



JUVENILE OFFENDER RULE BOOK

Office of the Secretary
Kansas Department of Corrections
Juvenile Services

Issued 11/20/2015

Kansas Department of Corrections

REGULATIONS

**OFFENDER CODE OF CONDUCT AND PENALTIES
DISCIPLINE PROCEDURE
OFFENDER GRIEVANCE SYSTEM**

ARTICLE 123-12 THROUGH 123-16 of
Kansas Administrative Regulations

**Office of the Secretary
Kansas Department of Corrections
Juvenile Services**

EFFECTIVE: November 20, 2015

*This book does not include the orders of any
superintendent of any juvenile correctional facility.*

Offenders and Employees, please turn this book into the program manager
or supervisor when you no longer reside or work here.

INSTRUCTIONS FOR USE OF THIS BOOK

1. You should read this entire book and keep it available for quick reference.
2. From time to time changes will be made. If this happens you will be notified of the change by publication on the bulletin board of each living unit.
3. Any suggestions you have for changing this book is welcome and may be submitted to the superintendent for review and transmittal to the office of the Secretary. Your suggestion should be in writing.
4. When you are released or transferred from this facility please turn in this book to your program manager before leaving.

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ARTICLE 12- OFFENDER CODE OF CONDUCT AND PENALTIES

Clothing, Hygiene, Safety, Appearance, and Living Quarters

123-12-101. Offender clothing. (a) Each offender shall turn in all personal clothing upon admission to a facility. Each offender shall wear only the clothing furnished by the state. However, an exception due to an offender's medical condition may be authorized by the superintendent or designee if the necessity for an exception is attested to or validated by the facility's medical staff or another medical authority approved by the commissioner. All clothing authorized as an exception shall conform in design, construction, and appearance to that clothing provided by the state to the extent that is reasonably practical.

(b) Except for authorized exceptions, an offender shall not wear or have possession of any clothing other than the required and issued items.

(c) Each offender shall follow the facility's orders regarding the clothing care and handling procedures.

(d) No offender's clothing shall be given special treatment in the laundry, clothing distribution room, or at any other point in the process of issuing, turning in, and exchanging clothing. Each exchange of clothing shall be made according to the facility's established schedules and procedures. Each offender shall keep that offender's clothing as neat and clean as the conditions permit.

(e) Each violation of this regulation shall be a class III offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-102. Personal cleanliness. (a) Each offender shall shower or bathe at least three times each week and shall brush the offender's teeth at least once each day.

(b) Each violation of this regulation shall be a class III offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-103. Tattoos, body markings, and body piercing. (a) No offender shall place, alter, or remove any tattoo or other body marking on the offender's own body or on the body of another offender. The removal or alteration of any tattoo or body marking shall be performed only by a medically qualified official after written approval has been given by the superintendent.

(b) No offender shall pierce the offender's own body or any body part or that of any other offender.

(c) Each violation of this regulation shall be a class II offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-104. Care of living quarters. (a) Each offender shall keep the offender's living quarters in a neat, clean, and sanitary condition. Clothing shall be neatly hung or stored in designated places. Beds shall be made at all times when not in use. Linens shall be exchanged in accordance with the facility's established procedures. Wash basins and toilet bowls shall be kept clean at all times.

(b) Except as permitted by an internal management policy and procedure or facility order, the following requirements shall apply:

(1) No offender shall alter, paint, or otherwise modify the offender's assigned living quarters.

(2) No offender shall alter, paint, or otherwise modify the furniture and equipment located in the offender's living quarters or use the furniture and equipment for other than their intended purpose.

(c) Each violation of this regulation shall be a class III offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-105. Unsafe or unsanitary practices. (a) No offender shall throw trash, rubbish, or debris of any kind upon the floors, sidewalks, or grounds of any facility. All trash, rubbish, and debris of any kind shall be placed in the containers provided for that purpose.

(b) No offender shall spit or otherwise deposit any other bodily fluids or bodily waste upon the floors, walls, and ceilings of any facility building or upon sidewalks and grounds at a facility. No offender shall collect, smear, or throw bodily fluids or wastes.

(c) Each violation of the requirements specified in subsection (a) of this regulation shall be a class III offense. Alternatively, any violation of subsection (a) of this regulation may be handled according to the summary disposition procedure specified in K.A.R. 123-13-201b.

(d) Each violation of the requirements specified in subsection (b) of this regulation shall be a class II offense. However, if the bodily fluids or wastes are smeared on or thrown at any person, the violation shall be a class I offense. It shall not be a

defense that the effort to smear or throw the bodily fluids or wastes on or at another person was unsuccessful.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-106. Hair standards and appearance. (a)(1) Each offender shall keep the offender's hair neat and clean and shall follow reasonable health and safety standards. Except as specified in paragraph (a)(2), each haircut, which shall include the length of sideburns, shall be in conformance with the applicable facility orders. No offender shall have a beard, moustache, or other form or style of facial hair.

(2) Upon a showing of medical necessity certified by a physician or dentist and with the written approval of the superintendent or designee, the limitations regarding haircuts or facial hair, or both, may be exempted to the limited extent necessitated by the medical condition. The necessity for continuing the exemption shall be reviewed at least every two weeks, except that a condition that has been certified by a physician as being congenital and not likely to change in the foreseeable future shall be reviewed every six months.

(b) Each offender shall wear a hair net when involved in the preparation or serving of food.

(c) Each violation of this regulation shall be a class III offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-107. Use of safety devices. (a) Each offender shall use the safety devices provided, in accordance with the applicable facility orders.

(b) Each violation of this regulation shall be a class III offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

Property and Money, Ownership, Possession, Registration, Care, and Use

123-12-201. Registration and use of personal property. (a) Each offender shall ensure that each item of personal property in the offender's possession is properly registered as required by the applicable internal management policy and procedure and facility order. Upon the demand of any staff member, each offender shall without delay produce any personal property registered in the offender's name or issued to the offender, unless the property being demanded has previously been reported lost, using the proper procedure.

(b) No offender shall possess any item of personal property unless the item is properly registered.

(c) Each violation of this regulation shall be a class II offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-202. Electronic personal entertainment devices. (a) No offender shall possess, play, or use any electronic personal entertainment device except as permitted by internal management policies and procedures and facility orders.

(b) Any offender may possess and either play or use a personal radio, a television, or electronic sound equipment only in accordance with applicable facility orders. The size, type, and capacity of the device shall be limited by internal management policies and procedures.

(c) Each violation of this regulation shall be a class III offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-203. Theft. (a) Theft shall include any of the following acts done with the intent to deprive the owner permanently of the possession, use, or benefit of the owner's property or services:

(1) Obtaining or exerting unauthorized control over property or services;

(2) obtaining control over property or services by deception;

(3) obtaining control over property or services by threat; or

(4) obtaining control over stolen property or services and knowing the property or services to have been stolen by another.

(b) Each violation of this regulation shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-204. Taking without permission. (a) No offender, regardless of the offender's intent, shall take any article or property of any kind from any other person or any place without the permission of a person who is authorized to give such permission. No offender shall obtain articles or property of any kind from any other person or any place by fraud or dishonesty.

(b) Each violation of this regulation shall be a class II offense. Alternatively, any violation of this regulation may be handled according to the summary disposition procedure specified in K.A.R. 123-13-201b.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-205. Unauthorized dealing and trading. (a) No offender shall trade, borrow, loan, give, receive, sell, or buy goods, services, or any item with economic or other intrinsic value with, to, or from another person without the written permission of the superintendent or designee.

(b) Each violation of this regulation shall be a class II offense. Alternatively, any violation of this regulation may be handled according to the summary disposition procedure specified in K.A.R. 123-13-201b.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-206. Debt adjustment and debt collection prohibited. (a) Each of the following acts between and among offenders shall be prohibited:

- (1) Debt adjustment; and
- (2) debt collection.

(b) Each violation of this regulation shall be a class II offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-207. Gambling and bookmaking. (a) No offender shall make any bet, operate or bank any gambling pool or game, accept or place any bet of another individual, or engage in any form of gambling.

(b) No offender shall possess, transfer, sell, distribute, or obtain dice or any other form or type of gambling paraphernalia.

(c) No offender shall receive, possess, distribute, sell, or transfer lottery tickets.

(d) Each violation of this regulation shall be a class II offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-208. Misuse of state property. (a) No offender shall destroy, damage, deface, alter, misuse, or fail to return when due any article of state property, including clothing and shoes.

(b) Each violation of this regulation shall be a class II offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-209. Entering into contracts; incurring financial obligations. (a) No offender shall enter into any contract or incur any financial obligation, including placing orders by mail, without the prior, written approval of the superintendent or designee.

(b) Each violation of this regulation shall be a class III offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-210. Accounts. (a) No offender shall establish, operate, negotiate, or otherwise hold or use any checking or savings account other than the offender's trust fund while confined in a juvenile correctional facility without the prior, written approval of the superintendent.

(b) Each violation of this regulation shall be a class II offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

Department, Violence, Disruptive Behavior, and Riot

123-12-301. Fighting; violence. (a) Each of the following acts shall be prohibited, unless the act is done in self-defense:

- (1) Fighting;
- (2) any act other than fighting that constitutes violence; and
- (3) any act that is likely to lead to violence.

(b) Each violation of this regulation shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-302. Noise. (a) No offender shall utter or otherwise make any inappropriate booing, whistling, shouting, hissing, or catcalls, or any other loud and disturbing noises.

(b) Each violation of this regulation shall be a class III offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-303. Lying. (a) No offender shall lie, misrepresent the facts, mislead, or otherwise give false or misleading information to an officer, employee, or any other person who is assigned to supervise the offender or who has a right to obtain information from the offender.

(b) No offender shall make any false or misleading allegations against any agency employee, other offender, or any other person.

(c) Each violation of this regulation shall be a class II offense. Alternatively, any violation of this regulation may be handled according to the summary disposition procedure specified in K.A.R. 123-13-201b.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-304. Disobeying orders. (a) Each offender shall promptly and respectfully obey any order, directive, or instruction given to the offender by any employee of the agency or by an employee of any other agency or entity in charge of the offender. In case of conflicting orders, the last order given shall be obeyed.

(b) If an order, directive, or instruction is alleged to have been disobeyed, the specific circumstances surrounding the alleged disobedience shall be included in the following:

- (1) The disciplinary report in which the charge is brought or made;
- (2) the investigative report; and
- (3) if used in lieu of testimony, the written statement of the officer who gave the order, directive, or instruction.

(c) Each violation of subsection (a) shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-305. Insubordination or disrespect to employees and volunteers. (a) Each offender shall be attentive to and respectful towards all employees, including each contractor's employees, and toward all volunteers. Each direct or indirect display of disrespect or argumentation shall be considered insubordination. A brief, initial exchange

or discussion between an offender and the other person to clarify an order or other instruction shall be permitted if the exchange or discussion is not conducted in an argumentative or disruptive manner.

(b) Each violation of this regulation shall be a class II offense. Alternatively, any violation of this regulation may be handled according to the summary disposition procedure specified in K.A.R. 123-13-201b.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-306. Threatening or intimidating any person. (a) No offender shall directly or indirectly threaten or intimidate any other person, whether the threat or intimidation is immediate or conditional.

(b) A civilized statement by the offender that the offender may properly use the legal process to enforce rights or redress wrongs, including by the use of the offenders' grievance procedure, shall not be considered a violation of this regulation.

(c) Each violation of this regulation shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-307. Avoiding an officer, supervisor, or other employee. (a) No offender shall run from, deliberately evade, or otherwise purposefully avoid any officer, supervisor, or other employee when required, ordered, or requested to be present to talk with, be accounted for, be searched, or be questioned by the officer, supervisor, or other employee.

(b) Each violation of this regulation shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-308. Improper use of food. (a) No offender shall take or accept more food or beverage than the offender will consume. No offender shall waste or deliberately destroy food or beverage. No offender shall carry or otherwise remove any food or beverage from the dining area or kitchen except as allowed by facility orders.

(b) Each violation of this regulation shall be a class III offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-309. Kitchen utensils and shop tools. (a) No offender shall remove or have possession of any eating or cooking utensil or shop tool without proper authorization.

(b)(1) Except as specified in paragraph (2) of this subsection, each violation of this regulation shall be a class II offense. Alternatively, any violation of this regulation as a class II offense may be handled according to the summary disposition procedure specified in K.A.R. 123-13-201b.

(2) The offender's unauthorized possession or removal of any kitchen utensil or shop tool that is deemed dangerous contraband shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-310. Misconduct in the dining room. (a) Each offender shall enter and leave the dining room in accordance with the established procedure at each institution and shall act in an orderly manner while in the dining room.

(b) Each violation of this regulation shall be a class II offense. Alternatively, any violation of this regulation may be handled according to the summary disposition procedure specified in K.A.R. 123-13-201b.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-311. Drunkenness, intoxication, or altered consciousness. (a) No offender shall be drunk, intoxicated, or in a chemically induced state of altered consciousness at any time. An exception to this prohibition shall be any instance of an altered state of consciousness induced by prescribed medications taken in accordance with instructions from and while under the care of qualified medical personnel.

(b) Each violation of this regulation shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-312. Stimulants, sedatives, drugs, or narcotics; misusing or hoarding authorized or prescribed medication. (a) No offender shall ingest, inhale, inject, or introduce by any other means any kind of substance into the offender's body or the body of another offender that is capable of producing intoxication, hallucination, stimulation, depression, dizziness, or any other alteration of the offender's state of consciousness or feeling, except for the following:

(1) Approved foods and beverages. Alcohol in any form shall not be deemed an approved food or beverage unless the alcohol is a medicinal ingredient in an authorized or prescribed medication; and

(2) any legal drugs, including medication properly and legally prescribed or authorized for the offender by an authorized licensed physician.

(b) The misuse or hoarding of any authorized or prescribed medication shall be prohibited and shall be defined as follows:

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

(2) "Hoarding" shall mean having possession or control of or holding any quantity of authorized or prescribed medication greater than the amount or dosage that has been issued to the offender by medical staff, or greater than the amount that should be remaining if the offender has taken the medication in accordance with the prescription and instructions from medical staff. Approved over-the-counter medications shall be purchased or possessed only in reasonably consumable quantities.

(c) No offender, while in possession or control of any medication, shall leave the medical unit or the area where the medication is issued, unless the removal of the medication from the unit or area has been authorized by medical staff.

(d) Each violation of this regulation shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-313. Sexually explicit materials. (a) No offender shall have in possession or under control any sexually explicit materials, including drawings, paintings, writing, pictures, items, and devices.

(b) Material shall be considered sexually explicit if the purpose of the material is sexual arousal or gratification and the material meets either of the following conditions:

(1) Contains nudity, which shall be defined as the depiction or display of any state of undress in which the human genitals, pubic region, buttock, or female breast at a point below the top of the areola is less than completely and opaquely covered; or

(2) contains any display, actual or simulated, or description of any of the following:

(A) Sexual intercourse or sodomy, including genital-genital, oral-genital, and anal-oral contact, whether between persons of the same or differing gender;

(B) masturbation;

(C) bestiality; or

(D) sadomasochistic abuse.

(c) Each violation of this regulation shall be a class I violation if either of the following conditions applies:

(1) The offender is classified as a sex offender.

(2) The sexually explicit material depicts, describes, or exploits any child under the age of 18 years.

(d) Each violation of this regulation not governed by subsection (c) of this regulation shall be a class II offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-314. Sexual intercourse; sodomy. (a) No offender shall commit or induce any other person to commit an act of sexual intercourse or sodomy, even with the consent of the other person. Participation in such an act shall be prohibited.

(b) No offender shall perform any of the following:

(1) Force or intimidate another person to engage in sexual intercourse or sodomy;

(2) solicit or arrange for the application of force or intimidation by another person in order to engage in sexual intercourse or sodomy with another person; or

(3) participate in any scheme or arrangement to force or intimidate another person to engage in sexual intercourse or sodomy.

(c)(1) “Sexual intercourse” shall mean any penetration of the female sex organ by a finger, the male sex organ, or any object. Any penetration, however slight, shall be deemed sufficient to constitute sexual intercourse.

(2) “Sodomy” shall be defined as any of the following:

(A) Oral contact with or oral penetration of the female genitalia or oral contact with the male genitalia;

(B) anal penetration, however slight, of a male or female by any body part or object; or

(C) oral or anal copulation between a person and an animal.

(d) Each violation of this regulation shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-315. Lewd acts. (a) No offender shall engage in a lewd or lascivious manner in any acts of kissing, fondling, touching, or embracing, whether the acts are with a person of the same or opposite sex and whether or not the acts are with the consent of the other person.

(b) No offender shall intentionally expose a sex organ with the knowledge or reasonable anticipation that the offender will be viewed by others and with the intent to arouse or gratify the sexual desires of the offender or another individual.

(c) The first and second violations of this regulation shall be class II offenses. The third violation and each subsequent violation of this regulation shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-317. Falsifying documents. (a) No offender shall falsify any document.

(b) Each violation of this regulation shall be a class II offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-318. Disruptive behavior. (a) No offender shall start, solicit, encourage, perform, participate in, or help others to perform or participate in any disruptive behavior.

(b) Each violation of this regulation shall be a class II offense. Alternatively, any violation of this regulation may be handled according to the summary disposition procedure specified in K.A.R. 123-13-201b.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-319. Riot or incitement to riot. (a) No offender shall riot or incite others to riot.

(1) "Riot" shall be defined as either of the following:

(A) Any use of force or violence by three or more persons acting together and without the authority of law that produces a breach of the peace on the premises of any juvenile correctional facility, whether within or without the security perimeter itself; or

(B) any threat to use the force or violence described in paragraph (1)(A) of this subsection against any person or property, if accompanied by the power or apparent power of immediate execution.

(2) “Incitement to riot” shall be defined as urging others by words or conduct to engage in riot under circumstances that would produce either a clear and present danger of injury to persons or property or a breach of the peace.

(b) Each violation of this regulation shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-321. Conduct regarding visitors and the public. (a) Each offender shall treat all visitors and other members of the public in a respectful and helpful manner. Each offender shall comply with the applicable regulations, internal management policies and procedures, and facility orders regarding contact with visitors and the public and shall maintain a dignified and respectful demeanor while in the presence of these individuals.

(b) Each violation of this regulation shall be a class II offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-322. Arson. (a) No offender shall commit arson.

(b) “Arson” shall be defined as the act of knowingly damaging any property by means of fire or explosive.

(c) Each violation of this regulation shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-323. Assault. (a) No offender shall commit assault.

(b) “Assault” shall be defined as an intentional threat to do bodily harm to another, coupled with the apparent or recognizable ability to carry out the threat and resulting in the other person’s immediate apprehension or fear of bodily harm. No bodily contact shall be necessary to complete an assault violation.

(c)(1) Except as specified in paragraph (c)(2), each violation of this regulation shall be a class II offense.

(2) Each violation of this regulation shall be a class I offense if the victim is an agency employee, an employee of one of the agency’s contractors, or a volunteer.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-324. Battery. (a) No offender shall commit battery.

(b) “Battery” shall be defined as either of the following:

(1) The unlawful or unauthorized, intentional touching or application of force to the person of another when done in a rude, insolent, or angry manner; or

(2) intentionally or recklessly causing bodily harm to another person.

(c) Each violation of this regulation shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-325. Offender activity; limitations. (a)(1) “Proselytizing” shall be defined as an active effort to persuade any person to convert to a religious faith or belief without the person’s prior consent. However, nothing in this regulation shall prohibit a one-to-one conversation about religious matters between two individuals freely participating in the conversation.

(2) No proselytizing shall be allowed in any institution.

(3) Each violation of this subsection shall be a class III offense.

(b)(1) No offender shall serve in the capacity of a member of the clergy or a religious instructor at any time except with the recommendation of the chaplain and the prior, written approval of the superintendent.

(2) Each violation of this subsection shall be a class III offense.

(c)(1) “Unsanctioned group” shall mean any ongoing formal or informal organization, association, or group of three or more persons with a common name or identifying sign or symbol that is not recognized by the superintendent and that does not have the superintendent’s approval and authorization to exist at the institution.

(2) No offender shall develop, organize, promote, or assist any unsanctioned group. No offender shall engage in any activity likely to result in a demonstration by any unsanctioned group.

(3) No offender shall possess any item associated or identified with any unsanctioned group.

(4) Each violation of this subsection shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-327. Interference with restraints. (a) No offender shall interfere with or assist or encourage other offenders to interfere in any way with handcuffs or any other restraints that have been, or are being, applied to an offender by an officer or any other employee.

(b) No offender shall remove or attempt to remove handcuffs or other restraints applied to the offender or another offender without the express approval of an officer or other employee authorized to give this approval.

(c) Each violation of this regulation shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-328. Personal relationships; limitations. (a) A “personal relationship” shall be defined as any relationship involving unnecessary familiarity by an offender toward any staff member, contract personnel, volunteer, or employee of any other organization in charge of the offender.

(b) No offender shall initiate, solicit, encourage, establish, or participate in any type of personal relationship with the individuals specified in subsection (a). Any contact other than a polite exchange of remarks or casual conversation between an offender and any of these individuals shall be limited to that contact necessary to carry out official duties and to provide authorized services to the offender in a professional manner.

(c) Each violation of this regulation shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

Assignments To and Performance of Work, Education, Training, or Other Duty

123-12-401. Programs. (a) “Program,” as used in this regulation, shall mean any of the following activities:

- (1) Any educational program;
- (2) any counseling program;
- (3) any vocational program;
- (4) any physiological or psychological treatment;
- (5) any skill training;
- (6) any work assignment; and
- (7) any other endeavor or project to which an offender has been assigned.

(b)(1) No offender shall intentionally interfere with, delay, disrupt the progress in, or sabotage any program, machinery, system, or product. No offender shall assist or participate with another offender in any of these prohibited actions.

(2) Each violation of this subsection shall be a class I offense.

(c)(1) Each offender shall carry out all programs in the offender’s case plan in the manner prescribed by and according to the directives of the offender’s supervisor or any other authorized official. The intentional failure of the offender to report to or depart from the location of each assigned program at the prescribed time shall be prohibited.

(2) Each violation of this subsection shall be a class II offense. Alternatively, any violation of this subsection may be handled according to the summary disposition procedure specified in K.A.R. 123-13-201b.

(d)(1) No offender shall slow the progress of a program through carelessness or neglect.

(2) Each violation of this subsection shall be a class II offense. Alternatively, any violation of this subsection may be handled according to the summary disposition procedure specified in K.A.R. 123-13-201b.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

Being Present and Accounted For

123-12-501. Answering calls; movement. (a)(1) Each offender shall respond promptly each time any employee calls the offender's name.

(2) Each offender shall move from place to place within the facility as required by the facility orders.

(3) Each offender who is authorized to move within the facility using a pass issued for that purpose shall meet the following requirements:

(A) Not destroy the pass issued; and

(B) present the pass to the appropriate person at the time and place indicated on the pass.

(b) Each violation of this regulation shall be a class III offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-502. Responsibility for head counts. (a) Each offender shall be present at the proper time and place designated for head counts.

(b)(1) Each offender shall cooperate in the conduct of the head count.

(2) No offender shall intentionally behave in a manner that causes, results in, or is likely to cause or result in a delay that renders the head count inaccurate or difficult to accomplish.

(c) Each violation of this regulation shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-503. Restricted areas; unauthorized presence; out-of-bounds in assigned living area. (a) Restricted areas.

(1) Each offender shall be required to know which areas are designated as restricted areas. No offender shall enter a restricted area without a direct order by an employee authorized to render the order or without the superintendent's written permission.

(2) Each violation of this subsection shall be a class II offense. Alternatively, any violation of this subsection may be handled according to the summary disposition procedure specified in K.A.R. 123-13-201b.

(b) Unauthorized presence.

(1) No offender shall be present in any area without authorization. If a pass is required, the offender shall show the offender's pass when asked to do so.

(2) Each violation of this subsection shall be a class III offense.

(c) Out-of-bounds in assigned living area.

(1) No offender shall roam about in the housing unit or be in any place within the housing unit without the permission of the unit manager or officer. This subsection shall apply if the offender's presence in the housing unit is otherwise authorized.

(2) Each violation of this subsection shall be a class III offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-504. Interference with cell operation, locking devices, and visibility.

(a) No offender shall block or otherwise interfere with the opening, closing, or locking of any door, cell door, or window, including food passage ports and slots.

(b) No offender shall cover or otherwise obstruct any passageway, door, cell, cell door, window, or observation port, including food passage ports and slots, in a manner that blocks visibility into the cell, room, or space, unless doing so has been expressly approved by the superintendent.

(c) Each violation of this regulation shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-505. Restrictions. (a) No offender shall avoid, break, or violate the terms of any restriction that has been imposed upon the offender.

(b) Each violation of this regulation shall be a class II offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-505b. Medical restrictions. (a) No offender shall participate in any program or recreational activities, partake of food or beverage items, or otherwise engage in any activity that is in violation of a documented medical restriction.

(b) Each violation of this regulation shall be a class III offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-506. Official name; alias name. (a) While committed to an institution, each offender shall respond when the offender is addressed by the offender's official name, as defined in K.A.R. 123-5-101. Each offender shall be referred to in all official transactions, and all correspondence to and from the offender, using the offender's official name.

(b) If the offender's name has been changed from or is otherwise different from the offender's official name, the records may be modified to incorporate the new or different name as an alias name, and the offender may use the alias name in parentheses after the official name.

(c) Each offender shall comply with all directives, references, and orders to the offender issued in the offender's official name.

(d) No charge shall be brought against any offender under this regulation if the offender is the addressee or recipient of any mail, phone call, document, or other communication using other than the official name, unless it is alleged and proven that the offender was a knowing and willing conspirator or instigator of the use of the alias name.

(e) Each violation of this regulation shall be a class II offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

Offender Writing and Other Offender Communication or Publications

123-12-601. Mail. (a) Definitions.

(1)(A) "Legal mail" means mail affecting the offender's right of access to the courts or legal counsel. This term shall include letters between the offender and any lawyer, a judge, a clerk of a court, or any intern or employee of a law firm, legal clinic, or other legal services organization providing legal services to offenders.

(B) "Official mail" means any mail between an offender and an official of the state or federal government who has the authority to control, or to obtain or conduct an investigation of, the custody or conditions of confinement of the offender.

(C) "Privileged mail" means any mail between the offender and the offender's physician, psychiatrist, psychologist, or other licensed mental health therapist.

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

(B) "Inspect" means to open, shake out, look through, feel, or otherwise check for contraband without reading or censoring. This term shall include any cursory reading necessary to verify that mail is legal or official in nature as permitted by paragraph (f)(3).

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

(b) General provisions.

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

(2) Items identified as contraband shall be dealt with as provided in subsection (d) and then either returned to the sender, at the offender's expense, or destroyed, at the offender's option. All items that are illegal under Kansas or federal law shall be seized and held as evidence for other law enforcement officers.

(3) All incoming mail shall identify the offender recipient by name and offender identification number.

(4) Each violation of mail regulations of the juvenile justice authority, facility orders, or the laws of Kansas or the United States may result in additional mail restrictions upon the offender that are sufficient to prevent the continuation or reoccurrence of the violation.

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

(6) Any incoming or outgoing mail other than legal, official, or privileged mail may be inspected or read at any time.

(7) Incoming mail addressed solely to a specified offender and not otherwise subject to censorship shall be delivered regardless of whether the mail is sent free of charge or at a reduced rate. All incoming mail shall nonetheless bear the sender's name and address on the envelope, or this mail shall not be delivered and shall be subject to censorship in accordance with subsection (d).

(8) Any outgoing first-class letters may be sent to as many people and to whomever the offender chooses, subject to the restrictions in this regulation.

(9) Outgoing offender mail shall bear the full official name, offender number, and address of the sender, and the name and address of the intended recipient. No other

words, drawings, or messages shall be placed on the outside of the envelope or package by an offender except words describing the mail as being legal, official, or privileged, or words intended to aid postal officials in delivery of the item. Outgoing offender mail shall be stamped by the institution to indicate that it was mailed from a juvenile correctional facility and that it has not been censored.

(10) No offender shall correspond with any person who has filed a written objection to the correspondence with the superintendent of the facility.

(A) The offender shall be notified of the objection in writing when it is received, but shall not be required to be informed of the exact contents of the objection.

(B) In the instance of unwanted correspondence to a minor, the objection shall be filed by the parent or guardian of the minor.

(C) Orders shall be developed by the superintendent of each facility to prevent further correspondence from being sent to those who have filed an objection.

(D) This regulation shall not prevent an offender from writing to the offender's natural or adoptive child, unless the child was the victim of the crime for which the offender is incarcerated, the person having legal custody of the child files a written objection with the superintendent, and the offender has not obtained a court order permitting this written communication with the child.

(c) Legal, official, and privileged mail.

(1) Subject to the provisions of paragraph (f)(3), outgoing privileged, official, or legal mail sent by any offender shall be opened and read only upon authorization of the superintendent for good cause shown. However, if any offender threatens or terrorizes any person through this mail, any subsequent mail, including official or legal mail, from

the offender to the person threatened or terrorized may, at the request of that person, be read and censored for a time period and to the extent necessary to remedy the abuse.

(2) Incoming mail clearly identified as legal, official, or privileged mail shall be opened only in the offender's presence. This mail shall be inspected for contraband but shall not be read or censored, unless authorized by the superintendent based upon a documented previous abuse of the right or other good cause.

(d) Censorship grounds and procedures.

(1) Incoming or outgoing mail, other than legal, official, or privileged mail, may be censored only when there is reasonable belief in any of the following:

(A) There is a threat to institutional safety, order, or security.

(B) There is a threat to the safety and security of public officials or the general public.

(C) The mail is being used in furtherance of illegal activities.

(D) The mail is correspondence between offenders, including any former offender regardless of current custodial status, that has not been authorized according to subsection (e). Correspondence between offenders may be inspected or read at any time.

(E) The mail contains sexually explicit material, as defined and proscribed in K.A.R. 123-12-313.

(2) If any communication to or from an offender is censored, all of the following requirements shall be met:

(A) Each offender shall be given a written notice of the censorship and the reason for the censorship, without disclosing the censored material.

(B) Each offender shall be given the name and address of the sender of incoming mail, if known, or the addressee of outgoing mail and the date the item was received in the mail room. It shall be the responsibility of the offender to contact the sender of censored incoming mail or the addressee of censored outgoing mail, if the offender so desires.

(C) The author or addressee of the censored correspondence shall be given a reasonable opportunity to protest the decision.

(D) All protests shall be referred to a correctional facility official other than the person who originally disapproved the correspondence.

(e) Offender correspondence with other offenders. Offenders sentenced to commitment in a juvenile correctional facility shall not correspond with any person who is in the custody of or under the supervision of any state, federal, county, community corrections, or municipal law enforcement agency, or with any offender formerly committed to a juvenile correctional facility regardless of current custodial status, unless either of these conditions is met:

(1) The proposed correspondents are members of the same immediate family or are parties in the same legal action, or one of the persons is a party and the other person is a witness in the same legal action.

(2) Permission for the correspondence is granted due to exceptional circumstances. Verification and approval of offender correspondence shall be conducted pursuant to the internal management policies and procedures.

(f) Writing supplies and postage.

(1) Stationery shall be available for purchase from the offender canteen.

(2) Indigent offenders, as defined by the internal management policies and procedures, shall receive reasonable amounts of free writing paper, envelopes, and postage for first-class domestic mail weighing one ounce or less, not to exceed four letters per month or any other limits established by the commissioner or superintendent.

(3) All postage for legal and official mail shall be paid by the offender, unless the offender is indigent, as defined by the internal management policies and procedures. The cost of postage for legal or official mail paid by the facility on behalf of an indigent offender shall be deducted from the offender's funds, if available. Credit for postage for legal and official mail shall be extended to indigent offenders under the terms and conditions of the internal management policies and procedures. Outgoing legal or official mail sent with postage provided on credit shall be subject to inspection and cursory reading in the presence of the offender for the purpose of ascertaining that the mail is indeed legal or official mail, and the offender shall then be permitted to seal the envelope containing the mail.

(4) The facility shall not pay postage for offender groups or organizations.

(g) Publications.

(1) Offenders may receive books, newspapers, and periodicals as approved by the internal management policies and procedures or facility orders, except for offenders while assigned to an intake, reception, and diagnostic unit for evaluation purposes. All books, newspapers, and periodicals shall be purchased through special purchase orders. Only books, newspapers, and periodicals received directly from a publisher or a vendor shall be accepted. However, each offender shall be permitted to receive printed material,

including newspaper and magazine clippings, if the material is included as part of a first-class letter that does not exceed one ounce in total weight.

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

(3) No publication that meets either of the following conditions shall be allowed into the facility:

(A) Contains sexually explicit material, as described in K.A.R. 123-12-313, or is otherwise illegal, in whole or in part; or

(B) Meets, in whole or in part, the test for censorship of mail in subsection (d) of this regulation.

(4) Each offender shall have the option of having censored publications in their entirety either mailed out of the facility at the offender's expense or discarded.

(5) Before transferring between institutions or before being released on conditional release, the offender shall arrange for a change of address for newspapers and periodicals. Newspapers and periodicals shall not be forwarded for more than 30 days after the date of the transfer or release.

(h) Penalty. Each violation of this regulation shall be a class II offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-602. Posting notices and distributing written materials. (a) No offender shall post or distribute any written materials without the prior, written approval of the superintendent or designee.

(b) Each violation of this regulation shall be a class II offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

Legal Assistance

123-12-702. Legal assistance by offenders. (a) In accordance with applicable facility orders, any offender may provide assistance pertaining to legal matters to another offender if both of the following conditions are met:

(1) The offender receiving the assistance has requested that the assistance be provided by the other offender.

(2) The offender providing the assistance neither requests nor accepts any gratuity or favor for providing the assistance.

(b) Each violation of this regulation shall be a class II offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

Administration Publications and Postings

123-12-801. Bulletin boards; publishing facility orders. (a) Each offender shall comply with all facility orders posted on bulletin boards designated for publishing facility orders.

(b) Each facility order shall be deemed published upon being posted on a bulletin board that is designated for this purpose.

(c) Each bulletin board designated for publishing facility orders shall be under the exclusive control of the superintendent.

(1) No offender shall post any item on any facility bulletin board unless directed by an agency employee to do so.

(2) No offender shall remove any item from any facility bulletin board unless directed by an agency employee to do so.

(d) Each violation of this regulation shall be a class II offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

Contraband

123-12-901. Dangerous contraband. (a) “Dangerous contraband” shall be defined as any of the following:

(1) Any item, including any ingredient, part, or instructions on the creation of an item, that meets the following conditions:

(A) Is inherently capable of causing serious damage to persons or property or is capable or likely to produce or precipitate seriously dangerous situations or conflict; and

(B) is not issued by the juvenile justice authority or the facilities, sold through the canteen, or specifically authorized or permitted by facility order for use or possession in the institution;

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

(3) any item that, although authorized, is misused in a way that could cause serious damage to persons or property or is likely to precipitate seriously dangerous situations or conflicts; or

(4) any item the possession of which would constitute traffic in contraband in violation of K.S.A. 21-3826, and amendments thereto.

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

(c) No offender shall possess, hold, sell, transfer, receive, control, distribute, or solicit any dangerous contraband.

(d) Each violation of this regulation shall be a class I offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-902. Less dangerous contraband. (a) “Less dangerous contraband” shall be defined as either of the following:

(1) Any item, including any ingredient, component, or instructions on the creation of an item, that is moderately dangerous in the institutional environment and is not issued by the agency, sold through the institution’s canteen, or specifically authorized or permitted by internal management and policy and procedure or facility order; or

(2) any item that, although authorized, is misused in a way that causes or is likely to cause moderate danger to persons or property.

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

(c) (1) No offender shall possess, hold, sell, transfer, receive, control, distribute, or solicit any less dangerous contraband or any other types of contraband.

(2) Each violation of this subsection shall be a class II offense. Alternatively, any violation of this regulation may be handled according to the summary disposition procedure specified in K.A.R. 123-13-201b.

(d) (1) No offender shall possess papers, bottles, containers, trash, or any other items in excess of those limits established by regulation, internal management policy and procedure, and facility order.

(2) The possession of excess items described in this subsection shall be considered to be the possession of nuisance contraband and shall be a class III offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

Violation of Statutes, Regulations, and Orders

123-12-1001. Violation of statutes and regulations. Except as otherwise provided in these regulations, the following classifications shall apply:

(a) Each violation of any state or federal statute that is designated as a felony crime under Kansas law shall be a class I offense.

(b) Each violation of any state or federal statute that is designated as a misdemeanor crime under Kansas law shall be a class II offense.

(c) Each violation of any civil penalty statute or any regulation shall be a class III offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-12-1002. Violation of internal management policy and procedure or facility order. (a) Each violation of any internal management policy and procedure shall be an offense of the class specified in the internal management policy and procedure. If no class is specified in the internal management policy and procedure, the violation shall be a class III offense.

(b) Each violation of any facility order shall be an offense of the class specified in the facility order. If no class is specified in the facility order, the violation shall be a class III offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

Attempt, Conspiracy and Accessory to Commission of Offense

123-12-1101. Anticipatory and facilitating offenses: attempt, conspiracy, solicitation, and accessory. (a) No offender shall attempt or conspire to violate any law, regulation, internal management policy and procedure, or facility order. Each attempt or conspiracy to violate any law, regulation, internal management policy and procedure, or facility order shall carry the same penalty as that for the offense itself.

(b) No offender shall solicit or be an accessory for another person to violate any law, regulation, internal management policy and procedure, or facility order. Each occasion of soliciting or acting as an accessory for another to commit any violation of

any law, regulation, internal management policy and procedure, or facility order shall carry the same penalty as that for the offense itself.

(c) The specific law, regulation, internal management policy and procedure, or facility order that is the basis of the attempt, conspiracy, solicitation, or accessory activity shall be stated and described in the disciplinary report.

(d)(1) Attempt.

(A) An “attempt” shall be defined as any overt or evident act toward the perpetration of activity that is prohibited by law, regulation, internal management policy and procedure, or facility order by an offender who intends to commit the prohibited activity but fails in the perpetration of the prohibited activity or is prevented from or intercepted in the execution of the prohibited activity.

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

(2) Conspiracy.

(A) A “conspiracy” shall be defined as an agreement with another person to commit an act that is prohibited by law, regulation, internal management policy and procedure, or facility order or to assist in committing the prohibited act. No offender may be convicted of a conspiracy unless an overt act furthering that conspiracy is alleged and proved to have been committed by the offender or by a co-conspirator.

(B) It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy and communicated the fact of the offender’s

withdrawal to one or more of the accused conspirators, before any overt act furthering the conspiracy was committed by the accused or by a co-conspirator.

(3) Solicitation.

(A) "Solicitation" shall be defined as the commanding of, encouraging, or requesting another person to commit, to attempt to commit, or to aid and abet for the purpose of promoting or facilitating the commission or attempted commission of an act that is prohibited by law, regulation, internal management policy and procedure, or facility order.

(B) It shall not be a defense to a charge of solicitation that the offender failed to communicate with the person solicited to commit the prohibited act if the offender's conduct was designed to effect a communication. It shall be a defense to a charge of solicitation that the offender, after soliciting another person to commit an offense, persuaded that person not to do so or otherwise prevented the commission of the offense, under circumstances manifesting a complete and voluntary renunciation of the offender's prohibited purposes.

(4) Accessory. Being an "accessory" to an offense shall be defined as knowingly harboring, concealing, or aiding any offender who has committed an act that is prohibited by law, regulation, internal management policy and procedure, or facility order or any offender who has been charged with committing an act that is prohibited by law, regulation, internal management policy and procedure, or facility order, with intent that the offender will avoid or escape apprehension, disciplinary hearing, conviction, or punishment for the prohibited act.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

Increased Penalties

123-12-1201. Increased penalty for involving or victimizing an offender under 16. For any offender who is 16 years of age or older and guilty of any offense defined in these regulations, the penalty imposed on the offender may be double the penalty that is otherwise established for the offense under these regulations if any of the following conditions exists:

(a) The offense was committed with another offender who was a principal in the offense and was younger than 16 years of age when the offense was committed.

(b) The offense was an anticipatory or facilitating offense as defined in K.A.R. 123-12-1101, and another offender who was involved as a principal in the offense was younger than 16 years of age when the offense was committed.

(c) Any victim of the offense was younger than 16 years of age when the offense was committed.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-12-1202. Conviction of four offenses in six months. Subject to any limitation specified in K.A.R. 123-12-1308, upon conviction of the fourth offense of the same or more serious class within the previous six months, the hearing officer may impose a sentence not greater than twice the maximum that can otherwise be imposed for that class of offense.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

Classification of Offenses and Penalties

123-12-1301. Class I offenses and penalties. (a) Class I offenses shall be defined as the following:

- (1) The violations designated as class I offenses by these regulations;
- (2) the violations designated as felonies by state or federal law; and
- (3) the violations designated as class I offenses by internal management policies and procedures and by facility orders.

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

- (1) Disciplinary segregation, not to exceed 30 days;
- (2) forfeiture of good time credits, not to exceed six months;
- (3) extra work for up to two hours per day, not to exceed 30 days;
- (4) restriction to the offender's cell or living quarters, not to exceed 10 days;
- (5) restriction from privileges, not to exceed 60 days;
- (6) restitution; or
- (7) an oral or written reprimand.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-12-1302. Class II offenses and penalties. (a) Class II offenses shall be defined as the following:

- (1) The violations designated as class II offenses by these regulations;
- (2) the violations designated as misdemeanors by state or federal law; and
- (3) the violations designated as class II offenses by internal management policies and procedures and by facility orders.

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

- (1) Disciplinary segregation, not to exceed 15 days;
- (2) forfeiture of good time credits, not to exceed three months;
- (3) extra work for up to two hours per day, not to exceed 20 days;
- (4) restriction to the offender's cell or living quarters, not to exceed seven days;
- (5) restriction from privileges, not to exceed 30 days;
- (6) restitution; or
- (7) an oral or written reprimand.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-12-1303. Class III offenses and penalties. (a) Class III offenses shall be defined as the following:

- (1) The violations designated as class III offenses by these regulations; and

(2) any violation of a regulation, internal management policy and procedure, or facility order within which the designation of the class of the offense for a violation is not specified.

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

- (1) Restriction to the offender's living quarters, not to exceed three days;
- (2) restriction from privileges, not to exceed 20 days;
- (3) extra work for not more than two hours per day, not to exceed 10 days;
- (4) restitution; or
- (5) an oral or written reprimand.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-12-1306. Use of restitution. (a) When restitution is used in the disciplinary process, the following requirements and limitations shall apply:

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

(2) The amount of restitution ordered shall be fair and shall not be used in a way that disrupts family support payments, tax payments, or court-ordered restitution.

(3) No offender shall be required to continue payment on any restitution imposed under these regulations while released from confinement. If the offender is readmitted to

a juvenile correctional facility, any balance due on the order of restitution may be collected.

(4) Restitution shall be paid out of money available to the offender from any legitimate source of funds, including any gainful work program. Restitution payment shall be limited to a reasonable amount and, if proper under the circumstances, shall be made in installments.

(5) The offender shall be given notice, not later than the beginning of the disciplinary hearing, of the basis for seeking restitution and shall be given an opportunity during the disposition phase of the disciplinary proceedings to present evidence regarding the appropriate amount of restitution. The hearing officer shall limit the evidence to a reasonable amount and extent appropriate to the nature of the administrative hearing, the level of the offense, and the extent of possible impact on the offender's resources.

(b) If restitution is paid to the state, the money shall be deposited in the state general fund. If restitution is paid to another offender, the money shall be transferred from the account of the offender payer to the account of the offender payee after the conclusion of the entire disciplinary process, including any appeal. If restitution is paid to any other person, the hearing officer shall determine how payment is to be made, and the payment arrangements shall be reviewed by the superintendent for consideration for approval.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; effective April 8, 2005.)

123-12-1308. Disciplinary segregation; limits. The continuous confinement of an offender in disciplinary segregation for more than 30 days shall require the superintendent's review and approval.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

ARTICLE 13- DISCIPLINARY PROCEDURE

Procedure Generally

123-13-101. Disciplinary procedure established. (a) A disciplinary procedure in accordance with these regulations shall be established and implemented by the superintendent of each facility.

(1) "Superintendent," as used throughout this article, shall include the superintendent's designee.

(2) "Disciplinary procedure," as used throughout this article, shall include conducting disciplinary proceedings and following the disciplinary process.

(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 requirements specified in these regulations and subject to the control of the hearing officer exercised within the parameters of the law and these regulations, each offender shall be entitled to the following:

(1) To receive advance, written notice of the offense that the offender is alleged to have committed 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 offender's own behalf;
- (5) to have witnesses called to testify on the offender's behalf;
- (6) to confront and cross-examine witnesses against the offender; and
- (7) to be furnished with staff assistance according to K.A.R. 123-13-408.

(d) Any specific offense alleged may be amended according to the provisions of these regulations.

(e) If an offender is alleged to have committed 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. 123-13-103.

(f) There shall be three classes of offenses, which shall be processed according to the provisions of these regulations. The offense classes shall consist of class I offenses as defined in K.A.R. 123-12-1301, class II offenses as defined in K.A.R. 123-12-1302, and class III offenses as defined in K.A.R. 123-12-1303.

(g) The disciplinary hearing process shall meet the requirements of K.A.R. 123-13-403, 123-13-404, and 123-13-405a.

(h) All stages of the disciplinary hearing shall be conducted by an impartial hearing officer appointed by the superintendent according to K.A.R. 123-13-105.

(i) A complete log of each disciplinary proceeding conducted pursuant to these regulations shall be maintained as specified in K.A.R. 123-13-509.

(j) Each disciplinary hearing shall be commenced within the period of time required by these regulations. Continuances and recesses of the hearing may be granted.

The offender shall be permitted to be present at all stages of the hearing, except as otherwise provided by these regulations.

(k) Staff assistance shall be permitted only under the limited conditions established in K.A.R. 123-13-408.

(l) A summary record shall be made of all stages of the hearing. The summary record shall be the basis for all actions that are conducted on the record.

(m) In class I and II offense cases, following an administrative review of the record and any needed adjustments of the disposition by the superintendent, the offender may appeal the case on the record to the commissioner. In class III offense cases, following an administrative review of the record by a facility official appointed by the superintendent for that purpose, an appeal on the record may be made to the superintendent. No appeal to the commissioner shall be permitted of the disposition for class III offenses.

(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 superintendent of another facility if good cause is shown and if justice and fairness will not be compromised. An assignment or delegation shall not be made except by the commissioner or designee, or by the superintendent with the commissioner's 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, if the offense occurred in the sending facility.

(o) This regulation shall not be construed or interpreted as establishing any rights or procedures that are not specified in this article.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-101a. Waiver of rights. (a) Each offender shall be permitted to voluntarily waive the right to any time limit or process afforded by these regulations. Each waiver shall be submitted in writing and shall state the specific time limit or process being waived. The waiver shall be made in the form and manner approved or prescribed by the commissioner. The waiver shall be witnessed by one impartial employee and shall be signed by the offender and the hearing officer, unless the offender is waiving the right to the disciplinary hearing process by accepting a summary judgment citation pursuant to K.A.R. 123-13-201b.

(b) Each offender 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 offender is waiving the right to the disciplinary hearing process by accepting a summary judgment citation pursuant to K.A.R. 123-13-201b, the offender shall be questioned by the hearing officer before accepting the waiver to determine if the waiver is knowingly and voluntarily made.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-103. Prosecution by outside agency. (a) If an offender is alleged to have committed an act covered by criminal law, the case shall be referred to the appropriate law enforcement or prosecutorial agency for consideration for prosecution, unless there is

a current written statement from a prosecutor who has jurisdiction and who requests that certain types or classes of crimes not be reported or that no report be made.

(b) Any hearing officer may proceed with a disciplinary hearing under these regulations or may authorize a continuance of the disciplinary hearing to await the result of a prosecution if the disciplinary proceeding involves the same offense as that being prosecuted.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-105. The disciplinary administrator and hearing officers. (a) A disciplinary administrator shall be appointed by the superintendent of each facility to manage the disciplinary procedure for the entire facility on a continuing basis.

(b) One or more impartial hearing officers shall be appointed by the superintendent to conduct disciplinary hearings at the facility.

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

(2) A person who is the reporting officer, an investigator in, or a witness in a case shall not be the hearing officer in that case.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-106. Administration of oaths; designation of persons authorized. (a) The superintendent and deputy superintendent, as well as the disciplinary administrator

and hearing officers appointed pursuant to K.A.R. 123-13-105, shall be authorized to administer oaths to witnesses in disciplinary proceedings.

(b) All 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.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

Commencement of Proceedings

123-13-201. Disciplinary report and written notice. (a) A disciplinary proceeding shall be commenced upon the making of a charge by the issuance of a disciplinary report.

(1) A copy of the disciplinary report shall be served on the offender within 48 hours after the issuance of the disciplinary report, excluding Saturdays, Sundays, and holidays.

(2) The report shall not be served on the offender by the same officer who brought the charge against the offender, unless no other officer is available to personally serve the offender.

(3) The officer serving the report shall inform the offender that the offender 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 superintendent according to K.A.R. 123-13-105, that officer may immediately, or as soon as possible, accept the offender's plea of guilty or no contest, conduct a sentencing

hearing, and impose a sentence by following the procedures established in K.A.R. 123-13-403.

(B) If the officer serving the report has not been appointed as a hearing officer according to K.A.R. 123-13-105 or refers the case to another hearing officer, then the offender 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. The hearing officer shall accept the offender's plea of guilty or no contest, conduct a sentencing hearing, and impose a sentence by following the procedures established in K.A.R. 123-13-403.

(4) If necessary, the hearing officer may accept the offender'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.

(b) If the offender is transferred to another facility before the arrival of the disciplinary report at the receiving facility, service of the report upon the offender 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 offender 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 after 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 offender 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 these regulations. If necessary, pending completion of the investigation, the offender may be held in administrative segregation as specified in the applicable internal management policies and procedures.

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

(4) The shift supervisor shall ensure that all necessary elements of the alleged violation are contained in the written report of the facts of the incident and that the report is not an abuse of the disciplinary process. The shift supervisor shall also make or direct any appropriate amendments to the report.

(5) If the charge is dismissed or the report is otherwise rejected by the shift supervisor, a written explanation shall be made in the record and filed with the report, with a copy given to the officer. The report shall not be destroyed.

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

- (1) The name and number of the offender;
- (2) the name of the facility;

- (3) the signature and title of the officer preparing the disciplinary report;
 - (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 regulation, internal management policy and procedure, or facility order violated;
 - (8) if the charge alleges a violation of K.A.R. 123-12-1101, a citation to the specific regulation, internal management policy and procedure, or facility order that is the basis for the anticipatory or facilitating offense;
 - (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 behavior by the offender;
 - (12) the disposition of any physical evidence; and
 - (13) any immediate action taken, including the use of force.
- (e) An offender shall not be charged unless the regulation, internal management policy and procedure, or facility order that is alleged to have been violated has been published.
- (f) The officer may orally warn or reprimand the offender instead of writing a report or otherwise documenting the incident.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-201b. Summary judgment procedure. (a) In any case involving one or more alleged class III offenses, or any other offense designated as eligible for summary judgment procedures, the reporting officer may offer the offender the option of resolving the matter through the summary judgment procedure as an alternative to writing a disciplinary report leading to initiation of the formal disciplinary hearing process.

(b) Each officer shall carry or have immediate access to summary judgment citation forms.

(c) If an officer observes an offender in the act of committing one or more class III offenses, or any other offense designated as eligible for summary judgment procedures, that the officer believes requires more than an undocumented, on-the-spot verbal reprimand, the officer may file a formal disciplinary report against the offender or may offer the offender summary judgment by issuing a summary judgment citation. If summary judgment is offered, the offer shall not be withdrawn unless there is subsequently an additional allegation that the offender committed another disciplinary offense.

(1) The summary judgment citation shall be written and served on the offender by the reporting officer within 24 hours of the alleged incident, 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 number of the regulation, internal management policy and procedure, or facility order for each alleged offense;

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

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

(F) the summary judgment sanction; and

(G) a space reserved for the offender to sign, indicating the offender either accepts or refuses of the offer of a summary judgment.

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

(A) Restriction from privileges for up to 10 days;

(B) extra work for up to two hours per day, not to exceed five days; or

(C) restitution of up to \$10.00.

(3) The offender 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 offender's receipt of the citation, or it shall be assumed that the offender refused the summary judgment. The officer may choose to impose a different summary judgment sanction after discussion of the incident with the offender, and this fact shall be documented on the summary judgment citation if the offender then accepts the summary judgment.

(A) If the offender accepts the summary judgment offered, this acceptance shall constitute a waiver of the offender's right to the benefits of the formal disciplinary hearing process and shall be documented by the offender's execution of a waiver of rights

according to K.A.R. 123-13-101a. Upon the offender's acceptance of the summary judgment, the sanction shall be immediately imposed, and the shift supervisor shall be notified.

(B) If the offender refuses the summary judgment offered, the offender shall be subject to the applicable hearing process. The summary judgment citation shall be marked and signed by the officer and the offender to indicate the offender's refusal. If notarized, the citation may then be used in lieu of the more formal disciplinary report to initiate the formal disciplinary hearing process. In that event, all normal applicable time limits shall run from the time the offender signs the summary judgment citation, indicating refusal of the summary judgment. The offender's signature of refusal on the summary judgment citation shall constitute service of the disciplinary report on the offender as required by K.A.R. 123-13-201. The requirement in K.A.R. 123-13-201 that an attempt be made to ensure that the officer personally serving the report on the offender is not the same officer who wrote the report shall not apply if summary judgment has been offered.

(C) If an offender refuses the summary judgment offered, the offender 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. 123-5-111.

(4) Each summary judgment citation accepted by the offender shall be documented in the offender's file.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-202. Amendment of the charge. (a) If, in the judgment of the disciplinary administrator, hearing officer, or superintendent 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 offender. After this notice is given, the offender shall have the same period of time between notice and hearing to prepare a defense that would have been permitted when the charge was originally made.

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

(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.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-203. Criminal prosecution and disciplinary hearing. (a) If an offender 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) If the offender has been convicted or acquitted in criminal court for a crime arising from the same facts, the hearing officer may rely on the findings 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 affecting the substantial rights of the offender. If such a showing is made, the hearing officer shall correct the decision on the record. However, the hearing officer shall not change the officer's decision if either of the following would result:

(1) Conviction of the offender of the disciplinary violation following a conviction by the court if the hearing officer acquitted the offender in the disciplinary proceeding before the criminal court entered its guilty finding; or

(2) an adverse effect on the offender.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

Nature of Proceedings

123-13-306. Offender responsibilities. (a) Each offender being served shall be required either to read the disciplinary report and any associated documentation or to notify the serving officer that the offender is illiterate or otherwise unable to read and understand the documents presented and to request that the notice and associated documents be read to the offender.

(b) Within 48 hours of service of the report, the offender shall complete and submit the authorized form for witnesses to the disciplinary administrator. If one or more witnesses are requested, the offender shall indicate on the form the testimony expected from each witness. The offender may use the form to waive the offender's right to call witnesses.

(c) Each illiterate offender shall receive assistance from the offender's program team member with completing the witness form, including any waiver of the right to call witnesses.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-307. 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 offender according to K.A.R. 123-13-306.

(b) The disciplinary hearing officer or administrator performing a review of a written request for witnesses shall, for purposes of the review, presume the truth of the proffered testimony and may deny the request only if, in the reviewer's judgment, the testimony proffered meets any of the following criteria:

- (1) Is clearly irrelevant or immaterial;
- (2) is repetitious of other proffered testimony; or
- (3) is properly excluded for reasons specified in K.A.R. 123-13-405a.

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

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

(e) If, following a review, there is no reason to deny the request for a witness, then the disciplinary administrator shall issue a written summons requesting that witness to appear. The appearance of a witness requested by either the reporting officer or the accused offender shall be voluntary, and neither the request nor the issuance of a summons according to this regulation shall compel an appearance. However, the issuance of a summons by a hearing officer either to an offender or to a staff member pursuant to K.A.R. 123-13-403 shall compel the appearance of the person summoned.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

Hearings Generally

123-13-401. Hearing within certain period; notice to offender; time and place of hearing. (a) Except as otherwise provided in these regulations and subject to authorized continuances, the disciplinary hearing to determine the offender's guilt or innocence and to impose a penalty if a finding of guilt is made shall be held not less than

24 hours and not more than seven working days after the offender has been served notice of the charge.

(b) Each offender 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 and shall be given by the disciplinary administrator, the hearing officer, or any other person designated by the superintendent.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-402. Continuing the hearing; recesses; time limits; extensions. (a) The disciplinary administrator or hearing officer may grant one or more continuances or recesses of reasonable length upon application of the offender, reporting officer, or juvenile justice authority 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 one of the following conditions is met:

(1) The offender or the reporting 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 offender is temporarily transferred outside the facility setting and is expected to return after a brief absence.

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

(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 commissioner or the commissioner's designee, in the case of a substantial disruption of order in the facility.

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

(3) The facts justifying an extension shall be examined, fully documented, and approved personally by the superintendent.

(4) At the discretion of the hearing officer, one or more recesses of appropriate and reasonable length may be declared.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-403. Conducting the disciplinary hearing. (a) Each disciplinary hearing shall be conducted as follows:

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

(2) The hearing officer shall then determine guilt or innocence.

(3) The hearing officer shall make a disposition, including the determination and imposition of sentence if guilt was previously established.

(b) Initially, the hearing officer shall read the disciplinary report to the offender, including the date, the nature of the offense, the reporting employee's name, and a synopsis of the observation. The officer shall ensure that the offender understands the charges and that the offender received a copy of the disciplinary report. The officer shall also explain the possible penalties if guilt is established. If the hearing officer finds that the offender is incapable of self-representation, the hearing officer shall continue the hearing as provided in K.A.R. 123-13-402(b)(1), until the offender regains the ability for self-representation. For purposes of this subsection, "incapable of self-representation" shall mean that the offender, due to physical or mental disability, whether temporary or permanent, lacks the present ability to assist in the offender's representation in the case. Illiteracy alone shall not be deemed a sufficient basis to find that an offender is incapable of self-representation.

(c) A staff assistant shall be permitted to be with the offender at the disciplinary hearing only as provided in K.A.R. 123-13-408. The hearing officer shall ensure that the offender has staff assistance when required by K.A.R. 123-13-408.

(d) If the offender is disruptive or refuses to be present, the hearing may proceed in absentia, and the record shall indicate each reason for the offender's absence. The offender's staff assistant, if so assigned, shall be present.

(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 offender of the following rights:

(1) The right to proceed to a determination of guilt or innocence, and if necessary, the application of penalties;

(2) the right to receive staff assistance in certain cases, according to K.A.R. 123-13-408; and

(3) any other procedural due process rights applicable in the case.

(f)(1) The hearing officer shall then ask the offender 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 offender.

(2) If the offender 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 offender pleads guilty or no contest, the offender 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 offender pleads guilty or no contest, the offender shall not be allowed to introduce evidence regarding the offender'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 should be dismissed, the officer may dismiss the case on the officer's own motion or on the motion of either party. The hearing officer shall give a brief explanation of the basis for the dismissal on the record.

(i) Only the relevant facts shall be employed in any determination of guilt or innocence. In the penalty phase, the offender'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 offender in accordance with these regulations. If the accused offender is furnished with staff assistance according to K.A.R. 123-13-408, 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 offender, except as otherwise provided by these regulations.

(l)(1) The disciplinary process shall, to the extent possible, discover the truth regarding the charges against the offender. The hearing officer shall be authorized to call and to examine any witness, and each offender, 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 examination or cross-examination but

shall not act as a prosecutor on behalf of the facility or charging officer against the accused offender or as defense counsel on behalf of the offender. All testimony and evidence shall be given or presented in the presence of the accused offender. Testimony and evidence shall not be received by the hearing officer or introduced outside the presence of the offender, except as provided in subsection (m) of this regulation, K.A.R. 123-13-403(d), K.A.R. 123-13-402(b)(5), and 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 offender will subject that offender 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 offender. The witness may be sequestered; or

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

(2) The testimony of the offender witness given under oath shall be examined and tested by the hearing officer. The hearing officer shall question the testifying offender, as necessary, 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 superintendent and commissioner.

(3) If the informant offender does not testify, the hearing officer may establish the reliability of the information provided to the testifying investigator 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 offender who gave the confidential testimony or provided confidential information to the testifying investigator. The identity of any confidential witness or of any offender informant shall not be disclosed to the accused, to any other offender, or to any staff member not required to complete the process. The staff assistant, if any, shall be permitted to be present when the board receives testimony from the confidential witness or the investigator, and the staff

assistant may ask questions. The offender's staff assistant shall not disclose the identity of the confidential witness or offender informant to the accused, to any other offender, or to any staff member not required to complete the hearing process. The testimony shall be recorded, for confidential review by the superintendent and, as applicable, on appeal, by the commissioner.

(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 a matter 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. 123-13-405a. 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 offender exist and the testimony would most likely affect the outcome of the hearing. The hearing officer shall inform the offender of any witness deemed waived by the failure to make a timely request.

(p) The hearing officer, in deciding whether or not the offender is guilty, shall consider only the relevant testimony and report. The accused offender'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 any 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 superintendent with a copy to the commissioner for confidential review.

(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 offender, 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 (q) in this regulation.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-404. Presence of offender and presence of charging officer at disciplinary hearings; officer statements in lieu of testimony. (a) The offender shall be present at all stages of the disciplinary hearing and disposition, except as otherwise provided by these regulations or by law.

(b) In class I cases, the charging officer shall be present for direct examination and for confrontation and cross-examination, unless either of the following conditions is met:

(1) The charging officer is excused by the hearing officer. The hearing officer may excuse the charging officer only if the hearing officer, after consulting with the superintendent, determines that facility safety or correctional goals would be jeopardized. "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 offender, and the report shall be read aloud at the hearing unless confidentiality is required to protect an offender accuser, informant, or witness.

(2) The offender has been transferred to another facility. If an offender 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 pertaining to that report may be taken by telephone at the discretion of the hearing officer. Except as provided in K.A.R. 123-13-403(m) and (q), all 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 procedures applicable to witnesses personally present at a hearing.

(c)(1) In class II and III cases, the charging officer's attendance shall not be required unless deemed necessary by the hearing officer. If the hearing officer excuses the attendance of the charging officer, the charging officer's sworn, written report and statement, if any, shall be submitted to the hearing officer. The charging officer's report and statement, if any, shall be read aloud at the hearing, and a copy shall be given to the offender unless confidentiality is required to protect an offender-accuser, informant, or witness according to K.A.R. 123-13-403(m). If such confidentiality is required but it is possible to protect the offender-accuser, informant, or witness by redacting certain

portions of the report and statement, then those portions shall be redacted and the offender shall be 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 investigation. To the best of the officer's ability, the statement shall include all relevant and material facts that might be used to support both the prosecution's case against the offender and the offender'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 the report, if any, from any official, impartial investigation of the matter conducted by another person, or the charging officer may submit the charging officer's own statement in addition to the other person's investigative report.

(2) Confidential offender testimony may be deleted from the statement in lieu of testimony and reported separately. The hearing officer shall receive any confidential offender testimony in accordance with K.A.R. 123-13-403.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-405a. Calling witnesses. (a) In determining whether to allow the offender to call a witness from the facilities' populations or from among the facilities' employees, the hearing officer shall balance the offender's interest in avoiding a loss of good time and the assessment of restitution or placement in disciplinary segregation against the needs of the facility at which the proceedings are held. The 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 offenders 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 offender 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 offenders and personnel;

(12) the need to correct the behavior of offenders 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 correctional environment disciplinary cases.

(b) The hearing officer shall have broad discretion in permitting or denying each request for witnesses. In exercising this discretion, the hearing officer shall balance the offender'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 offender's consent, the hearing officer may admit the affidavit of a nonparty 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 the disclosure on the record would endanger any person. In this case, a written explanation shall be made to the superintendent with a copy, on appeal, to the commissioner for confidential review.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-406. Disposition. (a) The disposition shall be rendered by the hearing officer in an official session with the offender present unless otherwise provided by law or regulation. The disposition shall be made without unreasonable delay following the hearing, preferably at the conclusion of the hearing.

(b) The disciplinary hearing officer may perform either of the following:

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

(2) in the case of multiple offenses, order the sentences for two or more violations to be served on a concurrent or consecutive basis. If the hearing officer makes no specific order in this regard, the sentences shall be computed on a concurrent basis.

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

(d) The hearing officer may make a recommendation to the superintendent, on a separate form or in a separate space on the disposition form as designated for the purpose, regarding disposition of personal property that has been found to be the subject of a violation of a law, regulation, internal management policy and procedure, or facility order in accordance with K.A.R. 123-5-111.

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

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-408. Assistance from staff. If at any time during the disciplinary proceedings the hearing officer finds that the charged offender is incapable of self-representation, the hearing officer shall appoint a staff member from an approved list to

act as a staff assistant to aid the offender at the disciplinary hearing and to question witnesses. A list of staff members to aid offenders as staff assistants shall be made available to the hearing officer by the superintendent.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-409. Standard of proof. No finding of guilty shall be made in a disciplinary proceeding unless the evidence and testimony provided at the disciplinary hearing are sufficient to show by a preponderance of the evidence that the accused offender committed the alleged violation. "Preponderance of the evidence" shall be that standard of proof by which a factual proposition is shown to be more likely true than not.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

Reports and Records

123-13-501. Preservation of all reports. No disciplinary reports and no summary judgment citations shall be destroyed for any reason. If written in error or incorrectly written, the report or citation shall be assigned a case number and shall be marked "void" and placed in the chronological disciplinary 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 chronological disciplinary file at the facility.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-502a. 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. 123-13-403, K.A.R. 123-13-404, and K.A.R. 123-13-405a;

(b) if the offender pleads guilty or no contest, a summary of compliance with the provisions of K.A.R. 123-13-101a and K.A.R. 123-13-403, 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 offender 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 the applicable provisions of K.A.R. 123-13-403;

(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 offender; and

(7) the reasons for the denial of any request for assistance by the offender at any stage of the hearing; and

(d) the disposition of the case provided for in K.A.R. 123-13-406, including a summary of the evidence and arguments heard and the reasons for the penalties imposed during the penalty phase of the hearing.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-505. Copy of record provided to offender. One copy of the disciplinary case record shall be provided without cost to the offender. The offender shall be charged for each additional copy at the rate established by law, regulation, internal management policy and procedure, or facility order.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-506. Preparation of the record within 10 working days. The hearing officer shall prepare the record of each disciplinary hearing within 10 working days after rendering the disposition, unless extenuating circumstances arise. If these circumstances arise, the record shall be prepared as soon as possible, and a written explanation of the reason for the delay shall be attached. The completed record shall be forwarded to the superintendent for administrative review. After that review, a copy shall be delivered to the offender.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-507. Docket. (a) The disciplinary administrator at each facility shall maintain a docket of all disciplinary cases filed at that facility showing the following for each case:

- (1) The case number;
- (2) the offender's name;
- (3) the offender's number;
- (4) the name of the living unit;
- (5) the offense and its classification; and
- (6) the name and title of the reporting officer.

(b) Space shall be left available on the docket to enter the plea of the offender, the findings of the hearing officer, and the sentence imposed.

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

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-508. Reports in file. The disposition report and disciplinary report for each case shall be placed in the file of the respective offender if there is a finding of guilty. If there is a not-guilty finding or if the case is dismissed, no reference to the case shall be placed or allowed to remain in the offender's file.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-509. Disciplinary case log. Each 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 be annotated to reflect that fact. No numbers or entries shall be altered, and no report shall be destroyed.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

Sentences

123-13-601. Serving disciplinary segregation sentence. Each offender sentenced to disciplinary segregation shall begin serving the sentence immediately upon imposition of the sentence by the hearing officer, unless the superintendent determines that space in the disciplinary segregation area is not immediately available or that immediate placement of the offender in segregation is not otherwise feasible. If either determination is made, the sentence shall be served when space is available or when placement of the offender in segregation becomes feasible.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-602. Credit for disciplinary segregation sentence. (a) Each offender sentenced to a term in disciplinary segregation shall be granted credit to reduce the term of this sentence on a day-for-day basis for each day the sentenced offender remained in administrative segregation if that offender was in administrative segregation solely for the purpose of awaiting the disciplinary proceeding.

(b) No credit to reduce the term of a sentence to disciplinary segregation shall be granted for any day the sentenced offender was in administrative segregation for a reason other than awaiting the disciplinary proceeding even if, absent that other reason, the sentenced offender would nevertheless have been in administrative segregation awaiting the disciplinary proceeding.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-603. Absence from facility. (a)(1) No time during which an offender is away from the facility shall be credited against the service of the offender's sentence if both of the following conditions are met:

(A) The offender is sentenced for a specific period of time to any of the following:

- (i) Disciplinary segregation;
- (ii) the restriction of privileges; or
- (iii) the performance of additional responsibilities.

(B) The offender is temporarily transferred from the facility before beginning or before completing the term of the sentence.

(2) Upon the offender's return to the facility, the offender shall serve the remainder of the sentence, unless the superintendent determines that the best interests of the offender or facility warrant that the remaining portion of the sentence be suspended.

(b) If an offender is conditionally released from the facility pursuant to the sentencing order in the underlying juvenile offender case, the offender may be required to complete serving the sentence upon the offender's subsequent return to the facility, at the discretion of the superintendent.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-610. Collection of restitution. (a) Upon disposition of the case, restitution may be collected immediately from the offender's trust account without any further hearing process, with the written order of the disciplinary administrator.

(b) The restitution shall be taken from any money that the offender has credited to the offender's trust account administered by the facility. The restitution shall not be deducted or taken from any applicable gratuity, travel, or clothing allowance provided to the offender upon release.

(c) No offender, while released in the community, shall be required to continue payment on any restitution imposed under these regulations. Upon any subsequent admission, the restitution may be collected, at the discretion of the superintendent.

(d) If an offender is transferred to another facility and there is a balance due on any restitution imposed under this regulation, collection of the remaining balance may be made by the receiving facility at the request of the superintendent of the sending facility

and with the approval of the superintendent of the receiving facility. The amount collected shall be deposited in the offender benefit fund at the facility where the collection is made.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

Appeals

123-13-701. Administrative review. (a) In each class I and class II offense case, a case review shall be conducted by the superintendent within seven working days after the preparation of the disciplinary hearing record. The record shall be reviewed to determine whether the proceeding was conducted in compliance with the disciplinary procedure. The review shall not include the presentation of further arguments from either side. Based upon the review, any of the following actions shall be taken by the superintendent:

- (1) Approving the decision;
- (2) disapproving the decision;
- (3) amending the charge in accordance with the provisions of K.A.R. 123-13-202 and remanding the case to the hearing officer;
- (4) disapproving the decision and dismissing the case;
- (5) reducing the penalty;
- (6) remanding the case to the hearing officer and ordering a new hearing; or
- (7) remanding the case to the hearing officer for clarification of the record and returning the case to the superintendent for further consideration.

If applicable, the disposition of any personal property that has been found to be the subject of a violation of one or more disciplinary regulations in accordance with K.A.R. 123-5-111 shall be made by the superintendent.

(b) The offender shall be notified by the superintendent of the results of the review by service of a copy of the disciplinary case record in a timely manner. Service shall occur without unnecessary delay but not later than seven working days after the review. The date of the review shall not be counted.

(c) In each class III case, an impartial employee of suitable rank and experience shall be designated by the superintendent to perform the review. The employee designated shall not be the person who was the hearing officer, a person involved as a witness or investigator, or a reporting officer. The review shall be conducted following the same procedures as those specified in subsection (a). The employee conducting the review shall have the same responsibilities and authority as those assigned to the superintendent in subsection (a).

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-702. Appeal on the record to the superintendent in class III offense cases. (a) In class III cases, each offender shall have a right of appeal to the facility's superintendent but shall have no right of appeal to the commissioner.

(b) The procedure for appeal to the superintendent shall be the same as that for appeal to the commissioner in cases involving class I and II offenses.

(c) The same time to answer the appeal shall be provided to the superintendent as that provided for the commissioner in cases involving class I and II offenses.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-703. Appeal on the record to commissioner in class I and II offense cases. (a) In class I and II cases, each offender shall have the right to appeal on the record to the commissioner from a final decision made by the disciplinary hearing officer, after the superintendent's review pursuant to K.A.R. 123-13-701. The offender shall be notified of the right of appeal before or immediately following the superintendent's review.

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

(c) The offender shall submit the appeal within 15 days of the date of receiving notice of the final action pursuant to K.A.R. 123-13-701(b).

(d) If the offender pleaded guilty or no contest at the disciplinary hearing, an appeal of the penalty imposed may be brought, but no appeal of a finding of guilt shall be permitted unless the offender alleges and shows any of the following:

(1) The offender was under duress at the time of the plea.

(2) Fraud or substantial error was involved in the offender's plea of guilty or no contest.

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

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

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

(3)(A) The offender's appeal papers and arguments shall be promptly forwarded to the designated facility's legal counsel for review and, as deemed necessary by legal counsel, preparation of a responsive argument on behalf of the facility. Each responsive argument so prepared shall be made a part of the record and shall be forwarded by the disciplinary administrator to the commissioner within 15 working days after the offender's notice of appeal. A copy of the responsive argument shall be served upon the offender within five working days after receipt by the disciplinary administrator.

(B) If no responsive argument is submitted by the facility, the appeal may be returned to the facility by the commissioner with the direction that a responsive argument be prepared and submitted. The disciplinary administrator, in collaboration with the superintendent, shall arrange for a responsive argument to be prepared and a copy served on the commissioner and the offender within five calendar days of the imposition of the requirement for a responsive argument. This requirement for a responsive argument shall not alter the time limits for the commissioner's review on appeal established in K.A.R. 123-13-704.

(4) Each argument shall identify, on its face, the disciplinary case and number to which the argument is to be attached.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-704. Commissioner's final review on appeal. (a) Within 15 working days after each appeal is received, the appealed case shall be reviewed by the commissioner or designee. The date of receipt shall not be counted. Any one of the following actions may be taken by the commissioner or designee:

- (1) Approving the decision as rendered;
- (2) revoking the decision entirely;
- (3) reducing the penalty;
- (4) ordering a new hearing; or
- (5) remanding the case for clarification of the record and resubmission to the commissioner for further consideration.

(b) The commissioner's review shall determine the following:

- (1) Whether there was substantial compliance with the agency's and the facility's standards and procedures;
- (2) whether the hearing officer's decision was based on material and relevant evidence; and
- (3) whether, under the circumstances, the penalty imposed was appropriate and proportionate to the offense.

(c) The commissioner's decision shall be final. A copy of the commissioner's decision shall be given to the offender within 15 working days after the decision is made. If the appeal is denied, the reason for that decision shall be included in the commissioner's decision.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-706. Administrative review board to review and make recommendations. The administrative segregation review board established under the applicable internal management policy and procedure of the commissioner may review the record for each offender held in disciplinary segregation. This board may, at any time, recommend to the superintendent that the disciplinary segregation sentence of an offender be modified to suspend the remaining segregation time, based on a finding of the administrative disciplinary segregation review board that the offender has maintained exceptionally good behavior while in segregation. The remaining segregation time of the offender's sentence may be suspended by the superintendent, acting on the recommendation of the administrative segregation review board.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-13-707. 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 the failure to take that

action appears to the hearing officer or the reviewing authority to be 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; and
- (d) an error by the offender in processing the offender'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 offender or the facility.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

ARTICLE 15- OFFENDER GRIEVANCE SYSTEM

Procedures Generally

123-15-101. Offender grievance procedure; informal resolution; formal levels. (a) Before utilizing the grievance procedure, each offender shall be responsible for attempting to reach an informal resolution of the matter with the personnel who work with the offender on a direct or daily basis. The offender shall contact the program team members for the attempt at informal resolution. That attempt shall be documented. The facility's offender request forms may be used to document this process. If the informal resolution attempt fails, the grievance system may then be used. If an emergency exists

and a resolution was not obtained by contacting the program team, the offender may utilize the grievance process.

(b) At every stage of the process, the grievance shall be answered promptly in order to avoid delays that impose additional hardship upon the offender or that unnecessarily prolong a misunderstanding. To the extent possible, the grievance of an offender who has been transferred, released, or discharged before its final resolution shall be answered.

(c) The grievance procedure shall consist of the following levels of problem solving to ensure resolution at the lowest administrative level possible:

(1) Level one. The offender shall first submit the grievance report form to the proper facility program team member.

(2) Level two. If not resolved at level one, the offender may then submit the grievance report form to the facility's superintendent.

(3) Level three. If not resolved at level two, the grievance may then be submitted to the office of the commissioner. Either a response to the grievance or a referral of the matter to the deputy commissioner for operations for further investigation by the superintendent, if necessary, shall be made. The grievance may be referred by the commissioner to the deputy commissioner or designee for a response.

(d) The forms designated in the "offender grievance" IMPP for an offender's use in submitting a grievance shall be made available to all offenders in each living unit. The program team shall assist the offender in obtaining copies of the supporting material necessary to complete the grievance if the number of photocopies requested by the offender is reasonable.

(e) No staff member shall refuse to sign, date, and return an offender request form, an offender grievance form, or a grievance receipt slip showing that the offender sought assistance from that person.

(f) Each offender shall be entitled to use the grievance procedure. The superintendent or designee shall provide reasonable accommodation to ensure that mentally impaired and physically handicapped offenders have access to the grievance procedure.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-15-101a. Grievance procedure distribution; orientation; applicability; remedies; investigation. (a) The grievance procedure regulations shall be distributed or made readily available to all offenders in each facility.

(b) Each offender, upon admittance to the facility, shall receive an oral explanation of the offender grievance procedure, including an opportunity to have questions regarding the procedure answered orally. Explanatory materials and the oral presentation shall be made available in any language spoken by a significant portion of the facility's population. To the extent feasible, offenders who do not understand English shall receive an explanation of the grievance procedure in a language in which the offender is fluent. Mentally impaired and physically handicapped offenders shall receive explanations in a manner comprehensible to them. Following the explanation, each offender shall sign a statement indicating that the required explanation has been given.

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

(d) (1) The grievance procedure shall be applicable to a broad range of matters that directly affect the offender, including the following:

(A) Complaints by offenders regarding policies and conditions within the jurisdiction of the facility or the juvenile justice authority; and

(B) actions by employees and offenders, and incidents occurring within the facility.

(2) The grievance procedure shall not be used as a means for challenging the decision reached in any of the following:

(A) The offender disciplinary procedure;

(B) the classification decision-making process; or

(C) the property loss or personal injury claims procedure.

(3) The grievance system may be used to challenge whether the procedure or process identified in paragraph (d)(2)(A), (B), or (C) was properly conducted or to challenge the manner in which the decision was made. This type of grievance shall be permitted only after the decision in the procedure or process being challenged is final, including appeals, if applicable, unless the offender would incur irreparable harm if delayed until the end of the process.

(e) The remedies available to the offender through the grievance procedure may include action by the facility's superintendent to correct the problem or action by the commissioner to cause the problem to be corrected. Relief may include an agreement by

facility officials to remedy an objectionable condition within a reasonable, specified time, or to change a facility policy or practice.

(f) A procedure shall be established by the superintendent for investigating the allegations and establishing the facts of each grievance. An offender or employee who appears to be involved in the matter shall not participate in any capacity in the resolution of the grievance.

(g) A copy of the grievance response at each level shall be delivered to the program team, the offender, and the superintendent last responding.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-15-101b. Time limit for filing grievance. (a) Each grievance shall be filed within 15 days from the date of the discovery of the event giving rise to the grievance. However, if the fifteenth day falls on a Saturday, Sunday, or holiday, the grievance may be filed on the first regular work day immediately following the fifteenth day. No grievance, regardless of the date of discovery, shall be filed more than one year after the date of the event giving rise to the grievance. Each grievance filed later than these deadlines shall be returned to the offender without investigation. The name of the individual returning the grievance, the date of the return, and the reasons for the return shall be noted on the grievance.

(b) Any offender may move to the next level of the grievance procedure if a timely response is not received at any level in the grievance process, unless an extension

of time for the response is agreed to in writing by the offender and staff person answering the grievance.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-15-102. Procedure. (a) Grievance level one; preliminary requirement; informal resolution and problem solving by or with the assistance of the program team.

(1) Each offender shall first seek information, advice, or help on any matter from the offender's program team or from a member of the team. If unable to solve the problem, the program team shall refer the offender to the proper office or department. The program team shall assist any offender who is unable to complete the form without assistance.

(2) If an offender does not receive a response from the program team within 10 calendar days, a grievance report may be sent to the superintendent without the program team's signature or signatures. Each grievance report form shall include an explanation of the absence of the signature or signatures.

(b) Grievance level two; complaint to the superintendent.

(1) If any offender receives a response but does not obtain a satisfactory resolution to the problem through the informal resolution process within 10 calendar days, the offender may complete an offender grievance report form and submit it, within three calendar days after the deadline for informal resolution, to a staff member for transmittal to the superintendent.

(2) The offender shall attach a copy of all offender request forms used to attempt to resolve the problem and shall provide the following information on the offender grievance report:

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

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

(C) the action that the offender wants the superintendent to take to solve the problem;

(D) the name and signature of each responsible facility employee from whom the offender sought assistance. This signature shall be on either the offender request form or the grievance report form. The date on which the help was sought shall be entered by the employee on the form; and

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

(3) The staff member shall forward the report to the superintendent before the end of the next working day and shall give a receipt to the offender.

(4)(A)(i) Upon receipt of a grievance report form, the superintendent or designee shall assign a unique control number and record the date of its receipt. The nature of the grievance shall be ascertained by the superintendent or designee.

(ii) A response to the grievance shall be returned to the offender within 10 working days from the date on which the grievance was received.

(B) Each response shall contain findings of fact, conclusions drawn, the reasons for those conclusions, and the action taken by the superintendent. Each response shall inform the offender that the offender may appeal by submitting the appropriate form to the commissioner.

(C) The superintendent shall return the original and one copy of the grievance report to the offender, along with the superintendent's response. The original documents shall be used for an appeal to the commissioner if the offender elects to file an appeal of the superintendent's decision, and the copy may be retained by the offender.

(D) The superintendent shall retain a copy of all documents.

(E) Each facility shall maintain grievance report files indexed by offender name and by subject matter.

(F) Any grievance report form may be rejected by the superintendent if the form does not document any program team action as required by the preliminary informal resolution process. If rejected, the grievance report form shall be sent back to the program team for an immediate response to the offender. If not rejected for lack of documentation, a response shall provide by the superintendent as required by these regulations.

(G) If the superintendent fails to respond in the time allowed under these regulations, the aggrieved offender may submit the grievance to the commissioner for handling in accordance with grievance level three. A grievance submitted under this subsection shall contain an explanation for direct submission to the commissioner.

(c) Grievance level three; appeal to the commissioner.

(1) If the superintendent's response is not satisfactory to the offender, the offender may appeal to the commissioner's office. The offender shall specifically detail the

reasons for the appeal and the action that the offender wants the commissioner to take to resolve the grievance. The offender's appeal shall be made within three calendar days of receipt of the superintendent's response or within three calendar days of the deadline for that response, whichever is earlier.

(2) The appeal, along with any other required documentation, shall be sent directly and promptly by U.S. mail to the commissioner's office.

(3) Whenever a superintendent's response is appealed, the commissioner shall have 20 working days from receipt of the grievance appeal to respond to the offender. The response shall include findings of fact, conclusions made, and actions taken and shall be returned to the offender along with the grievance report form.

(4) If a grievance report form that fails to document the superintendent's prior action is submitted to the commissioner, the form may be returned to the superintendent. If the superintendent fails to respond to the grievance in a timely manner, the form shall be accepted by the commissioner.

(5) A deputy commissioner may be designated by the commissioner to prepare a response to the grievance.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005)

123-15-104. Reprisals prohibited. No adverse action shall be taken against any offender for use of the grievance procedure, unless the offender uses the grievance procedure to communicate a threat to another person or to the security of the institution or to commit any unlawful act.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-15-105. Records. (a) Nature and retention. Records regarding the filing and disposition of grievances shall be collected and maintained systematically by the facility. These records shall include aggregate information regarding the numbers, types, and dispositions of grievances, as well as individual records of the date of and the reasons for each disposition at each stage of the procedure. These records shall be preserved for at least three years following final disposition of the grievance. The logs and records shall be maintained in a form and manner prescribed by the commissioner.

(b) Confidentiality. All records regarding the participation of an individual in grievance proceedings shall be considered confidential and shall be handled under the procedures used to protect other confidential case records. Each staff member participating in the disposition of a grievance shall have access to the records that are essential to the resolution of the grievance. Each offender shall be permitted to review any portion of the offender's own file upon the written approval of the superintendent. No offender shall be permitted to review any portion of another offender's file. Grievance report forms shall not be placed in the offender's institutional or agency file.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-15-105a. Annual review. (a) The records regarding the filing and disposition of grievances shall be reviewed annually by the commissioner or designee to determine the effectiveness and credibility of the grievance procedure.

(b) Each review shall include the following:

(1) An analysis of the types of grievances received;

(2) a breakdown reflecting the types and levels of disposition; and

(3) a summary and analysis of any complaints that have been received about the grievance procedure.

(c) In addition to the requirements specified in subsection (b), each review shall include the solicitation and consideration of employee and offender comments on the effectiveness and credibility of the grievance procedure.

(d) The results of each annual review shall be compiled in a written report. Each report shall document the conclusions about the effectiveness and credibility of the grievance procedure and shall include recommendations for improvements to the procedure. Each report shall be maintained by the agency in accordance with the agency's records retention policy.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-15-106. Emergency grievance procedure. (a) "Emergency grievance" shall mean a grievance for which disposition using the regular time limits would subject the offender to a substantial risk of personal injury or cause other serious and irreparable harm to the offender.

(b) In emergency situations, any offender may bypass the prerequisite of informal resolution if contacting the program team would not obtain a resolution to the problem. The offender shall indicate on the face of the grievance form the nature of the emergency and shall write the word "emergency" in readily discernable letters at the top of the grievance report form.

(c) Each emergency grievance shall be forwarded immediately, without substantive review, to the level at which corrective action can be taken. Each emergency grievance shall be expedited at every level. The same external review provisions that apply to regular grievances shall apply to emergency grievances.

(d) If a person at the corrective action level determines that the grievance is not an emergency, the person making that determination shall include that determination on the grievance form and then sign the form. The grievance shall then be processed as a regular grievance. If necessary for a proper response, the grievance may be sent for processing at a lower level.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-15-107. Special procedures for sexual abuse grievances; sexual harassment grievances and grievances alleging retaliation for filing same; reports of sexual abuse or sexual harassment submitted by third parties. (a) Definitions. For the purpose of this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Sexual abuse" means either of the following:

(A) “Sexual abuse of an offender by another offender,” which means any of the following acts if the victim does not consent, is coerced into the act by overt or implied threats of violence, or is unable to consent or refuse:

(i) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(ii) contact between the mouth and the penis, vulva, or anus;

(iii) penetration of the anal or genital opening of another person, however slight, by a hand, finger, or object; or

(iv) any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation; or

(B) “sexual abuse of an offender by a staff member, contractor, or volunteer,” which means any of the following acts, with or without the consent of the offender:

(i) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(ii) contact between the mouth and the penis, vulva, or anus;

(iii) contact between the mouth and any body part if the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(iv) penetration of the anal or genital opening, however slight, by a hand, finger, or object, that is unrelated to official duties or if the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(v) any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official

duties or if the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(vi) any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the acts described in paragraphs (a)(1)(B)(i)-(v);

(vii) any display by a staff member, contractor, or volunteer of that individual's uncovered genitalia, buttocks, or breast in the presence of an offender; or

(viii) voyeurism by a staff member, contractor, or volunteer.

(2) "Voyeurism by a staff member, contractor, or volunteer" means an invasion of privacy of an offender by staff for reasons unrelated to official duties, including peering at an offender who is using a toilet in the offender's cell to perform bodily functions; requiring an offender to expose the offender's buttocks, genitals, or breasts; or taking images of all or part of an offender's naked body or of an offender performing bodily functions.

(3) "Sexual harassment" means either of the following:

(A) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one offender directed to another; or

(B) repeated verbal comments or gestures of a sexual nature to an offender by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

(b) Submission of grievances concerning sexual abuse.

(1) Each offender submitting a grievance concerning sexual abuse alleged to have already occurred shall state that offender's intentions by marking "sexual abuse grievance" where indicated on the grievance form.

(2) Offenders shall not be required to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse of an offender by a staff member, contractor, or volunteer or a grievance in which it is alleged that sexual abuse of an offender by another offender or sexual abuse of an offender by a staff member, contractor, or volunteer was the result of staff neglect or violation of responsibilities.

(3) Any offender may submit a grievance to security staff, a program team member, or administrative personnel in person or by utilizing the offender internal mail system.

(4) Any offender who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint. The grievance shall not be referred to a staff member who is the subject of the complaint.

(c) Superintendent's response.

(1) Upon receipt of each grievance report form alleging sexual abuse, a serial number shall be assigned by the superintendent or designee, and the date of receipt shall be indicated on the form by the superintendent or designee.

(2) Each grievance alleging sexual abuse shall be returned to the offender, with an answer, within 10 working days from the date of receipt.

(3) Each answer shall contain findings of fact, conclusions drawn, the reasons for those conclusions, and the action taken by the superintendent. Each answer shall inform

the offender that the offender may appeal by submitting the appropriate form to the secretary of corrections (secretary).

(4) In all cases, the original and one copy of the grievance report shall be returned by the superintendent to the offender. The copy shall be retained by the offender for the offender's files. The original may be used for appeal to the secretary if the offender desires. The necessary copies shall be provided by the superintendent.

(5) A second copy shall be retained by the superintendent.

(6) Each facility shall maintain a file for grievance reports alleging sexual abuse, with each grievance report indexed by offender name and coded as a sexual abuse complaint. Grievance report forms shall not be placed in the offender's institution file.

(7) If no response is received from the superintendent in the time allowed, any grievance may be sent by an offender to the secretary with an explanation of the reason for the delay, if known, with a notation that no response from the superintendent was received.

(d) Appeal to the secretary.

(1) If the superintendent's answer is not satisfactory to the offender, the offender may appeal to the secretary's office by indicating on the grievance appeal form exactly what the offender is displeased with and what action the offender believes the secretary should take.

(2) The offender shall send the appeal directly and promptly by U.S. mail to the department of corrections' central office in Topeka.

(3) If an appeal of the superintendent's decision is made to the secretary, the secretary shall have 20 working days from receipt to return the grievance report form to

the offender with an answer. The answer shall include findings of fact, conclusions made, and actions taken.

(4) If a grievance report form is submitted to the secretary without prior action by the superintendent, the form may be returned to the superintendent for further action, at the option of the secretary.

(5) In all cases, a final decision on the merits of any portion of a grievance alleging sexual abuse, or an appeal thereof, shall be issued by the secretary within 90 days of the initial filing of the grievance.

(6) Computation of the 90-day time period shall not include time taken by offenders in preparing and submitting any administrative appeal.

(7) At any level of the administrative process, including the final level, if the offender does not receive a response within the time allotted for reply, including any properly noticed extension, the offender may consider the absence of a response to be a denial at that level and may proceed to the next level of appeal.

(8) An appropriate official may be designated by the secretary to prepare the answer.

(e) Imminent sexual abuse.

(1) Each offender submitting a grievance concerning imminent sexual abuse shall state that offender's intentions by marking "emergency sexual abuse grievance" where indicated on the grievance form.

(2) Each grievance alleging that an offender is subject to a substantial risk of imminent sexual abuse shall be treated as an emergency grievance under K.A.R. 123-15-106.

(3) After receiving an emergency grievance alleging imminent sexual abuse, the superintendent or designee shall provide an initial response within 48 hours and shall issue a final decision within five calendar days. The initial response and final decision shall document the determination whether the offender is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

(f) Submission of grievances concerning sexual harassment or concerning retaliation for submission of a report or grievance concerning sexual abuse or sexual harassment.

(1) Each offender shall be required to use the informal grievance process specified in K.A.R. 123-15-101 and 123-15-102 for grievances concerning sexual harassment or concerning retaliation for submission of a report or grievance concerning sexual abuse or sexual harassment. These grievances shall otherwise be treated and processed according to the ordinary grievance procedure specified in K.A.R. 123-15-101 and 123-15-102.

(2) Any offender who alleges sexual harassment or retaliation may submit a grievance without submitting it to a staff member who is the subject of the complaint. The grievance shall not be referred to a staff member who is the subject of the complaint.

(3) Each facility shall maintain a file for grievance reports alleging sexual harassment or retaliation for submission of a report or grievance alleging sexual abuse or sexual harassment, with each grievance report indexed by offender name and coded accordingly. No grievance report form shall be placed in the offender's institution file.

(g) Time limits.

(1) There shall be no time limit for submission of a grievance regarding an allegation of sexual abuse.

(2) The time limits for any grievance or portion thereof that does not allege an incident of sexual abuse or imminent sexual abuse shall be the limits specified in K.A.R. 123-15-101b.

(h) Third-party submissions.

(1) Third parties, including fellow offenders, staff members, family members, attorneys, and outside advocates, shall be permitted to assist any offender in filing requests for administrative remedies relating to allegations of sexual abuse and shall also be permitted to file these requests on behalf of any offender.

(2) If a third party files such a request on behalf of an offender, the alleged victim shall agree to have the request filed on behalf of the alleged victim. The alleged victim shall personally pursue any subsequent steps in the administrative remedy process.

(3) If the offender declines to have the request processed on that individual's behalf, the facility shall document the offender's decision.

(i) Grievances in bad faith. Any offender may be disciplined for filing a grievance related to alleged sexual abuse only if it can be demonstrated that the offender filed the grievance in bad faith. In this instance, a disciplinary report alleging violation of K.A.R. 123-12-303 or 123-12-317, as appropriate, may be issued. (Authorized by and implementing K.S.A. 2014 Supp. 75-7024 and 76-3203; effective November 20, 2015.)

Special Procedures

123-15-201. Special kinds of problems. (a) If an offender wants to bring a problem to the attention of a higher authority without going through the regular grievance procedure, the offender may send a sealed letter or grievance report form to the facility's superintendent or the commissioner. The sealed letter shall contain the designation

“official mail” on the outside of the envelope. This procedure shall be reserved for any problem for which resolution using the regular grievance procedure would not be effective due to the nature or sensitivity of the problem.

(b) Any complaint letter received by the commissioner or superintendent under this regulation may be returned to the offender with instructions to the offender to make use of and follow the proper grievance procedure if, in the recipient’s opinion, the matter can be properly handled through the grievance procedure described in these regulations.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

ARTICLE 16- OFFENDER CLAIMS

123-16-102. Reporting loss of or damage to property; claims. (a) Each offender shall immediately report any loss of or damage to the offender's personal property and to any state-owned property issued to the offender. When reporting property damage or loss, the offender shall use the applicable avenues of redress established by regulations, internal management policies and procedures, and facility orders. These procedures shall be strictly followed.

(b) The superintendent shall not be required to accept any claim for lost or damaged personal property unless the claim is made within 15 working days of the discovery of the loss or damage and the claim is made using the applicable procedures. The superintendent shall not be required to accept any claim if either of the following conditions exists:

(1) The offender could have discovered the loss by exercising reasonable effort to know the status of the offender's property.

(2) The claim is submitted later than one year and one day after the date of the loss, regardless of when the loss was discovered.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-16-105. Personal property at offender's own risk. Each offender who has personal property at a facility shall do so at the offender's own risk. The loss of or damage to personal property shall not provide a basis for recovery on a claim, unless the loss or damage directly resulted from the intentional or negligent act or omission of a juvenile justice authority employee and was reported according to applicable regulations, internal management policies and procedures, and facility orders.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 38-16,130, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)