

Article 13.--DISCIPLINARY PROCEDURE

PROCEDURE GENERALLY

44-13-101 Disciplinary procedure established, general description of system.

- (a) A disciplinary procedure in accordance with these regulations shall be implemented by the warden of each facility. The term "warden," as used throughout this article, shall include the warden's designee.
- (b) Prosecution by criminal justice agencies in the community shall be deemed 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) 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 to the following:
 - (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 furnished with staff assistance according to K.A.R. 44-13-408.
- (d) The charge may be amended according to the provisions of these regulations.
- (e) If 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.
- (f) There shall be three classes of offenses, which shall be processed according to the provisions of these regulations.
- (g) The disciplinary hearing process shall be structured as specified in K.A.R. 44-13-403, 44-13-404, and 44-13-405a.
- (h) All stages of the disciplinary hearing shall be conducted by a hearing officer appointed by the warden according to K.A.R. 44-13-105.
- (i) A complete log of the disciplinary process shall be maintained as specified in K.A.R. 44-13-509.
- (j) The disciplinary hearing shall be conducted within a certain time following notice of the charge as established by these regulations. Continuances and recesses 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.
- (k) Staff assistance shall be permitted only under limited conditions established in K.A.R. 44-13-408.
- (l) A summary record shall be made of all stages of the hearing.

(m) In class I and II offense cases, following an administrative review of the record and any needed adjustments of the disposition by the warden, 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 warden on the record following an initial review of the record by some person within the facility other than the warden. No appeal to the secretary of corrections shall be permitted.

(n) Nothing in these regulations shall prohibit the assignment or delegation of the disciplinary hearing and review process or any portion of it to the warden of another Kansas state correctional facility if good cause is 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 designee, or by the warden 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.

(o) This regulation shall summarize the disciplinary procedure and shall not be construed or interpreted as establishing any rights or procedures that are not specifically set forth in article 13. This amendment shall be effective on and after February 15, 2002.

(Authorized by and implementing K.S.A. 75-5210, 75-5251; 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; amended Feb. 15, 2002.)

44-13-101a. Waiver of rights. (a) Each inmate shall be permitted to voluntarily waive the right to any time limit or process afforded by the disciplinary procedure regulations in this article. 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 signed by the inmate and the hearing officer unless 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) Unless 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 before accepting the waiver to determine if it is knowingly and voluntarily made. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective May 1, 1984; amended May 1, 1985; amended April 20, 1992; amended July 13, 2007.)

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. 1990 Supp. 75-5210; effective May 1, 1980; amended May 1, 1984; amended April 20, 1992.)

44-13-104 This revocation shall be effective on and after February 15, 2002.

(Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended April 20, 1992; revoked Feb. 15, 2002.)

44-13-105 The disciplinary administrator and hearing officers.

(a) A disciplinary administrator shall be appointed by the warden of each facility to manage the disciplinary process for the entire facility. Any suitable employee may be designated by the warden to carry out this task on a continuing basis.

(b) One or more impartial hearing officers shall be appointed by the warden to conduct disciplinary hearings at each department-operated facility.

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

(2) A person who is the reporting officer, investigator, or a witness in a case shall not be the hearing officer in that case. This amendment shall be effective on and after February 15, 2002.

(Authorized by and implementing K.S.A. 75-5210, 75-5251; effective, T-83-23, Aug. 11, 1982; effective, T-84-6, May 1, 1983; effective May 1, 1984; amended Feb. 15, 2002.)

44-13-106. Administration of oaths; designation of persons authorized.

(a) The warden, a deputy warden, the disciplinary administrator appointed pursuant to K.A.R. 44-13-105, and those persons serving as hearing officers at the facility disciplinary hearings shall be authorized to administer oaths to witnesses in those proceedings.

(b) Oaths shall be administered in a form and a manner that are in accordance with K.S.A. 54-101 et seq., and amendments thereto.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective, T-85-37, Dec. 19, 1984; effective May 1, 1985; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-107 to 44-13-114 Reserved.

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

44-13-116 to 44-13-200 Reserved.

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.

(1) The inmate shall be notified in writing by personal service of a copy of the report upon the inmate within 48 hours after the issuance of the disciplinary report, excluding Saturdays, Sundays, and holidays.

(2) The report shall be served upon the inmate by an officer or unit team manager. The report shall not be served upon the inmate by the same person who brought the charge against the inmate.

(3) 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.

(A) If the officer serving the report has been appointed as a hearing officer by the warden according to K.A.R. 44-13-105, 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.

(B) If the officer serving the report has not been appointed as a hearing officer by the warden according to K.A.R. 44-13-105, 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.

(4) 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 may delay the sentencing hearing and imposition of sentence for not more than six working days.

(5) When the unit team manager serves the report, or at any time before the scheduled hearing, the unit team manager may implement one of the following options:

(A) Offer the inmate diversion of the charge or charges in accordance with K.A.R. 44-13-201a;

(B) offer the inmate summary judgment in accordance with K.A.R. 44-13-201b; or

(C) 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 and, acting as a hearing officer, 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 inmate accepts this option, the unit team manager shall forward to the disciplinary administrator the guilty or no contest plea waiver form and disposition and hearing record.

(b) If the inmate is transferred to another facility before the arrival of the disciplinary report at the receiving facility, service of the report upon the inmate shall be made within 48 hours after arrival of the report, excluding Saturdays, Sundays, and holidays, in the same manner as that specified 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.

(1) 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 if 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, if practical, shall be a staff member other than the person making the allegation. If an inmate is making the allegation, the officer who is receiving the allegation and is in a position to write the report may also be the investigator.

(2) 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, in accordance with the regulations. If necessary, pending completion of the investigation, the inmate may be held in administrative segregation for a certain period according to K.A.R. 44-14-302(b).

(3) The report shall be reviewed and either approved or disapproved by the shift supervisor or unit team manager based on whether or not the report is sound and adequate, and is made in proper manner and form.

(4) The shift supervisor or unit team manager shall assure that all necessary elements of the alleged violation are contained in the written report of the facts of the incident and that the report does not represent an abuse of the disciplinary process. The shift supervisor or unit team manager shall also make or direct appropriate amendments to the report, including use of the summary judgment procedure under K.A.R. 44-13-201b.

(5) If the charge is dismissed or the report is otherwise rejected by the shift supervisor or unit team manager, 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, shall be in a form prescribed by the secretary, and shall include the following:

- (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 or regulation violated, including citation to any underlying statute, regulation, internal management policy and procedure, or published order allegedly violated;
 - (8) the specific regulation that is the basis of an attempt, conspiracy, accessory, solicitation, or liability for the offenses of another under K.A.R. 44-12-1101;
 - (9) the names of known staff witnesses;
 - (10) a brief description of the circumstances and facts of the violation if, in cases in which the violation is based upon information supplied by a confidential witness or informant, the identity of the witness or informant is not disclosed, nor is any reference or factual detail likely to reveal the identity of the witness or informant;
 - (11) any unusual inmate behavior;
 - (12) the disposition of any physical evidence;
 - (13) any immediate action taken, including the use of force; and
 - (14) the factual basis for and the amount of any restitution sought for any injury, damage, or other loss caused by or resulting from the violation charged.
- (e) An inmate shall not be charged unless the regulation or law has been made in writing and published.
- (f) 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. 2006 Supp. 75-5210, K.S.A. 75-5251; 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; amended July 11, 1994; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-201a. Diversion procedure. (a) In any case involving one or more alleged class I or class II offenses, the charged inmate's unit team manager may initiate, or a member of the inmate's unit team in the inmate's assigned housing unit may request, consideration of diversion of the pending charges from prosecution, in connection with the formation and implementation of an intervention plan intended to address each behavioral issue presented in the incident in question. If a request is made by a unit team member other than the unit team manager, the request shall be submitted in writing and addressed to the unit team manager, who may decline further action or who may proceed further with the request. The unit team manager's decision about the request shall be final and shall not be subject to hearing or appeal under these regulations or to review pursuant to the inmate grievance procedure or any other administrative remedial procedure.

(b) The unit team manager may formulate the intervention plan or may assign the diversion request to the inmate's assigned correctional counselor for

review and recommendation as to the nature and components of the intervention plan. The unit team manager shall apply for a continuance of the case pursuant to K.A.R. 44-13-402 if necessary in order to complete consideration and formulation of the intervention plan.

(c) Upon formulation of the intervention plan, the unit team manager shall confer with the reporting officer or supervisor and the inmate. If both parties consent

to the diversion, the unit team manager shall present to the inmate for the inmate's execution a written request for continuance of the disciplinary case for the length of time required to carry out the plan, which shall not exceed 180 days, and shall also present the written intervention plan to the inmate and the reporting officer or supervisor. This plan

shall be in the form of an agreement to be signed by both parties and the unit team manager. If either party fails to consent, then the case shall proceed for prosecution. If a continuance has been secured by the unit team manager, then the unit team manager shall notify the disciplinary administrator in writing of the failure to agree to diversion.

(d) As a condition of the agreement specified in subsection (c), the inmate shall waive any right or claim to have the disciplinary case heard and determined within ordinary time limits. The inmate shall also agree and acknowledge that the determination as to whether the inmate has successfully completed the plan is that of the unit team manager, whose decision in that regard shall not be subject to hearing or appeal under these regulations or to review under the inmate grievance procedure or any other administrative remedial procedure.

(e) The request for continuance specified in subsection (c) shall then be forwarded to the facility disciplinary administrator, who shall proceed to grant the continuance, duly note the length of the continuance specified in the request on the case continuance log, and further note the diversion of prosecution of the charge or charges under the assigned case number.

(f) If the inmate fails to successfully complete the intervention plan or receives another disciplinary report for any class of offense during the term of the plan, the diversion of the charge or charges from prosecution shall immediately terminate. Upon receipt of written notification of the termination from the inmate's unit team manager, the disciplinary administrator shall proceed to docket the case for hearing, notify the parties, and process the case according to the ordinary procedures set forth in these regulations.

(g) If the inmate successfully completes the intervention plan, the reporting officer or supervisor or, in that person's absence, the unit team manager shall submit a written request for dismissal of the case to the disciplinary administrator, who shall cause the case to be shown as dismissed in the records of the administrator's office. The existence of the case and its

charge or charges shall not be part of the inmate's master file or any other file subject to review by the Kansas parole board or to disclosure to the public. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210; effective July 13, 2007.)

44-13-201b. Summary judgment procedure. (a) In any case involving one or more alleged class II or 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 offenses designated as eligible for summary judgment procedures 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 the inmate summary judgment by issuing a summary judgment citation. If summary judgment is offered to the inmate by the officer, the offer shall not be withdrawn without the commission of additional alleged disciplinary offenses by the inmate.

(1) The summary judgment citation shall be written, verified pursuant to K.S.A. 53-601 and amendments thereto, and served on the inmate by the reporting officer within 24 hours of the alleged incident, or within 48 hours if directed by the shift supervisor or unit team manager under paragraph (c)(3)(B), and shall include the following:

- (A) The date and time of each alleged offense;
- (B) the date and time the citation is written;
- (C) the name and rule number of each alleged offense;
- (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 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 not more than 10 days;
- (B) a fine not to exceed \$10.00;
- (C) extra work without incentive pay for not more than two hours each day, not to exceed five days;
- (D) work without incentive pay not to exceed five days, which shall apply only to ordinary inmate work assignments; or
- (E) restitution of not less than \$3.00 and not more than \$10.00.

(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 shall be

made within one hour of the inmate's receipt of the citation, or it shall 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, this acceptance shall constitute a waiver of the inmate's right to the benefits of the formal disciplinary hearing process. The waiver of rights established according to K.A.R. 44-13-101a shall be executed by the inmate. Upon the inmate's acceptance of the summary judgment, the sanction shall be immediately imposed, and the shift supervisor or unit team manager shall be notified.

(B) If the inmate refuses the summary judgment offered, the inmate shall receive the applicable hearing process. The summary judgment citation shall be marked and signed by the officer and the inmate to indicate the inmate's refusal. The citation may then be used in lieu of the more formal disciplinary report to initiate the formal disciplinary hearing process. The citation shall then be submitted to the shift supervisor or unit team manager for review and appropriate disposition, including any amendments that the reviewer may direct, pursuant to K.A.R. 44-13-201(c)(3) and (4). The citation shall subsequently be served upon the inmate in the manner and using procedures that apply to ordinary disciplinary reports.

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

(D) All evidence shall be confiscated or seized in connection with the issuance of a summary judgment citation, and shall be disposed of in accordance with K.A.R. 44-5-111.

(4) All summary judgment citations accepted by the inmate shall be documented in the inmate's file. (Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective April 20, 1992; amended July 11, 1994; amended Feb. 15, 2002; amended, T-44-3-11-03, March 11, 2003; amended July 25, 2003; amended July 13, 2007.)

K.A.R. 44-13-202. Amendment of the charge. (a) If, in the judgment of the disciplinary administrator, hearing officer, or warden during administrative review, the charge is incorrect or a language change would change the substance of the charge or adversely affect the defense, the charge shall 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.

(b) The same charge shall not be brought twice on same facts under any circumstance if a factual finding of guilt or innocence has been made. If a case has been dismissed without a factual finding of guilt or innocence, upon administrative review pursuant to K.A.R. 44-13-701, the reviewing authority may

either reinstate the charge or amend the charge as deemed appropriate, and remand the case for hearing.

(c) 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.

(d) The hearing officer shall ask the inmate which option the inmate chooses:

(1) Continue the case for hearing on a different date to prepare a defense to the additional or different offense resulting from amendment of the original charge or charges; or

(2) waive any time period allowed to prepare to defend against any additional or different offense resulting from amendment of the original charge or charges and hold the hearing on the charges at the time of amendment of the disciplinary charge.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1980, amended April 20, 1992, amended July 11, 1994; amended February 15, 2002; amended July 13, 2007.)

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. 1990 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992.)

44-13-204 to 44-13-300 Reserved.

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 This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective April 20, 1992; revoked Feb. 15, 2002.)

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 This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1990 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; revoked Feb. 15, 2002.)

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

44-13-306 Inmate responsibilities. It shall be the responsibility of each inmate being served to read the disciplinary report and any associated documentation, or to notify the serving staff that the inmate is illiterate or otherwise unable to read and understand the documents presented and request that the notice and associated documents be read to the inmate. Within 48 hours of service of the report, the inmate shall complete and submit the authorized form for witnesses to the disciplinary administrator. If one or more witnesses are requested, the inmate shall indicate on the form the testimony expected from each witness. The inmate may use the form to waive the inmate's right to call witnesses. An illiterate inmate shall receive assistance from the inmate's unit team correctional counselor for the purpose of completing the witness form, including any waiver of the right to call witnesses. This regulation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210 and 75-5251; effective Feb. 15, 2002.)

44-13-307. Administrative review of requests for witnesses; denial of requests; issuance of summons; voluntary nature of witness appearance.
(a) The disciplinary administrator or hearing officer assigned to hear the charges shall review any written requests for witnesses submitted by the accused inmate according to K.A.R. 44-13-306.

(b) The disciplinary administrator or hearing officer performing a review of a written request for witnesses may deny the request if, in the judgment of the reviewer, the testimonies proffered on the request form meet any of the following criteria:

(1) Are clearly irrelevant or immaterial;

(2) are repetitious of other proffered testimony; or

(3) are properly excluded for reasons specified in K.A.R. 44-13-405a. The truth of the proffered testimony shall be presumed in making this decision.

(c) Each denial of a request for witnesses shall be documented, including the reason or reasons for the denial, either on the request form or in the disciplinary case record.

(d) If practicable in the judgment of the reviewer, the inmate shall be informed, in writing and in advance of the hearing, of any denials of requested witnesses and of the reason or reasons for the denials. If informing the inmate is determined not to be practicable, the inmate shall be informed of any denials and reasons for any denials by the hearing officer at the beginning of the hearing.

(e) If no reason appears from a review of the written proffer of testimony for denial of the request for witnesses, then the disciplinary administrator shall issue a written summons for the appearance of the witness. The appearance of a witness requested by either the reporting officer or the accused inmate shall be voluntary, and neither the request nor the issuance of summons according to this regulation shall compel an appearance. However, issuance of summons by a hearing officer to an inmate or staff member pursuant to K.A.R. 44-13-403 shall compel an appearance.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210 and K.S.A. 75-5251; effective Feb. 15, 2002; amended July 13, 2007.)

44-13-308 to 44-13-400 Reserved.

HEARINGS GENERALLY

44-13-401 Hearing within certain time; notice to inmate; time and place of hearing.

(a) Except as otherwise provided in these regulations, the administrative hearing by a hearing officer of the facility 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 or more than seven working days after the service of notice of charge on the inmate, subject to authorized continuances.

(b) 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 warden. This amendment shall be effective on and after February 15, 2002.

(Authorized by and implementing K.S.A. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended April 20, 1992; amended Feb. 15, 2002.)

44-13-401a This revocation shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1984; amended April 20, 1992; revoked Feb. 15, 2002.)

44-13-402. Continuing the hearing; recesses; time limits; extensions. (a)

The disciplinary administrator or hearing officer may grant one or more continuances or recesses of appropriate and reasonable length upon application of the inmate, reporting officer, the hearing officer, a unit team manager pursuant to K.A.R. 44-13-201a, or department of corrections for cause shown.

(b) The hearing officer may also continue the case for a reasonable period, as necessary, subject to the review of the status of the case every 30 days, if any of the following conditions is met:

(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 a facility for diagnostic evaluation, out to court, or to a mental hospital before hearing.

(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.

(6) The case has been placed upon diversion status pursuant to K.A.R. 44-13-201a.

(c) 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. If there is a hearing officer appointed for the case, the request shall be forwarded to that officer.

(1) Reasonable extensions may be obtained with the prior approval of the secretary of corrections or the secretary's designee, in the case of a substantial disruption of order in the facility.

(2) If an inmate has been transferred to another facility, it shall be the responsibility of the warden of the sending facility to grant an extension of the disciplinary case, which shall not exceed 10 working days.

(3) At the discretion of the hearing officer, recesses of appropriate and reasonable length may be declared.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; 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, 1988; amended April

20, 1992; amended July 11, 1994; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-403. Conducting the disciplinary hearing. (a) The disciplinary hearing shall consist of the following procedures:

(1) The hearing officer shall initially inform the inmate of the charges and take the inmate's plea.

(2) Secondly, the hearing officer shall determine guilt or innocence.

(3) Finally, if guilt has been established, the hearing officer shall make a disposition, including the determination and imposition of sentence.

(b) Initially, the hearing officer shall read the disciplinary report to the inmate, including the date, nature of the offense, the reporting officer's name, and a synopsis of the observation. The officer shall ensure that the inmate understands the charges and that a copy of the disciplinary report was received by the inmate. The officer shall also explain the possible penalties. If the hearing officer finds that the inmate is incapable of self-representation, the hearing officer shall continue the hearing as provided in K.A.R. 44-13-402(b)(1), until the inmate regains the ability for self-representation. For purposes of this subsection, "incapable of self-representation" shall mean that the inmate, due to physical or mental disability, whether temporary or permanent, lacks the present ability to assist in the inmate's representation in the case. This term shall not include mere illiteracy.

(c) A staff assistant 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. The hearing officer shall ensure that the inmate has staff assistance when required by K.A.R. 44-13-408.

(d) If the inmate is disruptive or refuses to be present, the hearing may proceed in absentia, and the record shall indicate the reason or reasons for the inmate's absence. A staff assistant shall then be assigned and may ask questions of witnesses, present the argument, or otherwise aid the defendant inmate, at the discretion of the staff assistant and subject to rulings of the hearing officer as otherwise provided in this regulation.

(e) The hearing officer shall entertain and determine any motion for dismissal or objections to holding the hearing, as well as any motions for additional witnesses beyond those identified already in the witness list previously submitted. Additionally, the hearing officer shall advise the inmate of the inmate's rights to proceed to a determination of guilt or innocence, and if necessary, the application of penalties, and to receive staff assistance in certain cases, according to K.A.R. 44-13-408, and of other procedural due process rights.

(f) The hearing officer shall then ask the inmate to plead guilty, not guilty, or no contest. The plea shall be entered if the presiding officer is assured that the plea 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 that for a plea of guilty. If the inmate pleads guilty or no contest, the inmate shall waive the right

to a determination of guilt or innocence, but shall reserve the right to participate in the penalty phase of the hearing to the extent of offering a brief argument in mitigation of the penalty to be imposed. If the inmate pleads guilty or no contest, the inmate shall not be allowed to introduce evidence regarding the inmate's guilt or innocence of the charge or charges.

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

(h) If the hearing officer finds that the case shall 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 and provide a copy of the explanation to the reporting officer.

(i) Only the relevant facts shall be employed in any determination of guilt or innocence. In the penalty phase, the inmate's entire facility record and other relevant facts, observations, and opinions may be considered.

(j) 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.

(k) The hearing officer shall rule on all matters of assistance for the accused inmate in accordance with these regulations. If the accused inmate is furnished with staff assistance according to K.A.R. 44-13-408, the staff assistant shall be permitted to fully assist 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.

(l)(1) 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, and each inmate, staff member, volunteer, or contract employee called as a witness by the hearing officer shall be compelled to appear. 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, or on behalf of the inmate. Testimony and evidence shall not be received by the hearing officer or introduced outside the presence of the accused inmate, except that the accused inmate shall not be present when the hearing officer reviews any facility security videotape evidence. An inmate shall not be required to be present at the disciplinary hearing as provided in subsections (d), (e), and (m) and K.A.R. 44-13-402(b)(5), and as otherwise provided in these regulations.

(2) The hearing shall proceed as follows:

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

(B) The defense shall present its evidence, and the prosecution shall be permitted to cross-examine.

(C) The prosecution may make a closing argument. The defense may make a closing argument, and then the prosecution may make a short rebuttal.

(m)(1) If the hearing officer determines that the testimony of any inmate will subject that inmate to possible retaliation for having testified, the hearing officer may perform either of the following:

(A) Receive the testimony in confidence without confrontation or cross-examination by the accused inmate, and the witness may be sequestered; or

(B) receive testimony from an investigator who interviewed an inmate informant and relied on the confidential information provided.

(2) The testimony of the inmate witness 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 hearing officer

shall complete a credibility assessment form, which shall be available for confidential review by the warden and secretary of corrections.

(3) If the informant inmate does not testify, the hearing officer may establish the reliability of the information provided to the testifying investigators by any of the following:

(A) The testimony of the investigator regarding the reliability of the informant in the past, which shall include specific examples of past instances of reliability;

(B) the testimony of the investigator regarding the truthfulness of details that the investigator has been able to verify through investigation;

(C) corroborating testimony;

(D) a statement on the record by the hearing officer that the hearing officer has firsthand knowledge of the informant and considers the informant to be reliable due to the informant's past record of reliability, which shall include specific examples of past instances of reliability; or

(E) in camera review of material documenting the investigator's assessment of the credibility of the informant.

(4) 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 or provided confidential information to the testifying investigator. The identity of any confidential witness or of any inmate informant shall not be disclosed to the accused, to any other inmate, or to any staff not required to complete the process. The staff assistant shall be permitted to be present when the board receives testimony from the confidential witness, or investigator, and the staff assistant may ask questions.

The inmate's staff assistant shall not disclose the identity of the confidential witness or inmate informant to the accused, to any other inmate, or to any staff not required to complete the hearing process. The testimony shall be recorded for confidential review by the warden and, on appeal, by the secretary of corrections.

(n) The hearing officer may require the accused to explain briefly what the purpose and nature of the testimony of a witness will be. The request to call the witness may be denied or the testimony reasonably and fairly restricted if the testimony meets any of the following criteria:

(1) Relates to something already disposed of;

(2) is clearly irrelevant or immaterial;

(3) is repetitious of other testimony; or

(4) is properly excluded for reasons specified in K.A.R. 44-13-405a.

The truth of the testimony shall be presumed in making this decision.

(o) A witness request made at the hearing and not previously submitted shall not be permitted unless exceptional circumstances outside the control of the inmate exist and the testimony would most likely affect the outcome of the hearing. The hearing officer shall inform the inmate of any witness deemed waived by the failure to make a timely request.

(p) 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.

(q) Confrontation and cross-examination may be denied by the hearing officer if deemed necessary in any case except class I cases. In class I cases, confrontation and cross-examination may be limited or denied if necessary to protect the safety of an accuser, informant, or witness or if necessary to maintain facility safety, security, and control. Unless there is a security risk 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 warden with a copy to the secretary for confidential review. However, an inmate held in administrative or disciplinary segregation whose hearing is conducted by telephone, as provided by K.A.R. 44-13-404(e), shall not be permitted to confront any witnesses against the inmate, including the reporting officer.

(r) 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, both parties shall be present to hear what the other is saying unless exempt under subsection (m) or (p) above.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; 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; amended July 11, 1994; amended Feb. 15, 2002; amended July 13, 2007.)

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. Subject to the provisions of subsection (e), if the inmate is not present, then a staff assistant shall be assigned in accordance with K.A.R. 44-13-403 and 44-13-408.

(b)(1) In class I cases, the charging officer shall be present in person or by telephone, as determined by the hearing officer, for direct examination 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 any of the following is determined:

(A) Facility safety or correctional goals would be jeopardized.

(B) The charging officer is absent from duty due to activation for military service.

(C) The charging officer has been separated from employment with the facility for reasons unconnected to investigation of the charges or issuance of the disciplinary report.

(D) The charging officer is otherwise unlikely to be available for testimony within a reasonable time period as determined by the hearing officer, and a continuance pursuant to K.A.R. 44-13-402 either is not applicable or is not appropriate in the judgment of the hearing officer.

Facility 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 the charging officer is excused from appearance, the hearing officer shall document the ground for the excuse and shall likewise document the facts underlying the ground relied upon in the case record.

(2) If an inmate has been transferred to another facility after a disciplinary report was written in a class I case, 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. 44-13-403(m) and (q), any testimony taken by telephone shall be taken in a manner that can be heard by all those present at the hearing, and shall be subject to the same procedures as though the witness were personally present at the hearing.

(c)(1) 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 according to K.A.R. 44-13-403(m). 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.

(2) In all class II and III 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) (1) 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 that might be used to support both the facility's case against the inmate and the inmate's defense. If 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 that might be conducted by another person or may submit the charging officer's own statement in addition to the investigation report.

(2) 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.

(e) Hearings for inmates detained or held in administrative or disciplinary segregation status may be conducted by telephone, with the inmate remaining in the inmate's cell and outside the immediate physical presence of the hearing officer and any witnesses, including the reporting officer, at the discretion of the hearing officer. Except as provided in K.A.R. 44-13-403(m) and (q), any testimony taken by telephone shall be taken in a manner that allows the testimony to be heard by all those present at the hearing. The testimony taken by telephone shall be subject to the procedures governing the testimony of any witness personally present at a hearing. A staff assistant shall not be required to be appointed to render assistance to the inmate unless at least one of the circumstances set forth in K.A.R. 44-13-403 or 44-13-408 is present. The inmate shall be permitted to submit written motions, exhibits, or affidavits on the inmate's behalf to the hearing officer to the extent and under the circumstances applicable to documentary presentations under these regulations.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; 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; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-405 (Authorized by and implementing K.S.A. 1982 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 facility population or from among facility 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 facility. These needs of the facility shall include the following:

- (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 and evidence;
- (8) the need to reduce or prevent security hazards that could be presented in individual cases;

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

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

(11) the need to reduce the chances of seriously inflaming tension, frustration, resentment, and antagonism in the relationship between inmates and facility 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 need for 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 facility 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 request and wishes against the needs of the facility. 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 neither abuse the discretion entrusted to that officer nor interfere with the level of process that is reasonably necessary to find the truth.

(d) With the charged inmate's consent, the hearing officer may admit the affidavit of a non-party 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 this witness.

(e) If a request to call a witness is denied, a written explanation shall be made on the record unless it would endanger any person. In this case, a written explanation shall be made to the warden with a copy, on appeal, to the secretary of corrections for confidential review.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1984; amended May 1, 1987; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

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 shall sentence the inmate by selecting an appropriate disposition, or appropriate combination of dispositions, from the following options:

(1) Impose a penalty or penalties in accordance with the applicable penalty regulation for that class of offense;

(2) In the instance of two or more offenses, including imposition of previously suspended sentences, in which the penalty has a time component, order whether the sentences are to be served concurrently or consecutively. If the hearing officer makes no specific order in this regard, the sentences shall be computed on a concurrent basis;

(3) impose previously suspended sentences; or

(4) suspend all or part of the sentence imposed for a period of not less than 90 and not more than 180 days.

(c) The hearing officer shall make a recommendation regarding disposition of evidence. The warden shall determine final disposition of the evidence, in accordance with K.A.R. 44-5-111, in the warden's administrative review of the disciplinary report pursuant to K.A.R. 44-13-701.

(d) Upon request, the reporting staff person may be notified of the disposition.

(Authorized by and implementing K.S.A. 2006 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; amended Feb. 15, 2002; amended July 13, 2007.)

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. Assistance from staff. (a) If the hearing officer finds that at least one of the following conditions is met, the hearing officer shall appoint a staff member from an approved list to act as staff assistant to aid the inmate at the disciplinary hearing and to question relevant witnesses:

(1) The inmate is incapable of self-representation due to physical or mental disability, whether temporary or permanent.

(2) The inmate is illiterate in the English language.

(3) The charge is too complex for the inmate to readily comprehend or defend against.

(4) Testimony or other evidence will be given, either directly or indirectly, by a confidential inmate informant or witness.

(5) The inmate either refuses to attend or has been removed from the hearing.

(6) Any other circumstance exists that, in the judgment of the hearing officer, substantially impairs the inmate's ability to participate meaningfully in the inmate's defense.

(b) A list of staff members to aid the inmate as staff assistants shall be made available to the hearing officer by the warden.

(Authorized by and implementing K.S.A. 2006 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; amended Jan. 3, 1995; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-410 to 44-13-500 Reserved.

REPORTS AND RECORDS

44-13-501 Preservation of all reports. 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 the case number shall be marked ``void" and placed in the disciplinary chronological file at the facility. 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 facility. This amendment shall be effective on and after February 15, 2002.

(Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended May 1, 1984; amended April 20, 1992; amended Feb. 15, 2002.)

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. A complete written record shall be made of the disciplinary hearing by the hearing officer who conducted the hearing. The written record shall include the following information:

- (a) A summary of the disciplinary hearing showing compliance with the provisions of K.A.R. 44-13-403, K.A.R. 44-13-404, and K.A.R. 44-13-405a;
- (b) a summary of compliance with the provisions of K.A.R. 44-13-101a and K.A.R. 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;
- (c) a complete summary of all the evidence and arguments relied on to find the inmate guilty of the charge at the conclusion of the hearing, including the following:
 - (1) A summary of the testimony or sworn statement of the reporting officer, subject to applicable provisions of K.A.R. 44-13-403;
 - (2) a summary of the testimony or sworn statements of all other witnesses;
 - (3) any investigative reports;
 - (4) a list of all physical evidence;
 - (5) a list of any witnesses whose testimony was requested and denied and the reasons for that denial;
 - (6) the reasons for the denial of confrontation and cross-examination of any witness by the inmate; and
 - (7) the reasons for the denial of any request for assistance by the inmate at any stage of the hearing; and
- (d) 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 during the penalty phase of the hearing. This amendment shall be effective on and after February 15, 2002.

(Authorized by and implementing K.S.A. 75-5210, 75-5251; effective April 20, 1992; amended Feb. 15, 2002.)

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 10 working days. The record of the disciplinary hearing shall be caused by the warden or designee to be prepared within 10 working days after the rendering of the disposition by the hearing officer, unless extenuating circumstances arise. If such circumstances arise, the record shall be prepared as soon as possible, and the reason for the delay shall be attached in writing and delivered to the inmate upon completion of administrative review by the warden. This amendment shall be effective on and after February 15, 2002.

(Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002.)

44-13-507 Docket.

(a) A docket of disciplinary cases shall be maintained, showing the following:

- (1) The case number;
- (2) the inmate's name;
- (3) the inmate's number;
- (4) the cell house;
- (5) the offense and its classification; and
- (6) 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.

(b) A copy of this docket shall be maintained in the facility.

This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002.)

44-13-508 Disciplinary reports in file. The case disposition report and disciplinary report 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 or if the case is dismissed. This amendment shall be effective on and after February 15, 2002. (Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended May 1, 1984; amended Feb. 15, 2002.)

44-13-509 Disciplinary case log. The disciplinary administrator shall keep a continuous log of all disciplinary reports. The reports shall be numbered and recorded. If any disciplinary report is 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.

This amendment shall be effective on and after February 15, 2002.

(Authorized by and implementing K.S.A. 75-5210; effective May 1, 1984; amended Feb. 15, 2002.)

44-13-510 to 44-13-600 Reserved.

SENTENCES

44-13-601 Serving sentence. Each inmate shall begin serving the sentence immediately upon imposition of sentence by the hearing officer, unless the warden or designee 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 either determination is made, the sentence shall be served when the space is available or when placement of the inmate in segregation becomes feasible. This amendment shall be effective on and after February 15, 2002.

(Authorized by and implementing K.S.A. 75-5210, 75-5251; 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; amended Feb. 15, 2002.)

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 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 facility. (a) If the inmate is sentenced to disciplinary segregation, restriction to cell, or restriction from privileges and if the inmate is then transferred out to court or to a mental hospital before 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 warden determines that the best interests of the inmate or facility warrant that the sentence be suspended.

(b) If the inmate is paroled, conditionally released, or released on postrelease supervision before completion of serving the sentence, the inmate may be required to complete serving the sentence upon the inmate's subsequent return to a facility.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1986; amended April 20, 1992; amended July 11, 1994; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-604 to 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 that 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) No inmate, while released from incarceration, shall be required to continue payment on any fine imposed under these regulations. 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 warden of the sending facility, as approved and confirmed by the warden of the receiving facility. 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. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1984; amended May 1, 1985; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-611 to 44-13-700 Reserved.

APPEALS

K.A.R. 44-13-701. Administrative review. (a) In class I and II offense cases, within seven working days after preparation of the record, there shall be a review of the case, without the presentation of further arguments from either side, regarding compliance with the disciplinary procedure. One or more of the following actions may be performed by the warden

- (1) Approve the decision;
- (2) reinstate a charge that has been dismissed without a factual finding of guilt or innocence and remand the disciplinary case to the disciplinary administrator;
- (3) amend the charge in accordance with the provisions of K.A.R. 44-13-202 and remand to the disciplinary administrator;
- (4) disapprove the decision and dismiss the case;

- (5) reduce the penalty;
 - (6) suspend all or part of a sentence for a period of at least 90 but not more than 180 days;
 - (7) remand the case to the disciplinary administrator and order a new hearing;
 - (8) remand the case to the disciplinary administrator for clarification of the record, and return the case to the warden for further consideration; or
 - (9) reduce the disciplinary report to a summary judgment and impose one of the following:
 - (A) Restriction from privileges for not more than 10 days;
 - (B) a fine not to exceed \$10.00;
 - (C) extra work without incentive pay for not more than two hours each day, not to exceed five days;
 - (D) work without incentive pay, not to exceed five days. This penalty shall not include a fine and shall apply only to ordinary inmate work assignments; or
 - (E) restitution of not less than \$3.00 and not more than \$20.00.
 - (b) Disposition of personal property that has been found to be the subject of a violation of one or more disciplinary regulations shall be provided for by the warden in accordance with K.A.R. 44-5-111 if the property is the subject matter of the offense.
 - (c) The inmate shall be notified by the warden of the results of the review by way of service of a copy of the disciplinary case record, without unnecessary delay, but in no case later than seven working days after review of the record. The date of review shall not be counted.
 - (d) Any mistake of law or other clear error may be corrected by the warden, at any time before a decision is made by the secretary in any ensuing appeal by the inmate, with the appeal permitted to continue as to any other point still unresolved by the warden's action as required by K.A.R. 44-13-703.
 - (e) In class III offense cases that do not include class I or class II offenses, if possible, the reviewer shall not be the warden. An impartial employee of suitable rank and experience shall be designated by the warden to perform the review. A person who was the hearing officer shall not 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. 2006 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; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-702 Appeal on the record to the warden of the facility in class III offense cases.

- (a) In class III offense cases, the inmate shall have a right of appeal to the warden of the facility, and shall not have a right of appeal to the secretary of corrections.
- (b) The procedure for appeal to the warden of the facility shall be the same as that for appeal to the secretary of corrections in class I and II offense cases.

(c) The same time to answer the appeal shall be provided to the warden as that provided for the secretary of corrections in class I and II offense cases.

This amendment shall be effective on and after February 15, 2002.

(Authorized by and implementing K.S.A. 75-5210; effective May 1, 1980; amended, T-3-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended April 20, 1992; amended Feb. 15, 2002.)

K.A.R. 44-13-703. Appeal on the record to secretary of corrections in class I and II offense cases only.

(a) In class I and II offense 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 warden. If a class III offense is included among class I or II offenses, the class III offense shall be subject to review by the secretary of corrections. The inmate shall be notified of the right of appeal before or immediately following the warden's review.

(b) The inmate may, on forms provided by the unit team, prepare the inmate's own appeal. The unit team shall ensure that all data necessary to identify and properly log the appeal is provided and forwarded to the disciplinary administrator.

(c) The inmate shall submit the 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 any of the following:

(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.

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

(e) The facility's legal counsel may be asked by the secretary to prepare and submit a responsive argument. The responsive argument shall be submitted to the secretary within five calendar days of receipt of the request. The secretary's request for a responsive argument shall not extend the time limits for the secretary's review of the inmate's disciplinary appeal as established in K.A.R. 44-13-704.

(f) Any mistake of law or other clear error may be corrected by the warden at any time before a decision is made by the secretary in any ensuing appeal by the inmate, with the appeal permitted to continue as to any other point still unresolved by the warden's action, as required by K.A.R. 44-13-701.

(Authorized by and implementing K.S.A. 2005 Supp. 75-5210; effective May 1, 1980; amended May 1, 1985; amended May 1, 1987; amended April 20, 1992; amended Feb. 15, 2002; amended July 13, 2007.)

K.A.R. 44-13-704. Secretary of corrections' final review on appeal.

(a) Within 15 working days after an appeal is received, all cases appealed to the

secretary shall be reviewed by the secretary or designee. Any of the following actions may be taken by the secretary or designee:

- (1) Approve the decision;
- (2) reinstate a charge that has been dismissed without a factual finding of guilt or innocence and remand the disciplinary case to the disciplinary administrator for a new hearing;
- (3) amend the charge in accordance with K.A.R. 44-13-202 and remand the disciplinary case to the disciplinary administrator for a new hearing;
- (4) disapprove the decision and dismiss the case;
- (5) reduce the penalty;
- (6) suspend all or part of a sentence for at least 90 and not more than 180 days;
- (7) remand the case to the disciplinary administrator and order a new hearing;
- (8) remand the case to the disciplinary administrator for clarification of the record and return the case to the secretary for further consideration;
- (9) reduce the disciplinary report to a summary judgment and impose one of the following:
 - (A) Restriction from privileges for not more than 10 days;
 - (B) a fine not to exceed \$10.00;
 - (C) extra work without incentive pay for not more than two hours each day, not to exceed five days;
 - (D) work without incentive pay, not to exceed five days. This penalty shall not include a fine and shall apply only to ordinary inmate work assignments; or
 - (E) restitution of at least \$3.00 and not more than \$20.00; or
- (10) remand the case to the disciplinary administrator with any instructions necessary to ensure compliance with the disciplinary procedure and rules of conduct.

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 working days following the secretary's decision. If the appeal is denied, the reason for that decision shall be included in the written appeal decision.

- (b) The secretary's review shall determine the following:
 - (1) Whether there was substantial compliance with departmental and facility standards and procedures;
 - (2) whether the hearing officer's decision was based on some evidence; and
 - (3) whether, under the circumstances, the penalty imposed was appropriate and proportionate to the offense.

(Authorized by and implementing K.S.A. 2006 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; amended Jan. 3, 1995; amended Feb. 15, 2002; amended July 13, 2007.)

44-13-705 This revocation shall be effective on and after February 15, 2002.

(Authorized by and implementing K.S.A. 1990 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; revoked Feb. 15, 2002.)

44-13-706 Administrative review board to review and make

recommendations. The administrative segregation review board established under the applicable internal management policy and procedure of the secretary may review the inmates held in disciplinary segregation. This board may, at any time, recommend to the warden or designee 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 remaining segregation time of the inmate's sentence may be suspended by the warden or designee, acting on the recommendation of the administrative segregation review board. This amendment shall be effective on and after February 15, 2002.

(Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended April 20, 1992; amended Feb. 15, 2002.)

44-13-707 Harmless error; plain error. None of the following types of errors shall 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:

- (a) An error in either the admission or exclusion of evidence;
- (b) an error or defect in any ruling or order;
- (c) an error in anything done or omitted by the hearing officer or by any of the facility officials in processing the disciplinary case; or
- (d) an error by the inmate in processing the inmate's defense of the case.

Throughout the disciplinary process, the hearing officer or the reviewing authority shall disregard any error or defect in the proceeding that does not affect the substantial rights of the inmate or the facility. This amendment shall be effective on and after February 15, 2002.

(Authorized by and implementing K.S.A. 75-5210, 75-5251; effective, T-83-23, Aug. 11, 1982; effective, T-84-6, May 1, 1983; effective May 1, 1984; amended April 20, 1992; amended Feb. 15, 2002.)