

Kansas Administrative Regulations

Department of Corrections

Article 13.—Disciplinary Procedure

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

(a) A disciplinary procedure in accordance with these regulations shall be implemented by the warden of each facility. The term "warden," as used throughout this article, shall include the warden's designee.

(b) Prosecution by criminal justice agencies in the community shall be deemed a separate process from this disciplinary procedure, and both prosecution and disciplinary procedures may be conducted on matters relating to the same factual situations.

(c) Subject to the limitations and guidelines set out in these regulations and subject to the control of the hearing officer exercised within the parameters of the law and these regulations, the inmate shall be entitled to the following:

(1) To receive advance written notice of the charge and a fair hearing by an impartial hearing officer;

(2) to be present at the hearing;

(3) to present documentary evidence;

(4) to testify on the inmate's own behalf;

(5) to have witnesses called to testify on the inmate's behalf;

(6) to confront and cross-examine witnesses against the inmate; and

(7) to be furnished with staff assistance according to K.A.R. 44-13-408.

(d) The charge may be amended according to the provisions of these regulations.

(e) If an inmate allegedly commits an act covered by criminal law, the case shall be referred to the appropriate law enforcement or prosecutorial agency as provided in K.A.R. 44-13-103.

(f) There shall be three classes of offenses, which shall be processed according to the provisions of these regulations.

(g) The disciplinary hearing process shall be structured as specified in K.A.R. 44-13-403, 44-13-404, and 44-13-405a.

(h) All stages of the disciplinary hearing shall be conducted by a hearing officer appointed by the warden according to K.A.R. 44-13-105.

(i) A complete log of the disciplinary process shall be maintained as specified in K.A.R. 44-13-509.

(j) The disciplinary hearing shall be conducted within a certain time following notice of the charge as established by these regulations. Continuances and recesses of the hearing may be granted. Generally, the inmate shall be permitted to be present at all stages of the hearing, except as provided by these regulations.

(k) Staff assistance shall be permitted only under limited conditions established in K.A.R. 44-13-408.

(l) A summary record shall be made of all stages of the hearing.

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

(n) Nothing in these regulations shall prohibit the assignment or delegation of the disciplinary hearing and review process or any portion of it to the warden of another Kansas state correctional facility if good cause is shown and if justice and fairness will not thereby be infringed. An assignment or delegation shall not be made except by the secretary of corrections or designee, or by the warden with the secretary of corrections' written approval. This restriction shall not prohibit the holding of hearings at a receiving facility following a transfer based on a classification decision in the sending facility where the offense occurred in the sending facility.

(o) This regulation shall summarize the disciplinary procedure and shall not be construed or interpreted as establishing any rights or procedures that are not specifically set forth in article 13.

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

(Authorized by and implementing K.S.A. 75-5210, 75-5251; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1,

1984; amended, T-85-37, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended April 20, 1992; amended Feb. 15, 2002.)

***** Authenticated Kansas Administrative Regulation *****