




KANSAS DEPARTMENT OF CORRECTIONS

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|  | INTERNAL MANAGEMENT POLICY AND PROCEDURE | SECTION NUMBER 11-109 | PAGE NUMBER 1 of 7 |
| | | SUBJECT: DECISION MAKING: Transfer of Inmates to the Larned Correctional Mental Health Facility (LCMHF) and Larned State Security Hospital (LSSH) | |
| Approved By:  Secretary of Corrections | | Original Date Issued: 04-20-84 | Current Amendment Effective: 05-25-07 |
| | | Replaces Amendment Issued: 02-21-04 | |
| Reissued By:  Policy & Procedure Coordinator | | The substantive content of this IMPP has been reissued as per the appropriate provisions of IMPP 01-101. The only modifications within the reissue this document concern technical revisions of a non substantive nature. Date Reissued: 06-13-11 | |

POLICY

Male inmates requiring mental health services beyond the scope of services provided at their current location shall be afforded a due process hearing, as provided herein, and transferred to the Larned Correctional Mental Health Facility (LCMHF). Inmates transferred to LCMHF for reasons other than mental health treatment shall not require a due process hearing. Male inmates requiring mental health treatment beyond that provided at LCMHF also shall be afforded a due process hearing, as provided herein, and transferred to the Larned State Security Hospital (LSSH). Female inmates requiring mental health treatment beyond that provided at TCF shall be afforded a due process hearing, as provided herein, and transferred directly to the Larned State Security Hospital (LSSH). (ACI 3-4367, 3-4368)

DEFINITIONS

Departmental Health Authority: The medical director of the agency or organization responsible for the provision of health care for the Kansas Department of Corrections.

Facility health authority: The physician or health administrator responsible for the provision of health care services at a facility. The facility health authority works under the direction of the Departmental Health Authority.

Hearing officer: A mental health professional not directly involved in the supervision or treatment of the inmate, or in decisions relating to that inmate who is appointed by the Regional Mental Health Director to serve as a fact finder and chairperson of the due process hearing for transfer to either LCMHF or LSSH.

Inmate representative: A staff member or attorney associated with Legal Services for Prisoners with the responsibility to assist the inmate during due process hearings.

Recovered: Having achieved the maximum possible benefit from mental health treatment.

Reintegration program: A program of supportive mental health counseling/treatment provided at selected facilities upon completion of transitional treatment at LCMHF.

PROCEDURES

I. Identification of Inmates Requiring Mental Health Transfer to LCMHF and LSSH

- A. Identification while at either the El Dorado Correctional Facility – Reception and Diagnostic Unit (EDCF-RDU) or the Topeka Correctional Facility - Reception and Diagnostic Unit (TCF-RDU).
1. During the admission and evaluation process at EDCF-RDU or TCF-RDU, each inmate shall receive a mental health classification. Evidence of mental illness, mental retardation, or organic impairment, shall be considered within the body of the evaluation process. (ACI 3-4367)
 2. The mental health classification shall place inmates into one of the following levels of mental health treatment need:
 - a. Level 1 - Not currently requiring mental health treatment.
 - b. Level 2 - May require time-limited mental health services.
 - c. Level 3 - Requires on-going mental health services that may include medication management.
 - d. Level 4 - Requires special needs treatment monitoring. (ACI 3-4367)
 - e. Level 5 - Requires mental health structured reintegration program at LCF-TRU. (ACI 3-4367)
 - f. Level 6 - Requires intensive mental health placement at LCMHF or TCF-MHU. (ACI 3-4367)
 - g. Level 7 - Requires hospitalization at LSSH. (ACI 3-4367)
 3. Male inmates having a mental health treatment need of 6 or 7 shall, subsequent to the completion of a due process hearing, be transferred to LCMHF upon completion of the admission evaluation. If it is determined that a male inmate has a mental health treatment need of 5, the inmate shall then be transferred to a facility with a reintegration unit. Male inmates receiving a mental health treatment need of 7 shall, subsequent to the completion of yet another due process hearing at LCMHF, be placed at LSSH upon completion of the admission evaluation in accordance with the provisions of procedure I.B.45. of this IMPP. (ACI 3-4367)
 4. Female inmates having a mental health classification of 6 or 7 shall be considered for direct referral to LSSH in accordance with procedure I.B.5. of this IMPP. (ACI 3-4367)
 5. Any post release supervision violator either confined within a community facility or, not confined but requiring emergency psychiatric intervention, may, in lieu of transport to EDCF-RDU or TCF-RDU, be subject to direct placement to either LSSH or LCMHF. In emergency situations, a due process hearing is held as soon as possible after their arrival at either LSSH or LCMHF.
 - a. The due process hearing shall be conducted in accordance with the appropriate provisions of this IMPP.
 - b. The due process hearing shall be completed prior to initiating any long term, non-emergency, treatment modality.

- c. Should the results of the due process hearing indicate that the inmate should not be placed at either LSSH or LCMHF, he or she shall be transferred forthwith to an appropriate KDOC facility as determined by either EDCF-RDU or, in the case of females, TCF-RDU.

B. Identification while at locations other than EDCF-RDU or TCF-RDU.

1. Any staff member who suspects that an inmate is in need of mental health treatment shall notify the inmate's unit team verbally or in writing.
 - a. In an emergency situation or when a member of the unit team is not available, the security shift supervisor shall be notified.
 - b. Verbal notification shall be followed by a written recommendation within one (1) working day.
2. The unit team (security shift supervisor in unit team's absence) shall notify the facility mental health staff of the situation.
3. When evaluation by the facility mental health staff determines that an inmate's mental health state has deteriorated beyond the scope of services available at the facility, mental health staff shall prepare a recommendation for transfer to LCMHF or another appropriate facility.
 - a. The recommendation shall include a detailed description of the observed behavior and an assessment as to the level of treatment required.
 - b. In the case of a male inmate, the recommendation shall be for a transfer to LCMHF.
 - c. In the case of a female inmate, the recommendation shall be for a transfer to LSSH.
4. Recommendations for transfer to LCMHF shall be forwarded to the classification administrator.
 - a. The warden of the recommending facility shall direct that a due process hearing be conducted as provided by Section II.B. of this IMPP.
 - (1) Predicated upon a decision to transport, arrangements for admission to LCMHF shall be made by the designated facility staff.
5. Recommendations for transfer to LSSH, whether involving a male or female inmate, shall be forwarded to the facility health authority for approval or disapproval and processed as follows:
 - a. Recommendations which are not approved by the facility health authority shall be returned to the mental health staff. They, in turn, shall advise the inmate's unit team of the situation and make recommendations regarding management strategies appropriate for the control of the inmate.
 - (1) Such management strategies shall be communicated with other facility staff as required to maintain the inmate in the facility population or current housing assignment.
 - (2) Such management strategies shall be written and distributed to the unit team and maintained in the inmate's mental health file.
 - b. Recommendations, which are approved by the facility health authority shall be forwarded through the inmate's unit team to the facility warden.

- c. The warden or designee shall give the inmate a written notice that transfer to a mental hospital is being considered, as approved in Section II.A. of this IMPP.
- d. The warden shall direct that a due process hearing be conducted as provided by Section II.B. of this IMPP.
 - (1) If the inmate is found in need of LSSH placement, the facility warden shall contact the Warden of LCMHF by the most expeditious means.
 - (a) Arrangement for admission to LSSH shall be made by the designated LCMHF staff.

II. Notice to Inmates and Due Process Hearing Prior to LCMHF or LSSH Transfers

A. Notice to the inmate.

- 1. Written notice to the inmate shall advise the inmate of the right to:
 - a. A hearing at which time evidence will be presented and a rebuttal can be offered.
 - b. Present witnesses and to cross-examine facility staff, who provide testimony.
- 2. The "Notice of Mental Hospital Transfer" Form (Attachment A, Form #11-109-001) shall be used in giving written notice to the inmate.

B. Due Process Hearings (ACI 3-4368)

- 1. A due process hearing shall be held for each inmate prior to the inmate's transfer to either the Larned Correctional Mental Health Facility (LCMHF) or the Larned State Security Hospital (LSSH).
- 2. An inmate may voluntarily accept transfer to a mental hospital and may waive the due process hearing:
 - a. The "Waiver of Evidentiary Hearing and Voluntary Consent to Transfer to a Correctional Mental Health Facility or Mental Hospital" Form (Attachment B, Form #11-109-002) shall be used for this purpose.
 - b. Only the appointed hearing officer or a designee of the warden shall be authorized to secure such waivers.
 - c. Prior to accepting such a waiver of such a hearing, the hearing officer shall ascertain that the inmate has been found competent to make such a waiver, and such a determination of competency shall be based upon a contemporaneous examination of the inmate by a mental health clinician who is not involved in making the recommendation for transfer.
- 3. If the inmate voluntarily accepts transfer, and the hearing officer accepts the inmate's waiver of the due process hearing, then the hearing officer shall forego the due process hearing, review the packet of recommendations materials associated with the proposed transfer, and make an appropriate disposition.
 - a. If the inmate does not voluntarily accept transfer, the due process hearing shall be held no less than 24 hours after notice is given to the inmate, unless the inmate waives the 24-hour period as provided in II.B.4.a below.
- 4. If the inmate does not voluntarily accept transfer, the inmate may, nonetheless, choose to waive, by appropriately indicating on Attachment B, one or more of the following rights:
 - a. The 24 hour period to prepare for the hearing;

- b. The right to call witnesses on their behalf; and/or,
 - c. The right to confront and cross examine witnesses called on the behalf of the sending facility.
 5. The inmate shall be present and able to participate in the hearing unless it is determined by the hearing officer that:
 - a. The inmate poses an imminent threat of violence to witnesses, hearing officials, him/herself, or others, or
 - b. The inmate is in such a mental condition as to not be able to give or receive information.
 6. Though legal counsel need not be appointed, a qualified staff member not directly involved in either the evaluation or treatment of the mental health of the inmate, or another qualified person within the facility or corrections system, shall be appointed by the warden to serve as the inmate's representative if other qualified representation is unavailable to the inmate. This individual shall also assist the inmate in preparing and presenting the case.
- C. Appointment and Duties of the Hearing Officer
 1. A hearing officer shall be appointed by the Regional Mental Health Director
 2. The hearing officer shall be responsible for:
 - a. Calling/scheduling witnesses, using the "Hearing Officer's Request for Witnesses Mental Health Transfer " Form (Attachment C, Form #11-109-0043);
 - b. Conducting the hearing;
 - c. Receiving pertinent testimony required to arrive at an informed decision;
 - d. Evaluating the evidence; and,
 - e. Preparing a written summary record of proceedings.
- D. Evaluation of Evidence and Summary Record of Proceedings
 1. After the presentation of the evidence, the hearing officer shall consider the following:
 - a. Evidence that appropriate screening, diagnostic and evaluative procedures have been followed to indicate a treatment need;
 - b. Evidence that the inmate is in need of intensive psychiatric treatment; and,
 - c. Evidence that the inmate is suffering from a mental condition for which adequate treatment is not available at any ordinary Department of Corrections' facility.
 2. A summary record of the proceedings, using the "Decision of Transfer to Correctional Mental Health Facility or Mental Health Facility" Form (Attachment D, Form #11-109-004), shall be prepared by the hearing officer. The summary shall cover the general conduct of the hearing and specific findings as to:
 - a. The hearing officer's decision regarding the transfer;
 - b. The evidence relied upon; and,
 - c. The reasons for arriving at the decision.

3. The completed Decision of Transfer to Correctional Mental Health Facility or Mental Health Facility form shall be forwarded to the warden within 24 hours of the hearing.
 - a. A copy of the completed form shall be available to the inmate and the inmate's representative.

III. Coordination with LSSH and Transfer from LCMHF

A. Admission to LSSH

1. Staff designated by the Warden of LCMHF shall be responsible for coordinating admissions to LSSH with the designated LSSH staff.
 - a. Facility requested transfers shall be approved in accordance with IMPP 11-103.
2. Female inmates approved for transfer to LSSH shall be admitted directly to LSSH in accordance with arrangements made through and by the designated LCMHF staff.

B. Returns from LSSH

1. Upon notification from the designated LSSH staff that a male inmate has recovered from the condition, which occasioned the transfer to LSSH, the designated LCMHF staff shall arrange for transfer of the inmate to LCMHF.
2. Upon notification from the designated LSSH staff that a female inmate has recovered from the condition which occasioned the transfer to LSSH, the designated LCMHF staff shall coordinate the transfer of the female inmate back to an appropriate unit of the Topeka Correctional Facility.

C. Transfers from LCMHF

1. Upon notification that an inmate has recovered from the condition, which occasioned the transfer to LCMHF, the designated LCMHF staff shall arrange for the transfer of the inmate, in accordance with procedures in IMPP 11-103, to the most appropriate Department of Corrections' facility, which provides reintegration mental health services.

NOTE: The policy and procedures set forth herein are intended to establish directives and guidelines for staff and offenders and those entities that are contractually bound to adhere to them. They are not intended to establish State created liberty interests for employees or offenders, or an independent duty owed by the Department of Corrections to employees, offenders, or third parties. Similarly, those references to the standards of various accrediting entities as may be contained within this document are included solely to manifest the commonality of purpose and direction as shared by the content of the document and the content of the referenced standards. Any such references within this document neither imply accredited status by a Departmental facility or organizational unit, nor indicate compliance with the standards so cited. The policy and procedures contained within this document are intended to be compliant with all applicable statutes and/or regulatory requirements of the Federal Government and the state of Kansas This policy and procedure is not intended to establish or create new constitutional rights or to enlarge or expand upon existing constitutional rights or duties.

REPORTS REQUIRED

None.

REFERENCES

KSA 75-5206, 75-5209, 75-5210, 75-5249, 76-1305
KAR 44-5-112
IMPP 11-103, 12-110
ACI 3-4367, 3-4368

ATTACHMENTS

Attachment A - Notice of Proposed Mental Health Transfer, 2 pages
Attachment B - Waiver of Evidentiary Hearing and Voluntary Consent to Transfer to a Correctional Mental Health Facility or Mental Health Facility, 1 page
Attachment C - Hearing Officer's Request for Witnesses – Mental Health Transfer, 1 page
Attachment D - Decision of Transfer to Correctional Mental Health Facility or Mental Health Facility, 1 page

KANSAS DEPARTMENT OF CORRECTIONS
NOTICE OF MENTAL HEALTH TRANSFER

TO: _____ CASE # _____

DOC # _____ DATE _____

CELL HOUSE # _____ INSTITUTION _____

FROM: _____ Warden _____

RE: Transfer to [] Larned Correctional Mental Health Facility / [] Larned State Security Hospital

This is to notify you that I am considering your transfer to a Correctional Mental Health Facility or Mental Health Facility.

A hearing shall be held _____ on _____
(LOCATION) (DATE)

at _____, _____ M before a hearing officer who shall determine from the evidence presented whether
(TIME)

your transfer to a Correctional Mental Health Facility or Mental Health Facility is based upon your need for intensive psychiatric treatment.

You are hereby provided the following rights in this process:

1. You are entitled to written notice that your transfer to a Correctional Mental Health Facility or Mental Health Facility is being considered.
2. You are entitled to give voluntary consent at this time for transfer to a Correctional Mental Health Facility or Mental Health Facility for treatment by signing form 11-109-0042, Waiver of Evidentiary Hearing and Voluntary Consent to Transfer to a Correctional Mental Health Facility or Mental Health Facility. A hearing then will proceed without the required 24-hour notice for defense preparation.
3. You are entitled to a hearing of the recommendation to transfer you to a Correctional Mental Health Facility or Mental Health Facility. You will have no less than 24 hours after written notice is served upon you to permit you time to prepare; and, at said hearing evidence being relied upon for the transfer shall be disclosed to you; and, you shall be given the opportunity to be heard in person to present evidence in your behalf.
4. If you are transferred to a Correctional Mental Health Facility or Mental Health Facility on an emergency basis, you are entitled to a hearing within 24 hours after your arrival at the hospital.
5. At the hearing you are entitled to present testimony of witnesses, except upon finding of good cause for not permitting presentation, confrontation or cross-examination. Good cause shall include, but not be limited to, a situation where you are considered to pose a threat of violence to the witnesses, the hearing official, or others on the premises; or any situation where you are considered in such mental condition as to not be able to give or receive communication.
6. You are entitled at the hearing to have a hearing officer who may not be from outside the correctional system but will be someone not directly involved in the decision to transfer.

7. You are entitled to a written statement by the fact finder as to the evidence relied on and the reasons for your transfer.
8. Though legal counsel need not be appointed, a qualified staff member not directly involved in either the evaluation or treatment of the mental health of the inmate, or another qualified person within the facility or corrections system, shall be appointed by the warden to serve as the inmate's representative if other qualified representation is unavailable to the inmate. This individual may also assist the inmate in preparing and presenting the case.
9. You are entitled to effective and timely notice of all the foregoing rights.

WARDEN

DATE

ACKNOWLEDGMENT OF RECEIPT

I, the undersigned, hereby acknowledge that a copy of the above Proposed Transfer Hearing and Notice of Rights was personally given to me on _____ by _____.
(DATE) (WITNESS)

I DO DO NOT (circle one) request assistance to prepare for and present my case.

(Specify by Name)

Signature of Inmate

Date

KANSAS DEPARTMENT OF CORRECTIONS

**WAIVER OF EVIDENTIARY HEARING AND VOLUNTARY CONSENT TO
TRANSFER TO A CORRECTIONAL MENTAL HEALTH FACILITY OR MENTAL HEALTH FACILITY
(Pursuant to KSA 75-5206, 75-5209, 75-5210)**

INSTITUTION: _____ CASE # _____

NAME: _____ DOC # _____

I, _____, being under sentence by the State of _____, a portion of which remains unexecuted and for which I have not been paroled, discharged or otherwise released, and being in the custody of the Secretary of Corrections incarcerated at _____ HEREBY ACKNOWLEDGE each of the following rights that have been explained to me, AND WAIVE each of those that are initialed by me, as follows:

1. _____ The right to written notice 24 hours in advance that my transfer to _____ is being considered.
2. _____ The right to a hearing, a) at which the evidence relied upon to effect my transfer will be disclosed; b) at which I may be heard, call witnesses, offer documentary evidence and argue in my behalf, except upon good cause shown; and c) at which I may confront and cross-examine witnesses called by the institution, except upon good cause shown.
3. _____ The right to have a hearing officer not involved in the proposed transfer hear my case.
4. _____ The right to receive a written statement by the fact-finder stating the evidence relied upon and the reasons for my transfer.
5. _____ The right to qualified and independent assistance furnished by the State if I am financially unable to obtain such assistance.

I have read and understand the foregoing rights as they have been explained to me, and expressly **WAIVE** those rights that I have initialed.

Signature

Subscribed and sworn to before me on this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____.

cc: Inmate, Medical File, Receiving Facility Records Office

KANSAS DEPARTMENT OF CORRECTIONS
HEARING OFFICER'S REQUEST FOR WITNESS
MENTAL HEALTH TRANSFER

TO: _____ DATE: _____

CASE # _____

SUBJECT: Proposed Transfer to a Correctional Mental Health Facility or Mental Health Facility for:

_____ DOC# _____

You are (ordered) (requested) to appear as a witness in this matter to be heard on:

_____ at _____ o'clock, ____ M. _____
(DATE) (TIME) (LOCATION)

Please contact the undersigned for additional information.

Hearing Officer

Date

KANSAS DEPARTMENT OF CORRECTIONS

DECISION OF TRANSFER TO CORRECTIONAL MENTAL HEALTH FACILITY OR MENTAL HEALTH FACILITY

TO: _____ DATE: _____
(Warden)

INSTITUTION: _____ CASE # _____

SUBJECT: Order of Transfer to a Correctional Mental Health Facility or Mental Health Facility

INMATE: _____ DOC # _____

HEARING DATE: _____

A hearing on the proposed transfer of the above named inmate was heard on _____.
After presentation of testimony, it is my decision that the above referenced inmate SHOULD SHOULD NOT
(circle one) be transferred to (____) Larned Correctional Mental Health Facility / (____) Larned State Security
Hospital for mental health treatment not currently available at this facility.

Summary of Basis for Decision:

Evidence Relied Upon:

Witnesses (List):

Hearing Officer

Date