

Kansas Administrative Regulations

Department of Corrections

Article 13.—Disciplinary Procedure

44-13-201a. Diversion procedure.

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

(b) The unit team manager may formulate the intervention plan or may assign the diversion request to the inmate's assigned correctional counselor for review and recommendation as to the nature and components of the intervention plan. The unit team manager shall apply for a continuance of the case pursuant to K.A.R. 44-13-402 if necessary in order to complete consideration and formulation of the intervention plan.

(c) Upon formulation of the intervention plan, the unit team manager shall confer with the reporting officer or supervisor and the inmate. If both parties consent to the diversion, the unit team manager shall present to the inmate for the inmate's execution a written request for continuance of the disciplinary case for the length of time required to carry out the plan, which shall not exceed 180 days, and shall also present the written intervention plan to the inmate and the reporting officer or supervisor. This plan shall be in the form of an agreement to be signed by both parties and the unit team manager. If either party fails to consent, then the case shall proceed for prosecution. If a

continuance has been secured by the unit team manager, then the unit team manager shall notify the disciplinary administrator in writing of the failure to agree to diversion.

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

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

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

(g) If the inmate successfully completes the intervention plan, the reporting officer or supervisor or, in that person's absence, the unit team manager shall submit a written request for dismissal of the case to the disciplinary administrator, who shall cause the case to be shown as dismissed in the records of the administrator's office. The existence of the case and its charge or charges shall not be part of the inmate's master file or any other file subject to review by the Kansas parole board or to disclosure to the public.

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