the disciplinary process shall be complied with. Reasonable extensions may be obtained with the prior approval of the secretary of corrections or the secretary's designee, only in the case of a substantial disruption of order in the facility or where the inmate has been transferred to another location. In the event an inmate has been transferred to another facility, it shall be the responsibility of the principal administrator of the sending facility to apply for approval of the extensions. The facts justifying an extension shall be

examined, fully documented, and approved personally by the principal administrator. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1990; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1988; amended April 20, 1992.)

**44-13-403. Conducting the disciplinary hearing.** (a) The disciplinary hearing shall be conducted in three stages: Stages A, B, and C. In Stage A, the hearing officer shall inform the inmate of the charges and take the inmate's plea. In Stage B, the hearing officer shall determine guilt or innocence. In Stage C, the hearing officer shall make a disposition, including the determination and imposition of sentence if guilt was established in Stage B.

(b) In Stage A the hearing officer shall read the disciplinary report to the inmate, including the date, nature of offense, the reporting officer's name, and a synopsis of the observation. The officer shall assure that the inmate understands the charges and that a copy was received by the inmate. The officer shall explain the possible penalties.

(c) Counsel or counsel substitute shall be permitted to be with the inmate at all stages of the disciplinary hearing only as provided in K.A.R. 44-13-408.

Counsel or counsel substitute shall not be permitted in other kinds of cases.

(d) If the inmate is disruptive or is deliberately refusing to be present, the hearing may proceed *in absentia* and the record shall indicate reasons for the inmate's absence. The inmate's counsel shall be permitted to be present.

(e) The hearing officer shall assure that the inmate has counsel or counsel substitute when required by K.A.R. 44-13-408.

(f) The hearing officer shall advise the inmate of the inmate's rights to Stages B and C of the hearing, and to counsel or counsel substitute in certain cases, pursuant to K.A.R. 44-13-408, and of other procedural due process rights.

(g) The hearing officer shall then ask the inmate to plead guilty, not guilty, or no contest and shall take the plea if the presiding officer is assured that it is made knowledgeably and without threat or promise of reward to the inmate. If the inmate refuses to plead, the hearing officer shall enter a plea of not guilty. A plea of no contest shall be treated in the same manner as a plea of guilty. The inmate may plead guilty or no contest, thereby waiving his right to Stage B of the disciplinary hearing, but reserving the right to participate in Stage C of the hearing to the extent of offering a brief argument in mitigation of the penalty to be imposed. In that event, no evidence or arguments about the inmate's guilt or innocence of the charge(s) may be introduced by the inmate.

(h) The hearing officer may upon a plea of guilty or no contest, make a finding of guilt, conduct a Stage C sentencing hearing, and impose sentence.

(i) If the hearing officer finds at Stage A of the hearing that the case must be dismissed, the officer may dismiss the charge on the officer's own motion or on motion of either party. The hearing officer shall give a brief explanation on the record.

(j) In Stage B, only the facts relevant to determination of guilt or innocence shall be considered. In Stage C, the inmate's entire institution record and other relevant facts, observations and opinions may be considered. The unit team file shall be available to the hearing officer.

(k) The hearing officer shall rule on all matters of evidence. Strict rules of evidence, as used in a court of law, shall not be required, but the hearing officer shall exercise diligence to admit reliable and relevant evidence and to refuse to admit irrelevant or unreliable evidence.

(l) The hearing officer shall rule on all matters of representation for the accused inmate in accordance with these regulations. If the accused inmate is represented by counsel pursuant to K.A.R. 44-13-408, or counsel substitute, then that representative shall be permitted to fully represent the accused and shall be permitted to question witnesses and present arguments on behalf of the accused inmate, except as otherwise provided by these regulations.

(m) The disciplinary process shall, to the extent possible, discover the truth regarding charges against the inmate. For this purpose, the hearing officer shall be authorized to call and to interrogate any witness. All testimony and evidence shall be given or presented in the presence of the accused inmate; testimony or evidence shall not be received by the hearing officer or introduced outside the presence of the inmate, except as provided in (n) below, K.A.R. 44-13-403(d), K.A.R. 44-13-402(a)(5), and as otherwise provided in these regulations.

(n) If the testimony of any inmate, in the judgment of the hearing officer, will subject that inmate to possible retaliation for having testified, the hearing officer may receive the testimony in confidence without confrontation or cross examination by the accused inmate, and the witness may be sequestered. The testimony given under oath shall be examined and tested by the hearing officer. The hearing officer shall closely question the testifying inmate to determine the veracity and weight of the testimony offered. The accused shall be apprised of the general nature of the confidential testimony, omitting those details that would tend to identify the inmate who gave the confidential testimony. The identity of any confidential witness shall not be disclosed to the accused, to any other inmate, or to any staff not required to complete the process.

Counsel or counsel substitute, if any, shall be permitted to be present when the board receives testimony from the confidential witness, and the attorney may ask questions. The testimony shall be recorded for confidential review by the principal administrator and, on appeal, by the secretary of corrections.

(o) The hearing officer may require the defendant to explain briefly what the purpose and nature of the testimony of a witness will be. The request for the witness may be denied or the testimony reasonably and fairly restricted if the testimony relates to something already disposed of, is clearly irrelevant or immaterial, is repetitious of other testimony, or for reasons specified in K.A.R. 44-13-405a. The truth of the testimony shall be presumed in making this decision.

(p) The hearing officer shall have and exercise all powers necessary to ensure the orderly process of the disciplinary hearing proceedings.

(q) The hearing officer shall listen to all testimony by the reporting officer, the accused inmate, and all other witnesses. The hearing officer shall require the reporting officer and all witnesses to provide all details concerning the alleged offense. The hearing officer shall question each witness, as the need arises, to clarify the facts surrounding the alleged offense.

(r) The hearing officer, in deciding whether or not the inmate is guilty, shall consider only the relevant testimony and report. The accused inmate's correctional and supervision record shall not be considered in determining guilt or innocence. The decision in the hearing shall be based solely on evidence presented as part of the hearing.

(s) The hearing shall proceed as follows:

(1) The prosecution shall state its case simply in summary and then the defense shall do likewise.

(2) The prosecution shall present its evidence and the defense shall be permitted to cross examine, except as otherwise provided by these regulations.

(3) The defense shall present its case and the prosecution shall be permitted to cross examine.

(4) Prosecution may make closing argument. The defense may do likewise, and then the prosecution may make a short rebuttal.

(t) If the accused inmate is disruptive or is deliberately refusing to be present, the hearing may proceed in absentia and the record shall indicate reasons for the inmate's absence. The inmate's counsel, if available, shall be permitted to be present.

(u) Confrontation and cross examination may be denied by the hearing officer when deemed necessary in any case except class I cases. In class I cases, it may be limited or denied when necessary to protect the safety of an accuser, informant, or witness or when necessary to maintain institutional safety, security and control. Unless a security risk

is involved endangering some person, the explanation shall be in the record. If there is such a security risk, a written explanation of the reason shall be sent to the principal administrator with a copy to the secretary for confidential review.

(v) After the conclusion of the presentation of evidence regarding guilt or innocence or disposition, if the hearing officer needs the charging officer, the accused inmate, or both present to provide further information to clarify facts, then both shall be present to hear what the other is saying unless exempt under subsection (n) or (o) above. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended April 20, 1992.)

**44-13-404. Presence of inmate and presence of charging officer at disciplinary hearings; officer statements in lieu of testimony.** (a) The inmate shall be present at all stages of the disciplinary hearing and disposition except as otherwise provided by these regulations or by law.

(b) In class I cases, the charging officer shall be present for direct examination, and for confrontation and cross examination, unless excused by the hearing officer or unless the inmate has been transferred to another facility. The hearing officer may excuse the charging officer only if it is determined that institutional safety or correctional goals would be jeopardized. Institutional safety or correctional goals shall not include considerations of mere convenience. If the officer is not present, the officer's report and statement shall be made to the hearing officer in writing under oath. Copies of the report shall be provided to the inmate and it shall be read aloud at the hearing unless confidentiality is required to protect an inmate accuser, informant, or witness. If an inmate has been transferred to another facility after a disciplinary report was written, the testimony of the charging officer and other witnesses regarding that report may be taken by telephone at the discretion of the hearing officer. Except as provided in K.A.R. 44-13-405(f), any testimony taken by telephone shall be taken in a manner which may be heard by all those present at the hearing, and shall be subject to the same procedures as though the witness was personally present at the hearing.

(c) In class II and III cases, the officer's attendance shall not be required unless deemed necessary by the hearing officer. The officer's report and statement shall be submitted to the hearing officer in writing under oath. It shall be read aloud at the hearing and a copy shall be given to the inmate unless confidentiality is required to protect an inmate accuser, informant, or witness pursuant to K.A.R. 44-13-405(f). If such confidentiality is required, but it is possible to protect the inmate accuser, informant, or witness by editing out certain portions of the report and statement, then those

portions shall be edited and the inmate provided with a copy. The hearing officer may contact the officer, by telephone or radio, to ask questions or clarify the facts while the hearing is being conducted or while the matter is being considered for decision. In all cases, if the charging officer requests, the hearing officer shall allow the charging officer to be present. In such a case, the officer shall be present throughout and shall be subject to direct examination, confrontation and cross examination unless restricted by the hearing officer according to these regulations.

(d) When the officer is not present to testify, the officer's statement under oath, along with the disciplinary report, shall be admissible as evidence. The officer's statement under oath shall consist of the officer's rendition of all the facts of the case resulting from the charging officer's complete fact investigation. To the best of the officer's ability, it shall show all relevant and material facts which might be used to support both the facility's case against the inmate and the inmate's defense. When the officer is uncertain of a fact, the officer shall state that with respect to the fact. The charging officer may either adopt or defer under oath to any official neutral fact investigation report which might be conducted by another person or may submit the charging officer's own statement in addition to the investigation report. Confidential inmate testimony may be deleted from the statement in lieu of testimony and reported separately. The hearing officer shall receive any confidential inmate testimony in accordance with K.A.R. 44-13-403(n).

(e) If an alleged violation is based upon uncertain facts, an appropriate investigation shall be initiated within 24 hours of the time the allegation is made and shall be completed without unreasonable delay. The investigation shall determine whether a disciplinary action should be initiated or continued by determining whether the allegation is soundly based on reasonably reliable facts. The investigator shall be a staff member, and, where practical, shall be a staff member other than the person making the allegation. If an inmate is making the allegation, the officer receiving the allegation, and in a position to write the report, may also be the investigator.

(f) The investigation report may be adopted by the charging officer both as the charge itself, and as the officer's sworn statement in lieu of testimony in any case where appropriate and in accordance with the regulations. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-1, Jan. 5, 1983; amended May 1, 1984; amended April 20, 1992.)

**44-13-405.** (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; revoked April 20, 1992.)



**44-13-405a. Calling witnesses.** (a) In determining whether to allow the inmate to call a witness from the prison population or from among prison employees, the hearing officer shall balance the inmate's interest in avoiding loss of good time and assessment of a fine or placement in disciplinary segregation against the needs of the prison. These needs of the prison include:

(1) The need to keep the hearing within reasonable time limits;

(2) the need to prevent the creation of a risk of retaliation and reprisal;

(3) the need to prevent the undermining of authority;

(4) the need to limit, to a reasonable level, access to other inmates for the purpose of collecting statements or compiling documentary evidence;

(5) the need to prevent disruption;

(6) the need to administer swift punishment;

(7) the need to avoid irrelevant, immaterial, or unnecessary testimony or evidence;

(8) the need to reduce or prevent security hazards that may be presented in individual cases;

(9) the need to use the disciplinary process as a rehabilitative tool and to modify inmate behavior;

(10) the need to prevent the creation of undue risk to personal or institutional safety;

(11) the need to reduce the chances of seriously inflaming tension, frustration, resentment and antagonism in the relationship between inmates and institutional personnel;

(12) the need to correct the behavior of inmates and develop in them a value system in order to foster their eventual return to the community; and

(13) the prompt, efficient and effective resolution of the disciplinary case with accurate and complete fact finding consistent with the level of process required by law for prison disciplinary cases.

(b) The hearing officer shall have broad discretion in permitting or denying the witness request. In exercising the discretion, the hearing officer shall balance the inmate's requests and wishes against the needs of the prison. The goal of the hearing officer shall be to conduct the fact-finding process in a manner leading to the discovery of the truth.

(c) The hearing officer shall not abuse the discretion entrusted to him nor interfere with the level of process which is reasonably necessary to find the truth.

(d) With the charged inmate's consent, the hearing officer may admit the affidavit of a witness in lieu of an appearance by the witness. If a witness is denied or cannot attend in a timely manner, the hearing officer may also admit the affidavit of such witness.

(e) If the requested witness is not an employee or inmate at the institution, the hearing officer may deny the request

to call the witness unless critical to determining elemental facts.

(f) The state shall not compel a witness who is neither a prison employee nor an inmate to attend, nor pay expenses for such a witness to attend.

(g) When a request to call a witness is denied, a written explanation shall be made on the record unless it would endanger some person. In such a case, a written explanation shall be made to the principal administrator with a copy to the secretary of corrections for confidential review. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1984; amended, May 1, 1987; amended April 20, 1992.)

**44-13-406. Disposition.** (a) The disposition shall be rendered by the hearing officer in an official session with the inmate present unless otherwise provided by law or regulation. The disposition shall be made without unreasonable delay following the hearing, preferably at the conclusion of the hearing.

(b) The disciplinary hearing officer may:

(1) Designate the minimum and maximum penalty;

(2) impose a sentence of a specific number of days, within the limits set in the disciplinary code; or

(3) designate only the minimum within the limits set out in the disciplinary code, in which case the maximum shall be that shown in the code. If the penalty is not a sentence of a specific number of days, the case shall be reviewed, after the minimum penalty has been served, by the principal administrator or the principal administrator's designee; and

(4) may order the sentences for two or more rule violations to be served on a concurrent or consecutive basis. If the hearing officer makes no specific order in this regard, the sentences shall be computed on a concurrent basis.

(c) The hearing officer may suspend all or part of the sentence imposed.

(d) The hearing officer may make a recommendation regarding classification, housing or assignment to the unit team on a separate form or in a separate space on the disposition form as designated for such purpose.

(e) The hearing officer may make a recommendation regarding disposition of personal property which has been found to be the subject of a violation of one or more disciplinary rules in accordance with K.A.R. 44-5-111 to the principal administrator on a separate form or in a separate space on the disposition form as designated for such purposes.

(f) The charging officer shall be notified promptly of the disposition. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended, T-83-23,

Aug. 11, 1982; amended, T-84-6, May. 1, 1983; amended May 1, 1984; amended, T-86-4, March 22, 1985; amended May 1, 1986; amended May 1, 1987; amended April 20, 1992.)

**44-13-407.** (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; revoked April 20, 1992.)

**44-13-408. Representation by counsel or counsel substitute.** (a) If the hearing officer finds that the charged inmate is incapable of representing himself or herself at any stage of the disciplinary hearing, the hearing officer shall appoint a staff member from an approved list to act as counsel substitute to represent the inmate at the disciplinary hearing and to question relevant witnesses. The principal administrator shall make available to the hearing officer a list of staff members available to assist the inmate as counsel substitute.

(b) Representation by Legal Services for Prisoners, Inc., or its designee shall be permitted only in class I offense cases. Representation in other cases shall be limited to counsel substitute, and shall be permitted only when the hearing officer finds that the inmate is not capable of effectively collecting and presenting evidence on the inmate's own behalf. If Legal Services for Prisoners, Inc., is not available, representation by a counsel substitute shall be permitted in class I offense cases. If the inmate does not wish to be represented by a counsel substitute when Legal Services for Prisoners, Inc., is not available, the hearing may proceed without legal counsel or counsel substitute unless the hearing officer finds the inmate incapable of proceeding on the inmate's own behalf.

(c) Counsel shall be considered not available in cases in which counsel fails or is not expected to appear within three days, excluding Saturdays, Sundays, holidays, and authorized continuances.

(d) Counsel substitute shall mean a correctional staff member. Counsel substitute shall also include Legal Services for Prisoners, Inc., in any case where the hearing officer determines that the inmate is incapable of proceeding on the inmate's own behalf, and Legal Services for Prisoners, Inc., is available and willing to represent the inmate.

(e) Legal Services for Prisoners, Inc., may designate the University of Kansas law school defender project or Washburn university legal clinic by general designation for all members and participants of such programs on a continuing basis. When a bona fide conflict of interest exists, Legal Services for Prisoners, Inc., may designate a private attorney, on a case by case basis, with prior written approval by the secretary of corrections.

(f) In a class I case, if the inmate is represented by legal counsel, the officer also shall be permitted to have representation by legal counsel. The counsel shall be provided by the staff attorney of the facility if one is on staff, or by a department staff attorney, if available. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended April 20, 1992.)

**44-13-409. Standard of proof.** (a) No finding of guilt shall be made in a disciplinary proceeding unless the institution or facility shall have produced evidence and testimony sufficient to show guilt of the inmate in a clear and convincing manner. (1) "Clear and convincing" is that standard quality of proof which is less than the criminal standard of proof "beyond a reasonable doubt," but more than the civil standard of proof by "mere preponderance of the evidence."

(2) "Clear and convincing" evidence should produce in the mind of the board or hearing officer a firm belief or conviction as to the truth of the allegations sought to be established.

(b) "Clear and convincing" means that the truth of the facts asserted is highly probable. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

## **REPORTS AND RECORDS**

**44-13-501. Preservation of all reports (see also K.A.R. 44-13-508 and 509).** No disciplinary reports or summary judgment citations shall be destroyed for any reason. If written in error, or incorrectly written, the report or citation with case number shall be marked "void" and placed in the disciplinary chronological file at the institution. If the charge was dismissed or a finding of not guilty was made by the disciplinary hearing officer, then the report shall be marked accordingly and placed in the disciplinary chronological file at the institution. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1984; amended April 20, 1992.)

**44-13-502.** (Authorized by K.S.A. 1979 Supp. 75-5210; 75-5210(f) effective May 1, 1980; revoked April 20, 1992.)

**44-13-502a. Hearing Record. (See also K.A.R. 44-13-101a, 44-13-403, 44-13-406, and 44-13-506.)** (a) A complete written record shall be made of each stage of the disciplinary hearing by the hearing officer who conducted the hearing. The written record shall include the following:

(1) a summary of stage A of the disciplinary hearing showing compliance with the provisions of K.A.R. 44-13-403(b)-(i);

(2) A summary of compliance with the provisions of K.A.R.

44-13-101a and 44-13-403 if the inmate pleads guilty or no contest, including attachment of the required waiver form and acceptance of the plea by the hearing officer;

(3) a complete summary of all the evidence and arguments relied on to find the inmate guilty of the charge at the conclusion of stage B of the hearing, including a summary of the testimony or sworn statement of the reporting officer, subject to K.A.R. 44-13-403(n), a summary of the testimony or sworn statements of all other witnesses, any investigative reports, a list of all physical evidence, a list of any witnesses whose testimony was requested and denied and the reasons for that denial, the reasons for the denial of confrontation and cross-examination of any witness by the inmate, the reasons for the denial of any request for representation by the inmate at any stage of the hearing; and

(4) the disposition of the case provided for in K.A.R. 44-13-406, including a summary of the evidence and arguments heard and the reasons for the penalties imposed in stage C of the hearing. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective April 20, 1992.)

**44-13-503.** (Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; revoked April 20, 1992.)

**44-13-504.** (Authorized by K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1984; amended May 1, 1986; revoked April 20, 1992.)

**44-13-505. Copy to the inmate.** No charge shall be made for the first single copy of the disciplinary case record provided to an inmate. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

**44-13-506. Preparation of the record in seven days.** The principal administrator or designee shall cause to be prepared and served on the inmate the record of the disciplinary hearing within seven days, excluding Saturdays, Sundays, and holidays, after the rendering of the disposition by the hearing officer, unless extenuating circumstances arise, in which case the record shall be prepared as soon as possible and the reason for the delay attached in writing and delivered to the inmate upon completion of preparation. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-13-507. Docket.** A docket of disciplinary cases shall be maintained, showing the case number, the inmate name, inmate number, the cell house, work assignment, offense, title, classification of offense, and the name and title of the reporting officer. Space shall be left on each line on the docket

to enter the plea of the inmate, the findings of the hearing officer and the sentence imposed. A copy of such docket shall be maintained in the institution. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; April 20, 1992.)

**44-13-508. Disciplinary reports in file.** (See also K.A.R. 44-13-501 and 44-13-509.) Case disposition and disciplinary reports shall be placed in the inmate's file if there is a finding of guilty. No reference to the case shall be made in the inmate's file if the inmate is not found to be guilty. (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective May 1, 1980; amended, May 1, 1984.)

**44-13-509. Disciplinary case log** (see also K.A.R. 44-13-501 and 44-13-508). The principal administrator shall keep a continuous log of all disciplinary reports. The reports shall be numbered and recorded. If voided, dismissed or otherwise terminated, the log and the report shall reflect that fact. No numbers or entries shall be altered, nor any report destroyed. (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective May 1, 1984.)

## SENTENCES

**44-13-601. Serving sentence.** An inmate shall begin serving the sentence immediately upon imposition of sentence by the hearing officer, except if the principal administrator determines that space in the disciplinary segregation area is not immediately available or that immediate placement of the inmate in segregation is not otherwise feasible. If such a determination is made, the sentence shall be served when the space is available or as soon as placement of the inmate in segregation becomes feasible. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1987; amended April 20, 1992.)

**44-13-602. Time not credited for administrative segregation.** If the inmate is held in administrative segregation before the disciplinary hearing for some administrative reason, other than merely to await the disciplinary hearing or for investigation of the offense, then that time spent in administrative segregation shall not be credited against the service of the sentence in disciplinary segregation. However, any time during which the inmate is held pending the hearing, which is solely for the purpose of awaiting the disciplinary hearing or awaiting completion of the investigation, shall be credited and subtracted from the inmate's disciplinary segregation sentence, if such a sentence is rendered on the charge. (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective

May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended T-84-6, May 1, 1983; amended May 1, 1984.)

**44-13-603. Absence from institution.** (a) If the inmate is sentenced to disciplinary segregation, restriction to cell, restriction from privileges or extra work, and the inmate is then transferred to the diagnostic unit of the Topeka correctional facility, out-to-court or to a mental hospital prior to commencing or completing the sentence, that time spent outside the facility shall not be credited against the service of the sentence. Upon return to the facility, the inmate shall serve the remainder of the sentence, unless the principal administrator determines the best interests of the inmate or facility warrant that the sentence be suspended.

(b) In the event that the inmate is paroled or conditionally released prior to completion of serving the sentence, the inmate shall not be required to complete serving the sentence upon the inmate's subsequent return to the institution. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1986; amended, amended April 20, 1992.)

**44-13-604. through 44-13-609. Reserved.**

**44-13-610. Collection of fines.** (a) Upon disposition of the case, a fine may be collected immediately, without further hearing process, from the inmate's trust account. The fine shall be collected only on written order of the disciplinary administrator.

(b) The fine shall be taken from any money the inmate has credited to the trust account administered by the department of corrections or the contract facility. The fine shall not be deducted or taken from the gratuity, travel, or clothing allowance provided to the inmate upon release.

(c) Upon release, the fine shall be dormant. Upon any subsequent admission, the fine may be collected.

(d) If the inmate is transferred to another department of corrections or contract facility before collection, collection may be made by the receiving facility on order of the principal administrator of the sending facility, as approved and confirmed by the principal administrator of the receiving institution. The proceeds of the fine shall be deposited to the inmate benefit fund at the facility where the collection is made. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1984; amended May 1, 1985; amended April 20, 1992.)

**APPEALS**

**44-13-701. Appeal on the record to secretary of corrections in class I and II offense cases only.** (a) In class

I and II cases the inmate shall have the right to appeal on the record to the secretary of corrections from a final decision made by the disciplinary hearing officer, after review of the decision by the principal administrator. The inmate shall be notified of that right of appeal before or immediately following the principal administrator's review.

(b) The appeal shall be initiated by the unit team, upon request by the inmate. The inmate may, on forms provided by the unit team and with their assistance, prepare the inmate's own appeal. The unit team shall assure that the proper forms are included before it is forwarded.

(c) The inmate shall appeal within 15 days of the date of receiving the inmate's copy of the final action.

(d) If the inmate pleads guilty or no contest at the hearing, an appeal of the penalty imposed may be brought, but no appeal of the finding of guilt shall be permitted unless the inmate alleges and shows that:

(1) the inmate was under duress at the time of the plea;

(2) fraud or substantial error was involved in the inmate's plea of guilty or no contest; or

(3) the inmate was not advised of the nature of the hearing and the rights the inmate would waive by that plea.

(e) (1) In appeals, each side may submit a written argument and shall serve a copy of the argument on the opposing side.

(2) The inmate shall serve a copy of the argument on the unit team, with the appeal papers, and the argument shall be made part of the appeal record. Within two working days, the unit team shall forward a copy to the institution's disciplinary administrator so that a responsive argument may be made.

(3) Within two working days of receipt of the inmate's appeal papers and argument, if any, the disciplinary administrator shall forward a copy to the institution's or facility's administrative legal advisor, or if none, to the deputy director for programs. If a responsive argument is then prepared, it shall be delivered to the facility's disciplinary administrator within five working days of receipt of the inmate's appeal papers and argument, if any, by the facility's administrative legal advisor or deputy director for programs. A copy of the responsive argument shall be served upon the inmate, or the inmate's attorney, within two working days after receipt by the facility's disciplinary administrator. The responsive argument shall be made a part of the record and forwarded to the secretary of corrections along with the appeal within 15 working days of the inmate's notice of appeal. In any case in which no responsive argument is submitted by the facility, the secretary of corrections may request that such argument be prepared, submitted, and served on the inmate within five calendar days of the request. Such request shall not delay the time limits established in K.A.R. 44-13-702 for the secretary of corrections' review on appeal.



(4) All arguments shall identify, on their face, the disciplinary case and number to which they are to be attached. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended April 20, 1992.)

**44-13-702. Secretary of corrections final review on appeal.** The secretary of corrections shall, within 10 days of receiving an appeal, excluding Saturdays, Sundays, and holidays, review all cases appealed to the secretary. The secretary may approve the decision as rendered, revoke it entirely, reduce the penalty, or order a new hearing. The date of receipt shall not be counted. The secretary's decision shall be final. A copy of the written appeal decision shall be given to the inmate within 15 days following the secretary's decision. If the appeal is denied, the reason for that decision shall be included in the written appeal decision. The purpose of the secretary's review shall be to determine whether there was substantial compliance with departmental and facility standards and procedures, whether the hearing officer's decision was based on some evidence, and whether, under the circumstances, the penalty imposed was appropriate and proportionate to the offense. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended T-84-6, May 1, 1983; amended May 1, 1984; amended April 20, 1992.)

**44-13-703. Appeal on the record to the principal administrator of the institution or facility in class III offense cases.** (a) In class III offense cases, the inmate shall have a right of appeal to the principal administrator of the institution or facility and shall not have a right of appeal to the secretary of corrections.

(b) The procedure for appeal to the principal administrator of the institution or facility shall be the same as that for appeal to the secretary of corrections in class I and II offense cases.

(c) The principal administrator shall have the same time to answer the appeal as provided for the secretary of corrections in class I and II offense cases. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1985; amended May 1, 1987; amended April 20, 1992.)

**44-13-704. Administrative review.** (a) In class I and II offense cases, within seven days after preparation of the record, excluding Saturdays, Sundays, and holidays, there shall be a review of the case without the presentation of further arguments from either side. The principal administrator shall approve the decision, disapprove the decision,

amend the charge in accordance with the provisions of K.A.R. 44-13-202 and remand to the hearing officer, disapprove the decision and dismiss the case, reduce the penalty, provide for disposition of personal property which has been found to be the subject of a violation of one or more disciplinary rules in accordance with K.A.R. 44-5-111, or remand the case to the hearing officer and order a new hearing.

(b) The principal administrator shall notify the inmate of the results of the review without unnecessary delay, but in no case later than seven days after receipt of the record, excluding Saturdays, Sundays and holidays. The date of receipt shall not be counted.

(c) In class III cases, where possible, the reviewer shall not be the principal administrator. The principal administrator shall designate an impartial employee of suitable rank and experience to do the review. No person who was the hearing officer may act as reviewing authority nor shall the reviewer be any person involved in the offense as witness or reporting officer. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1988; amended April 20, 1992.)

**44-13-705. Failure to meet deadlines, possible dismissal of case.** Failure to meet deadlines required in the review and appeal process may result in the dismissal of the appeal at the discretion of the reviewing authority. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-13-706. Administrative review board to review and make recommendations.** The administrative segregation review board established under article 44-14 of these regulations may review the inmates held in disciplinary segregation and may, at any time, recommend to the disciplinary hearing officer that the disciplinary segregation sentence of an inmate be modified to suspend the remaining segregation time based on a finding of the administrative disciplinary segregation review board that the inmate has maintained exceptionally good behavior while in segregation. The disciplinary hearing officer may, acting on the recommendation of the administrative segregation review board, suspend the remaining segregation time of the inmate's sentence. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

**44-13-707. Harmless error; plain error.** (a) An error in either the admission or exclusion of evidence, an error or defect in any ruling or order, an error in anything done or omitted by the hearing officer or by any of the facility

officials in processing the disciplinary case, or an error by the inmate in processing the inmate's defense of the case, shall not be grounds for granting a new hearing, for setting aside a finding, or for vacating, modifying or otherwise disturbing a disposition or order, unless refusal to take that action appears to the hearing officer or the reviewing authority inconsistent with substantial justice. At every stage of the hearing, the hearing officer or the reviewing authority shall disregard any error or defect in the proceeding which does not affect the substantial rights of the inmate or the state. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective, T-83-23, Aug. 11, 1982; effective, T-84-6, May 1, 1983; effective May 1, 1984; amended April 20, 1992.)

## **Article 14.—ADMINISTRATIVE AND DISCIPLINARY SEGREGATION**

### **SEGREGATION GENERALLY**

**44-14-101. Minimum standards of segregation.** The following minimum standards shall apply to disciplinary and administrative segregation alike: (a) Each inmate shall receive daily at least 2,500 calories of food from the normal diet of inmates not in segregation.

(b) Each cell in which an inmate is confined in segregation shall, whenever possible, be at least as large as other cells in the institution or facility and shall be adequately lighted during the daylight hours. All of the necessities of civilized existence, including toilet, bedding and water for drinking and washing shall be provided. Normal room temperature for comfortable living shall be maintained. If any of these necessities are removed temporarily, that removal shall be only to prevent suicide or self-destructive acts, or damage to the cell and its equipment, or to other persons. Each inmate shall have the opportunity to shave and shower at least three times per week unless this would present a clear security hazard as determined by the principal administrator. The procedure for issue and exchange of clothing, bedding, and linen, and for barbering and hair care services shall be as frequent and of the same quality as for the general population unless an exception is found necessary by the senior officer on duty. Such an exception shall be recorded in the log and justified in writing.

(c) All inmates in segregation shall be provided clothing that is not degrading, and access to basic personal items for use in their cells, unless there is imminent danger that an inmate or any other inmate will destroy an item or induce self-injury. Under no circumstances shall inmates confined in segregation be deprived of normal body clothing except for the inmate's own protection. If such a deprivation is temporarily necessary, the inmate shall be provided with body clothing and bedding adequate to protect the inmate's health, depending on air temperature and other conditions in the cell.

(d) If an inmate is not confined in segregation for punishment, but is confined only under conditions of emergency for the inmate's own protection, or that of personnel or other inmates, the confinement shall not be continued for longer than is necessary for the emergency. An inmate's right to communicate with an attorney or a person or agency designated to receive complaints shall not be interfered with.

(e) An inmate shall not be placed in segregation without the approval of the highest ranking officer on duty at the time unless there is a serious emergency or major disturbance.

In such a case, the procedure in K.A.R. 44-14-305 shall be followed.

(f) Unless access to medical services is provided on an as needed basis, no inmate shall be kept in segregation, for any reason, for longer than 24 hours without being examined by a medical doctor, or other medical personnel under the doctor's supervision. The inmate shall be observed once a week thereafter and examined if deemed necessary. Any medication prescribed for an inmate shall be provided for that inmate.

(g) A permanent log in a bound book shall be maintained at or near the segregation cells, and employees in charge of these cells shall be responsible for recording all admissions, releases, indicators of health and medical condition, clothing and bedding restrictions, food intake, visits to cells and other events, including those of a routine nature.

(h) A weekly report shall be made to the secretary of corrections giving the following data for segregated inmates:

- (1) Name of inmate;
- (2) race or ethnic origin;
- (3) type of, and reason for, segregation;
- (4) length of time in segregation; and
- (5) health and medical condition.

(i) If the inmate is deprived of any usually authorized item or activity, a report of this action shall be made for the inmate's file and forwarded to the principal administrator or the deputy in charge of security. This report shall be in addition to the notation in the log required by subsection (g) of this regulation.

(j) Each inmate in segregation shall be provided with the same opportunities for writing and receiving letters as provided to the general population.

(k) Visitation shall be allowed on a restricted basis unless there are substantial reasons for withholding the privilege. If possible, the inmate shall be given an opportunity to notify visitors of any restrictions before the visitors arrive.

(l) Telephone privileges shall be granted on a restricted basis. Restrictions placed on disciplinary segregation inmates may differ from those placed on administrative segregation inmates.

(m) Segregation inmates shall have access to legal materials.

(n) Segregation inmates shall have access to reading materials.

(o) Inmates confined in disciplinary or administrative segregation shall be allowed to exercise outside the cell, for those who so desire, for at least one hour per day and at least five days per week unless security, health, or safety considerations dictate otherwise. Weather permitting, such inmates shall be permitted to exercise outdoors to the extent that facilities and staff are available to maintain basic security for such inmates. When limitations on normal exercise are

necessary, every feasible alternative shall be explored to provide adequate exercise to maintain health. An inmate may be required to remain in the cell and be allowed to exercise in the cell, at the inmate's own discretion, if:

(1) A substantial security risk for the inmate is documented; and

(2) a set of exercises is approved for the inmate, by a doctor or physical fitness professional, as being adequate for the maintenance of health and capable of being accomplished within the physical limitations imposed by the cell interior.

(p) Administrative segregation inmates shall have reasonable access to programs and services including, but not limited to, educational services, commissary services, library services, social services, counseling services, religious guidance, and recreational programs.

(q) Segregation inmates shall receive daily visits from the principal administrator or designee, and from a qualified health care official unless medical attention is needed more frequently. Segregation inmates shall receive visits from members of the program staff on reasonable request. The designee of the principal administrator shall be the senior correctional supervisor in charge on a daily basis, which may include the major, captain or a lieutenant. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective, May 1, 1980; amended, May 1, 1984.)

**44-14-102. Security segregation established and provided.** Each institution and facility shall establish a set of procedures designated as security segregation procedures. Those procedures shall be divided into two parts: administrative segregation, including protective custody, and disciplinary segregation. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective, May 1, 1980; amended, May 1, 1981; amended May 1, 1984.)

#### **DISCIPLINARY SEGREGATION**

**44-14-201. Disciplinary segregation.** Disciplinary segregation shall be that division of the security segregation procedures having the greatest extent of security and procedures, and in which privileges and certain rights are restricted or removed for the purpose of punishment to maintain discipline. The purpose of disciplinary segregation shall be to incarcerate for punishment those inmates currently serving a sentence as meted out by the disciplinary board as approved by the principal administrator. (Authorized K.S.A. 75-5251, K.S.A. 1980 Supp. 75-5252, 75-5252(c); effective, May 1, 1980; amended, May 1, 1981.)

**44-14-202. Procedure required before disciplinary segregation.** No inmate shall, under any condition except those

set out in these regulations, be placed in a disciplinary segregation unit unless all of the requirements of the disciplinary procedure have been met pursuant to department of corrections' K.A.R. 44-13-101 et seq. (Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 75-5252, 75-5252(c); effective, May 1, 1980.)

### **ADMINISTRATIVE SEGREGATION**

**44-14-301. Administrative segregation.** (a) Administrative segregation procedures shall be established for the control of inmates for some necessary administrative purpose other than punishment. Procedures shall be effectively related to the control of the inmate for stated purposes. These procedures may be increased in scope and extent necessary to maintain effective control.

(b) If the inmate is in administrative segregation at his or her own request then placement in higher security may not be made unless the normal explanation, documentation and notice as is used for involuntary administrative segregation is first completed. (Authorized by K.S.A. 75-5251, K.S.A. 1980 Supp. 75-5210, 75-5210(f), 75-5252; effective, May 1, 1980; amended May 1, 1981.)

**44-14-302. Types of inmates or situations for use of administrative segregation.** Inmates may be confined in administrative segregation for any of the following reasons or under any of the following conditions: (a) Protective custody (P.C.). Any inmate who requests security segregation for personal safety or who the principal administrator knows to be in serious and imminent danger, may be placed in administrative segregation if the principal administrator explains the reason in writing and refers to the documents or other basis for the administrator's knowledge. Documentation that protective custody is warranted and that no reasonable alternatives are available shall be provided. Any denial of protective custody shall be fully documented.

(b) Pending results of investigation.

(1) Inmates may be placed in administrative segregation pending the completion of an investigation to determine whether charges should be brought. Any inmate may be segregated to prevent:

(A) Communication and collaboration between inmates involving an attempt to improperly or dishonestly coordinate the testimony which might be given;

(B) the possible intimidation of witnesses or accusers; or

(C) further disruption, if a threat to security and control, including danger to other inmates, continues to exist in the judgment of the principal administrator.

(2) Any inmate may be held in administrative segregation under both this subsection and any of subsections (a), (c),

(d), or (f) simultaneously. This shall be mentioned on the report form given to the inmate when the inmate is placed in administrative segregation.

(3) Any inmate held in administrative segregation under this subsection (b) shall be charged or released as soon as possible and always within 48 hours, excluding Saturdays, Sundays and holidays, unless a continued holding in administrative segregation under this section is justified in writing and approved by the principal administrator. This notice and explanation shall be given to the inmate in writing. The inmate's status in this situation shall be reviewed by the principal administrator or designee within 72 hours.

(c) Pre-hearing detention. If necessary to maintain security and control, any inmate who has been charged with an alleged violation of law or class I or II offense may be held in administrative segregation pending a hearing before the institution disciplinary board, or pending a trial by a court. Credit for this time shall be given against any sentence of disciplinary segregation which might result from that hearing. Any inmate may be held in administrative segregation under this subsection and any of subsections (a), (b), (d), (e), or (f) of this section simultaneously. If the inmate is held under more than one subsection, that fact shall be stated in the administrative segregation report. The inmate's status shall be reviewed by the principal administrator or designee within 72 hours.

(d) Communicable disease. Those whom a doctor of medicine has declared to be carrying any communicable disease may be isolated in administrative segregation status until danger of contagion is past.

(e) Special security inmate. Administrative segregation may be applied to:

(1) Persons accused of or who have a history of aggressive or forceable sexual attacks. That history shall be verified and documented, or a psychiatrist or psychologist shall verify, after any such occurrence, that a recurrence is probable.

(2) inmates with suicidal tendencies verified by a psychiatrist or psychologist before, or within 72 hours after, lockup in administrative segregation. Any inmate who inflicts any self-injury may be placed in administrative segregation for up to 72 hours for observation and to give clinical staff an opportunity to determine whether the injury is a significant indication of a suicidal tendency;

(3) inmates with a history of self-mutilation or self-injury after a demonstration has been made from the inmate's record that this history exists;

(4) inmates with mental or emotional problems which cause them to be a threat to themselves, employees, or other inmates, when that mental or emotional problem has been verified by a psychiatrist or psychologist;

(5) emergency situations in which the violent behavior of an inmate indicates that the inmate is potentially dangerous



to the inmate's self, or others. Segregation in this case shall continue for the duration of the emergency only, and in no case beyond 72 hours, without a psychiatrist's or psychologist's verification that the inmate's potential for danger to self or others is continuing, unless the actual violent behavior continues; and

(6) inmates who have been determined by the principal administrator, or in the administrator's absence, by the deputy director, for good and well founded cause, to be an extreme risk of escape. Such segregation shall be only for the duration of the risk condition. The reason shall be explained in writing and reference made to the documents or other basis for the placement by the principal administrator or deputy director unless already apparent from the information shown in the inmate's record. When these officers are absent during an emergency, segregation may be authorized by the highest ranking officer on duty. The principal administrator's approval and documentation shall be obtained as soon as possible.

(f) Consistent bad behavior. Any inmate may be placed in administrative segregation indefinitely when the inmate's record shows consistent bad behavior, as evidenced by three offenses within the preceding 12 months, and when:

(1) The inmate has been found guilty of the offense by a disciplinary process;

(2) such offenses involve acts which are violent and are a substantial threat to the safety and security of the institution or facility; and

(3) when such offenses arise from separate fact situations. Placement under this provision shall be only with prior written approval of the principal administrator.

(g) Other security risk. The principal administrator may place in administrative segregation or lock-up, in the inmate's own cell, any inmate or group of inmates if such inmate or inmates are engaging in behavior which threatens the maintenance of security or control in the correctional facility. In such cases, the principal administrator shall, in writing, explain, for the record, the threat to security and show justification for segregation or lock-up. A copy of this explanation and justification shall be sent immediately to the secretary of corrections. (Authorized by and implementing K.S.A. 75-5251 and K.S.A. 1983 Supp. 75-5210, 75-5252; effective, May 1, 1980. amended, May 1, 1981; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended, May 1, 1984.)

**44-14-303. Placement within segregation; notification requirements; hearing.** (a) In all cases in which inmates are placed in administrative segregation, the shift supervisor shall be notified directly. The shift supervisor shall forward a written report to the principal administrator before the end of the particular shift.

(b) Except as provided in subsection (c), inmates placed in segregation shall be provided with a hearing prior to placement in order to provide them with an opportunity to present objections, explanations or reasons as to why such a placement should not be effected. This hearing shall be held by the administrative segregation review board, the principal administrator or the administrator's designee.

(c) A hearing prior to placement shall not be required if an emergency situation exists. The principal administrator or designee may order immediate placement in administrative segregation when necessary to protect the inmate or others, prevent escape, or maintain control of the correctional facility. This action shall be reviewed by the administrative segregation review board as soon as possible, but not later than three working days after placement, in accordance with K.A.R. 44-14-310. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective, May 1, 1980; amended May 1, 1984; amended May 1, 1985.)

**44-14-304. Administrative segregation report.** (a) An administrative segregation report shall be completed in all cases of administrative segregation. The report shall indicate, specifically, the reason for placing the inmate in administrative segregation.

(b) The administrative segregation report may be used as the written memorandum of the shift supervisor to the principal administrator required by K.A.R. 44-14-303(a). A copy of the report may be used as the written notice to the inmate required by K.A.R. 44-14-305. (Authorized by and implementing K.S.A. 75-5251 and K.S.A. 1983 Supp. 75-5210, 75-5252; effective, May 1, 1980; amended May 1, 1984.)

**44-14-305. Notice and explanation to inmate.** Written notice of the reasons for placement in administrative segregation, stated in sufficient detail to allow the inmate to understand the reasons and to make a response to them, shall be provided to the inmate before the inmate is placed in administrative segregation unless a serious emergency or major disturbance exists. If a serious emergency or major disturbance involves a substantial number of inmates, or a clear and present danger thereof, notice and explanation shall be given not more than 48 hours after placement in administrative segregation. The serious emergency or major disturbance shall be described briefly, in writing, by the officer and made part of the record. In all cases, the notice shall be given to the inmate before the hearing so the inmate knows the reason for the placement. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective, May 1, 1980; amended May 1, 1984.)

**44-14-305a. Administrative segregation; inmate property management and security.** When general orders of the principal administrator permit, the inmate shall be allowed to pack the inmate's own property for storage while the inmate is in segregation. If the inmate is not allowed to pack the inmate's own property, then the property shall be immediately secured by staff and shall be packed and stored as soon as possible thereafter. The property shall not be left with or be packed by another inmate unless directly and constantly observed and closely supervised by appropriate security or unit team personnel. (Authorized by and implementing K.S.A. 75-5210, 75-5251, 75-5252; effective, May 1, 1984; amended May 1, 1986.)

**44-14-306. Privileges and rights in administrative segregation.** Inmates in administrative segregation shall be treated as nearly as possible like any other inmate in the general population of the institution or facility. Where possible, the inmate shall retain such privileges and property as are commensurate with the particular circumstances or condition for which he or she was placed in administrative segregation. Administrative segregation shall not be used or considered as punishment. An inmate requesting the benefits of protective custody status in administrative segregation may be required by the principal administrator to waive certain specified privileges in writing for those privileges which the principal administrator, in his or her best judgment, deems it impossible to provide to the inmate while in protective custody status, when such privileges are otherwise allowed to inmates in general population. This waiver shall constitute an agreement between the principal administrator and the inmate for the principal administrator to provide additional security facilities and staff to the inmate in return for his or her relinquishment of certain limited privileges. The principal administrator must nevertheless provide to those in protective custody those privileges which are deemed possible. (Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 75-5252, 75-5252(c); effective, May 1, 1980.)

**44-14-307. Transfer to more restricted area in extreme special cases.** In cases involving suicide attempts, or attempts at arson, or other situations where, because the inmate in administrative segregation has access to devices with which to commit suicide, start fires, or otherwise threaten the safety of himself, herself, or others, or he or she becomes an uncontrollable security risk, the inmate may be immediately placed in greater restrictive confinement to prevent him or her from continuing to be a danger to himself, herself, or others. Pursuant to K.A.R. 44-14-305, the inmate shall be given a written statement setting forth the reason why his or her status is being changed. In such cases, the inmate shall be given a review by the administrative segregation review board within 24

hours after receipt of this notice. This review shall consist of the same procedure as used for initial placement in administrative segregation. The change of status is permitted only for administrative security and control and does not constitute nor shall it be used as punishment. If appropriate, the inmate shall be charged with an offense and receive a disciplinary hearing as quickly as possible within the rules so that his or her case may be clarified. (Authorized by and implementing K.S.A. 75-5251, 75-5252; effective, May 1, 1980; amended May 1, 1987.)

**44-14-308. Discipline while in administrative segregation.** Inmates who commit offenses while in administrative segregation may be charged, given notice and brought before the disciplinary board for hearing. (Authorized by K.S.A. 75-5251, 75-5252; effective, May 1, 1980; amended May 1, 1986.)

**44-14-309. Administrative segregation review board.** In each facility there shall be an administrative segregation review board appointed by the principal administrator. The board shall consist of one (1) person from the security staff, one (1) person from the clinical staff, and one (1) person from the classification or other non-security staff. (Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 75-5252, 75-5252(c); effective, May 1, 1980.)

**44-14-310. Procedure for the administrative segregation review board upon initial placement.** (a) If an inmate is placed in administrative segregation without a hearing, the administrative segregation review board shall hold a hearing to review the placement decision within three working days of placement and shall interview the inmate. This requirement shall apply to every case of administrative segregation.

(b) The inmate shall be given the opportunity to present the inmate's case. When necessary the board shall obtain clarifying information from the officer and staff involved in the placement. If the inmate is disruptive or is a danger to self or others, the board may exclude the inmate from the review. In this situation, the board shall, if possible, interview the inmate at the cell or obtain a written statement from the inmate in response to the placement.

(c) The administrative segregation review board shall provide a written decision of whether the placement is legal and proper and a brief summary record of the hearing, including references to the facts which were relied upon and the reasons for the confinement in administrative segregation. The record shall include a brief statement summarizing the position of the shift supervisor or principal administrator and the position of the inmate. The board may include a recommendation to the principal administrator regarding future disposition and the reasons for that recommendation. (Authorized by and

implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective, May 1, 1980; amended, T-83-23, August 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984.)

**44-14-311. Regular review and monitoring by the administrative segregation review board.** (a) The administrative segregation review board shall review the status of each inmate confined in administrative segregation every seven days for the first two months of segregation and at least every 30 days thereafter. The board shall recommend to the facility principal administrator, in writing, one of the following actions:

- (1) Continue in present status;
- (2) return to general population;
- (3) transfer to other Kansas state institution or facility;
- (4) transfer to another institution in another state or a federal institution;

(5) medical or psychological intervention; or

(6) continue or modify program or treatment status.

(b) The inmate shall be permitted to submit written requests for release to the administrative segregation review board. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective, May 1, 1980; amended May 1, 1984.)

**44-14-312. Inmate complaints and institution compliance monitor.** (a) Upon verbal request of any inmate in administrative segregation, an inmate request form and a writing implement with which to make a written complaint to the administrative segregation review board concerning the inmate's condition or treatment shall be provided to that inmate.

(b) The principal administrator, or a member of the staff which reports directly to the principal administrator, shall make a weekly on-site spot check, interviewing at least two inmates, to determine compliance with institution and department policy, rules and regulations. A notation shall be made in the log stating the name of the inmate interviewed and the name of the staff member making the check. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective, May 1, 1980; amended May 1, 1984.)

**44-14-313. General lockdown.** In cases of emergencies, disruptions of a general nature or that involve substantial numbers of inmates, or in the event of a riot, a general lockdown of the institution and confinement of all inmates to their cells shall be permitted. The hearing and review requirements of these administrative segregation regulations

shall not apply. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective, May 1, 1984.)

**44-14-314. Protective custody.** (a) Admission to protective custody shall be made only when there is documentation that protective custody is warranted and that no reasonable alternatives are available. The administrative segregation review board shall review protective custody cases with a goal of terminating separate housing as soon as possible.

(b) The inmate shall sign a consent form agreeing to protective custody when the inmate requests the placement.

(c) The reasons for protective custody shall be documented, especially in those cases in which the inmate does not request or consent to the placement. If the inmate does not consent to the protective custody placement, a hearing shall be held according to K.A.R. 44-14-303 and 44-14-310.

(d) Protective custody shall be for as short a time period as possible under the circumstances. Long-term custody shall be fully documented and clearly monitored.

(e) Denials of protective custody shall be documented showing the reason justifying the denial. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective, May 1, 1984.)

**44-14-315. Staff selection and rotation.** Special criteria shall be established by the principal administrator to govern selection, supervision and rotation of staff who work on a regular and daily contact basis in segregation units. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective, May 1, 1984.)

**44-14-316. Psychological review criteria.** A personal interview shall be conducted and a report prepared by a qualified psychologist or psychiatrist when an inmate remains in segregation beyond 30 days. After that a psychological assessment shall be made at least every three months. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5252; effective, May 1, 1984.)

**44-14-317. Waiver of rights.** (a) The inmate shall be permitted to voluntarily waive the right to any time limit or process afforded by these administrative procedure regulations, K.A.R. chapter 44, article 14. The waiver shall be in writing and shall state with specificity the particular time limit or process being waived. The waiver shall be made in the form and manner approved or prescribed by the secretary of corrections and shall be witnessed by one impartial correctional employee. It shall be signed by the inmate and the chairperson of the administrative segregation review board.

(b) The inmate shall be informed of the nature of the time limit or process being waived and of the impact and consequence of the waiver.

(c) The inmate shall be questioned by the board chairperson prior to accepting the waiver to determine if it is knowingly and voluntarily made. (Authorized by and implementing K.S.A. 75-5210, 75-5252; effective, May 1, 1987.)

## **Article 15.—GRIEVANCE PROCEDURE FOR INMATES AND PAROLEES**

### **PROCEDURES GENERALLY**

**44-15-101. Inmate or parolee grievance procedure; informal resolution; formal levels.** (a) Throughout this series of regulations comprising the grievance procedure, all references to inmates shall include parolees unless the meaning is clearly to the contrary. References to the principal administrator shall include the parole director. The unit team equivalent shall be the parole officer.

(b) Prior to utilizing the grievance procedure, the inmate shall be responsible for attempting to reach an informal resolution of the matter with the personnel who work with the inmate on a direct or daily basis. An inmate in a facility or parole setting shall contact the unit team members for the attempt at informal resolution. That attempt shall be documented. The facility's inmate request forms may be used to document this process. If this informal resolution attempt fails, the grievance system may then be used. If an emergency exists and a resolution could not be obtained by going to the unit team, the inmate may go directly into the grievance process.

(c) At each stage all grievances shall be answered in as short a time as possible to insure that delay will not impose additional harshship upon the inmate or unnecessarily prolong a misunderstanding. Grievances of inmates who have since been transferred, paroled, or discharged shall be answered to the extent possible.

(d) The grievance procedure shall incorporate several levels of problem solving to assure solution at the lowest administrative level possible.

(1) Level 1. Inmates in the prison facilities shall first submit the grievance report form to the principal administrator of the facility. Parolees shall first submit the form to the regional parole director.

(2) Level 2. If not resolved, the grievance may be next submitted to the office of the secretary of corrections. The secretary of corrections shall respond to the grievance or refer the matter to a deputy secretary of corrections for additional investigation, if necessary, and response to the inmate. Grievances of inmates in the prison facilities may be referred by the secretary to the deputy secretary of corrections for facility management. Grievances of parolees may be referred by the secretary to the deputy secretary of corrections for community and field services management.

(e) Inmate grievance report forms and appeal forms shall be made available to all inmates. Grievance forms and appeals forms shall be provided in containers in each inmate living unit and on each segregation wing or tier. The unit team



shall assist the inmate in obtaining copies of supporting material necessary to complete the grievance if the number of photocopies requested by the inmate is reasonable.

(f) No staff member shall refuse to sign, date and return an inmate request form, an inmate grievance form, or a grievance receipt slip showing that the inmate came to that person for assistance.

(g) Each inmate shall be entitled to invoke the grievance procedure. The facility shall insure that the procedure is accessible to mentally impaired and physically handicapped inmates. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; effective May 1, 1980; amended May 1, 1984; amended May 1, 1987; amended April 20, 1992.)

**44-15-101a. Grievance procedure distribution; orientation; applicability; remedies; advisory committee; investigation.** (a) Grievance procedure regulations shall be distributed or made readily available to all employees and inmates in each correctional facility.

(b) Each inmate and employee, upon admittance to or employment by the institution, shall receive an oral explanation of the procedure including an opportunity to have questions regarding the procedure answered orally. Explanatory materials and the oral presentation shall be available in any language spoken by a significant portion of the institution's population. To the extent feasible, inmates who do not understand a language spoken by a significant portion of the institution's population shall receive an explanation of the grievance procedure in a language in which the inmate is fluent. Mentally impaired and physically handicapped inmates shall receive explanation in a manner comprehensible to them. Parole officers shall provide each parolee with a brief grievance procedure orientation that explains the manner in which the system functions for parolees. Following the explanation inmates and parolees shall sign a statement indicating that the required explanation has been given.

(c) All employees of the institution who are directly involved in the operation of the grievance procedure shall receive training in the skills necessary to operate, or participate in, the grievance procedure.

(d) (1) The grievance procedure shall be applicable to a broad range of matters which directly affect the inmate including:

(A) Complaints by inmates regarding policies and conditions within the jurisdiction of the institution or the department of corrections; and

(B) Actions by employees and inmates, and incidents occurring within the institution.

(2) The grievance procedure shall not be used in any way as a substitute for, or as part of, the inmate disciplinary procedure, the classification decision-making process, or the property loss or personal injury claims procedure. The grievance

system shall not challenge the decision of these other procedures. If the other procedure was conducted improperly, the grievance may challenge the manner in which the decision was made. Grievances of this type shall be made only after the decision process is completed unless the inmate would incur irreparable harm if delayed until the end of the process.

(e) The remedies available to the inmate may include action by the director of the institution to correct the problem or action by the secretary of corrections to cause the problem to be corrected. Relief may include an agreement by institution officials to remedy an objectionable condition within a reasonable, specified time, or to change an institution policy or practice.

(f) The principal administrator shall establish a procedure for investigating the allegations and establishing the facts of each grievance. Any inmate or employee who appears to be involved in the matter shall not participate in any capacity in the resolution of the grievance.

(g) A copy of the grievance response at each level shall be delivered to the unit team, to the inmate, and to the principal administrator last responding. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5210(f); effective May 1, 1984; amended May 1, 1985.)

**44-15-101b. Time limit for filing grievance.** Grievances shall be filed within 15 days from the date of the discovery of the event giving rise to the grievance, excluding Saturdays, Sundays and holidays. No grievance, regardless of time of discovery, shall be filed later than one year after the event. Any grievance filed later than these deadlines may be returned to the inmate without investigation. The name of the individual returning the grievance, the date of the return, and the reasons for the return shall be noted on the grievance. An inmate may move to the next stage of the grievance procedure if a timely response is not received at any step in the grievance process, unless an extension of time for the response is agreed to in writing by the inmate and staff person answering the grievance. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1984; amended May 1, 1988.)

**44-15-102. Procedure.** (a) Preliminary requirement; informal resolution and problem-solving at unit team level.

(1) Each inmate shall first seek information, advice, or help on any matter from the inmate's unit team, or from a member of the team. If unable to solve the problem, the unit team shall refer the inmate to the proper office or department. The unit team shall assist those inmates who are unable to complete the form themselves.

(2) If an inmate does not receive a response from the unit team within 10 calendar days, a grievance report may be

sent to the principal administrator without the unit team signature or signatures. Each grievance report form shall include an explanation of the absence of the signature or signatures.

(b) Grievance step one; complaint to the principal administrator. If any inmate receives a response but does not obtain a satisfactory solution to the problem through the informal resolution process within 10 calendar days, the inmate may fill out an inmate grievance report form and submit it, within three calendar days after the deadline for informal resolution, to a staff member for transmittal to the principal administrator.

(1) The inmate shall attach copies of all inmate request forms used to attempt to solve the problem and shall indicate on the inmate grievance report the following information:

(A) A specific complaint that states what or who is the subject of the complaint, related dates and places, and what effect the situation, problem, or person is having on the inmate which makes the complaint necessary;

(b) Title and number, if possible, of any order or regulation, that may be the subject of the complaint;

(C) the action the inmate wants the principal administrator to take to solve the problem;

(D) the name and signature of the responsible institution employee or employees or of the parole officer from whom the inmate sought assistance. This signature shall be on either an inmate request form or the grievance report form. The date the help was sought shall be entered by the employee on the form; and

(E) the date the completed grievance report was delivered to the staff member for transmittal to the office of the principal administrator.

(2) The staff member shall forward the report to the principal administrator before the end of the next working day, and shall give a receipt to the inmate.

(3) Principal administrator's response.

(A) (i) Upon receipt of each grievance report form, the principal administrator shall assign a serial number and shall indicate the date of receipt. The principal administrator shall ascertain the nature of the grievance.

(ii) If a grievance is determined to challenge policies or practices of the institution or department, including the grievance procedure itself, the principal administrator or designee shall prepare and post a notice setting out the nature of the general policy or practice which is the subject of the complaint and shall solicit written comments from both inmates and employees concerning the practice or policy. The notice shall direct any interested inmate or employee to submit a written comment to the principal administrator no later than five calendar days from the date notice is posted.

(iii) Each grievance which is the subject of inmate and

employee comment shall be returned to the inmate, with an answer, within 15 calendar days from the date of receipt. All other inmate grievances shall be returned to the inmate, with an answer, within 10 calendar days from the date of receipt.

(B) Each answer shall contain findings of fact, conclusions drawn, the reasons for those conclusions and the action taken by the principal administrator. Each answer shall inform the inmate that the inmate may appeal by submitting the appropriate form to the secretary of corrections.

(C) In all cases, the principal administrator shall return the original and one copy of the grievance report to the inmate. The copy shall be retained by the inmate for the inmate's files. The original may be used for appeal to the secretary if the inmate desires. The principal administrator shall provide the necessary copies.

(D) A second copy shall be retained by the principal administrator.

(E) Each institution or facility shall maintain a file on grievance reports indexed by inmate name and subject matter. Grievance report forms shall not be placed in the inmate's institution file.

(F) Any grievance report form may be rejected by the principal administrator if the form does not document any unit team action as required for the preliminary informal resolution process. The grievance report form shall then be sent back to the unit team for an immediate answer to the inmate.

(G) If no response is received from the principal administrator in the time allowed, any grievance may be sent by an inmate to the secretary of corrections with an explanation of the reason for the delay.

(c) Grievance step two; appeal to the secretary of corrections.

(1) If the principal administrator's answer is not satisfactory, the inmate may appeal to the secretary's office by indicating on the grievance appeal form exactly what the inmate is displeased with and what action the inmate believes the secretary should take. The inmate's appeal shall be made within three calendar days of receipt of the principal administrator's decision, or within three calendar days of the deadline for that decision, whichever is earlier.

(2) The appeal shall then be sent directly and promptly to the department of corrections office in Topeka.

(3) When an appeal of the principal administrator's decision is made to the secretary, the secretary shall then have 20 calendar days from receipt to return the grievance report form to the inmate with an answer. The answer shall include findings of fact, conclusions made and actions taken.

(4) If a grievance report form is submitted to the secretary without prior action by the principal administrator, the form

may be returned to the principal administrator. If the principal administrator did not respond in a timely manner, the form shall be accepted by the secretary.

(5) Each answer by the secretary of corrections shall be in the same form as that by the principal administrator. The secretary may designate an appropriate deputy secretary to prepare the answer. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210; K.S.A. 75-5251; effective May 1, 1980; amended May 1, 1984; amended May 1, 1985; amended May 1, 1988; amended April 20, 1992.)

#### **44-15-103. Reserved.**

**44-15-104. Reprisals prohibited.** (a) Inmates. No adverse action shall be taken against any inmate for use of the grievance procedure unless the inmate uses the grievance procedure to communicate a threat to another person or to the security of the institution or to commit any unlawful act.

(b) Employees. No adverse action shall be taken against any employee for good faith participation in the grievance procedure. Employees shall be entitled to grieve reprisals for participation in inmate grievance systems by use of the employee grievance system (secretary of corrections' internal management policy and procedure [IMPP] 02-115). (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5210(f); effective May 1, 1984.)

**44-15-105. Records.** (a) Nature. Records regarding the filing and disposition of grievances shall be collected and maintained systematically by the correctional facility. These records shall be preserved for at least three years following final disposition of the grievance. These records shall include aggregate information regarding the numbers, types and dispositions of grievances, as well as individual records of the date of and the reasons for each disposition at each stage of the procedure. The logs and records shall be in a form and manner prescribed by secretary of corrections policy and procedure.

(b) Confidentiality. Records regarding the participation of an individual in grievance proceedings shall be considered confidential and shall be handled under the same procedures used to protect other confidential case records. Consistent with ensuring confidentiality, members of the staff who are participating in the disposition of a grievance shall have access to records essential to the resolution of the grievance. This, however, shall not permit review of inmate files by other inmates. Grievance report forms shall not be placed in the inmate's departmental file. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5210(F); effective May 1, 1984.)

**44-15-105a. Annual Review.** The records regarding the filing and disposition of grievances shall be reviewed annually by the secretary of corrections to determine the effectiveness and credibility of the grievance process. The review shall include an analysis of the types of grievances received, the types and levels of disposition, and any complaints that have been received about the grievance procedure itself. The review shall also include solicitation and consideration of employee and inmate comments on the effectiveness and credibility of the grievance procedure. The secretary of corrections may designate an appropriate deputy secretary of corrections to conduct the review. (Authorized by and implementing K.S.A. 1991 Supp. 75-5210, 75-5251; effective April 20, 1992.)

**44-15-106. Emergency procedure.** "Emergency grievances" shall mean those grievances for which disposition according to the regular time limits would subject the inmate to a substantial risk of personal injury, or cause other serious and irreparable harm to the inmate. In emergency situations the inmate may bypass the prerequisite of informal resolution if going to the unit team would not obtain a solution to the problem. The inmate shall indicate on the face of the grievance form the nature of the emergency and shall write the word "emergency" at the top of the grievance report form. Emergency grievances shall be forwarded immediately, without substantive review, to the level at which corrective action can be taken. Emergency grievances shall be expedited at every level. The same external review provisions that apply to regular grievances shall apply to emergency grievances.

If the person at the corrective action level determines that the grievance is not an emergency, that fact shall be included on the grievance form and the form shall be signed by the person who made that determination. The grievance may then be processed from that point on as a regular grievance. If necessary for a proper response the grievance may be sent for processing at a lower level. (Authorized by and implementing K.S.A. 75-5251, K.S.A. 1983 Supp. 75-5210, 75-5210(f); effective May 1, 1984.)

### **SPECIAL PROCEDURES**

**44-15-201. Special kinds of problems.** (a) Inmates may have certain problems which they feel must be brought to a higher authority, without going through the grievance procedure. In these cases, sealed letters or grievance report forms may be addressed as official mail to the principal administrator of the institution, the secretary of corrections, or the state pardon attorney. However, these letters or grievance report forms should be reserved for the most difficult and complex problems. Generally, any matter which may be internally handled under the inmate grievance procedure will not be

considered as appropriate for the use of the official mail correspondence privilege. (K.A.R. 44-12-601)

(b) Any department of corrections or institution official who receives a complaint letter may return it to the inmate with instructions to the inmate to make use of and follow the proper grievance procedure if, in the opinion of the official, the matter is appropriate for handling through the grievance procedure. (Authorized by K.S.A. 1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980.)

**44-15-202.** (Authorized by K.S.A. 75-5251, K.S.A.1979 Supp. 75-5210, 75-5210(f); effective May 1, 1980; revoked May 1, 1984.)

**44-15-203. Ombudsman.** The department of corrections grievance procedure is provided for its inmates and parolees, and shall not in any way replace any other complaint system provided by the state ombudsman for corrections. The functions of the ombudsman for corrections are described in writing and made available to inmates. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended May 1, 1987.)

**Article 16.—REPORTING AND CLAIMS  
PROCEDURE FOR LOST OR DAMAGED  
PROPERTY OR FOR PERSONAL INJURY**

**44-16-101. Reserved.**

**44-16-102. Reporting loss or damage to property.** (a) Each inmate shall report every loss of or damage to the inmate's own property immediately. In reporting property damage or loss, inmates shall use those procedures established by written order of the principal administrator. These procedures shall be followed strictly.

(b) The institution or facility principal administrator shall not be required to accept any property loss or damage claim unless it is made within 15 days of the discovery of the loss. The principal administrator shall not be required to accept any claim at all if:

(1) It is submitted later than one year and one day after the date of the loss, regardless of when the loss was discovered; and

(2) the inmate could have discovered the loss by exercising reasonable effort to know the status of the inmate's property and money. (Authorized by K.S.A. 75-5251; implementing K.S.A. 46-920, 75-5254, 75-5255, 75-5257, K.S.A. 1983 Supp. 75-5210, 75-5210(f); effective May 1, 1980; amended May 1, 1984.)

**44-16-103. Reporting personal injury or medical problems.** (a) Each inmate shall report any personal injury or medical problem immediately, according to procedures established by written order of the principal administrator. If a loss or damage is likely, the report shall be made as soon as possible after the injury or medical problem is known or should be known with reasonable effort. These procedures shall be followed strictly.

(b) Inmates shall seek medical care whenever needed to help prevent or lessen loss or damage due to injury or medical problems.

(c) The principal administrator or designee shall conduct an investigation as soon as possible whenever loss or damage appears likely as a result of an injury or medical problem. (Authorized by and implementing K.S.A. 46-920, as amended by L. 1988, Ch. 183, Sec. 1, K.S.A. 75-5210, 75-5251, 75-5254, 75-5257; effective May 1, 1980; amended May 1, 1984; amended, Jan. 2, 1989.)

**44-16-104. Claims for or reports of lost or damaged property or for personal injury.** (a) Claims for property loss or damage or personal injury may be submitted to the institution



and secretary of corrections. If the loss is greater than \$500.00, the claim may be filed with the joint legislative committee on claims against the state.

(b) The inmate shall obtain a claim form from the unit team, fill it out and return it. The unit team shall provide the inmate with a receipt or a copy of the form indicating on it who received it, from whom and the date received. The unit team shall submit the claim to the principal administrator for investigation within 48 hours of receipt, excluding Saturdays, Sundays and holidays.

(c) Each department of corrections institution shall maintain information and forms necessary for filing a claim to the joint committee on special claims against the state.

(d) The principal administrator shall assure that the unit team assists the inmate in submitting a claim by providing information and any necessary claims forms.

(e) All claims filed by inmates for lost or damaged property or personal injury shall be under oath. (Authorized by K.S.A. 1991 Supp. 75-5210, K.S.A. 75-5251; implementing K.S.A. 1991 Supp. 46-920, 75-5254, 75-5257; effective May 1, 1980; amended May 1, 1984; amended, Jan. 2, 1989; amended April 20, 1992.)

**44-16-105. Property at own risk.** An inmate owns personal property at his or her own risk. Loss or damage of personal property shall not provide a basis for recovery on a claim unless the loss or damage directly resulted from the intentional or negligent act or omission of a correctional employee and was reported pursuant to K.A.R. 44-16-102. (Authorized by and implementing K.S.A. 1983 Supp. 75-5210; effective, May 1, 1980; amended, May 1, 1984.)

**44-16-106. Report to secretary of corrections.** The principal administrator shall make a report to the secretary of corrections on such reported loss, damage or injury, in a form and manner prescribed by the secretary of corrections in the internal management policies and procedures. (Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 75-5252; effective May 1, 1980.)

**44-16-107. Claims processing.** (a) The principal administrator shall cause an investigation and a report of the investigator's findings and recommendations to be completed within 10 days of receipt of the claim. The investigation period may be extended for 20 days for good cause. The inmate shall be notified of the reason for any extension.

(b) When complete, the principal administrator shall forward the findings, any statements and documentation obtained in the investigation, and a recommendation regarding disposition of the claim to the secretary of corrections.

(c) A decision on the claim shall be made by the secretary

or the secretary's designee within 20 days after receipt of the claim.

(d) If granted, the claim shall be paid promptly according to procedures prescribed by the secretary of corrections. (Authorized by K.S.A. 1983 Supp. 75-5210, K.S.A. 75-5251; implementing K.S.A. 1983 Supp. 75-5210, K.S.A. 46-920, 75-5251, 75-5254, 75-5257; effective May 1, 1984.)

**44-16-108. Claims between institutions.** (a) When a property or personal injury claim is made for a loss which occurred at another Kansas correctional institution, the principal administrator of the institution where the claim was filed shall, within two days, excluding Saturdays, Sundays and holidays, forward a copy of the claim to the other institution principal administrator.

(b) The principal administrator of the institution where the loss occurred shall, within 10 days after receipt of the claim, cause an investigation and a report of findings and recommendations to be made and sent to the secretary of corrections. The investigation period may be extended for 20 days for good cause. The inmate shall be notified of the reason for any extension. (Authorized by and implementing K.S.A. 46-920, as amended by L. 1988, Ch. 183, Sec. 1, K.S.A. 75-5210, 75-5251, 75-5254, 75-5257; effective May 1, 1980; effective May 1, 1984; amended, Jan. 2, 1989.)