

Kansas Administrative Regulations

Department of Corrections

Article 13.—Disciplinary Procedure

44-13-201. Disciplinary report and written notice.

(a) A disciplinary proceeding shall be commenced upon the making of a charge by a disciplinary report.

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

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

(3) The officer serving the report shall inform the inmate that the inmate may enter a plea of guilty or no contest to the charge at the time of service of the report.

(A) If the officer serving the report has been appointed as a hearing officer by the warden according to K.A.R. 44-13-105, that officer may immediately, or as soon as possible, accept the inmate's plea of guilty or no contest, conduct a sentencing hearing, and impose sentence by following the procedures established in K.A.R. 44-13-403.

(B) If the officer serving the report has not been appointed as a hearing officer by the warden according to K.A.R. 44-13-105 or wishes to refer the case to another hearing officer, then the inmate desiring to plead guilty or no contest to the charge at the time of service of the report shall be brought immediately, or as soon as possible, before a hearing officer, who shall accept the inmate's plea of guilty or no contest, conduct a sentencing hearing, and impose sentence by following the procedures established in K.A.R. 44-13-403.

(4) If necessary, the hearing officer may accept the inmate's plea of guilty or no contest immediately, or as soon as possible, after service of the report, but may delay the sentencing hearing and imposition of sentence for not more than six working days.

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

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

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

(C) inform the inmate that the inmate may enter a plea of guilty or no contest to the charge at the time of service of the report and, acting as a hearing officer, accept the inmate's plea of guilty or no contest, conduct a sentencing hearing, and impose sentence by following the procedures established in K.A.R. 44-13-403. If the inmate accepts this option, the unit team manager shall forward to the disciplinary administrator the guilty or no contest plea waiver form and disposition and hearing record.

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

(c) The disciplinary report shall be written within 48 hours of the offense, the discovery of the offense, or the determination following an investigation that the inmate is the suspect in the case and is to be named as defendant.

(1) If an alleged violation is based upon uncertain facts, an appropriate investigation shall be initiated within 24 hours of the time the allegation is made and shall be completed without unreasonable delay. The investigation shall determine if a disciplinary action should be initiated or continued by determining whether the allegation is soundly based on reasonably reliable facts. The investigator shall be a staff member, and, if practical, shall be a staff member other than the person making the allegation. If an inmate is making the allegation, the officer who is receiving the allegation and is in a position to write the report may also be the investigator.

(2) The investigation report may be adopted by the charging officer both as the charge itself, and as the officer's sworn statement in lieu of testimony in any case, in accordance with the regulations. If necessary, pending completion of the investigation, the inmate may be held in administrative segregation for a certain period according to K.A.R. 44-14-302(b).

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

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

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

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

- (1) The name and number of the inmate;
- (2) the institution;
- (3) the signature and title of the writing officer;
- (4) the date and time of the alleged offense;
- (5) the date and time the report is written;
- (6) the nature of the alleged offense;

(7) the class, title, and number of the rule or regulation violated, including citation to any underlying statute, regulation, internal management policy and procedure, or published order allegedly violated;

(8) the specific regulation that is the basis of an attempt, conspiracy, accessory, solicitation, or liability for the offenses of another under K.A.R. 44-12-1101;

(9) the names of known staff witnesses;

(10) a brief description of the circumstances and facts of the violation if, in cases in which the violation is based upon information supplied by a confidential witness or informant, the identity of the witness or informant is not disclosed, nor is any reference or factual detail likely to reveal the identity of the witness or informant;

(11) any unusual inmate behavior;

(12) the disposition of any physical evidence;
(13) any immediate action taken, including the use of force; and
(14) the factual basis for and the amount of any restitution sought for any injury, damage, or other loss caused by or resulting from the violation charged.

(e) An inmate shall not be charged unless the regulation or law has been made in writing and published.

(f) The officer may orally warn or reprimand the inmate instead of writing a report or otherwise documenting the incident.

(Authorized by and implementing K.S.A. 2006 Supp. 75-5210, K.S.A. 75-5251; effective May 1, 1980; amended, T-83-23, Aug. 11, 1982; amended, T-84-6, May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended April 20, 1992; amended July 11, 1994; amended Feb. 15, 2002; amended July 13, 2007.)

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