



DEPARTMENT  
OF  
CORRECTIONS



STATE OF  
KANSAS

EMPLOYEE

# HANDBOOK

-Inmate Disciplinary  
Procedure-

Office of the:  
Secretary of Corrections

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# HANDBOOK

## For Use In the Inmate Disciplinary Procedure By Correctional Staff and Hearing Officers

### Introduction

The Inmate Rule Book describes the process used to enforce rules within our correctional facilities. Rule Violations are divided into three classes of offenses, with different hearing requirements and authorized penalties for each class.

Our policies recognize that not every rule violation constitutes major misconduct, and that in some cases verbal counseling or summary action may be the appropriate initial response to an apparent rule violation. Before punishment is imposed for a rule violation, the inmate generally has a right to a written report and a hearing. There are at least two alternatives to this formal process. First, if a warning is sufficient to remedy the situation, the staff member may talk to the inmate about the behavior instead of writing a report. Second, even if punishment is preferable to a warning, the staff member still has the option of offering the inmate "summary judgement" (K.A.R. 44-13-201b). The inmate can accept the summary judgment sanction by waiving the right to a formal disciplinary report and hearing. Only if the inmate declines to accept the summary judgment is the regular, formal disciplinary hearing process initiated.

An inmate charged with a rule violation has certain rights that are described in the Inmate Rule Book; these rights are based on constitutional principles of "due process" with which we are required to comply in conducting disciplinary hearings.

### What is Due Process?

The United States and Kansas constitutions require that certain due process procedures be followed when any governmental entity seeks to deprive a person of his or her life, liberty, or property. Due process is frequently equated with basic fairness and applies to a wide variety of judicial and administrative hearings. The type of procedures that must be followed to satisfy due process depends on the nature of the protected right. Criminal trials, for example, involve strict and elaborate due process protections. The purpose of the required procedures is to protect individuals against arbitrary and discriminatory governmental action. Because an inmate can forfeit property (fines, restitution) and/or liberty (good time, segregation) as a result of a disciplinary conviction, prison discipline must be administered in accordance with certain minimum due process procedures.

### Due process includes several basic elements:

a) Written rules to inform all parties about prohibited and expected behavior.

A department-wide listing of disciplinary offenses and procedural rules comprises our Inmate Rule Book. By defining the types of behavior that will be punished as misconduct, we fulfill the first element of basic fairness with the provision of notice of these rules. The publication of these rules also assists staff to consistently identify rule violations and properly charge them. Other rules that apply only in specific work and school areas, housing units, and any

other areas having specialized requirements that will be punished if violated must be written and prominently posted.

b) Information provided to the accused as to the nature and substance of the accusation(s) against him, to allow for the preparation of a response;

c) Opportunity to appear and comment on the accusation(s) before an impartial examiner.

The United States Supreme Court has held that, in the context of prison disciplinary hearings, these due process elements require:

1) At least 24 hours' advance written notice of the charges and time and place of the hearing.

2) A limited right to call witnesses and present documentary evidence.

3) Assistance of staff or other inmates in complex cases or where the accused inmate is illiterate or otherwise incapable of representing himself.

4) A very limited right to confront and cross-examine adverse witnesses.

5) A written statement of the decision, with the evidence relied on and the reasons for the action taken.

All of these requirements are addressed by our rules and regulations as indicated.

## **THE INMATE DISCIPLINARY PROCEDURE**

The disciplinary process involves much more than the hearing itself; before a hearing officer becomes involved, a rule violation has been charged by the reporting officer, the disciplinary report screened, and the case investigated as necessary. The reporting officer, shift supervisor, and investigator may therefore perform functions that are essential to the proper outcome of the hearing process. The hearing officer can base his or her decision only on the evidence presented at the hearing. If the inmate is not properly charged, or the disciplinary report is carelessly reviewed or poorly investigated, the hearing officer may have no choice but to find the inmate not guilty or dismiss the report.

### **A. Responsibilities of the Reporting Officer**

#### **1. Determine response.**

A staff member who witnesses an apparent rule violation should first determine whether a warning or a summary action is appropriate. If such action is not sufficient, the staff member should then check the Inmate Rule Book and the Handbook checklist to determine the appropriate charge(s) to bring in the disciplinary report.

#### **2. Description of rule violation.**

The reporting officer must ensure that the behavior of the charged inmate is accurately reported and supports the specific rule violation charged. If the reporting officer has observed the misconduct directly, he should carefully describe what happened, including the time, date, and place of the occurrence. If the report is based on the observations of others, this fact should be clearly reflected in the report. The account of the violation should be as detailed as possible. Whenever possible, the disciplinary report should be written by a staff member who actually witnessed the violation.

The reporting officer should recite exactly what happened without making assumptions or conclusions. For example, to state that two inmates "were

fighting" is simply a conclusion; the report must include and describe the behavior alleged to be a fight, such as, "Inmate A then hit Inmate B in the face, knocking him to the ground. Inmate B kicked at A and may have kicked his ankle...". Similarly, do not state simply, "I gave Inmate A a direct order, which he refused"; instead, quote the exact words of the order and specify the behavior of the inmate that constituted refusal: "I told Inmate A to lock up. Inmate A refused, stating, "No way," folding her arms, and remaining in the hallway."

Keep in mind that the way a report is written may ultimately determine the decision made at the hearing. The hearing officer must have sufficient evidence, either in the form of direct observations or sufficient circumstantial evidence, on which to make a decision regarding guilt or innocence. The conclusions or findings are for the hearing officer to make, and there cannot be a conclusion or finding of "guilty" without the production of evidence that establishes guilt clearly and convincingly. (See K.A.R. 44-13-409) The disciplinary report and any additional statement or testimony from the reporting officer are likely to be an essential component of that evidence.

When distance (such as between several inmates or the inmate and the reporting officer) or location of the alleged violation (such as where contraband was seized) are important, the reporting officer should consider making a small diagram as part of the report.

### 3. Circumstantial Evidence.

A hearing officer may reach a guilty finding in a particular case based solely on circumstantial evidence. Circumstantial evidence is evidence of an indirect nature; that is, facts or circumstances from which other facts or circumstances may be shown. For example, two inmates emerging from a closet with black eyes, bloody noses and bleeding knuckles, just after loud noises have been heard coming from that area, creates a logical inference that while in the closet the two inmates were fighting. Therefore, despite the lack of any direct observation of the fight, and depending on the explanation of the inmates, a reporting officer can write a proper report, and a hearing officer could properly conclude, based on the circumstantial evidence alone, that the two inmates were guilty of fighting.

### 4. Physical Evidence.

Any physical evidence that was involved in the misconduct must be seized by the reporting officer and stored, with the chain of custody protected. Many violations may require that physical evidence, or perhaps a photograph of that evidence, be seen by the hearing officer as a necessary basis for a finding of guilt. For example, it may not be possible to convict an inmate of dangerous contraband or theft if the shank or stolen radio in question were not properly seized, stored, and made available at the disciplinary hearing.

### 5. Witnesses.

The names of all persons who may have any knowledge of the incident out of which the disciplinary report arose should be listed on the report. This includes both staff and inmates. In order for the hearing officer to reach a correct decision as to guilt or innocence at the disciplinary hearing, it is important that he or she have available all relevant information, and this can be obtained only if all those who may have such information are mentioned in the disciplinary report.

## 6. Offense Checklist for Reporting/Hearing Officers.

The reporting officer should review the Offense Checklist for Reporting/Hearing Officers prior to completion of the disciplinary report. This checklist is a helpful tool which, if properly utilized, will greatly increase the likelihood of a proper finding at the disciplinary hearing. Although the definitions of the offenses in the Inmate Rule Book govern, the Checklist attempts to break down certain of these definitions into their separate elements. Consequently, by following the Checklist, the reporting officer and hearing officer can be helped to ensure that the facts and elements required to bring or establish a particular charge are contained in the disciplinary report and presented at the disciplinary hearing.

## 7. Shift Supervisor Approval.

The shift supervisor must review all disciplinary reports to determine if they are sound, adequate, and made in the proper manner. Reports which are not should not be approved by the shift supervisor.

## 8. Counsel substitute.

From time to time certain staff members will be appointed by the warden to act as counsel substitute for inmates in disciplinary hearing pursuant to K.A.R. 44-13-408. When appointed, counsel substitute will assist inmates in class I cases and any other case in which the inmate is not competent to represent himself or herself. Counsel substitute will not be required to offer advocacy of the type that would be expected in a truly adversarial process, but, instead, to simply assist the inmate in understanding the process and presenting a relevant, meaningful defense to the charges. Where appropriate, counsel substitute can help the inmate secure the appearance at the hearing of any relevant witnesses, to obtain written statements from any relevant witnesses, and to present any relevant documents. Counsel substitute's job is to assist rather than represent the inmate at the disciplinary hearing.

## **B. Responsibilities of the Hearing Officer**

### 1. Overview.

The role of the hearing officer is somewhat like that of a judge: to act as an impartial decision-maker who takes pleas, determines based on the evidence presented at the disciplinary hearing whether the charged inmate is guilty, and imposes sanctions in the event of a finding of guilt or a plea of no contest. The hearing officer is attempting to ensure that the truth of the matter is determined as nearly as possible. The hearing officer must determine whether all necessary evidence has been gathered, weigh the credibility of all witnesses, determine the facts in the case, and decide whether those facts amount to sufficient proof of the alleged misconduct.

To be impartial, the hearing officer's decision must be based only on the evidence presented at the disciplinary hearing and only on that evidence relating to the charged offense, or a lesser included violation.

The hearing officer is in charge of the disciplinary hearing and is entitled to expect respectful behavior from all persons present. Anyone who does not follow the direction of the hearing officer and disrupts the proceedings may be required to leave by the hearing officer.

The appearance of fairness is just as important as actual fair decision-making. The hearing officer must take care to allow the inmate to give his or her side of the incident, to conduct the hearing in an orderly manner, and to be

clear in describing the inmate's rights. All decisions made by the hearing officer and the reasons for them should be explained to the inmate; any denial of any inmate request to introduce certain evidence or testimony or to conduct the disciplinary hearing in a certain fashion must be explained on the record and that explanation documented in writing in the hearing summary. This does not mean, however, that the inmate must be allowed to speak or present his case without limitation; relevance and repetition are always appropriate considerations.

## 2. Outline of Duties.

Briefly summarized, the duties of a hearing officer are as follows:

a) Review the disciplinary report to ensure that all notice requirements and applicable time limits have been or are being met; rule on requests for continuances.

Always begin by asking the inmate if he or she understands the nature of the proceedings and what he or she has been charged with. ("Do you understand...") Make sure that the inmate has been timely served with all relevant documents in addition to the disciplinary report, except those containing information about confidential witnesses. Remember that any time limits can be waived by the inmate if the inmate is properly advised of his or her rights and signs the appropriate waiver. Continuances can be granted by the hearing officer in accordance with K.A.R. 44-13-402 when appropriate and necessary in order to meet applicable time limits. Keep in mind that the failure to comply with certain time limits may be determined by the hearing officer, in his or her discretion, to constitute only a harmless error, so that the hearing may proceed without prejudice to the inmate's ability to defend himself or herself. A continuance may be requested for good cause pursuant to K.A.R. 44-13-402; typical examples of good cause would include situations involving complex facts, where the inmate was in segregation or the hospital and was unable to prepare or obtain assistance to prepare, where key witnesses are unavailable but will become available in the event of a continuance, or other situations suggesting that, despite reasonable diligence, the party requesting the continuance was unable to prepare. The hearing officer shall state all such decisions regarding continuances and the reasons for them on the record, and include them in the written hearing summary.

b) Dismiss defective disciplinary reports.

The need to take such action will be infrequent, but on occasion will arise. The most likely reason for dismissal of the report will be that the charges are inadequate as a result of procedural errors, such as omission of the specific rule allegedly violated, omission of the time and place of the alleged incident, omission of a meaningful description of the incident, omission of names of witnesses (unless good cause exists to withhold this information). Keep in mind that, except where a finding of guilt or innocence has been made in the case, or, more generally speaking, except where the harm caused by the error that resulted in the dismissal cannot be corrected somehow, the dismissal need not be final, because K.A.R. 44-13-202 provides for the amendment and refiling of the charges.

c) You must be impartial.

Direct involvement with an alleged offense, such as being a witness or victim, automatically disqualifies someone from serving as a hearing officer.

Likewise, anyone who investigates an incident should not sit later as the hearing officer for charges arising from that incident. Personal bias against an inmate also disqualifies a potential hearing officer. However, a hearing officer does not have to withdraw as a hearing officer just because an inmate has named that individual as a defendant in a lawsuit filed by the inmate.

d) Counsel or counsel substitute to represent or assist the inmate.

In addition to the specific situations in which representation or assistance by counsel or counsel substitute pursuant to K.A.R. 44-13-408 may be appropriate, the general rule to follow is that the inmate should have access to counsel or counsel substitute when the inmate is illiterate or the issues are so complex that it is unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case. The decision that an inmate needs assistance is a judgment call for the hearing officer, to be made in light of all of the circumstances surrounding a particular inmate and the charge; factors to be taken into consideration can include whether the inmate speaks English, whether the inmate can read, whether the inmate is considered developmentally disabled or otherwise intellectually impaired to any degree, the complexity of the alleged violation, whether the inmate appears reasonably capable of preparing for the hearing and speaking on his own behalf, or whether the inmate was segregated or otherwise situated where his or her ability to prepare for the hearing might have been impeded. The hearing officer needs to be alert to the possible need for assistance even when the inmate does not request it. Counsel or counsel substitute should be given an adequate opportunity to review the evidence against the inmate. The decision regarding counsel or counsel substitute and the reasons for that decision must be made on the record and included in the written hearing summary.

e) Take the inmate's plea in accordance with the provisions of K.A.R. 44-13-201 (a) and 44-13-403 (a) - (i), by conducting Stage A of the disciplinary hearing.

If the inmate pleads not guilty, then the hearing officer proceeds to conduct Stage B of the disciplinary hearing. If the inmate pleads guilty or no contest, and that plea is accepted by the hearing officer, or if the inmate is convicted in Stage B of the hearing, then the hearing officer will proceed to conduct Stage C of the hearing by determining and imposing the appropriate penalty.

Before accepting a plea of guilty or no contest in Stage A of the disciplinary hearing, the hearing officer must be certain that the inmate has been informed of and understands the charges and the possible penalties and other consequences of the plea, and that the inmate has knowingly and voluntarily signed the appropriate waiver form (K.A.R. 44-13-101a). Before the inmate signs the waiver form the inmate should date and initial the response to each of the questions on the form, signifying the inmate's understanding of and agreement with those responses. A hearing process with some element of formality is required for the taking of the plea and the execution of the waiver form. The plea and waiver process should not take place in the inmate's cell or in a hallway, but should involve a hearing that is sufficiently formal to reflect the significance of the waiver of rights by the inmate. An inmate who pleads guilty or no contest retains the right to make a brief statement to the hearing officer in mitigation of sentence at Stage C of the hearing, but the inmate can be prohibited by the hearing officer from presenting evidence or making arguments as to his or her guilt or innocence of the charge at this stage of the proceeding.

f) Conduct Stage B of the disciplinary hearing.

If the case proceeds to Stage B of the hearing, it is the responsibility of the hearing officer to rule on all matters of evidence and to make the ultimate decision as to guilt or innocence. The basic goal of this stage is to find out what happened and respond accordingly. While the applicable rules must be followed, they should not be burdensome. Questions of procedure should not dominate the hearing. The hearing officer plays a critical role in assuring that the hearing process runs fairly, by the rules, and that it meets its goal of evaluating the accuracy of the charge. The hearing officer sets and controls the atmosphere of the hearing. The hearing officer is in the best position to see that the rules are followed, to correct mistakes that may have been made, and to see that the hearings are held with an appropriate level of decorum.

1) Use of rules of evidence; hearsay.

The formal rules of evidence that apply in a court of law do not apply to disciplinary hearings. This includes the rules regarding hearsay. Hearsay is evidence that does not stem from the personal knowledge of the witness, but from the witness' recitation of what he has heard other people say. If a witness testifies that Inmate A told the witness that he saw Inmate B stab Inmate C, that is hearsay if used to prove that the stabbing took place. Hearsay testimony is admissible in an inmate disciplinary hearing. The issue for the hearing officer is to decide how much weight to give the hearsay testimony. If the statement offered as hearsay was made under circumstances which suggest the person making the statement was very unlikely to be lying, the statement gains credibility. Admissions of guilt by the charged inmate to a third party are admissible and can be given considerable weight since it can be assumed that a person will not falsely admit to a rule violation. When deciding whether to consider hearsay information and how much weight to give it, the hearing officer should therefore look to see if there are circumstances surrounding the hearsay which either make it more or less convincing. Where a witness is available, it is preferable to have that witness testify directly.

2) Calling witnesses. As K.A.R. 44-13-405a provides, the decision about whether to call witnesses requested by an inmate is a balance between the interests of the inmate and the needs of the prison. The general rule governing these decisions by the hearing officer is that inmates have a right to call witnesses to testify unless doing so would present a hazard to institutional safety or correctional goals, or unless the proposed witness' testimony is irrelevant, duplicative, or unnecessary to a meaningful presentation of the inmate's defense; the assumption must be that the inmate will be allowed to call a witness, and the hearing officer must justify any refusals. Hearing officers will encounter situations in which, even though no security problems relating to safety, order, security, or rehabilitation are involved, an inmate seeks to call several witnesses when one would do, or in which witness testimony slows down an entire day's docket of hearings; however, if a proposed witness appears to have something to say which goes to the question of guilt or innocence (in other words, relevant information), it is preferable to allow the witness to testify rather than to refuse the inmate's request for the witness. In other words, the power to deny requests for irrelevant witnesses should be exercised cautiously. The hearing officer's authority to deny duplicative witnesses should also be exercised with caution. For example, if the case is essentially a credibility contest between the charged inmate and the reporting officer, the testimony of an eyewitness may do more than merely corroborate,

or repeat, the charged inmate's testimony, but may also substantiate it and make it more credible.

Failure by the inmate to make advance requests for witnesses through timely submission of a witness list may justify the hearing officer's refusal to allow those witnesses to be called to testify. However, denials of witnesses not properly requested in advance of the hearing should not be automatic. The hearing officer must consider why the inmate did not request the witness earlier, what information the witness might have to offer, and how inconvenient it would be to obtain the testimony of the witness, including over the telephone.

The inmate can consent to admission of written statements from requested witnesses in lieu of their live testimony. However, absent such consent, live testimony is always preferable to written statements, especially because conflicts can arise between written statements and live testimony that need to be resolved, and because there are often issues that the written statement does not address.

If security reasons justify disallowing a witness, these can usually be addressed without knowing anything about the expected testimony of that witness. However, if the possible disqualification is based on other grounds, such as relevancy, how can the hearing officer know whether to disallow the testimony without hearing it? The answer lies in a technique called a "proffer" or "offer of proof." The hearing officer can simply ask the charged inmate to summarize what a proposed witness would say if allowed to testify. Based on the response, which is the offer of proof, the hearing officer should be able to decide if there are grounds for disallowing the witness. In situations where the testimony made through an offer of proof is of a sort where further questioning of the absent witness is not necessary, the hearing officer can simply accept the offer of proof as evidence and go on with the hearing without actually calling the witness. In other words, the hearing officer can agree to a stipulation to the absent witness' proffered testimony.

The specific, factual reasons for denying a requested witness request must be made on the record during the hearing and included in the written hearing summary. If the reasons for the denial are based on security concerns that cannot be shared with the inmate, the part of the record reflecting those reasons and concerns need not be given to the inmate.

The hearing officer may call and question witnesses not requested by either party in order to determine the truth of the matter.

### 3) Use of confidential inmate testimony.

According to K.A.R. 44-13-403(n), if an inmate would be subject to possible retaliation for testifying at a disciplinary hearing, that inmate's testimony can be taken in confidence by the hearing officer and a sealed record of it made. Such a procedure is permissible because due process does not require that inmates have an unlimited right to confront and cross-examine adverse witnesses. K.A.R. 44-13-403(u) allows the hearing officer to deny confrontation and cross-examination when deemed necessary in Class II and III cases; therefore, the reporting officer is generally not required to personally appear to testify in these cases. However, in Class I cases, this rule provides that confrontation and cross-examination can be limited or denied only when necessary to protect the witness or institutional security; therefore, the reporting officer is generally required to personally appear to testify in these cases. The denial or limitation of confrontation and cross-examination must be

explained on the record (or in confidential written form if security requires).

If the hearing officer receives confidential testimony, he or she must determine that the informant and the information provided are reliable and believable, because the charged inmate will generally be unable to rebut incorrect informant testimony. The hearing record must also reflect the factual basis for the hearing officer's finding that the informant was reliable (credible).

4) Use the Offense Checklist for Reporting/Hearing Officers; consider lesser included offenses.

The Checklist poses a series of questions to assist staff in determining whether adequate evidence has been presented to support the elements necessary to establish guilt for certain offenses in the Inmate Rule Book, and also mentions some lesser included charges of some of these offenses. You should not find an inmate guilty of an offense unless each element of the offense is proven by clear and convincing evidence. While the Inmate Rule Book is superior authority and contains the official, governing definitions of each disciplinary offense, the Checklist can help you determine whether those definitions have been met such that the offense has been adequately proven. Your written hearing record must include the evidence in support of each element of the offense. If the inmate is found not guilty of the offense charged, he may still be convicted in the same hearing of a lesser included charge if some credible evidence has been presented to establish each element of the lesser charge. A lesser included charge is less severe than the original charge, contains some, but not all, of the same elements as the original charge, and contains no elements not contained in the higher, original charge. For example, less dangerous contraband can be a lesser included charge of the offense of dangerous contraband where it is determined that the contraband in question is not dangerous, but that the inmate is otherwise guilty of the charge. Similarly, taking without permission could be a lesser included charge of the offense of theft. From the due process perspective, receipt by the inmate of the disciplinary report serves as adequate notice that he or she may be convicted of a lesser included offense if not convicted as originally charged.

5) Standard of Proof.

The standard of proof is the minimum amount of evidence that must be produced by the facility before an inmate can be found guilty of the charge(s) against him. Our regulations (K.A.R. 44-13-409) require the production of sufficient evidence to show the guilt of the inmate clearly and convincingly. Clear and convincing evidence should produce in the mind of the hearing officer a firm belief or firm confidence in the guilt of the inmate or the truth of the charges.

g) Conduct Stage C of the disciplinary hearing; disposition.

Once the inmate has been found guilty by the hearing officer in Stage B of the disciplinary hearing, Stage C, or the penalty phase, must be conducted and the disposition (K.A.R. 44-13-406) made. The inmate should be permitted to make a brief statement to the hearing officer in mitigation of sentence in Stage C without making any arguments as to guilt or innocence, and, generally, without introducing any additional evidence. The hearing officer should be consistent in imposing penalties. The reasons for the penalties imposed must be included in the disposition and made part of the written hearing record. Some factors that may be appropriately taken into consideration in choosing the proper penalties include the severity of the offense, the way the offense

was committed (level of violence involved), the inmate's past disciplinary and behavior record, the degree to which the incident threatened institution security or the safety of others, property damage warranting restitution, possible deterrence factor, and circumstances suggesting that lesser sanctions would be ineffective in motivating the inmate to comply with institutional rules.

h) Prepare written hearing record.

K.A.R. 44-13-502a outlines for the hearing officer the essential components that must be included in the written record of the hearing. This record should be prepared by the hearing officer immediately, or as soon as possible, upon conclusion of all stages of the disciplinary hearing. Administrative appeal decisions will be based on this record. The written hearing record must include the evidence relied on, the reasons for all discretionary decisions made by the hearing officer during the hearing process, and the reasons for any disciplinary action taken. This information must be presented in a meaningful fashion. Someone who was not at the hearing should be able to read the written record and be able to determine what the conflicting evidence was, how those conflicts were resolved, and why the inmate was found guilty. However, a verbatim record of the hearing is not required.

The statement of reasons for the hearing officer's decision must not simply be general conclusions, such as "the report was clear," or "the facts are clear," or the evidence shows that the inmate is guilty." Do not simply incorporate "the officer's report" or other documents into the hearing summary without indicating what facts you, as the hearing officer, believe took place. Include a specific finding on each element and aspect of the offense charged. Specify the source for each specific factual finding that you make, such as the reporting officer's testimony, a lab report, or the inmate's statement, among others. Ideally, the written decision should be complete and detailed enough to stand on its own, because it includes a factual account of what the hearing officer believes occurred and a reference to the particular evidence or testimony which led the hearing officer to such conclusions.

A poorly written decision that does not provide detail as to the evidence relied on, does not offer sufficient reasons for discretionary decisions made by the hearing officer during the proceedings, and does not provide detail as to the reasons for the sanction imposed, may harm both the inmate and the facility in the future by preventing an accurate understanding of what the inmate really did. Legally speaking, from a due process perspective, a poorly written decision exposes the hearing officer, the hearing process, and other department officials to liability.

A hearing record guide is included later in this handbook to help you prepare the summary.

### C. Summary Judgment

The summary judgment process offers a new option for handling relatively minor disciplinary offenses and can be used in any case involving a class III offense. The reporting officer makes the choice to use the summary judgment procedure or not; use of this procedure is never mandatory, and the alternative option of writing a regular disciplinary report is still available. Some considerations that might be relevant to the reporting officer's choice about the appropriate procedure to use include whether the officer has time to write and serve the citation on the inmate within the two hour time limit (if not, the officer

will still have 48 hours from the time of the alleged offense to write a disciplinary report), whether the officer is comfortable serving the citation on the inmate himself (if not, summary judgment would probably not be an appropriate approach, and the officer can write a disciplinary report instead, because it will generally be served on the inmate by someone other than the reporting officer), whether the matter seems too serious for summary judgment treatment even though only class III violations are involved, and whether the officer has any previous experience with or knowledge about a particular inmate that might help the officer predict the potential effectiveness of the summary judgment procedure with respect to that particular inmate. If the reporting officer chooses to utilize the summary judgment procedure, the officer should complete the process before leaving work or a change of shifts; if the officer will be unable to complete the summary judgment process in a timely fashion, the officer should use the regular disciplinary report process instead.

#### D. Appeals

The disposition made of a disciplinary case by a hearing officer is administratively reviewed at the institution level. Class I and II cases are reviewed by the principal administrator in accordance with K.A.R. 44-13-704. The same rule provides, where possible, for review of class III cases by someone other than and designated by the principal administrator; this designee should be someone who was not directly involved in the hearing process. The reason for the requirement that someone other than the principal administrator should generally review class III cases is that the principal administrator is the reviewer in any class III case in which the inmate files an appeal.

In class I and II cases, the inmate has a right to appeal his conviction to the Secretary of Corrections if the inmate pled not guilty to the charges; in class III cases, the appeal is to the principal administrator. K.A.R. 44-13-701, 44-13-702, 44-13-703. If the inmate pled guilty or no contest to the charges, the conviction is not appealable in the absence of duress, fraud or substantial error, or failure to ensure that the plea was knowingly and voluntarily made, but the sentence is always appealable. The purpose of the review on appeal is to determine whether some evidence exists to support the findings of the hearing officer, whether all applicable procedures and requirements were followed, and whether the sentence is fair and falls within the limits set by the regulations.

## **OFFENSE CHECKLIST FOR REPORTING/HEARING OFFICERS**

A proper and complete disciplinary report must contain certain basic information. In addition to the standard, identifying information that must be included in all disciplinary reports, regardless of the charge, other types of information are unique to the offense being charged. The following is a checklist of some questions relating to the specific offenses in the Inmate Rule Book. These questions should generally be answered in any disciplinary report you write that charges that offense, although other information may be necessary to include in the report as well, depending on the facts of the particular case. These questions can help you select the proper charge(s) as well as write a proper report.

These questions can also be used by the hearing officer to examine the disciplinary report and the evidence and other testimony presented at the disciplinary hearing. The questions can help the hearing officer to determine whether the elements of the offense(s) charged have been proven, and whether the inmate should be found guilty of the offense(s) as charged. These questions can also be used by the hearing officer as questions to be asked of witnesses who testify at the disciplinary hearing.

### **INMATE CLOTHING (44-12-101):**

1. What is the item of clothing in question?
2. Is the clothing not approved and/or in excess of authorized issue?
3. Was the clothing given special treatment?
4. Is the clothing clean?

### **PERSONAL CLEANLINESS (44-12-102):**

1. Has the inmate failed to shower or bathe at least once a week?
2. Has the inmate failed to brush his teeth at least once a day?

### **TATTOOS AND BODY MARKINGS (44-12-103):**

1. What is the body marking or tattoo in question?
2. Has it been added or removed?
3. Did the inmate add or remove the body marking or tattoo himself, or did another inmate do so?

### **CARE OF LIVING QUARTERS (44-12-104):**

1. What about the inmate's living quarters is not in a neat, clean, sanitary condition? (Clothing, bed, linens, fixtures?)
2. What unapproved alterations have been made to the living quarters or its equipment?
3. If serious damage has been done to the living quarters, have you considered the more serious charge of Misuse of state property (44-12-208)?

### **UNSANITARY PRACTICES (44-12-105):**

1. What was the trash that the inmate threw?
2. Where did the inmate throw the trash?

### **HAIR STANDARDS AND APPEARANCE (44-12-106):**

1. Is the inmate's hair neat and clean?

2. If the inmate works in food service, is the inmate wearing a cook's hat and/or net, and is his facial hair within acceptable limits?

**USE OF SAFETY DEVICES (44-12-107):**

1. What is the safety device in question?
2. How is the inmate using the safety device in a manner that is not in accordance with the Warden's orders?

**REGISTRATION AND USE OF PERSONAL PROPERTY (44-12-201):**

1. What is the item of personal property in question?
2. Has the inmate failed to properly register an item of personal property in his possession? Do the IMPP's require registration of this item?
3. Has the inmate failed to produce a piece of property that is registered to the inmate? Has that item previously been reported stolen?

**RADIOS, T.V.'S, MUSICAL INSTRUMENTS OR OTHER SOUND EQUIPMENT (44-12-202):**

1. What is the electronic sound equipment in question?
2. Is the inmate playing, possessing, or using the equipment in violation of facility orders?
3. Does the size or type of the equipment fail to comply with IMPP property restrictions? How?

**THEFT (44-12-203):**

1. What was the property?
2. To whom does it belong?
3. Where was it found?
4. Who has control of that area?
5. Where is the property now?
6. Would the lesser included offense of Taking without permission (44-12-204) be a more appropriate charge?

**TAKING WITHOUT PERMISSION (44-12-204):**

1. What items were taken?
2. From whom were they taken? From where?
3. If the inmate obtained the items through fraud or dishonesty, how did they go about doing so?
4. This is a lesser included offense of Theft (44-12-203).

**UNAUTHORIZED DEALING OR TRADING (44-12-205):**

1. Which of the prohibited activities (trading, borrowing, loaning, giving, receiving, selling, or buying) was involved here? (if more than one, so indicate.)

2. What property or services were the subject of the prohibited activity?

**MISUSE OF STATE PROPERTY (44-12-208):**

1. What is the article of state property in question?
2. How was the item destroyed, damaged, defaced, altered, misused, or not

returned when due?

3. If the inmate has done serious damage to valuable property, you might consider charging him under 44-12-1001(a), Violation of statutes, other regulations, or orders, with the underlying charge being a violation of K.S.A. 21-3720, Criminal damage to property.

**ENTERING INTO CONTRACTS, INCURRING FINANCIAL OBLIGATIONS (44-12-209):**

1. Has the inmate entered into a contract? With whom?
2. Has the inmate incurred a financial obligation? To whom?
3. Does the contract or financial obligation involve a mail order?
4. Did the inmate have the Warden's approval?

**ACCOUNTS (44-12-210):**

1. What checking or savings account other than the inmate trust account has the inmate established? Where? Did the inmate have this account prior to incarceration?
2. Did the inmate have the Warden's approval to establish the account?

**FIGHTING (44-12-301):**

1. Who was involved in the fighting or other violent activity? (Name everyone.)
2. Where?
3. Can it be determined who started the fight? Did it appear that anyone involved had been forced to defend himself?
4. What was the nature of the fight? (Was there yelling, an exchange of blows? Were any weapons involved? If so, what weapons, in whose possession or where were they found, and where are they now?)
5. Was anyone injured?

**NOISE (44-12-302):**

1. What is the loud and disturbing noise? Booing, whistling, shouting?
2. Who and/or what is the noise disturbing?

**LYING (44-12-303):**

1. To whom did the inmate lie?
2. What was the lie, misrepresentation, or false or misleading statement, information, or allegation?
3. How do you know the statement, information, or allegation was a lie, a misrepresentation, false, or misleading?

**DISOBEYING ORDERS (44-12-304):**

1. What exactly was the order?
2. When and where was the order given?
3. To whom was the order directed?
4. How was the order disobeyed?
5. What were the specific circumstances surrounding the violation? (Include in disciplinary report, investigation report, and any written version of the

reporting officer's testimony.)

6. If the behavior that the inmate was ordered to perform or to stop performing is also covered by another rule that is less than a Class I offense, would that rule be a more appropriate basis for a charge/conviction of a lesser included offense?

**INSUBORDINATION OR DISRESPECT TO OFFICERS OR OTHER EMPLOYEES (44-12-305):**

1. How has the inmate been inattentive, disrespectful, or argumentative? Has any disrespect been shown directly or indirectly?

2. To whom? Employee, visitor, official?

3. Have you allowed for a civilized initial exchange or discussion for the inmate to seek clarification of any orders?

4. Would Conduct regarding visitors or the public (44-12-321) be the more appropriate basis for the charge?

5. If the inmate has issued an actual threat, have you considered charging a violation of 44-12-306, Threatening or intimidating any person?

**THREATENING OR INTIMIDATING ANY PERSON (44-12-306):**

1. Who was being threatened or intimidated?

2. What was the exact nature of the threat or intimidation?

3. Was the threat or intimidation direct or indirect, conditional or not?

4. Would the lesser offense of Insubordination or disrespect to officers or other employees (44-12-305) be a more appropriate charge?

**AVOIDING AN OFFICER (44-12-307):**

1. Did the inmate run from or deliberately avoid an officer or employee? Where?

2. Who was the officer or employee?

3. How did the officer or employee require, order or request the inmate to appear or be present? In other words, how was the inmate summoned, by whom, and to what location?

4. Was the inmate summoned to talk with, be accounted for, be searched, or be questioned by the officer or employee?

**IMPROPER USE OF FOOD (44-12-308):**

1. Did the inmate deliberately destroy or waste food? What food?

2. How did the inmate destroy or waste the food?

3. Did the inmate carry food or drink from the dining area or kitchen? What food?

4. Do facility orders allow the inmate to carry the food or drink in question from the dining area or the kitchen?

**KITCHEN UTENSILS OR SHOP TOOLS (44-12-309):**

1. What eating or cooking utensils or tools did the inmate possess or remove?

2. Did the inmate have authorization to do so?

**MISCONDUCT IN DINING ROOM (44-12-310):**

1. What is the facility's established procedure for entering and leaving the dining area?

2. How did the inmate fail to enter or leave the dining area according to established procedure or fail to conduct himself in an orderly fashion while there?

**BEING IN A CONDITION OF DRUNKENNESS, INTOXICATION, STATE OF ALTERED CONSCIOUSNESS (44-12-311):**

1. What symptoms of drunkenness, intoxication, or otherwise being in an altered state of consciousness did the inmate exhibit? Specifically describe the inmate's behavior. (Could you smell alcohol or other substances, was the inmate awake, was the inmate moving in any unusual way, was the inmate speaking or otherwise acting in any unusual way, did the inmate look unusual in any way, such as in the eyes?) In other words, what exactly made you believe that the inmate was drunk or intoxicated?

2. Can you identify the source or nature of the intoxicant?

**USE OF STIMULANTS, SEDATIVES, UNAUTHORIZED DRUGS, OR NARCOTICS, OR THE MISUSE, OR HOARDING OF AUTHORIZED OR PRESCRIBED MEDICATION (44-12-312):**

1. Was the inmate under the influence? If so, specifically describe the inmate's behavior.

2. Was there an odor of alcohol or other intoxicant?

3. Was any prohibited substance found? What was the substance? What did it look like? Was the substance tested? By whom? When? What were the results?

4. Exactly where was the substance found? How much was found? Is it possible to determine the source of the substance? If the substance is prescribed medication, how is it to be used and in what quantities, according to the prescription and instructions from medical staff?

5. Who has control of the area in which the substance was found?

6. Where is the substance now?

**OBSCENITY (44-12-313):**

1. What was the obscene material?

2. Where was it found? Who has control of that area?

3. What makes the material obscene? (If it contains sex acts, specify those; does its sole purpose appear to be to appeal inappropriately to an interest in sex without any other redeeming purpose?)

4. Does the material involve children who appear to be under the age of eighteen years?

**SODOMY, AGGRAVATED SODOMY, AGGRAVATED SEXUAL ACT (44-12-314):**

1. What was the exact nature of the sex act or sodomy involved? Which of the acts prohibited by the rule were involved? (Be specific.)

2. Who was the victim of the sodomy or sex act?

3. What was the nature of any force or intimidation used against the victim?
4. Did the charged inmate participate in any plan or arrangement to force or intimidate the victim into participation in any sex act?

**LEWD ACTS (44-12-315):**

1. What was the exact nature of the lewd act(s) involved? Which of the acts prohibited by the rule were involved? (Be specific.)
2. Other than the charged inmate, who else, if anyone, was involved?
3. At whom, if anyone, was the lewd act directed?
4. Has this inmate previously violated this rule? How many times?

(This information is relevant to the class of offense with which the inmate is charged under this rule, because conviction of a third or subsequent violation can raise the class of offense.)

**FALSIFYING DOCUMENTS (44-12-317):**

1. What is the document that was falsified?
2. How was it falsified?

**DISRUPTIVE BEHAVIOR (44-12-318):**

1. How did the inmate start or involve or help others to become involved in any disruptive behavior?
2. What was the disruptive behavior?
3. What was the behavior disrupting?
4. Other related charges include Noise (44-12-302) and Riot or incitement to riot.

**RIOT OR INCITEMENT TO RIOT (44-12-319):**

1. If the charge is rioting, who was involved? (Name everyone; there must be three or more people acting together.)
2. What was the nature of the force or violence that was used or threatened to be used? If force or violence were threatened but not used, how did the rioters appear to have the power to immediately carry out the threat? How was the peace breached?
3. If the charge is incitement to riot, what words or conduct presented a clear and present danger of injury, damage, or a breach of the peace? What was the exact nature of the danger presented?
4. Would the lesser included offense of Noise (44-12-302) or Disruptive behavior (44-12-318) be a more appropriate charge?

**INTERFERENCE WITH OFFICIAL DUTIES (44-12-320):**

1. What was the official duty in question?
2. What officer or employee was performing the official duty?
3. How did the inmate interfere or ask others to interfere with the performance of the official duty?
4. Would Disruptive behavior (44-12-318) be a more appropriate charge here?

**CONDUCT REGARDING VISITORS OR THE PUBLIC (44-12-321):**

1. Did the inmate treat visitors or members of the public in a disrespectful, unhelpful, or undignified manner? How?
2. Who were the visitors or members of the public?
3. Did the inmate fail to comply with the facility's orders regarding contact with visitors and the public?

**ARSON (44-12-322):**

1. What is the property that was damaged?
2. Was the property damaged by means of fire or explosive?
3. Who set the fire or set off the explosive?
4. Did they do so knowingly?

**ASSAULT (44-12-323):**

1. What was the exact nature of the threat or attempt to do bodily harm? How was it communicated (in words, by the brandishing of a weapon, for example)?
2. Did the charged inmate appear to have the ability to carry out the threat or follow through on the attempt?
3. What was the bodily harm that was threatened or attempted?
4. Did the threat or attempt place the victim in immediate fear of bodily harm? How?

**BATTERY (44-12-324):**

1. What was the exact nature of the touching or application of force (bodily contact) involved?
2. Was it unlawful or unauthorized?
3. Was it intentional?
4. Was it done rudely, insolently, or angrily?
5. Who was the victim?
6. If there was no physical contact, would Assault (44-12-323) be the more appropriate charge?

**INMATE ACTIVITY; LIMITATIONS (44-12-325):**

1. Whom and how was the inmate proselytizing (trying to convert someone to a religion who does not consent to the conversation effort)?
2. Was the inmate serving as clergy or a religious instructor without the approval of the Warden based on the chaplain's recommendation?
3. Is the inmate assisting or involved in the development, organization, or promotion of unsanctioned prison group activity?
4. Are three or more persons involved in this group activity?
5. Has the group activity been approved by the Warden?
6. Does the group have a common name or identifying sign or symbol?

**SEXUAL ACTIVITY (44-12-326):**

1. With whom did the inmate engage in sexual intercourse? Another inmate, staff member, volunteer, contract employee, visitor?

2. When and where?

**INTERFERENCE WITH RESTRAINTS (44-12-327):**

1. How did the inmate interfere with or help another inmate to interfere with handcuffs or other restraints that have been applied to them by an officer or employee?

2. Did the inmate remove or attempt to remove his own restraints or those of another inmate? Was such removal or attempted removal approved by an officer or employee?

**RELATIONSHIPS WITH STAFF (44-12-328):**

1. How did the inmate solicit, encourage, establish, or participate in any type of unnecessarily familiar relationship with a staff member?

2. Who was the staff member?

3. What was the nature of the relationship? What was unnecessarily familiar about the relationship?

4. Did the contact between the inmate and staff member go beyond a polite exchange of remarks or casual conversation or in any way prevent the staff member from carrying out official duties or assisting the inmate in an authorized and professional manner?

**WORK PERFORMANCE (44-12-401):**

1. What work, machinery, systems, or products in progress were interfered with, delayed, or disrupted?

2. How did the inmate participate or attempt to participate in the interference, delay, or disruption?

3. Was the inmate's participation or attempt to participate intentional?

4. Did the inmate fail to perform work assigned in the manner assigned or as directed? By whom was the work assigned or directed to be performed in a certain manner?

5. Did the inmate intentionally fail to report to or leave work on time and without unnecessary delay?

6. Did the inmate slow the progress of work through carelessness or neglect? How?

7. Was the inmate tardy for work?

**ANSWERING CALLS OR PASSES (44-12-501):**

1. Did the inmate fail to respond promptly to all calls made for the inmate or to move from place to place according to facility orders? How?

2. Did the inmate destroy or alter a pass issued to him?

3. Did the inmate fail to show a pass to the proper person at the time and place indicated on the pass?

**RESPONSIBILITY FOR COUNTS (44-12-502):**

1. Was the inmate at the proper place at the proper time for counts according to facility orders? If not, where was the inmate? Did the inmate fail to be present during the count process?

2. Did the inmate cause a delay that rendered the count inaccurate or more difficult to conduct?

**RESTRICTED AREA AND UNAUTHORIZED PRESENCE OR OUT-OF-PLACE IN ASSIGNED DOMICILE (44-12-503):**

1. Did the inmate enter a restricted area without a direct order or express written authorization by the Warden? What was the restricted area?
2. Was the inmate present in a certain area without authorization? What area? Did the inmate have a pass and show it?
3. While otherwise permitted to be in the living unit, was the inmate roaming around the housing unit or was he present in any unauthorized area of the housing unit without permission of the unit team? Where was the inmate?

**INTERFERENCE WITH CELL OPERATION AND VISIBILITY (44-12-504):**

1. Did the inmate block or otherwise interfere with the operation of the opening or closing of a cell? How?
2. Did the inmate block visibility into the cell in an unauthorized manner?

**RESTRICTION (44-12-505):**

1. What were the terms of the restriction that had been imposed on the inmate, and how and by whom was the restriction imposed?
2. How did the inmate avoid, break, or violate the terms of the restriction?
3. If the restriction in question is a medical restriction, you should consider bringing a charge under Medical restriction (44-12-505b) instead.

**MEDICAL RESTRICTION (44-12-505B):**

1. What are the terms of the medical restriction that had been imposed on the inmate, and how and by whom was the restriction imposed? How and where is the medical restriction documented?
2. In what work or recreational activities did the inmate participate that violate the medical restriction?
3. How do the inmate's activities aggravate the injury, illness, or other medical condition?

**CHANGE OF NAME AS IT APPEARS ON JOURNAL ENTRY OF SENTENCE, CONVICTIONS (44-12-506):**

1. Under what name was the inmate committed to the custody of the SOC?
2. Has the inmate gotten a legal name change? Has the inmate limited use of the new legal name by using it only in parentheses after the conviction name?
3. Has the inmate failed to respond to a directive, reference, or order that used the conviction rather than legal name?
4. If the inmate is the addressee or recipient of any mail, phone calls, documents, or other communications under other than the conviction name, can it be proven that the inmate knowingly and willingly conspired or instigated the use of the non-conviction name?

**MAIL (44-12-601):**

1. Is legal, official, or privileged mail involved?
2. Exactly how has the charged inmate abused or violated proper mail procedures? (Has the inmate circumvented mail procedures by delivery of mail through an unauthorized person? Does the inmate's incoming mail

contain contraband? Has the inmate threatened or terrorized someone through the mail? Has the inmate's mail been used in furtherance of illegal activities "obscenity, fraud, etc."? Does the mail bear the full conviction name and address of the sender and the name and address of the intended recipient? Does the mail bear any improper drawings or messages? Is the inmate corresponding with forbidden correspondents?)

**POSTING NOTICES (44-12-602):**

1. What was the written communication in question?
2. How or where was the written communication posted or distributed? To whom was it addressed or distributed?
3. Was the posting or distribution approved in writing by the Warden?

**LEGAL ASSISTANCE BY INMATES (44-12-702):**

1. Is the inmate charging for legal assistance provided to other inmates?
2. Did the other inmates request legal assistance?

**BULLETIN BOARDS (44-12-801):**

1. What item did the inmate remove from the bulletin board?
2. Where was the bulletin board?

**DANGEROUS CONTRABAND (44-12-901):**

1. What was the item?
2. Exactly where was it found?
3. Who has control of that area?
4. Where is the item now?
5. What makes the item or its use dangerous?
6. Would the lesser included offense of Less dangerous contraband (44-12-902) be a more appropriate charge here?

**LESS DANGEROUS CONTRABAND (44-12-902):**

1. What was the item?
2. Exactly where was it found?
3. Who has control of that area?
4. Where is the item now?
5. What makes the item or its use less dangerous? How is the item moderately dangerous?

**VIOLATION OF STATUTES, OTHER REGULATIONS, OR ORDERS (44-12-1001):**

1. What was the statute, other regulation, or order that was violated? Be specific.

**VIOLATION OF PUBLISHED ORDERS (44-12-1002):**

1. What was the published order that was violated?

**ATTEMPT, CONSPIRACY, ACCESSORY, AND SOLICITATION (44-12-1101):**

1. Which of the prohibited acts/ behaviors was involved here?
2. What specific rule or underlying violation is the basis of the attempt, conspiracy, accessory, or solicitation?
3. If the charge is attempt, what was the overt (clearly evident) act committed by the inmate toward perpetration of the offense?
4. If the charge is conspiracy, with whom did the inmate have an agreement to commit or assist in committing the offense? What is the overt act furthering the conspiracy? Did the inmate withdraw from the conspiracy?
5. If the charge is accessory, how did the inmate intentionally aid the offender (by knowingly harboring, concealing or aiding him?) with the intent to help him avoid apprehension, conviction, or punishment for the offense?
6. If the charge is solicitation, how did the inmate seek (commanding, encouraging, requesting?) another person's involvement in the commission of or participate in an offense? Was it for the purpose of promoting or facilitating the offense? Did the soliciting inmate later persuade the person they had solicited not to commit the offense or somehow otherwise prevent the commission of the offense by completely renouncing the intent or desire to have the offense committed?

## SAMPLE STAGE A (GUILTY PLEA) AND STAGE C HEARING

HO: This is case number 00000, in which you, John Smith, Inmate number 11111, have been charged with a violation of K.A.R. 44-12-999, Breaking a Rule, a class II offense. I want to begin by making certain that you understand what you are charged with and that you understand the manner in which we will be conducting your disciplinary hearing today. That is one of the purposes of this stage of the disciplinary hearing, which is stage A. The first thing that I want to ask you is whether you have received your copy of the disciplinary report.

JS: Yes I did, but I am pretty sure that I got it late.

HO: If we take a look at the report, checking the date and time of the alleged offense and the date and time that you were served, it appears that you were served within the proper time frame. Were you able to read the report? Let me go ahead and read it out loud. (Read Report.) Now, do you understand the charge?

JS: Yes.

HO: I also want to make certain that you understand the possible penalties that could result from a conviction of the charge of Breaking a Rule. This is a class II offense, which means that the possible penalties are (list penalties from K.A.R. 44-12-1302). Do you understand those penalties?

JS: Yes. I want a lawyer to represent me.

HO: According to K.A.R. 44-13-408, you are not entitled to counsel here, because the charge is a class II offense. In addition, I find from your demeanor and your affirmative responses to my questions about whether you understand the charge and the possible penalties that you are capable of representing yourself in this hearing. Therefore, I am going to deny your request for counsel.

JS: Okay, then, I might as well just go ahead and plead guilty. I've got a pretty bad disciplinary record, so I would just be found guilty anyway based on my history.

HO: Another of the purposes of stage A of this hearing is for me to take your plea. However, before I accept a guilty plea from you, I want to make certain that you understand the consequences of that plea. First of all, you have a right to plead not guilty and to have stages B and C of this hearing. The purpose of stage B would be to determine your guilt or innocence by having the facility's evidence against you introduced and then giving you a chance to present your defense. At this stage your disciplinary record, or your "history", as you call it, would not be considered against you; only evidence relevant to the determination of guilt or innocence would be considered in stage B. Stage C is the sentencing part of the hearing. Stage C is the only stage at which your disciplinary record would be considered. Even if you plead guilty or no contest, which would mean that you waive stage B of the hearing, you may make a statement on your own behalf in stage C of the hearing before I impose the sentence. By pleading guilty or no contest you would also be waiving the right to appeal the conviction unless it resulted from fraud or coercion, but you would retain the right to appeal the sentence I impose. Do you understand?

JS: Yes.

HO: How do you wish to plead?

JS: I want to plead guilty.

HO: Is your plea of guilty a result of any threat or promise of some type of reward?

JS: No.

HO: In order for me to accept your plea, I need to go over with you the waiver form that you will have to sign reflecting your understanding of the consequences of your plea. (Carefully go over each item on the waiver form, asking the inmate if he or she understands. Have the inmate date and initial each response.) I will go ahead and have you sign the waiver form now.

JS: (signs waiver form)

HO: I will accept your plea of guilty. We can now proceed to stage C of the hearing. Do you wish to make any statement before I impose sentence?

JS: Yes. I would rather go to seg. than get a fine, because I need all of my money for my parole, but I can't do too much seg. time. Also, can I call my witness now who can say that I really did not Break a Rule?

HO: The purpose of your opportunity to make a statement before I impose sentence is for you to present your thoughts about what that sentence should be, not whether you are guilty or innocent of the charge. You have already plead guilty to the charge, and, when we went over the waiver form that you signed, you indicated that you were pleading guilty because you were, in fact, guilty of the charge. Are you now asking to be allowed to withdraw your guilty plea?

JS: No, I still want to plead guilty. I just wanted to know if I could still have my witness now.

HO: I am going to deny your request to call a witness at this stage, because it appears as if the purpose of that testimony would be to present arguments about your guilt or innocence of the charge, which is not the purpose of this stage of the hearing. I am going to stand by my acceptance of your plea of guilty based on your assurances that you wish to stand by that plea. Do you have any further remarks that you would like to make in mitigation of sentence before I proceed?

JS: No.

HO: I am going to sentence you to (impose sentence). My reasons for imposing this sentence are your prior disciplinary record, which reflects a number of prior convictions of a similar nature, and the relatively serious nature of this violation. Again, you have a right to appeal this sentence to the Secretary of Corrections. I will prepare the disposition/hearing summary, and your time for appealing will begin to run when it is served on you. Do you have any questions?

## SAMPLE STAGE A (NOT GUILTY PLEA), STAGE B, AND STAGE C HEARING

HO: This is case number 00000, in which you, John Smith, Inmate number 11111, have been charged with a violation of K.A.R. 44-12-999, Breaking a Rule, a class II offense. I want to begin by making certain that you understand what you are charged with and that you understand the manner in which we will be conducting your disciplinary hearing today. That is one of the purposes of this stage of the disciplinary hearing, which is stage A. The first thing that I want to ask you is whether you have received your copy of the disciplinary report.

JS: Yes.

HO: If we take a look at the report it appears that all applicable time frames have been met. Were you able to read the report? Let me go ahead and read it out loud. (Read report.) Now, do you understand the charge?

JS: Yes.

HO: I also want to make certain that you understand the possible penalties that could result from a conviction of the charge of Breaking a Rule. This is a class II offense, which means that the possible penalties are (list penalties from K.A.R. 44-12-1302). Do you understand those penalties?

JS: Yes.

HO: I find from your demeanor and your affirmative responses to my questions about whether you understand the charge and the possible penalties that you are capable of representing yourself in this hearing and that we can proceed. Another of the purposes of stage A of this hearing is for me to take your plea. However, before I take a plea from you, I want to make certain that you understand the consequences of that plea. First of all, you have a right to plead not guilty and to have stages B and C of this hearing. The purpose of stage B would be to determine your guilt or innocence by having the facility's evidence against you introduced and then giving you a chance to present your defense. Only evidence relevant to the determination of guilt or innocence would be considered in stage B. Stage C is the sentencing part of the hearing. Stage C is the only stage at which your disciplinary record would be considered. Even if you plead guilty or no contest, which would mean that you waive stage B of the hearing, you may make a statement on your own behalf in stage C of the hearing before I impose the sentence. By pleading guilty or no contest you would also be waiving the right to appeal the conviction unless it resulted from fraud or coercion, but you would retain the right to appeal the sentence I impose. Do you understand?

JS: Yes.

HO: How do you wish to plead?

JS: I want to plead not guilty.

HO: We will then go ahead and proceed to stage B of this hearing. Because this is a class II offense case, the reporting officer will not have to appear to testify. The disciplinary report and the reporting officer's sworn written statement appear sufficient, so that I see no need to require his appearance here unless something comes up that appears to necessitate it.

JS: Can I have another continuance?

HO: The record reflects that you have had one continuance of five days already. What is your reason for requesting this additional continuance?

JS: Well, my mother is coming here to visit tomorrow, and if I get convicted I will probably be pretty upset, and I just don't want this to ruin my visit, because my mother doesn't get up here to see me very often.

HO: At this stage you are entitled to an additional continuance only for good cause. I find that the reasons you offer in support of your request do not amount to good cause, so I am going to deny your request for a continuance. Let's go ahead with the hearing.

JS: Well, I think the reporting officer does need to be here, because I have a right to cross-examine him.

HO: Can you tell me what you would ask him and what the purpose of those questions would be?

JS: I wouldn't be able to tell you what I want to ask him until I hear him testify. Basically I just think he should have to be here.

HO: I am at this point going to stand by my decision that the reporting officer's appearance here is unnecessary. You do not have a right to cross-examine him in this hearing. As I said earlier, if questions arise here that appear to me to necessitate a personal appearance by the reporting officer, then we will go ahead and bring him in at that time. In the meantime we are going to proceed without him. I will now read the disciplinary report and the reporting officer's sworn written statement. (Read report and statement.) The other evidence that the facility has produced against you is this letter attached to the reporting officer's written statement; it is a letter addressed to your wife that was intercepted and which, according to the officer's statement, contains a statement by you confessing to the charge of Breaking a Rule. You received a copy of this when you were provided with a copy of the disciplinary report and the officer's written statement, did you not?

JS: Yes, I did.

HO: That is all the evidence that the facility wants to introduce against you at this time. You may proceed to present your case.

JS: Well, first of all, I have three witnesses.

HO: The witness slip that you submitted contains only one witness. Who are the other two witnesses you wish to call?

JS: One is the warden of this prison, and one is my cell partner, who is a character witness, because he knows I would not break a rule.

HO: What first-hand knowledge of this case do you believe the warden has that would make his testimony relevant in this case? In other words, what testimony could the warden give that is directly related to the question of whether you broke a rule or not?

JS: The warden knows that a lot of these officers write these reports because they are on a power trip, not because the inmate actually did anything wrong. He can talk about that.

HO: I find that the warden has no first-hand knowledge of this case that would enable him to offer relevant testimony, so I am going to deny your request to call him as a witness. Would your cell partner know anything about this case, or would his appearance be for the sole purpose of acting as a character witness?

JS: Well, I think he can give me an alibi, too.

HO: If you think it is possible that your cell partner can provide you with an alibi, then I am going to allow you to call him as a witness even though you did not include him on your witness list.

JS: Okay, then I don't need my other witness that was on my list.

HO: All right. Do you want to go ahead and call your cell partner to testify now?

JS: Yes.

(Cell partner testifies as character witness: "I know JS and he doesn't break rules like this"; under questioning by HO, his attempts to provide JS with a believable alibi fail.)

HO: Do you have any additional evidence you want to present or any closing argument?

JS: I just want to say that I did not break a rule. I am not into petty stuff like that. My cell partner told you I wasn't there, so I couldn't have done it. The reporting officer is lying, and I would like to hear him come here and say all of that to my face.

HO: I find no reason to change my earlier decision about the lack of necessity of an appearance by the reporting officer to testify here. Do you have anything else?

JS: No.

HO: I am going to find you guilty of the charge of Breaking a Rule based on the evidence I have heard here. The standard of proof of clear and convincing evidence is more than satisfied here. The disciplinary report and the reporting officer's written sworn statement are clear and detailed, and they indicate that the officer saw you commit the violation, that he knows you, and that he is therefore positive that it was you he saw Breaking a Rule.

Your witness' testimony was not believable as far as your claimed alibi is concerned, because the witness admitted that he was not certain that he saw you somewhere other than at the scene of the violation on the same day that the violation occurred. In addition, you confessed your guilt to your wife in writing. We will now proceed to stage C of the hearing. Do you have any statement that you would like to make before I impose sentence?

JS: Don't take any of my good time.

HO: Anything else?

JS: No.

HO: I am going to sentence you to (impose sentence). My primary reason for imposing this sentence is your substantial number of prior convictions of a similar nature, and the relatively serious nature of this violation. As you requested, I have not sentenced you to a loss of good time.

You have the right to appeal this conviction and sentence to the Secretary of Corrections. I will prepare the disposition/hearing summary, and your time for appealing will begin to run when it is served on you. Do you have any questions?

## HEARING RECORD GUIDE (SEE K.A.R 44-13-502A)

Did you indicate all parties present?

Are there any procedural defects requiring dismissal of the charge(s)? (44-13-403)

Was disciplinary report read to inmate? (44-13-403)

(Did you include date, nature of offense, reporting officer's name, and a synopsis of the observation?)

Did you ensure inmate understands charges and received a copy?

Did you explain possible penalties?)

Was inmate advised of rights to Stages B and C of hearing?

Was inmate advised of rights regarding counsel and counsel substitute (44-13-408, 44-13-403?)

(Inmate capable of representing self?)

If inmate requests counsel or counsel substitute and request is denied, state reasons )

Counsel or counsel substitute requested? required? permitted? present? (44-13-403, 44-13-408) (Name)

Was counsel or counsel substitute appointed/obtained when required?

If counsel or counsel substitute representing inmate, were they present for all stages of hearing?

Inmate plea? guilty? not guilty? no contest? (44-13-403)

(Was plea made knowledgeably and without threat or promise of reward to inmate?)

Was not guilty plea entered if inmate refuses to plead?

Did you inform inmate that he can plead guilty or no contest, which means that he waives right to Stage B of hearing, but reserving right to make brief argument in mitigation of sentence in Stage C?)

If inmate pleads guilty or no contest, did you follow waiver procedures in 44-13-101a?

(Did you review waiver form with inmate to ensure that he is informed of and understands all consequences of plea? Did you have inmate date and initial each reply on the form before signing it?)

Did the inmate and HO sign waiver form in presence of impartial staff witness?)

Did you accept guilty or no contest plea and proceed to Stage C of hearing to impose sentence? (44-13-403)

Did you proceed to Stage B of the hearing if inmate pleads not guilty?

Any witnesses requested by inmate on witness slip? (Names)

Any additional witnesses requested at hearing? (Names)

Requested witnesses allowed? disallowed? If disallowed, give reasons? (44-13-405a)

(Was a written statement admitted in lieu of appearance by witness?)

Did you swear in all witnesses?

Was the reporting officer present and testifies? If not, why not? (44-13-406)

Was there confidential testimony? Who? DO NOT SHARE THE INFORMATION ABOUT WHO AND WHY WITH INMATE.

Was any physical evidence admitted? What? By whom?

Was cross-examination of institution witnesses by inmate allowed? Denied? If denied, give safety or security reason? (44-13-403)

Did you make decision as to guilt or innocence at end of Stage B? Guilty? Not guilty?

If guilty, did you proceed to Stage C of the hearing?

(Did you hear any brief statement inmate wants to make in mitigation of sentence?)

Did you render disposition, including a summary of the evidence and arguments and the reasons for the sanction imposed? (44-13-406)

Did you summarize evidence relied on at Stages B and C of the hearing in writing for hearing summary?

Did you advise the inmate of the right to appeal any conviction and/or sentence?

## INMATE DISCIPLINARY PROCEDURE

(Note: Procedure will vary somewhat depending on class of offense charged.)

