



Kansas Register

Ron Thornburgh, Secretary of State

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State of Kansas

Secretary of State

Executive Appointments

Executive appointments made by the Governor, and in some cases by other state officials, are filed with the Secretary of State's office. A complete listing of Kansas state agencies, boards and commissions, and county officials are included in the Kansas Directory, which is available on the Secretary of State's Web site at www.kssos.org. The following appointments were recently filed with the Secretary of State:

Greenwood County Sheriff

Mark Kenneson, 212 Center, Carbondale, 66414. Succeeds Matthew Samuels, deceased.

State Board of Agriculture

Jay R. Garetson, 2276 50th Road, Copeland, 67837. Term expires January 10, 2009. Succeeds John M. Petz.

Kenneth R. Palmgren, 2835 Road 64, Edson, 67733. Term expires January 10, 2009. Succeeds Larry Kepley.

Ann M. Peuser, 1313 7th St., Baldwin City, 66006. Term expires January 10, 2009. Reappointed.

Roland L. Rhodes, 27585 W. 183rd, Gardner, 66030. Term expires January 10, 2009. Reappointed.

Kansas Business Health Policy Committee

Jeff Levin, 3704 Everett, Manhattan, 66503. Serves at the pleasure of the Governor. Succeeds John N. Sears.

Kansas Commission on Peace Officers' Standards and Training

Steven R. Stowers, 2809 Acres Road, Hutchinson, 67502. Term expires July 1, 2006. Succeeds Joseph T. Gimar, resigned.

Kansas Propane Education Research Council

James Brewer Jr., 310 N. Olive, Leon, 67074. Term expires August 30, 2007. Reappointed.

Don Sutton, 912 S.W. Haverford Court, Lee's Summit, MO 64081. Term expires August 30, 2007. Reappointed.

State Board of Tax Appeals

Rebecca W. Crotty, 1905 Grandview East, Garden City, 67846. Term expires January 15, 2009. Reappointed.

Advisory Committee on Trauma

Elaine K. Becker, 541 24th Road, Centralia, 66415. Term expires June 30, 2005. Succeeds Mark F. Bradford, resigned.

Kansas Water Authority

Lisa J. French, 8016 W. Longview Road, Partridge, 67566. Term expires January 15, 2009. Succeeds Dr. Roger L. Boyd.

Ron Thornburgh
Secretary of State

Doc. No. 031729

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State of Kansas

Kansas Water Authority**Notice of Meetings**

The Kansas Water Authority will meet Thursday and Friday, March 31-April 1, at the Broadview Radisson Hotel, 400 W. Douglas, Wichita. Authority members will convene as the Committee of the Whole at 1 p.m. March 31, then meet as the full Authority at 9 a.m. April 1. For more information, see the Kansas Water Office's Web site at www.kwo.org or call (785) 296-3185.

Steve Irsik
Chairman

Doc. No. 031731

State of Kansas

Board of Emergency Medical Services**Notice of Meetings**

The Board of Emergency Medical Services will meet at 9 a.m. Friday, April 1, in Room 106 of the Landon State Office Building, 900 S.W. Jackson, Topeka. Committee meetings will begin at 10 a.m. Thursday, March 31, at the same location. Agenda items include updates on the office, committee reports, budgets for FY 2005/2006, 2005 legislative session, and the Advisory Committee on Trauma.

All meetings of the board are open to the public. For more information, contact the administrator at Room 1031, Landon State Office Building, 900 S.W. Jackson, Topeka, 66612-1228, (785) 296-6237.

David Lake
Administrator

Doc. No. 031735

State of Kansas

Social and Rehabilitation Services**Request for Proposals**

The Department of Social and Rehabilitation Services announces the release of a request for proposals by the Southeast Region Children and Family Services to provide services to children and families for the prevention of out-of-home placement in Labette County. New and innovative methods and services are requested to either prevent initial placement out-of-home or to decrease the number of children currently in out-of-home placement.

Vendors interested in receiving a request for proposals should contact Susan Mitchell at the Chanute Service Center, 1500 W. 7th, Chanute, 66720, (620) 431-5002, fax (620) 431-5076, e-mail: [SXMM@srskansas.org](mailto: SXMM@srskansas.org). Complete proposals must be received not later than 5 p.m. April 15.

Gary J. Daniels
Acting Secretary of Social and
Rehabilitation Services

Doc. No. 031711

State of Kansas

Social and Rehabilitation Services**Request for Proposals**

The Department of Social and Rehabilitation Services announces the release of a request for proposals by the Southeast Region Children and Family Services to provide services to children and families for the prevention of out-of-home placement in the 31st Judicial District consisting of Neosho, Allen, Woodson and Wilson counties. New and innovative methods and services are requested to either prevent initial placement out-of-home or to decrease the number of children currently in out-of-home placement.

Vendors interested in receiving a request for proposals should contact Susan Mitchell at the Chanute Service Center, 1500 W. 7th, Chanute, 66720, (620) 431-5002, fax (620) 431-5076, e-mail: [SXMM@srskansas.org](mailto: SXMM@srskansas.org). Complete proposals must be received not later than 5 p.m. April 15.

Gary J. Daniels
Acting Secretary of Social and
Rehabilitation Services

Doc. No. 031712

State of Kansas

Criminal Justice Coordinating Council**Notice of Available Grant Funding**

Grant funds are available from the Kansas Criminal Justice Coordinating Council (KCJCC) for the Federal Edward Byrne Memorial Justice Assistance Grant (JAG) for fiscal year 2006. The KCJCC and the federal JAG program guidelines establish eligibility criteria that must be met by all organizations that receive JAG funds. These grant funds are to be awarded to units of state and local government and Native American tribes and not-for-profit and faith-based organizations. Applicants that apply for JAG funds directly from the Federal Bureau of Justice Assistance also are eligible to apply for the state JAG program.

The KCJCC developed the following priorities for the 2005-2008 Kansas JAG Strategy. The primary intended use of JAG is to support: (1) law enforcement programs; (2) prosecution and court programs; (3) prevention and education programs; (4) corrections and community corrections programs; (5) drug treatment programs; and (6) planning, evaluation and technology improvement programs.

Grant applications may be obtained by contacting the Office of the Governor's Grants Program at (785) 291-3205. Applications also may be accessed via the Internet at www.ksgovernor.org. This is to obtain a printed copy only. Applications cannot be submitted online.

All grant applications must be received by 5 p.m. Monday, April 25.

Juliene Maska
Governor's Grants Program Administrator

Doc. No. 031726

State of Kansas

Kansas, Inc.

Notice of Rescheduled Meeting

The Kansas, Inc. Board of Directors will meet at noon Friday, March 18, in the Kansas, Inc. office, Suite 100, 632 S.W. Van Buren, Topeka. The meeting is open to the public. For more information, call (785) 296-1460.

Jerry Lonergan
President

Doc. No. 031736

State of Kansas

Legislature

Legislative Bills and Resolutions Introduced

The following numbers and titles of bills and resolutions were introduced March 3-9 by the 2005 Kansas Legislature. Copies of bills and resolutions are available free of charge from the Legislative Document Room, 145-N, State Capitol, 300 S.W. 10th Ave., Topeka, 66612, (785) 296-4096. Full texts of bills, bill tracking and other information may be accessed at www.kslegislature.org.

House Bills

HB 2508, An act concerning the Kansas pet animal act; amending K.S.A. 47-1701 and repealing the existing section, by Committee on Federal and State Affairs.

HB 2509, An act concerning campaign finance; relating to electioneering communications; relating to independent expenditures; relating to certain reporting requirements; relating to corrupt political advertising; amending K.S.A. 25-4148 and 25-4156 and repealing the existing sections, by Committee on Federal and State Affairs.

HB 2510, An act regulating certain amusement machines; providing duties and responsibilities of the director of alcoholic beverage control; relating to licensure; fees; penalties for criminal acts, by Committee on Taxation.

HB 2511, An act concerning taxation; eliminating corporation income tax; repealing certain income tax credits and sales tax exemptions; amending K.S.A. 79-3220, 79-32,102, 79-32,103 and 79-32,107 and K.S.A. 2004 Supp. 79-32,101, 79-32,105, 79-32,110, 79-32,111 and 79-3606 and repealing the existing sections; also repealing K.S.A. 74-50,132, 79-32,138, 79-32,142, 79-32,155, 79-32,156, 79-32,157, 79-32,158, 79-32,159, 79-32,159b, 79-32,160, 79-32,160b and 79-32,160c and K.S.A. 2004 Supp. 79-32,153, 79-32,154, 79-32,160a, 79-32,182b and 79-32,206, by Committee on Taxation.

HB 2512, An act concerning the health care stabilization fund; relating to certain expenditures; amending K.S.A. 2004 Supp. 40-3403 and repealing the existing section, by Committee on Appropriations.

HB 2513, An act relating to commercial driver's licenses; concerning hazardous materials endorsement; amending K.S.A. 2004 Supp. 8-2,151 and repealing the existing section, by Committee on Appropriations.

HB 2514, An act concerning the transportation development district act; relating to infrastructure development; amending K.S.A. 2004 Supp. 12-17,140, 12-17,141, 12-17,142, 12-17,144, 12-17,145, 12-17,146, 12-17,147, 12-17,150 and 12-17,151 and repealing the existing sections, by Committee on Taxation.

HB 2515, An act concerning schools and school districts; relating to school finance; funding thereof; income and sales taxation, rate increases; income tax credits; school ad valorem tax levy and exemption therefrom; resident trust; limitations on refunds; amending K.S.A. 40-2246, 72-6410, 72-6433, 79-32,109, 79-32,176 and 79-32,190 and K.S.A. 2004 Supp. 72-6431, 79-201x, 79-3230, 79-32,110, 79-32,197, 79-32,206, 79-3603, 79-3609, 79-3620, 79-3703 and 79-3710 and repealing the existing sections; also repealing K.S.A. 2004 Supp. 79-32,121, by Committee on Taxation.

HB 2516, An act concerning income taxation; relating to credits for investment in qualified business facility; assignment thereof; amending

K.S.A. 2004 Supp. 79-32,160a and repealing the existing section, by Committee on Taxation.

HB 2517, An act concerning the conservation commission; relating to conservation easements; establishing the farm and ranch land protection program; amending K.S.A. 2-1904 and repealing the existing section, by Committee on Appropriations.

HB 2518, An act concerning the Kansas national guard; relating to periods of state active duty; cost of certain health insurance; amending K.S.A. 2004 Supp. 79-32,213 and repealing the existing section, by Committee on Appropriations.

HB 2519, An act concerning the legislative post audit act; amending K.S.A. 2004 Supp. 46-1114 and repealing the existing section, by Committee on Appropriations.

House Concurrent Resolutions

HCR 5016, A concurrent resolution supporting a Taiwan-United States free trade agreement.

House Resolutions

HR 6021, A resolution urging the Secretary of the Kansas Department of Health and Environment to review the data regarding cervical cancer and human papillomavirus, to evaluate current methods of public education and access to regular cervical cancer screening and to consider options for increasing screening accuracy.

Senate Bills

SB 287, An act concerning certain drug-related offenses relating to motor vehicles; amending K.S.A. 8-1005 and 12-4305 and K.S.A. 2004 Supp. 8-1567 and repealing the existing sections, by Committee on Federal and State Affairs.

SB 288, An act concerning animals; relating to the pet animal act; rules and regulations; fees; limitation on certain expenditures; amending K.S.A. 47-1712 and K.S.A. 2004 Supp. 47-1721 and repealing the existing sections, by Committee on Ways and Means.

SB 289, An act concerning taxation on cigarettes and tobacco products; relating to rates; amending K.S.A. 79-3371 and 79-3378 and K.S.A. 2004 Supp. 79-3310, 79-3311, 79-3312 and 79-3387 and repealing the existing sections, by Committee on Ways and Means.

SB 290, An act concerning promulgation of rules and regulations by the secretary of social and rehabilitation services; relating to the prior authorization program; amending K.S.A. 2004 Supp. 39-7,120 and repealing the existing section, by Committee on Ways and Means.

SB 291, An act concerning retirement and pensions; relating to the Kansas public employees retirement system and systems thereunder; death and disability benefits; employer contributions; amending K.S.A. 2004 Supp. 74-4927 and repealing the existing section, by Committee on Ways and Means.

SB 292, An act concerning school districts; relating to school finance; providing revenue therefor; relating to income taxation; relating to the imposition of an earnings tax; relating to sales tax; relating to property tax; amending K.S.A. 12-140, 72-979, 72-6410, 72-6413 and 72-6414 and K.S.A. 2004 Supp. 19-101a, 72-978, 72-6431, 79-201x, 79-32,110, 79-3603, 79-3620, 79-3703 and 79-3710 and repealing the existing sections; also repealing K.S.A. 2004 Supp. 19-101k, by Committee on Ways and Means.

SB 293, An act authorizing the state historical society to convey certain land at the Shawnee Indian mission historic site to the city of Fairway, Kansas; disposition of proceeds, by Committee on Ways and Means.

Senate Resolutions

SR 1825, A resolution congratulating and commending Mr. and Mrs. George Epps, Sr. upon their 65th wedding anniversary.

SR 1826, A resolution honoring the American GI Forum.

SR 1827, A resolution honoring Legislative Reference Director Rita Haley upon her retirement from employment with the State of Kansas and her relocation to a new home and new ventures in our neighboring state of Colorado.

SR 1828, A resolution urging groups and organizations to include in their printed calendars on the date February 22, these words: "34 star flag first flown."

Doc. No. 031714

State of Kansas
Wildlife and Parks Commission

Notice of Hearing on Proposed
Administrative Regulations

A public hearing will be conducted by the Wildlife and Parks Commission at 7 p.m. Thursday, April 21, at the Holiday Inn Express, 4020 Parkview Drive, Pittsburg, to consider the approval and adoption of proposed administrative regulations of the Kansas Department of Wildlife and Parks. This notice is in addition to the previously published notice.

A workshop meeting on business of the Wildlife and Parks Commission will begin at 1:30 p.m. April 21 at the location listed above. The meeting will recess at 5:30 p.m., then resume at 7 p.m. at the same location for the regulatory hearing. There will be public comment periods at the beginning of the afternoon and evening meetings for any issues not on the agenda, and additional comment periods will be available during the meeting on agenda items. Old and new business also may be discussed at this time. If necessary to complete the hearing or other business matters, the commission will reconvene at 9 a.m. April 22 at the same location.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Sheila Kemmis, commission secretary, at (620) 672-5911. Persons with a hearing impairment may call the Kansas Commission for the Deaf and Hard of Hearing at 1-800-432-0698 to request special accommodations.

This 30-day notice period prior to the hearing constitutes a public comment period for the purpose of receiving written public comments on the proposed administrative regulations.

All interested parties may submit written comments prior to the hearing to the chairman of the commission, Kansas Department of Wildlife and Parks, 1020 S. Kansas Ave., Suite 200, Topeka, 66612, or to sheilak@wp.state.ks.us if submitted electronically. All interested parties will be given a reasonable opportunity at the hearing to express their views orally in regard to the adoption of the proposed regulations. During the hearing, all written and oral comments submitted by interested parties will be considered by the commission as a basis for approving, amending and approving, or rejecting the proposed regulations.

The regulations that will be heard during the regulatory hearing portion of the meeting are as follows:

K.A.R. 115-25-9. This exempt regulation sets the open season, bag limits and permits for deer. Three changes are proposed for the 2005-2006 season. First, the extended firearms season is proposed for eight days. Second, individuals must have an antlered permit prior to purchasing an antlerless whitetailed deer permit or game tag. Third, deer taken in Unit 16 are added to the list of units that must be registered at a check station.

Economic Impact Summary: The proposed new regulation is not anticipated to have any appreciable economic impact on the department, other agencies or the public.

Copies of the complete text of the regulations and their respective economic impact statements may be obtained by writing the chairman of the commission at the address above, electronically on the department's Web site at www.kdwp.state.ks.us, or by calling (785) 296-2281.

John R. Dykes
Chairman

Doc. No. 031717

State of Kansas
Department of Transportation

Notice of Public Auction

The Kansas Secretary of Transportation will offer for sale at public auction **April 15** the following structures located in Douglas and Franklin counties, Kansas, to be moved:

9 a.m.—40x30 shop building/garage located at 178 E. 1250th Road, Baldwin City, Douglas County, Kansas (*Dg 5*)

10 a.m.—2-car garage/shop located at 4197 U.S. 59 Hwy., Ottawa, Franklin County, Kansas (*Fr 3*)

11 a.m.—Garage located at 4481 U.S. 59 Hwy., Ottawa, Franklin County, Kansas (*Fr 1*)

Inspection of Properties

The structures will be opened to the public for viewing and inspection April 8 during the following hours:

178 E. 1250th Road, Baldwin City ... 9 to 10 a.m.

4197 U.S. 59 Hwy., Ottawa10 to 11 a.m.

4481 U.S. 59 Hwy., Ottawa11 a.m. to noon

Inspections also will be 30 minutes prior to the auction.

Performance Bonds

The successful bidder for each property will be required to post a performance bond in the amount of \$1,500 by cashier's check the day of the sale.

Terms of Sale

A cashier's check for the purchase price must be paid on the day of the sale, payable to the Kansas Department of Transportation. The successful bidder will receive a Bill of Sale upon payment. The successful bidder will be required to remove the structure from the right of way on or before June 15, 2005.

For additional terms or information, contact the Bureau of Right of Way at 1-877-461-6817. The seller reserves the right to reject any and all bids and is not responsible for accidents. The Kansas Department of Transportation ensures the acceptance of any bid pursuant to this notice will be without discrimination on the grounds of sex, race, color, religion, physical handicap or national origin.

Deb Miller
Secretary of Transportation

Doc. No. 031730

State of Kansas

Office of the Attorney General
Kansas Bureau of InvestigationNotice of Hearing on Proposed
Administrative Regulations

A public hearing will be conducted at 9 a.m. Thursday, May 19, in the auditorium at the Kansas Bureau of Investigation, 1620 S.W. Tyler, Topeka, to consider adoption of an amended rule and regulation of the Kansas Bureau of Investigation in relation to the implementation of the requirement for the KBI to approve field tests to be used by law enforcement officers to detect controlled substances. Only field tests approved by the KBI director are admissible at preliminary examination pursuant to K.S.A. 22-2902 and amendments thereto.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rule and regulation. All interested parties may submit written comments prior to the hearing to Director Larry Welch, c/o Jane Nohr, Assistant Attorney General, Kansas Bureau of Investigation, 1620 S.W. Tyler, Topeka, 66612.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Linda Durand at (785) 296-8211 or the Kansas Relay Center at 1-800-766-3777. Handicapped parking is located at the south end of the KBI building, off of Tyler Street.

All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulation during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request each participant limit any oral presentation to 10 minutes.

The regulation is proposed for adoption on a permanent basis. A summary of the proposed regulation and its economic impact follows:

K.A.R. 10-22-1. This rule and regulation is being modified to clarify the wording in the rule and regulation published in the Kansas Register February 24, 2005, regarding the requirement for the director of the Kansas Bureau of Investigation to approve field tests for controlled substances. With this section there is no economic impact.

Copies of the proposed regulation and the associated economic impact statement may be obtained by contacting the KBI Legal Division at the address and phone number given above.

Jane E. Nohr
Assistant Attorney General
Kansas Bureau of Investigation

Doc. No. 031722

State of Kansas

Department on Aging

Notice of Hearing on Proposed
Administrative Regulations

A public hearing will be conducted at 10 a.m. Thursday, May 26, in Room 331W of the New England Building, 503 S. Kansas Ave., Topeka, to consider the adoption of proposed permanent regulations of the Department on Aging.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Secretary of Aging, 503 S. Kansas Ave., Topeka, 66603. All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulations during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request each participant limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation should be made at least five days in advance of the hearing by contacting Tina Lewis at (785) 296-1260 or TTY (785) 291-3167. Handicapped parking is located in front of the New England Building.

These regulations are proposed for adoption on a permanent basis. A summary of the proposed regulations and their economic impact follows:

K.A.R. 26-39-438. Informal dispute resolution request. This regulation allows any adult care home administrator to request from the department an informal opportunity to dispute cited deficiencies.

K.A.R. 26-39-439. Informal dispute resolution panel. This regulation establishes informal dispute resolution panels, appointed by the Secretary of Aging, as authorized by L. 2004, chapter 162, section 1, and amendments thereto. The regulation also allows adult care home administrators to request a face-to-face meeting with the panel at the department's administrative offices in Topeka. The regulation also provides that panel members shall adhere to departmental confidentiality requirements related to the information presented in the informal dispute resolution process.

K.A.R. 26-39-440. Informal dispute resolution process. This regulation provides that the department will attempt to convey an informal dispute resolution panel within 30 days of the receipt of each request for informal dispute resolution. The regulation also establishes the procedure to be followed by the panel during the informal dispute resolution process.

K.A.R. 26-39-441. Notification of final decision. This regulation provides that the panel's recommendation shall be accepted, rejected or modified by the Secretary of Aging. The regulation also provides that the administrators shall be notified in writing of the final decision.

Proposed K.A.R. 26-39-438, K.A.R. 26-39-439, K.A.R. 26-39-440 and K.A.R. 26-39-441 direct the Department on

Aging staff to assist the independent review panel in convening the informal dispute resolution process and serving as staff resource to the panels. Therefore, the costs to the department will include staff time spent on setting up panels, notifying panel members of scheduled dates and times, and serving as resource to the panels by attending the informal dispute resolution meetings. Other costs include postage, printing and communications. The costs for adult care home administrators include copying of materials for review by the panels and transportation to the department's administrative offices in Topeka.

Copies of the regulations to be considered at the public hearing and the associated economic impact statement may be obtained from the department by calling Mark Boranyak at (785) 296-0383.

Pamela Johnson-Betts
Secretary of Aging

Doc. No. 031718

State of Kansas State Employees Health Care Commission

Notice of Hearing on Proposed Administrative Regulations

A public hearing will be conducted at 10 a.m. Tuesday, May 17, in Room 108, Landon State Office Building, 900 S.W. Jackson, Topeka, to consider the adoption of a proposed regulation of the Kansas State Employees Health Care Commission on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rule and regulation. All interested parties may submit written comments prior to the hearing to Linda DeCoursey, Health Benefits Administrator, Department of Administration, Room 920N, Landon State Office Building, 900 S.W. Jackson, Topeka, 66612-1251, or at Linda.DeCoursey@da.state.ks.us. All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulation during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Faith Loretto at (785) 296-6006, TTY 1-800-296-4798, or faith.loretto@da.state.ks.us. The north entrance to the Landon State Office Building is accessible. Handicapped parking is located across the street from the north entrance to the building.

A summary of the proposed regulation and its economic impact follows:

K.A.R. 108-1-1 provides the eligibility requirements for participants in the state of Kansas health care benefits program established by the Kansas State Employees Health Care Commission, including the following categories of participants: (1) active participants; (2) direct bill participants; (3) COBRA participants; and (4) eligible de-

pendent participants. K.A.R. 108-1-1(d) states the classes of direct bill participants, which include retired state officers or employees who are receiving retirement benefits administered by the Kansas public employees retirement system (KPERs) or who are receiving retirement benefits under K.S.A. 74-4925 (the annuity program for the Regents institutions). The proposed amendment to K.A.R. 108-1-1 supplements this list of eligible direct bill participants by adding a reference to a separate retirement plan option that covers a small number of officers and employees.

K.S.A. 74-4911f and K.S.A. 74-4911h allow certain officers and employees of the state to opt out of KPERs participation. In lieu of participation, they can contribute to the deferred compensation plan provided under K.S.A. 75-5524 and receive an employer contribution to the plan in the amount of 8 percent of their salary. Because these individuals have opted out of KPERs membership, the existing provision in K.A.R. 108-1-1 relating to the eligibility of retirees does not cover them. The proposed amendments to K.A.R. 108-1-1 provide eligibility for former state officers and employees who opted out of KPERs and participated in the special deferred compensation option for a minimum of 32 calendar quarters of service.

Direct bill participants pay 100 percent of the premium requirements for the state of Kansas health care benefits program. Because the state does not make an employer contribution, there is no economic impact on the Department of Administration or other state agencies beyond the basic administrative and membership support functions provided by the Department of Administration to all direct bill participants. The number of employees who might eventually meet the proposed eligibility criteria is extremely limited. Therefore, the administrative support associated with these participants would be inconsequential, and it is unlikely that these members could create an adverse selection impact on the overall program. There is a favorable economic impact for those former employees who would retain access to the state program upon leaving state service in that it is reasonable to assume they would pay less for continued enrollment in the state program or would maintain a higher level of benefits than would be available to them through an individual insurance plan. There is no economic impact on the general public.

Copies of the proposed regulation and the associated economic impact statement may be obtained from the Health Benefits Administrator at the address above or by calling (785) 296-6280, or may be viewed at <http://da.state.ks.us/hcc/default.htm>.

Linda DeCoursey
Health Benefits Administrator

Doc. No. 031724

State of Kansas

Board of Healing Arts

Notice of Hearing on Proposed
Administrative Regulations

A public hearing will be conducted at 10 a.m. Thursday, May 26, at the office of the Kansas State Board of Healing Arts, 235 S. Topeka Blvd., Topeka, to consider six new proposed rules and regulations, K.A.R. 100-73-1 through 100-73-6. All of these regulations deal with radiologic technologists.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the above referenced rules and regulations. All interested parties may submit comments prior to the hearing to the Board of Healing Arts at the address above. Further, all interested parties will be given a reasonable opportunity to present their views, orally or in writing, concerning the adoption of these regulations during the hearing. In order to give all persons an opportunity to present their views, it may be necessary to request each participant to limit any oral presentations to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the regulations being considered and the economic impact statement in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Tammy Farr at (785) 296-8558. Handicapped parking is located at the west end of the Hutton Building, and the northwest entrance to the building is accessible.

The rules and regulations to be considered at the hearing and the respective economic impact are as follows:

K.A.R. 100-73-1. Fees. This regulation establishes the fees to be collected by the board for initial licensure of radiologic technologists, and fees for a temporary license, paper renewal and online renewal, paper late renewal and online late renewal, reinstatement, certified copy of license, and revoked reinstatement.

K.A.R. 100-73-2. Application. This regulation specifies the information that will be contained on the application for licensure as a radiologic technologist.

K.A.R. 100-73-6. Unprofessional conduct: defined. This regulation defines specific grounds that would constitute unprofessional conduct by a radiologic technologist.

K.A.R. 100-73-3. Criteria for approval of programs in nuclear medicine technology, radiation therapy, and radiography. This regulation establishes the criteria necessary for each school to be recognized by the board as providing an approved educational program in radiation therapy or radiography and nuclear medicine technology.

K.A.R. 100-73-4. Examinations. This regulation specifies the content areas of examinations that a radiologic technologist shall fulfill in order for the board to approve an application for licensure.

K.A.R. 100-73-5. Expiration of license. This regulation establishes the expiration date of the license of each radiologic technologist as September 30, 2006, and on September 30 of each year thereafter.

These regulations are not mandated by any federal law and there is no foreseen cost to either the board or the public to implement these new regulations.

Copies of the regulations to be considered at the public hearing and the associated economic impact statement may be obtained from the Kansas State Board of Healing Arts, 235 S. Topeka Blvd., Topeka, 66603, by visiting the board's Web site at www.ksbha.org/pubinfo.html or by calling (785) 296-3680.

Lawrence T. Buening, Jr.
Executive Director

Doc. No. 031719

State of Kansas

Board of Healing Arts

Notice of Hearing on Proposed
Administrative Regulations

A public hearing will be conducted at 10 a.m. Wednesday, May 18, at the office of the Kansas State Board of Healing Arts, 235 S. Topeka Blvd., Topeka, to consider four new proposed rules and regulations, K.A.R. 100-15-4, 100-15-5, 100-15-6 and 100-15-7. In addition, consideration will be given to revoking K.A.R. 100-15-2. All of these regulations deal with license renewal and continuing education for licensees practicing the healing arts.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the above referenced rules and regulations. All interested parties may submit comments prior to the hearing to the Board of Healing Arts at the address above. Further, all interested parties will be given a reasonable opportunity to present their views, orally or in writing, concerning the adoption of these regulations during the hearing. In order to give all persons an opportunity to present their views, it may be necessary to request each participant to limit any oral presentations to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the regulations being considered and the economic impact statement in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting Tammy Farr at (785) 296-8558. Handicapped parking is located at the west end of the Hutton Building, and the northwest entrance to the building is accessible.

The rules and regulations to be considered at the hearing and the respective economic impact are as follows:

K.A.R. 100-15-2. Continuing education. This regulation deals with continuing education that has been in effect since 1977 and was last amended in 1979. This regulation is being considered for revocation as it has become outdated.

K.A.R. 100-15-4. Continuing education standards; definitions. This regulation defines content requirements for each continuing education activity.

K.A.R. 100-15-5. Continuing education requirement. This regulation indicates the minimum number of hours required for each person who applies for renewal of a license to practice a branch of the healing arts. Addition-

ally, this regulation has a provision for a licensee who may require an extension of time for submitting proof of continuing education.

K.A.R. 100-15-6. Documentation of continuing education. This regulation specifies what type of proof is required to document completion of continuing education.

K.A.R. 100-15-7. Category I continuing education using distance-learning media. This regulation explains the qualifiers for continuing education credit when the continuing education activity is offered using the Internet or other distance-learning media.

These regulations are not mandated by any federal law and there is no foreseen cost to either the board or the public to implement these amended regulations.

Copies of the regulations to be considered at the public hearing and the associated economic impact statement may be obtained from the Kansas State Board of Healing Arts, 235 S. Topeka Blvd., Topeka, 66603, on the board's Web site at www.ksbha.org/pubinfo.html or by calling (785) 296-3680.

Lawrence T. Buening, Jr.
Executive Director

Doc. No. 031713

State of Kansas

Secretary of State

Notice of Corporations Forfeited

In accordance with K.S.A. 17-7510, the articles of incorporation of the following corporations organized under the laws of Kansas and the authority of the following foreign corporations authorized to do business in Kansas were forfeited during the month of February 2005 for failure to timely file an annual report and pay the annual franchise tax as required by the Kansas general corporation code:

Domestic Corporations

Allied Floors, Inc., Topeka, KS.
America's Drive-In Corp., Wichita, KS.
Around the House Service Center, Inc., Overland Park, KS.
Blackwood Homes, Inc., Louisburg, KS.
Calhoun's Dent Repair Inc., Ozark, MO.
Centralia Fertilizer, Inc., Centralia, KS.
Childtime, Inc., Kansas City, KS.
Continental Advanced Services, Inc., Merriam, KS.
Country Pride Mulch, Inc., Kansas City, MO.
CSR Management Services, Inc., Louisburg, KS.
D.W. Leasing Ltd., Olathe, KS.
Dentfixers Inc., Hutchinson, KS.
DKS Dozing, Inc., Dighton, KS.
E.T. Leasing Sales & Service, Inc., Haysville, KS.
E.T.E.C.O., Inc., Wichita, KS.
Extreme Athletics Foundation, Wichita, KS.
Fraternal Order of Eagles Aerie #918 Inc., West Mineral, KS.
Glassfrass Designs, LLC, Mission, KS.
Hayes Tooling & Plastics, Inc., Olathe, KS.
Hughes Development Company, Inc., Kansas City, KS.
Hunam Restaurant of Manhattan, Inc., Manhattan, KS.
Industrial Specialties, Inc., Topeka, KS.
Interior Expressions, Inc., Hutchinson, KS.
Kansas Cagerz, Inc., Salina, KS.
Ki-Oat, Inc., Neodesha, KS.

Larry Lochner Quality Homes, Inc., Olathe, KS.
Lay LLC, Emporia, KS.
Liberty Escrow Services, Inc., Overland Park, KS.
M & M Sales Company of Byers, Kansas, Byers, KS.
Mechanical Contractors Association of Kansas, Inc., Topeka, KS.
Mikesell Motors, Inc., Belleville, KS.
Montrose Grain Company, Inc., Portis, KS.
Nine Months Adoptions, Inc., Overland Park, KS.
Olathe Arts Alliance, Inc., Olathe, KS.
Partridge Garage, Inc., Partridge, KS.
Pavlich, Inc., Kansas City, KS.
Peirce Knapp Farms, Inc., Hutchinson, KS.
Price & Co Inc., Coffeyville, KS.
Pro Tire & Auto, Inc., Wichita, KS.
Project Awareness for Major Mental Illness, Inc., Wichita, KS.
Raben, D.D.S., P.A., Wichita, KS.
Randy Burns Trucking & Harvesting, Inc., Cimarron, KS.
Rim Rock Ranch, LLC, Tulsa, OK.
Secure Contracting Inc., Leavenworth, KS.
Strawns Farms, Inc., Cimarron, KS.
Sunflower Title & Trust Co., Inc., Junction City, KS.
Surface Options, Inc., Wichita, KS.
T. J. Terminals Corporation, Topeka, KS.
The Barry and Cynthia Schwan Foundation, Wichita, KS.
The Pence Community Church Inc., Scott City, KS.
The Short Grass Prairie Trail, Ashland, KS.
The United States Conference of the Mennonite Brethren Churches, Hillsboro, KS.
Twenty-First Century Dairies Cooperative Ladder Creek, Manhattan, KS.
U-Wash Puppy Inc., Shawnee, KS.
Wichita Jaycees, Inc., Wichita, KS.
Wilbur Planned Development District Owners Association, Salina, KS.
21st Street Church of God of Prophecy, Inc., Shawnee, KS.

Foreign Corporations

American Academy of Addiction Psychiatry, Prairie Village, KS.
DMS Investments, Inc., Tulsa, OK.
Dynamex Operations East, Inc., Dallas, TX.
Enterprise Vehicle Exchange, Inc., Hanover, MA.
Escher Corporation, Oklahoma City, OK.
Event Central, Inc., Kansas City, MO.
Frederick's of Hollywood Stores, Inc., Hollywood, CA.
Fuel Managers, Incorporated, Tulsa, OK.
Hickory Farms, Inc., Maumee, OH.
Home Depot U.S.A., Inc., Atlanta, GA.
Joe Harding, Incorporated, Joplin, MO.
John H. Booth, Inc., Tulsa, OK.
Mairc Mortgage Corporation, South Jordan, UT.
Pacific Professional Insurance, Inc., Marina Del Rey, CA.
Service Station Computer Systems, Inc., Salinas, CA.
Sykes Enterprises Incorporated, Tampa, FL.
Sykes Realty, Inc., Tampa, FL.
TESINC, Inc., Phoenix, AZ.
The Temple, Congregation B'nai Jehudah, Leawood, KS.
Toys "R" Us-Delaware, Inc., Wayne, NJ.

Ron Thornburgh
Secretary of State

Doc. No. 031721

State of Kansas

Department of Health and Environment

Notice Concerning Kansas Water Pollution Control Permits

In accordance with Kansas Administrative Regulations 28-16-57 through 63, 28-18-1 through 15, 28-18a-1 through 32, 28-16-150 through 154, 28-46-7, and the authority vested with the state by the administrator of the U.S. Environmental Protection Agency, draft permits have been prepared and/or permit applications have been received for discharges to the waters of the United States and the state of Kansas for the class of discharges described below.

The determinations for permit content are based on staff review, applying the appropriate standards, regulations and effluent limitations of the state of Kansas and the EPA, and when issued will result in a State Water Pollution Control Permit and National Pollutant Discharge Elimination System Authorization subject to certain conditions.

All Kansas Department of Health and Environment district office addresses and telephone numbers are listed below.

Public Notice No. KS-AG-05-038/044

Pending Permits for Confined Feeding Facilities

Table with 3 columns: Name and Address of Applicant, Legal Description, Receiving Water. Row 1: Triple A Ranch - Ungles Yard, Josephine Ungles, Route 1, Box 87, Satanta, KS 67870. Legal: SW/4 of Section 35, T28S, R35W, Grant County. Receiving: Cimarron River Basin.

Kansas Permit No. A-CIGT-B003

This is a new permit for the expansion and modification of an existing facility certified for an animal capacity of 950 head (950 animal units) of cattle weighing more than 700 pounds. The proposed expansion would increase the animal capacity to a maximum of 999 head (999 animal units) of cattle weighing more than 700 pounds. Proposed modifications consist of abandonment of two cattle pens and enlargement of the infiltration bench area that receives runoff from the pen areas.

Table with 3 columns: Name and Address of Applicant, Legal Description, Receiving Water. Row 1: Cow Camp Ranch, Nolan and Kent Brunner, 3553 Upland Road, Lost Springs, KS 66859. Legal: NE/4 of Section 09, T17S, R04E, Marion County. Receiving: Smoky Hill River Basin.

Kansas Permit No. A-SHMN-B003

This is a new permit for a previously unregistered facility for construction of waste controls at an existing facility for a maximum of 800 head of cattle weighing more than 700 pounds (800 animal units). The proposed changes to the operation are to provide a waste control system in accordance with approved plans.

Table with 3 columns: Name and Address of Applicant, Legal Description, Receiving Water. Row 1: H.W. Bontrager Family Farm, Harry W. Bontrager, 10709 S. Yoder Road, Haven, KS 67543. Legal: SE/4 of Section 28, T24S, R05W, Reno County. Receiving: Lower Arkansas River Basin.

Kansas Permit No. A-ARRN-M038

This is a renewal permit for an existing facility for 50 head (70 animal units) of mature dairy cattle.

Table with 3 columns: Name and Address of Applicant, Legal Description, Receiving Water. Row 1: Bogner Dairy, Marcella A. Bogner Trust, 19019 S. Haven Road, Haven, KS 67543. Legal: NE/4 of Section 32, T25S, R04W, Reno County. Receiving: Lower Arkansas River Basin.

Kansas Permit No. A-ARRN-M031

This is a renewal permit for an existing facility with a modification to include 4 horses not listed on the previous permit. This permit is for a maximum of 150 head (210 animal units) of dairy cattle, 45 head of heifers (45 animal units), 45 head of calves (22.5 animal units) and 4 horses (8 animal units), for a total of 285.5 animal units.

Table with 3 columns: Name and Address of Applicant, Legal Description, Receiving Water. Row 1: Brooks Farm, Bill Brooks, Route 2, Box 29, Norton, KS 67654. Legal: SE/4 of Section 29, T03S, R25W, Norton County. Receiving: Smoky Hill River Basin.

Kansas Permit No. A-URNT-B002

This is a renewal for an existing facility for 999 head (999 animal units) of cattle weighing greater than 700 pounds each.

Table with 3 columns: Name and Address of Applicant, Legal Description, Receiving Water. Row 1: Jewell County Feeders, LLC, Randy and Becky Dean, Route 2, Box 71, Mankato, KS 66956. Legal: SW/4 of Section 10, T03S, R09W, Jewell County. Receiving: Solomon River Basin.

Kansas Permit No. A-SOJW-C001 Federal Permit No. KS0119695

This is a renewal permit for an existing facility for 4,990 head (4,990 animal units) of cattle weighing greater than 700 pounds.

Table with 3 columns: Name and Address of Applicant, Legal Description, Receiving Water. Row 1: Thomas County Feeders, Inc., Mike Hunter, Manager, 1762 U.S. 83, Colby, KS 67701. Legal: N/2 of Section 10, T08S, R32W, Thomas County. Receiving: Solomon River Basin.

Kansas Permit No. A-SOTH-C003 Federal Permit No. KS0117862

This permit includes modifications to the existing water pollution controls for an existing facility with a maximum capacity of 18,000 head (18,000 animal units) of cattle weighing greater than 700 pounds.

Public Notice No. KS-05-027/028

Table with 3 columns: Name and Address of Applicant, Waterway, Type of Discharge. Row 1: Pottawatomie County, RWD #4, c/o Steve Ainsworth, Dist. Manager, 6005 Camp Creek Road, Belvue, KS 66407. Waterway: Kansas River via Lost Creek via Spoils Bank Ditch. Type of Discharge: Process Wastewater.

Kansas Permit No. I-KS05-PO02 Federal Permit No. KS0095591

Legal: NE1/4, SE1/4, SE1/4, S29, T9S, R11E, Pottawatomie County

Facility Name: Pottawatomie Co. RWD #4 Reverse Osmosis Water Treatment Plant

Facility Description: The proposed action is to reissue an existing permit for an existing wastewater discharge from a water treatment plant. The wastewater is the reject water from a reverse osmosis unit. The proposed permit includes monitoring for chloride and nitrate and limits for pH. Domestic wastewater and miscellaneous wastewater are directed to a septic tank/lateral field. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Table with 3 columns: Name and Address of Applicant, Waterway, Type of Discharge. Row 1: Rose Hill, City of, P.O. Box 185, Rose Hill, KS 67133. Waterway: Walnut River via Eight Mile Creek. Type of Discharge: Treated Domestic Wastewater.

Kansas Permit No. M-WA13-OO01 Federal Permit No. KS0117048

Legal: NE¼, SE¼, S29, T28S, R3E, Butler County

Facility Description: The proposed action is to reissue an existing permit for operation of an existing wastewater treatment facility treating primarily domestic wastewater. The proposed permit includes limits for biochemical oxygen demand and total suspended solids. Monitoring of ammonia, fecal coliform, sulfates and pH also will be required. Contained in the permit is a schedule of compliance requiring the permittee to submit a facility plan addressing the long-term wastewater treatment needs for the city. The facility plan must include a schedule of implementation for the proposed improvements. The permit requirements are pursuant to the Kansas Surface Water Quality Standards, K.A.R. 28-16-28(b-f), and Federal Surface Water Criteria, and are water-quality based.

Persons wishing to comment on or object to the draft permits and/or permit applications must submit their comments in writing to the Kansas Department of Health and Environment if they wish to have the comments or objections considered in the decision making process. Comments or objections should be submitted to the attention of April Romero for agricultural permits or applications, or to the permit clerk for all other permits, at the Kansas Department of Health and Environment, Division of Environment, Bureau of Water, 1000 S.W. Jackson, Suite 420, Topeka, 66612-1367.

All comments regarding the draft permit or application notice postmarked or received on or before April 16 will be considered in the formulation of final determinations regarding this public notice. Please refer to the appropriate Kansas permit number (KS-AG-05-038/044, KS-05-027/028) and name of applicant/application as listed when preparing comments.

If no objections are received during the public notice period regarding any proposed permit, the Secretary of Health and Environment will issue the final determination regarding issuance or denial of the proposed permit. If response to this notice indicates significant public interest, a public hearing may be held in conformance with K.A.R. 28-16-61 (28-46-21 for UIC). Media coordination for publication and/or announcement of the public notice or public hearing is handled by the Kansas Department of Health and Environment.

For agricultural permits and applications, a copy of the permit application, supporting documentation and a KDHE-developed fact sheet, if appropriate, is available for review at the appropriate district office:

- Northwest District Office, 2301 E. 13th, Hays, 67601-2651, (785) 625-5664
- North Central District Office, 2501 Market Place, Salina, 67401-7699, (785) 827-9639
- Northeast District Office, 800 W. 24th, Lawrence, 66046-4417, (785) 842-4600
- Southwest District Office, 302 W. McArtor Road, Dodge City, 67801-6098, (620) 225-0596
- South Central District Office, 130 S. Market, 6th Floor, Wichita, 67202-3802, (316) 337-6020
- Southeast District Office, 1500 W. 7th, Chanute, 66720, (620) 431-2390

Application information and components of plans and specifications for all new facilities and for expansions of existing swine facilities may be reviewed on the Internet at <http://www.kdhe.state.ks.us/feedlots>.

For all other proposed permits, the draft permit(s), including proposed effluent limitations and special conditions, fact sheets as appropriate, comments received and other information, are on file and may be inspected at the offices of the Kansas Department of Health and Environment, Bureau of Water.

Division of Environment offices are open from 8 a.m. to 5 p.m. Monday through Friday, excluding holidays. These documents are available upon request at the copying cost assessed by KDHE. Additional copies of this public notice also may be obtained at the Division of Environment.

Roderick L. Bremby
Secretary of Health
and Environment

Doc. No. 031725

**State of Kansas
Department of Administration
Division of Purchases**

Notice to Bidders

Sealed bids for items listed will be received by the Director of Purchases until 2 p.m. on the date indicated. For more information, call (785) 296-2376:

03/28/2005	08156	Lightbars
03/28/2005	08194	Air Charter Service
03/28/2005	08204	Aluminum
03/31/2005	08225	Video Production
04/04/2005	08185	Individual Professional Liability Insurance
04/05/2005	08214	EUDL Technical Conference
04/11/2005	08231	Cobra Administration and Billing Services
04/19/2005	07682	Pest Control Services

The above referenced bid documents can be downloaded at the following Web site:

<http://da.state.ks.us/purch/rfq/>

Additional files may be located at the following Web site (please monitor this Web site on a regular basis for any changes/addenda):

<http://da.state.ks.us/purch/adds/default/htm>

Contractors wishing to bid on the projects listed below must be prequalified. For more information about the prequalification process or to obtain the following bid documents, call (785) 296-8899:

04/05/2005	A-9997	Public Address System Upgrade
04/07/2005	A-9973	Hickory Living Unit Repairs
04/07/2005	A-010034	Partial Reroof

Chris Howe
Director of Purchases

Doc. No. 031732

State of Kansas

Office of Judicial Administration
Supreme Court Docket

(Note: Dates and times of arguments are subject to change.)

Monday, April 18, 2005

9:30 a.m.

Case No. / Case Name	Attorneys	Jurisdiction
91,862 State of Kansas, Appellee, v. Brilon S. Jones, Appellant.	Phillip D. Kline, Atty. Gen. Debra S. Peterson, Deputy District Atty. Carl F. Maughan	Sedgwick
91,432 State of Kansas, Appellee, v. Shawnttis K. Franklin, Appellant.	Phillip D. Kline, Atty. Gen. Debra S. Peterson, Deputy District Atty. James Brent Getty, Asst. Appellate Defender	Sedgwick
91,965 State of Kansas, Appellee, v. Jaime Guzman, Appellant.	Phillip D. Kline, Atty. Gen. Debra S. Peterson, Deputy District Atty. Sarah Ellen Johnson, Asst. Appellate Defender	Sedgwick
90,255 State of Kansas, Appellee, v. Michael A. Patten, Appellant.	Phillip D. Kline, Atty. Gen. Ty Kaufman, County Atty. Patrick H. Dunn, Asst. Appellate Defender	McPherson Petition for Review

1:30 p.m.

91,748 City of Wichita, Appellant, v. Sealpak Company, Inc., et al., Appellees.	Roger M. Theis Stephen E. Robison	Sedgwick
91,051 State of Kansas, Appellee, v. Michael W. Kesselring, Appellant.	Phillip D. Kline, Atty. Gen. Christine E. Kenney, District Atty. B. Joyce Yeager	Douglas
91,498 State of Kansas, Appellee, v. Phillip J. Sedillos, Appellant.	Phillip D. Kline, Atty. Gen. Barry R. Wilkerson, County Atty. Patrick H. Dunn, Asst. Appellate Defender	Riley Petition for Review
91,007 State of Kansas, Appellee, v. Richard H. Chamberlain, Appellant.	Phillip D. Kline, Atty. Gen. Paul J. Morrison, District Atty. Norman Robb Edmonds	Johnson Petition for Review

Tuesday, April 19, 2005

9:30 a.m.

Case No. / Case Name	Attorneys	Jurisdiction
91,225 In the Matter of the Estate of Francis J. Wolf, Jr.	John M. McFarland Jeffrey B. Rosen	Wyandotte Petition for Review
91,466 State of Kansas, Appellee, v. Darrell L. Farmer, Appellant.	Phillip D. Kline, Atty. Gen. F. William Cullins, County Atty. Randall L. Hodgkinson, Deputy Appellate Defender	Montgomery
91,113 Jimmie R. Bryant, Appellant, v. State of Kansas, Appellee.	Randall L. Hodgkinson, Deputy Appellate Defender Phillip D. Kline, Atty. Gen. Ernest H. Richardson, County Atty.	Pratt Petition for Review

91,804
 State of Kansas, Appellee,
 v.
 Charles D. Boley, Appellant.

Phillip D. Kline, Atty. Gen.
 David E. Yoder, County Atty.
 Randall L. Hodgkinson, Deputy
 Appellate Defender

Harvey
 Petition for Review

90,674
 State of Kansas, Appellee,
 v.
 Robert J. Engelhardt, Appellant.

Phillip D. Kline, Atty. Gen.
 Kristafer Ailslieger, Asst. Atty. Gen.
 Michael P. Whalen

Harvey

90,120
 State of Kansas, Appellee,
 v.
 Steven Peterman, Appellant.

Phillip D. Kline, Atty. Gen.
 Keith E. Schroeder, District Atty.
 Michael S. Holland

Reno
 Petition for Review

90,964
 State of Kansas, Appellee,
 v.
 Michael James Post, Appellant.

Phillip D. Kline, Atty. Gen.
 Kristie C. Hildebrand, County Atty.
 Heather R. Cessna, Asst. Appellate Defender

Dickinson
 Petition for Review

91,284
 State of Kansas, Appellee,
 v.
 Wilson Ingram II, Appellant.

Phillip D. Kline, Atty. Gen.
 Barry R. Wilkerson, County Atty.
 Barry A. Clark

Riley
 Petition for Review

Wednesday, April 20, 2005

9:30 a.m.

Case No. / Case Name

Attorneys

Jurisdiction

93,066
 Isaac John South, a Minor, through John and Linda
 South, his Guardians, Appellants,
 v.
 James McCarter, et al., Appellees.

Frank D. Taff
 Michael L. Hughes

Shawnee

93,665
 In the Matter of Victor W. Miller, Respondent.

Janith A. Davis, Deputy Discip. Admin.
 Gregory A. Lee
 Victor W. Miller, Pro Se

Original

93,131
 In the Matter of Rebecca Arlene Ware, Respondent.

Frank D. Diehl, Deputy Discip. Admin.
 Stephen M. Joseph
 Rebecca Arlene Ware, Pro Se

Original

Thursday, April 21, 2005

**Summary Calendar—No Oral Argument
 Pursuant to Supreme Court Rule 7.01(c)**

92,050 Johnny Hogue v. Louis Bruce, et al.

**Summary Disposition of Sentencing Appeals—No Oral Argument
 Pursuant to Supreme Court Rule 7.041(a)**

92,352 State v. Olian G. McClellan
92,395/
92,396 State v. Jerry L. Bowman
92,568 State v. Cory D. McPherson
92,633 State v. Mark O. Moser
92,650 State v. Zandraren L. Moller
92,668 State v. Latosha L. Nelson
92,727 State v. Roger L. Willson

92,823 State v. Richard L. Dougherty
92,845 State v. Curtis Blockmon
92,846 State v. Robert L. Foged, Jr.
92,862 State v. Dustin D. Rhodig
92,868 State v. Branden O. Mulvaney
92,873 State v. Andrew R. Yokum
92,884 State v. David E. Guthrie

92,953 State v. Robert R. Riggs
92,991 State v. Darren L. Hutcherson
93,025 State v. Lyston Martin
93,034 State v. Richard L. Henagan
93,095 State v. Mark A. Hall, Jr.
93,104 State v. Tommy L. Horacek
93,161 State v. Michael J. Mitchell, Sr.

Carol G. Green
 Clerk of the Appellate Courts

State of Kansas

University of Kansas

Notice to Bidders

Sealed bids for the item listed below will be received by the University of Kansas Purchasing Office, Lawrence, until 2 p.m. on the date indicated and then will be publicly opened. Interested bidders may call (785) 864-3416 or fax (785) 864-3454 for additional information:

Monday, March 28, 2005
RFQ 39542

Remove, provide and install new windows in
Sellards Scholarship Hall, University of Kansas

Barry Swanson
Associate Comptroller

Doc. No. 031727

State of Kansas

Behavioral Sciences Regulatory Board

Temporary Administrative
Regulations

(Editor's Note: The amendment in (e)(2) changes the requirements from 12 to nine semester hours required in residency at the college or university granting the degree. The amendment to this regulation shall remain in force and effect only through April 8, 2005.)

Article 3.—PROFESSIONAL COUNSELORS; FEES

102-3-3a. Educational requirements. To qualify for licensure as a professional counselor or a clinical professional counselor, the applicant's educational qualifications and background shall meet the applicable requirements provided in the following subsections.

(a) Degree requirements. At the time of application, each applicant shall have fulfilled these requirements:

(1) Received either a master's or doctoral degree in counseling; and

(2) as a part of or in addition to the coursework completed for the counseling graduate degree, completed a minimum of 60 graduate semester hours acceptable to the board, of which at least 45 graduate semester hours shall clearly satisfy the coursework requirements provided in subsection (b).

(b) Coursework requirements. Each applicant shall have satisfactorily completed a minimum of 45 graduate semester hours of formal academic coursework that is distributed across the substantive content areas provided in this subsection. There shall be a minimum of at least two discrete and unduplicated semester hours or their academic equivalent, neither of which may be taken by independent study, in each of the following substantive content areas:

(1) Counseling theory and practice, which shall include studies in basic theories, principles, and techniques of counseling and their applications to professional settings;

(2) the helping relationship, which shall include studies in the philosophic bases of helping relationships, application of the helping relationship to counseling practice, and an emphasis on development of practitioner and client self-awareness;

(3) group dynamics, processes, and counseling approaches and techniques, which shall include studies in theories and types of groups, as well as descriptions of group practices, methods, dynamics, and facilitative skills;

(4) human growth and development, which shall include the following:

(A) Studies that provide a broad understanding of the nature and needs of individuals at all developmental levels, with emphasis on psychological, sociological, and physiological models; and

(B) studies in normal and abnormal behavior, personality theory, and learning theory;

(5) career development and lifestyle foundations, which shall include studies in vocational theory, the relationship between career choice and lifestyle, sources of occupational and educational information, approaches to career decision-making processes, and career development exploration techniques;

(6) appraisal of individuals, which shall include studies and training in the development of a framework for understanding the individual, including methods of data gathering and interpretation, individual and group testing, and the study of individual differences;

(7) social and cultural foundations, which shall include studies in change processes, ethnicity, subcultures, families, gender issues, changing roles of women, sexism, racism, urban and rural societies, population patterns, cultural mores, use of leisure time, and differing life patterns. These studies may come from the behavioral sciences, economics, political science, and similar disciplines;

(8) research and evaluation, which shall include the following:

(A) Studies in the areas of statistics, research design, development of research, development of program goals and objectives, and evaluation of program goals and objectives; and

(B) thesis preparation;

(9) professional orientation, which shall include studies in the goals and objectives of professional organizations, codes of ethics, legal considerations, standards of preparation and practice, certification, licensing, and role identities of counselors and others in the helping professions; and

(10) supervised practical experience, which shall include studies in the application and practice of the theories and concepts presented in formal study. This experiential practice shall be performed under the close supervision of the instructor with the use of direct observation, one-way mirrors in a counseling laboratory, the use of videotaped or audiotaped sessions, and written case notes.

(c) Each applicant for licensure as a clinical professional counselor whose master's or doctoral degree is earned before July 1, 2003 shall have a graduate degree required by the board for licensure as a professional counselor in accordance with subsections (a) and (b).

(d) Each applicant for licensure as a clinical professional counselor whose master's or doctoral degree is earned on or after July 1, 2003 shall meet the following education requirements:

(1) A graduate degree required by the board for licensure as a professional counselor in accordance with subsections (a) and (b);

(2) completion of 15 graduate credit hours. The applicant shall have satisfactorily completed two graduate semester hours of discrete coursework in ethics and two graduate semester hours of discrete coursework in psychopathology and diagnostic assessment, including the study of the latest edition of the "diagnostic and statistical manual of mental disorders" and assessment instruments that support diagnosis. In addition, the applicant shall demonstrate, through courses taken, education in interdisciplinary referral and collaboration and in treatment approaches; and

(3) completion of a graduate-level, supervised clinical practicum pursuant to K.S.A. 65-5804a(c)(1)(C), and amendments thereto.

(e) Program requirements. In order to be approved by the board, each educational program in professional counseling shall meet the following conditions:

(1) Have established program admission requirements acceptable to the board that are at least partially based upon objective measures or standardized achievement test results;

(2) require an established curriculum that encompasses a minimum of two academic years of graduate study. At least one of the academic years shall include at least nine semester hours in residency at the college or university granting the degree;

(3) have clear authority and primary responsibility for the core and specialty areas of training in professional counseling;

(4) have an established, organized, and comprehensive sequence of study that is planned by administrators who are responsible for providing an integrated educational experience in professional counseling;

(5) be chaired or directed by an identifiable person who holds a graduate degree that was conferred by a regionally accredited college or university upon that person's actual completion of a formal academic training program in professional counseling;

(6) have an identifiable full-time, professional faculty whose members hold conferred graduate degrees in professional counseling or a related field;

(7) have established and recognized an identifiable body of students who are formally enrolled in the program for a degree;

(8) have clearly identified and established residency requirements that are substantially equivalent to those in Kansas college or university graduate programs in professional counseling;

(9) require an appropriate practicum, internship, field, or laboratory training in professional counseling that integrates didactic learning with supervised clinical experience; and

(10) conduct ongoing, objective review and evaluation of student learning and progress, and report this evaluation in the official student transcripts.

(f) College or university requirements. In order for an applicant to qualify for licensure, the college or university at which the applicant completed the counseling degree requirements shall meet these requirements:

(1) Be institutionally accredited to award the graduate counseling degree;

(2) be regionally accredited, with accreditation standards equivalent to those met by Kansas colleges and universities;

(3) document in official publications, including course catalogs and announcements, the description, standards, and admission requirements of the professional counseling education and training program;

(4) identify and clearly describe in pertinent institutional catalogs the coursework, experiential, and other academic program requirements that must be satisfied before conferral of the graduate degree in counseling;

(5) clearly identify and specify in pertinent institutional catalogs its intent to educate and train professional counselors;

(6) have clearly established as a coherent entity within the college or university a professional counseling education and training program that, at the time the applicant's graduate degree was conferred, met the program standards provided in subsection (e); and

(7) have conferred the graduate degree in counseling upon the applicant's successful completion of an established and required formal program of studies.

(g) The following types of study shall not be substituted for or counted toward the coursework requirements of subsections (a), (b), (c), and (d):

(1) Academic coursework that the applicant completed as a part of or in conjunction with the undergraduate degree requirements;

(2) academic coursework that has been audited rather than graded;

(3) academic coursework for which the applicant received an incomplete or failing grade;

(4) coursework that the board determines is not closely related to the field or practice of counseling;

(5) graduate or postgraduate coursework or training provided by any college, university, institute, or training program that does not meet the requirements of subsections (e) and (f); and

(6) any continuing education, in-service activity, or on-the-job training.

(h) The following types of study may be counted toward the 60 graduate semester hours required under paragraph (a)(2):

(1) No more than six graduate semester hours of independent study that is related to the field or practice of counseling, except that independent study shall not be used to meet the substantive content area requirements specified in subsection (b); and

(2) no more than four graduate semester hours for thesis research and writing.

(i) The amendment to this regulation shall remain in force and effect only through April 8, 2005. (Authorized by K.S.A. 2004 Supp. 74-7507; implementing K.S.A. 65-5804a; effective Dec. 19, 1997; amended July 19, 2002; amended Aug. 8, 2003; amended, T-102-3-4-05, March 4, 2005.)

Phyllis Gilmore
Executive Director

Doc. No. 031733

State of Kansas

Pooled Money Investment Board

Notice of Investment Rates

The following rates are published in accordance with K.S.A. 75-4210. These rates and their uses are defined in K.S.A. 12-1675(b)(c)(d), 75-4201(l) and 75-4209(a)(1)(B).

Effective 3-14-05 through 3-20-05

Term	Rate
1-89 days	2.51%
3 months	2.73%
6 months	3.03%
1 year	3.35%
18 months	3.59%
2 years	3.69%

Derl S. Treff
Director of Investments

Doc. No. 031715

State of Kansas

Secretary of State

Permanent Administrative Regulations

Article 34.—CORPORATION FILING FEES

7-34-2. Corporation filing fees. The fees for filing and issuing corporate documents shall be as follows:

- (a) Articles of incorporation
- (1) For-profit corporation \$ 75.00
- (2) Nonprofit corporation \$ 20.00
- (b) Foreign corporation application \$100.00
- (c) Restated articles of incorporation \$ 20.00
- (d) Certificate of amendment, correction, dissolution, merger, restoration, revocation of dissolution, or withdrawal, or any other certificate filed \$ 20.00
- (e) Name reservation \$ 20.00
- (f) Letter of good standing \$ 5.00
- (g) Certificate of good standing
- (1) Short version \$ 7.50
- (2) Long version \$ 7.50 per fact
- (h) Certificate of fact \$ 7.50
- (i) Any other certificate issued by the secretary of state \$ 20.00
- (j) Certified copy of corporate filing \$ 7.50
- (k) Corrected instrument a fee equal to the amount of the filing fee for the original instrument

(Authorized by and implementing K.S.A. 2004 Supp. 17-7506; effective, T-7-12-29-04, Jan. 1, 2005; effective April 1, 2005.)

Ron Thornburgh
Secretary of State

Doc. No. 031723

State of Kansas

Kansas Development Finance Authority

Notice of Hearing

A public hearing will be conducted at 9 a.m. Thursday, March 31, in the offices of the Kansas Development Finance Authority, 555 S. Kansas Ave., Suite 202, Topeka, on the proposal for the K DFA to issue its Agricultural Development Revenue Bond for the projects numbered below in the respective maximum principal amount. The bond will be issued to assist the respective borrower named below (who will be the owner and operator of the project) to finance the cost in the amount of the bond of acquiring the project or for the purpose of refunding a bond previously issued to finance the project. The projects shall be located as shown:

Project No. 000626—Maximum Principal Amount: \$142,500. Owner/Operator: Kenneth E. and Deborah K. Gfeller. Description: Acquisition of 250 acres of agricultural land and related improvements and equipment to be used by the owner/operator for farming purposes. The project is located at the Southwest Quarter of Section 24, Township 13, Range 5 (90 acres) and the Southeast Quarter of Section 23, Township 13, Range 5 (160 acres), Geary County, Kansas, approximately 6.5 miles south and .5 mile east of Junction City.

Project No. 000627—Maximum Principal Amount: \$55,000. Owner/Operator: Nicholas G. Biggs. Description: Acquisition of 40 acres of agricultural land and related improvements and equipment to be used by the owner/operator for farming purposes. The project is located at the Southeast Quarter of the Northeast Quarter of Section 12, Township 10, Range 7, Lincoln County, Kansas, approximately 1 mile north of Barnard on 250th Road.

Project No. 000628—Maximum Principal Amount: \$56,000. Owner/Operator: Kevin L. and Teresa S. Clark. Description: Acquisition of 280 acres of agricultural land and related improvements and equipment to be used by the owner/operator for farming purposes. The project is located at Section 34, Township 19, Range 38, Wichita County, Kansas, approximately 2 miles west of Leoti and 2.5 miles south.

The bond, when issued, will be a limited obligation of the K DFA and will not constitute a general obligation or indebtedness of the state of Kansas or any political subdivision thereof, including the K DFA, nor will it be an indebtedness for which the faith and credit and taxing powers of the state of Kansas are pledged. The bond will be payable solely from amounts received from the respective borrower, the obligation of which will be sufficient to pay the principal of, interest and redemption premium, if any, on the bond when it becomes due.

All individuals who appear at the hearing will be given an opportunity to express their views, and all written comments previously filed with the K DFA at its offices at 555 S. Kansas Ave., Suite 202, Topeka, 66603, will be considered. Additional information regarding the projects may be obtained by contacting the K DFA.

Any individual affected by the above-described projects may, at or prior to the hearing, file a written request with the K DFA that a local hearing be held on the proposal to issue a bond to finance said project. A local hear-

ing, if requested, would be conducted in the county where the project in question is located.

Stephen R. Weatherford
President

Doc. No. 031734

State of Kansas

Social and Rehabilitation Services

Permanent Administrative Regulations

Article 5.—PROVIDER PARTICIPATION, SCOPE OF SERVICES, AND REIMBURSEMENTS FOR THE MEDICAID (MEDICAL ASSISTANCE) PROGRAM

30-5-64. Prior authorization. (a) Any medical service may be placed by the secretary on the published list of services requiring prior authorization or precertification for any of the following reasons:

(1) To ensure that provision of the service is medically necessary;

(2) to ensure that services that may be subject to over-use are monitored for appropriateness in each case; and

(3) to ensure that services are delivered in a cost-effective manner.

(b) Administration of covered pharmaceuticals in the following classes shall require prior authorization. A cross-reference of generic and brand names shall be made available upon request:

(1) Ace inhibitors:

(A) Fosinopril;

(B) moexipril;

(C) perindopril;

(D) quinapril;

(E) ramipril; and

(F)trandolopril;

(2) acne and skin lesion products:

(A) Tretinoin; and

(B) alitretinoin;

(3) angiotensin II receptor antagonists:

(A) Candesartan;

(B) cardesartan-HCTZ;

(C) eprosartan;

(D) eprosartan-HCTZ;

(E) olmesartan; and

(F) olmesartan-HCTZ;

(4) anticholinergic urinary incontinence drugs:

(A) Flavoxate;

(B) oxybutynin XL;

(C) tolterodine; and

(D) oxybutynin patches;

(5) antipsoriatics: alefacept;

(6) antiretroviral drugs: enfuvirtide;

(7) antirheumatics:

(A) Leflunomide;

(B) infliximab;

(C) anakinra;

(D) adalimumab; and

(E) etonercept;

(8) cervical dystonias: botulinum toxins A and B;

(9) drugs for the treatment of osteoporosis: teriparatide;

(10) antituberculosis products:

(A) Aminosalicylate sodium;

(B) capreomycin;

(C) ethambutol;

(D) ethionamide;

(E) isoniazid;

(F) pyrazinamide; and

(G) rifampin and rifampin-isoniazid combinations;

(11) benzodiazepines:

(A) Alprazolam;

(B) clorazepate dipotassium; and

(C) diazepam;

(12) all decubitus and wound care products;

(13) all intravenous and oral dietary and nutritional products, including the following:

(A) Amino acids, injectable;

(B) l-cysteine;

(C) lipids, injectable; and

(D) sodium phenylbutyrate;

(14) beta-blockers:

(A) Betaxolol;

(B) bisoprolol;

(C) carteolol;

(D) nadolol;

(E) penbutolol;

(F) timolol; and

(G) propranolol XL;

(15) calcium channel blockers:

(A) Diltiazem extended release, with the following brand names:

(i) Cardizem SR[®];

(ii) Cardizem CD[®];

(iii) Cartia XT[®];

(iv) Dilacor XR[®];

(v) Taztia XT[®]; and

(vi) Cardizem LA[®];

(B) verapamil sustained release, with the following brand names:

(i) Covera HS[®]; and

(ii) Verelan PM[®];

(C) nifedipine sustained release, with the following brand names:

(i) Nifedical XL[®]; and

(ii) Procardia XL[®] and all generic equivalents;

(D) nimodipine;

(E) nisoldipine;

(F) felodipine;

(G) isradipine;

(H) nicardipine SR; and

(I) nifedipine immediate release, with the following brand names:

(i) Adalat[®] and all generic equivalents; and

(ii) Procardia[®] and all generic equivalents;

(16) all cyclooxygenase 2 (cox 2) inhibitors:

(A) Celecoxib; and

(B) valdecoxib;

(17) all growth hormones and growth hormone stimulating factor, including the following:

(A) Somatrem;

(continued)

- (B) somatropin; and
- (C) sermorelin;
- (18) modafinil;
- (19) intranasal corticosteroids:
 - (A) Budesonide;
 - (B) mometasone;
 - (C) beclomethasone; and
 - (D) triamcinolone;
- (20) proton pump inhibitors:
 - (A) Omeprazole;
 - (B) pantoprazole; and
 - (C) rabeprazole;
- (21) drugs for the treatment of impotence: alprostadil;
- (22) monoclonal antibody for respiratory syncytial virus (RSV), including palivizumab;
- (23) muscle relaxants:
 - (A) Tizanidine;
 - (B) orphenadrine;
 - (C) methocarbamol;
 - (D) carisprodol;
 - (E) carisprodol compound;
 - (F) cyclobenzaprine (5 mg); and
 - (G) metaxalone;
- (24) nonsteroidal, anti-inflammatory drugs:
 - (A) Meloxicam;
 - (B) diclofenac-misoprostol;
 - (C) indomethacin;
 - (D) nabumetone; and
 - (E) piroxicam;
- (25) drugs for the treatment of obesity:
 - (A) Orlistat; and
 - (B) sibutramine;
- (26) oxazolidinones, including linezolid;
- (27) HMG-CoA reductase inhibitors:
 - (A) Pravastatin;
 - (B) fluvastatin;
 - (C) lovastatin; and
 - (D) rosuvastatin;
- (28) nonsedating antihistamines:
 - (A) Desloratidine;
 - (B) fexofenadine;
 - (C) Claritin[®]; and
 - (D) cetirizine;
- (29) H₂ antagonists: nizatidine;
- (30) triptans:
 - (A) Naratriptan;
 - (B) zolmitriptan;
 - (C) frovatriptan; and
 - (D) eletriptan HBr;
- (31) oral antidiabetic drugs:
 - (A) Amaryl[®];
 - (B) Glucotrol XL[®];
 - (C) Prandin[®];
 - (D) Precose[®];
 - (E) Glucophage XR[®];
 - (F) Glucovance[®]; and
 - (G) Metaglip[®];
- (32) all 3.0 ml syringes and 3.0 ml cartridges of insulin, including the following:
 - (A) Humalog[®];
 - (B) Humalog Mix[®];
 - (C) Novolog[®]; and

- (D) Novolog Mix[®];
- (33) serotonin 5-HT₃ receptor antagonist antiemetics:
 - (A) Kytril[®]; and
 - (B) Anzemet[®];
- (34) influenza vaccines: Flumist[®];
- (35) the following drugs if specifically required by the physician, which shall require prior authorization to override maximum allowable cost (MAC) or federal upper limit (FUL) pricing:
 - (A) Clozaril;
 - (B) depakene;
 - (C) tegretol; and
 - (D) coumadin; and
- (36) monoclonal antibody for asthma: omalizumab.
 - (c) Failure to obtain prior authorization, if required, shall negate reimbursement for the service and any other service resulting from the unauthorized or noncertified treatment. The prior authorization shall affect reimbursement to all providers associated with the service.
 - (d) The only exceptions to prior authorization shall be the following:
 - (1) Emergencies. If certain surgeries and procedures that require prior authorization are performed in an emergency situation, the request for authorization shall be made within two working days after the service is provided.
 - (2) Situations in which services requiring prior authorization are provided and retroactive eligibility is later established. When an emergency occurs or when retroactive eligibility is established, prior authorization for that service shall be waived, and if medical necessity is documented, payment shall be made.
 - (e) Services requiring prior authorization shall be considered covered services within the scope of the program unless the request for prior authorization is denied. (Authorized by K.S.A. 39-708c(b) and K.S.A. 2003 Supp. 39-7,120; implementing K.S.A. 2003 Supp. 39-7,120 and 39-7,121a; effective May 1, 1981; amended May 1, 1983; amended May 1, 1986; amended May 1, 1992; amended July 1, 1994; amended March 1, 1995; amended March 1, 1996; amended July 1, 1996; amended July 1, 1997; amended Jan. 1, 1999; amended April 1, 2000; amended Oct. 1, 2000; amended Oct. 1, 2001; amended Dec. 6, 2002; amended Feb. 21, 2003; amended May 9, 2003; amended July 11, 2003; amended Aug. 8, 2003; amended Nov. 14, 2003; amended Dec. 29, 2003; amended May 28, 2004; amended Oct. 29, 2004; amended Jan. 7, 2005; amended April 1, 2005.)

Article 10.—ADULT CARE HOME PROGRAM

30-10-18. Rates of reimbursement. (a) Rates for existing nursing facilities.

(1) The determination of per diem rates shall be made, at least annually, using base-year cost information submitted by the provider and retained for cost auditing and analysis.

(A) The base year utilized for cost information shall be reestablished at least once every seven years.

(B) A factor for inflation may be applied to the base-year cost information.

(C) For each provider currently in new enrollment, re-enrollment, or change-of-ownership status, the base year shall be determined in accordance with subsections (c), (d), and (e) of this regulation, respectively.

(2) Per diem rates shall be limited by cost centers, except where there are special level-of-care facilities approved by the United States department of health and human services. The upper payment limits shall be determined by the median in each cost center plus a percentage of the median, using base-year cost information. The percentage factor applied to the median shall be determined by the secretary.

(A) The cost centers shall be as follows:

- (i) Operating;
- (ii) indirect health care; and
- (iii) direct health care.

(B) The property component shall consist of the real and personal property fee as specified in K.A.R. 30-10-25.

(C) The upper payment limit for the direct health care cost center shall be a statewide base limit calculated on each facility's case mix adjusted base-year costs.

(i) A facility-specific, direct health care cost center upper payment limit shall be calculated by adjusting the statewide base limit by that facility's average case mix index.

(ii) Resident assessments used to determine additional reimbursement for ventilator-dependent residents shall be excluded from the calculation of the facility's average case mix index.

(3) Each provider shall receive an adjusted rate for each quarter if there is a change from the previous quarter in the facility's average medicaid case mix index.

(4) Resident assessments that cannot be classified shall be assigned to the lowest case mix index.

(5) To establish a per diem rate for each provider, a factor for incentive may be added to the allowable per diem cost.

(6) Resident days in the rate computation.

(A) Resident days shall be determined from census information corresponding to the base-year cost information submitted by the provider.

(B) Total resident days shall be used to calculate the per diem costs used to determine the upper payment limit and rates in the direct health care cost center. Total resident days shall be used to calculate the per diem costs used to determine the upper payment limit and rates for food and utilities in the indirect health care cost center.

(C) Resident days used to calculate the upper payment limits and rates in the operating cost center and indirect health care cost center, less food and utilities, shall be subject to an 85 percent minimum occupancy requirement based on the following:

(i) Each provider that has been in operation for 12 months or longer and has an occupancy rate of less than 85 percent for the cost report period shall have the resident days calculated at the minimum occupancy of 85 percent.

(ii) The 85 percent minimum occupancy requirement shall be applied to the resident days and costs reported for the 13th month of operation and after. The 85 percent minimum occupancy requirement shall be applied to the

interim rate of a new provider, unless the provider is allowed to file a projected cost report.

(iii) The minimum occupancy rate shall be determined by multiplying the total number of licensed beds by 85 percent. In order to participate in the Kansas medical assistance program, each nursing facility provider shall obtain proper certification for all licensed beds.

(iv) Each provider with an occupancy rate of 85 percent or greater shall have actual resident days for the cost report period used in the rate computation.

(7) Each provider shall be given a detailed listing of the computation of the rate determined for the provider's facility.

(8) The effective date of the rate for existing providers shall be in accordance with K.A.R. 30-10-19.

(b) Comparable service, private pay rate limitations.

(1) For each nursing facility and nursing facility for mental health, the per diem rate for care shall not exceed the rate charged for the same type of service to residents not under the Kansas medical assistance program. Private pay rates reported to the agency on other than a per diem basis shall be converted to a per diem equivalent.

(2) The agency shall maintain a registry of private pay per diem rates submitted by providers.

(A) Providers shall notify the agency of changes in the private pay rate and the effective date of that change so that the registry can be updated.

(i) Private pay rate information submitted with the cost reports shall not constitute notification and shall not be acceptable.

(ii) Providers may send private pay rate notices by certified mail so that there is documentation of receipt by the agency.

(B) The private pay rate registry shall be updated based on the notification from the providers.

(C) The effective date of the private pay rate in the registry shall be the later of the effective date of the private pay rate or the first day of the following month in which complete documentation of the private pay rate is received by the agency.

(i) If the private pay rate effective date is other than the first day of the month, the effective date in the registry shall be the first day of the closest month. If the effective date is after the 15th, the effective date in the register shall be the first day of the following month.

(ii) For new facilities or new providers coming into the medicaid program, the private pay rate effective date shall be the issued certification date.

(3) The average private pay rate for comparable services shall be included in the registry. The average private pay rate may consist of the following variables:

(A) Room rate differentials. The weighted average private pay rate for room differentials shall be determined as follows:

(i) Multiply the number of private pay residents in private rooms, semiprivate rooms, wards, and all other room types by the rate charged for each type of room. Sum the resulting products of each type of room. Divide the sum of the products by the total number of private pay residents in all rooms. The result, or quotient, is the weighted average private pay rate for room differentials.

(continued)

(ii) Each provider shall submit documentation to show the calculation of the weighted average private pay rate when there are room rate differentials.

(iii) Failure to submit the documentation shall limit the private pay rate in the registry to the semiprivate room rate.

(B) Level-of-care rate differentials. The weighted average private pay rate for level-of-care differentials shall be determined as follows:

(i) Multiply the number of private pay residents in each level of care by the rate they are charged to determine the product for each level of care. Sum the products for all of the levels of care. Divide the sum of the products by the total number of private pay residents in all levels of care. The result, or quotient, is the weighted average private pay rate for the level-of-care differentials.

(ii) Each provider shall submit documentation to show the calculation of the weighted average rate when there are level-of-care rate differentials.

(iii) Failure to submit the documentation may delay the effective date of the average private pay rate in the registry until the complete documentation is received.

(C) Extra charges to private pay residents for items and services specified in K.A.R. 30-10-15a may be included in the weighted average private pay rate if the same items and services are allowable in the Kansas medical assistance program rate.

(i) Each provider shall submit documentation to show the calculation of the weighted average extra charges.

(ii) Failure to submit the documentation may delay the effective date of the weighted average private pay rate in the registry until the complete documentation is received.

(4) The weighted average private pay rate shall be based on what the provider receives from the resident. If the private pay charges are consistently higher than what the provider receives from the residents for services, then the average private pay rate for comparable services shall be based on what is actually received from the residents. The weighted average private pay rate shall be reduced by the amount of any discount received by the residents.

(5) The private pay rate for medicare skilled beds shall not be included in the computation of the average private pay rate for nursing facility services.

(6) When providers are notified of the effective date of the Kansas medical assistance program rate, the following procedures shall be followed:

(A) If the private pay rate indicated on the agency register is lower, then the Kansas medical assistance program rate, beginning with its effective date, shall be calculated as follows:

(i) If the average medicaid case mix index is greater than the average private pay case mix index, the Kansas medical assistance program rate shall be the lower of the private pay rate adjusted to reflect the medicaid case mix or the calculated Kansas medical assistance rate.

(ii) If the average medicaid case mix index is less than or equal to the average private pay case mix index, the Kansas medical assistance program rate shall be the average private pay rate.

(B) Providers who are held to a lower private pay rate and subsequently notify the agency in writing of a different private pay rate shall have the Kansas medical as-

sistance program rate adjusted on the later of the first day of the month following the date upon which complete private pay rate documentation is received or the effective date of a new private pay rate.

(c) Rate for new construction or a new facility to the program.

(1) The per diem rate for newly constructed nursing facilities or a new facility to the Kansas medical assistance program shall be based on a projected cost report submitted in accordance with K.A.R. 30-10-17.

(2) The cost information from the projected cost report and the first historic cost report covering the projected cost report period shall be adjusted to the base-year period.

(3) The provider shall remain in new enrollment status until the base year is reestablished. During this time, the adjusted cost data shall be used to determine all rates for the provider.

(4) Any factor for inflation that is applied to cost data for established providers shall be applied to the adjusted cost data for each provider in new enrollment status.

(5) No rate shall be paid until a nursing facility financial and statistical report is received and processed to determine a rate.

(d) Change of provider.

(1) The payment rate for the first 24 months of operation shall be based on the base-year historical cost data of the previous owner or provider. If base-year data is not available, data for the most recent calendar year available preceding the base-year period shall be adjusted to the base-year period and used to determine the rate. If the 85 percent minimum occupancy requirement was applied to the previous provider's rate, the 85 percent minimum occupancy requirement shall also be applied to the new provider's rate.

(2) Beginning with the first day of the 25th month of operation, the payment rate shall be based on the historical cost data for the first calendar year submitted by the new provider. The data shall be adjusted to the base-year period.

(3) The provider shall remain in change-of-provider status until the base year is reestablished. During this time, the adjusted cost data shall be used to determine all rates for the provider.

(4) Any factor for inflation that is applied to cost data for established providers shall be applied to the adjusted cost data for each provider in change-of-provider status.

(e) Determination of the rate for nursing facility providers reentering the medicaid program.

(1) The per diem rate for each provider reentering the medicaid program shall be determined from either of the following:

(A) A projected cost report if the provider has not actively participated in the program by the submission of any current resident service billings to the program for 24 months or more; or

(B) the base-year cost report filed with the agency or the most recent cost report filed preceding the base year, if the provider has actively participated in the program during the most recent 24 months.

(2) If the per diem rate for a provider reentering the program is determined in accordance with paragraph

(e)(1)(A), the cost data shall be adjusted to the base-year period.

(3) The provider shall remain in reenrollment status until the base year is reestablished. During this time, the cost data used to determine the initial rates shall be used to determine all subsequent rates for the provider.

(4) Any factor for inflation that is applied to cost data for established providers shall be applied to the cost data for providers in reenrollment status.

(5) If the per diem rate for a provider reentering the program is determined in accordance with paragraph (e)(1)(A), a settlement shall be made in accordance with subsection (f).

(f) Per diem rate errors.

(1) If the per diem rate, whether based upon projected or historical cost data, is audited by the agency and found to contain an error, a direct cash settlement shall be required between the agency and the provider for the amount of money overpaid or underpaid. If a provider with an identified overpayment is no longer enrolled in the medicaid program, the settlement shall be recouped from a facility owned or operated by the same provider or provider corporation, unless other arrangements have been made to reimburse the agency. A net settlement may occur if a provider has more than one facility involved in settlements.

(2) The per diem rate for a provider may be increased or decreased as a result of a desk review or audit of the provider's cost reports. Written notice of this per diem rate change and of the audit findings shall be sent to the provider. Retroactive adjustment of the rate paid from a projected cost report shall apply to the same period of time covered by the projected rate.

(3) Each provider shall have 30 days from the date of the audit report cover letter to request an administrative review of an audit adjustment that results in an overpayment or underpayment. The request shall specify the finding or findings that the provider wishes to have reviewed.

(4) An interim settlement, based on a desk review of the historical cost report covering the projected cost report period, may be determined after the provider is notified of the new rate determined from the cost report. The final settlement shall be based on the rate after an audit of the historical cost report.

(5) A new provider that is not allowed to submit a projected cost report for an interim rate shall not be entitled to a retroactive settlement for the first year of operation.

(g) Out-of-state providers.

(1) The rate for out-of-state providers certified to participate in the Kansas medical assistance program shall be the rate approved by the agency.

(2) Out-of-state providers shall obtain prior authorization by the agency.

(h) Reserve days as specified in K.A.R. 30-10-21 shall be paid at 67 percent of the Kansas medical assistance program per diem rate.

(i) Determination of rate for ventilator-dependent resident.

(1) The request for additional reimbursement for a ventilator-dependent resident shall be submitted to the agency in writing for prior approval. Each request shall

include a current care plan for the resident, the most current resident assessment, and an itemized expense list for implementing that care plan. The additional reimbursement shall not include the cost of durable medical equipment.

(2) All of the following conditions shall be met in order for a resident to be considered ventilator-dependent.

(A) The resident is not able to breathe without mechanical ventilation.

(B) The resident uses a ventilator for life support 24 hours a day, seven days a week.

(C) The resident has a tracheostomy or endotracheal tube.

(3) The provider shall be reimbursed at the Kansas medical assistance program daily rate determined for the nursing facility plus an additional amount approved by the agency for the ventilator-dependent resident. The provider shall submit a budget with the detail of the expenditures requested to care for the ventilator-dependent resident. The additional reimbursement shall be negotiated based on the prevailing cost of the individual care plan and subject to an upper payment limit that is based on the comparable rate from the medicare prospective payment system.

(4) No additional amount above that figured at the Kansas medical assistance program daily rate shall be allowed until the service has been authorized by the agency.

(5) The criteria shall be reviewed quarterly to determine if the resident is ventilator-dependent. If a resident is no longer ventilator-dependent, the provider shall not receive additional reimbursement beyond the Kansas medical assistance program daily rate determined for the facility.

(6) The additional reimbursement for the ventilator-dependent resident shall be offset to the cost center of benefit on the nursing facility financial and statistical report.

(j) This regulation shall be effective on and after April 1, 2005. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1985; amended May 1, 1986; amended, T-87-29, Nov. 1, 1986; amended May 1, 1987; amended, T-89-5, Jan. 21, 1988; amended Sept. 26, 1988; amended Jan. 2, 1989; amended Jan. 2, 1990; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Oct. 28, 1991; amended May 1, 1992; amended Nov. 2, 1992; amended Jan. 3, 1994; amended July 1, 1994; amended Sept. 30, 1994; amended Dec. 29, 1995; amended Jan. 1, 1999; amended June 28, 2002; amended Dec. 31, 2002; amended, T-30-5-30-03, July 1, 2003; amended July 25, 2003; amended, T-30-12-29-04, Dec. 29, 2004; amended April 1, 2005.)

Gary J. Daniels
Acting Secretary of Social
and Rehabilitation Services

Doc. No. 031720

State of Kansas

Kansas Dental Board

Permanent Administrative
Regulations

Article 2.—SPECIALISTS

71-2-2. Branches of dentistry. The recognized branches of dentistry for which application may be made for a specialist's certificate shall be the following: oral and maxillofacial surgery, orthodontics, prosthodontics, pediatric dentistry, periodontics, dental public health, endodontics, oral and maxillofacial pathology, and oral and maxillofacial radiology. These branches of dentistry shall be defined as follows:

(a) "Dental public health" means that branch of dentistry relating to the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. Dental public health is the form of dental practice that serves the community rather than the individual patients. This branch of dentistry is concerned with the dental health education of the public, with applied dental research, and with the administration of group dental care programs as well as the prevention and control of dental diseases on a community basis.

(b) "Endodontics" means that branch of dentistry concerning the morphology, physiology, and pathology of the human dental pulp and periradicular tissues. The study and practice encompass the basic and clinical sciences, including the biology of the normal pulp; the etiology, diagnosis, prevention, and treatment of diseases and injuries of the pulp; and associated periradicular conditions.

(c) "Oral and maxillofacial pathology" means that branch of dentistry concerning the nature, identification, and management of diseases affecting the oral and maxillofacial regions. This branch is a science that investigates the causes, processes, and effects of these diseases. The practice of oral and maxillofacial pathology includes the research and diagnosis of diseases using clinical, radiographic, microscopic, biochemical, and other examinations.

(d) "Oral and maxillofacial radiology" means that branch of dentistry concerning the production and interpretation of images and data produced by all forms of radiant energy that are used for the diagnosis and management of diseases, disorders, and conditions of the oral and maxillofacial region.

(e) "Oral and maxillofacial surgery" means that branch of dentistry concerning the diagnosis and the surgical and adjunctive treatment of disease, injuries, and defects involving both the functional and esthetic aspects of the hard and soft tissues of the oral and maxillofacial region.

(f) "Orthodontics" and "dentofacial orthopedics" means that branch of dentistry concerning the diagnosis, prevention, interception, and correction of malocclusion, as well as neuromuscular and skeletal abnormalities of the developing or mature orofacial structures.

(g) "Pediatric dentistry" means the branch of dentistry that is the age-defined specialty providing both primary

and comprehensive prevention and therapeutic oral health care for infants and children through adolescence, including those with special health care needs.

(h) "Periodontics" means that branch of dentistry concerning the prevention, diagnosis, and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes and the maintenance of the health, function, and esthetics of these structures and tissues.

(i) "Prosthodontics" means that branch of dentistry concerning the diagnosis, treatment planning, rehabilitation, and maintenance of the oral function, comfort, appearance, and health of patients with clinical conditions associated with missing or deficient teeth or oral and maxillofacial tissues, or both, using biocompatible substitutes. (Authorized by K.S.A. 74-1406; implementing K.S.A. 65-1427; effective Jan. 1, 1966; amended, E-77-9, March 19, 1976; amended Feb. 15, 1977; amended May 1, 1980; amended March 27, 1989; amended April 1, 2005.)

Larry Williamson
Executive Director

Doc. No. 031728

State of Kansas

Juvenile Justice Authority

Permanent Administrative
Regulations

Article 2.—FACILITIES MANAGEMENT

123-2-105. Duties of superintendents. Subject to the supervision of the commissioner or designee and the applicable laws, regulations, and internal management policies and procedures, each superintendent shall perform the following:

(a) Oversee the government and discipline of the facility and superintend all of the business concerns of the facility;

(b) give necessary directions to the facility's officers and employees and examine whether each officer and employee has satisfactorily performed the officer's or employee's duties;

(c) examine the state of the facility and the health, conduct, and safekeeping of the offenders;

(d) under the direction of the commissioner or designee, use every proper means to furnish programs to the offenders that are most beneficial to the public and suited to the offenders' abilities; and

(e) take charge of all real and personal property belonging to the state in and about the facility.

This regulation shall be effective on and after April 8, 2005. (Authorized by K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; implementing K.S.A. 75-7001, K.S.A. 2004 Supp. 75-7024, K.S.A. 76-2101, K.S.A. 76-2101b, K.S.A. 76-2201, K.S.A. 76-3203, K.S.A. 76-3204, and K.S.A. 2004 Supp. 76-3205; effective April 8, 2005.)

123-2-110. Regulations, internal management policies and procedures, and facility orders; publication and availability to offenders. (a) Facility orders may be issued by each superintendent, subject to the provisions

of law, regulations, and internal management policies and procedures, as the superintendent deems necessary for the governance of the facility and the enforcement of order and discipline in the facility.

(b) All regulations, internal management policies and procedures, and facility orders for the governance of a facility and the enforcement of discipline in the facility to which the offenders are required to adhere, except for those regulations, IMPPs, and facility orders relating to emergency or security procedures, shall be published and made available to all offenders at the facility.

(c) Each facility order issued by the superintendent shall be effective when published and shall remain in effect until rescinded or amended by the superintendent or until disapproved by the commissioner.

(d) Each facility order shall be published either by posting the order on a bulletin board designated for that purpose at the facility or by delivering a copy of the order to the person governed by the order, or both.

This regulation shall be effective on and after April 8, 2005. (Authorized by K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; implementing K.S.A. 75-7001, K.S.A. 2004 Supp. 75-7024, K.S.A. 76-2101, K.S.A. 76-2101b, K.S.A. 76-2201, K.S.A. 76-3204, and K.S.A. 2004 Supp. 76-3205; effective April 8, 2005.)

Article 5.—OFFENDER MANAGEMENT

123-5-101. Definitions. The following definitions shall be applicable to the regulations in this article.

(a) "Alias name" means any name by which the offender in a juvenile offender case is known or identified other than the offender's official name. The offender's alias name could be the offender's legal name.

(b) "Official name" means the name used to identify the offender in the particular case in which the offender is adjudicated as a juvenile offender and committed to the custody of the commissioner. The official name is not necessarily the offender's legal name.

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.)

123-5-106. Use of force or restraint on offenders.

(a) All juvenile correctional officers and other agency employees authorized to perform law enforcement duties in the discharge of their duties when preventing escapes, apprehending escapees, and maintaining security, control, and discipline in the correctional situation shall adhere to the following:

(1) K.S.A. 21-3215, and amendments thereto, regarding use of force by a law enforcement officer in making an arrest; and

(2) the applicable internal management policies and procedures.

(b) The use of mechanical restraints on an offender for punitive purposes shall be prohibited. Mechanical restraints may be used only when necessary in the following instances:

(1) When transporting the offender;

(2) upon the advice of clinical personnel that the offender could cause injury to self or others, or when, based

on the past history or present behavior, it appears likely that the offender will cause injury to self or others;

(3) when hospitalizing the offender outside the juvenile correctional security setting; and

(4) when part of authorized practice in routine security procedures applied to an offender, based on the offender's security classification.

(c) No restraining device shall be applied in a manner that is likely to cause significant physical pain or undue discomfort, restrict blood circulation or breathing, or otherwise injure or incapacitate the offender beyond the extent necessary to maintain security and control.

This regulation shall be effective on and after April 8, 2005. (Authorized by and implementing K.S.A. 2004 Supp. 75-7024, K.S.A. 75-7025, and K.S.A. 76-3203; effective April 8, 2005.)

123-5-111. Disposition of contraband. (a) Contraband shall be divided into three categories as follows:

(1) Items that are contraband because mere possession is illegal in the state of Kansas or the United States;

(2) items, including money, that are designated as contraband in correctional institutions by the laws of the state of Kansas, by the regulations of the commissioner, or by facility orders; and

(3) items that are neither illegal in themselves nor defined as contraband in a correctional institution under all circumstances, but have become contraband because of either of the following:

(A) The items are misused or accumulated in excessive quantities.

(B) The items are an element of or instrument in an illegal or otherwise unauthorized or prohibited act.

(b) Upon an offender's admission to any juvenile correctional facility, the property that the offender is allowed to possess shall be restricted. Money and any property not permitted in the facility shall be disposed of according to regulations, internal management policies and procedures, or facility orders.

(c) If, at any time following admission to any juvenile correctional facility, the offender is found in possession of any item, including money, that by law, regulation, internal management policy and procedure, or facility order is deemed contraband, the item shall be confiscated, and the offender shall forfeit all rights to the item. If applicable, the item shall be held as evidence in a prosecution for a crime or a disciplinary proceeding, or both. Following the completion of any prosecution and disciplinary proceeding, the contraband shall be disposed of as follows:

(1) Items that are inherently illegal under the laws of the United States or Kansas shall be disposed of as allowed by law, and a record shall be made and retained at the facility for three years.

(2) Items that are illegal only in the institution may be destroyed or donated to any charitable, not-for-profit corporation, and a record shall be made and retained at the facility for three years. However, all money shall be placed in the offender benefit fund.

(d) If it is determined that property held by an offender should be confiscated because of its misuse or excessive

(continued)

accumulation but the property is otherwise not a violation, one of the following actions shall be taken:

(1) If the offender can show ownership of the property and the property has not been an element of or instrument in an illegal or otherwise unauthorized or prohibited act, the property may be sent out of the juvenile correctional facility to a person designated by the offender, at the offender's expense.

(2) If the property is an element of or instrument in an illegal or otherwise unauthorized or prohibited act, the property shall be held pending a prosecution or disciplinary hearing. Thereafter, at the superintendent's or designee's discretion, the property may be disposed of by donation to any charitable, not-for-profit corporation or destroyed. A record shall be made of the manner of disposition and retained at the facility for three years.

(3) If the property does not belong to the offender, the property shall be returned to the rightful owner if the owner can be determined. If the property was stolen, it may be used as evidence in a disciplinary hearing or prosecution before being returned to its rightful owner. If the property was the subject of a loan or other violation of the property registration requirements or if the rightful owner of the property cannot be determined, then, at the superintendent's or designee's discretion, the property may be disposed of by donation to any charitable, not-for-profit corporation or destroyed, and a record shall be made of the manner of disposition and retained at the facility for three years. However, money shall be placed in the offender benefit fund.

(e) The offender shall be given an opportunity to present any mitigating or extenuating circumstances that would excuse the possession of the contraband. The final decision shall be made by the superintendent or designee.

(f) If a finding is made that the item is not contraband, the item shall be returned to the offender.

This regulation shall be effective on and after April 8, 2005. (Authorized by K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; implementing K.S.A. 75-7001, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-5-112. Clinical services; offender treatment.

(a) Medical services for offenders, both on an outpatient and on an inpatient basis, shall be arranged for by the superintendent or designee in cooperation with the superintendent's medical and correctional staff. Plans and arrangements shall be made by the superintendent or designee for an offender to be taken, when necessary, to a medical facility outside the facility. These plans and arrangements shall meet the requirements of and shall be consistent with the applicable internal management policies and procedures.

(b) Procedures for offenders to report a personal injury or medical problem shall be established and governed by facility orders. Each offender shall be informed regarding these procedures.

(c) Adequate and necessary basic medical care shall be made available to each offender. A system for routine offender medical care during normal working hours and for emergency medical care during evenings, weekends, and holidays shall be established by the superintendent, by facility order. This system shall meet the requirements

of and shall be consistent with the applicable internal management policies and procedures.

(d) The medical personnel shall be certified, licensed, or registered according to applicable Kansas law.

(e) The medical personnel shall advise the superintendent or designee on the dietary requirements for offenders and shall consult with the food service staff to meet any necessary dietary requirements. A diet from which reasonable selection can be made and that is sufficient for an offender's dietary requirements may be used in lieu of special menus. Other dietary needs, if verified by medical personnel as being necessary and basic for adequate health care, shall be met.

This regulation shall be effective on and after April 8, 2005. (Authorized by K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; implementing K.S.A. 75-7001, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

123-5-505. Offender visitation.

(a) Facility orders shall be promulgated to govern offender communication with family, friends, relatives, and others through visits to the facility. Further elaboration of this regulation through the internal management policies and procedures shall be made by the commissioner or designee, particularly with respect to establishing a system of identifying a primary visitor for each offender. The following procedures shall be observed by the staff in the administration of visits.

(1) A suitable area and reasonable space within the facility shall be provided for offender visitation. All visits shall be held in the area provided, except when the superintendent or designee grants authority for a visit to be conducted elsewhere. For reasons of security and order in the facility, a visit may be allowed by the superintendent or designee with the stipulation that physical contact between the offender and visitor shall not be permitted. All visits, except those provided for in subsection (b), shall be subject to visual and sound monitoring of actions and conversations during the visit.

(2) Any offender may make a list of not more than 20 friends or relatives for the purpose of visiting the offender in the facility. Each proposed visitor shall be informed of the following requirements:

(A) No person under the age of 18, who shall be referred to as a "minor child," shall be allowed to visit, unless the minor child is a member of the offender's immediate family. For the purpose of this subsection, "immediate family" shall mean siblings, stepsiblings, children, stepchildren, and spouse.

(B) No minor child who is a member of the offender's immediate family, except the spouse, shall be allowed to visit unless the minor child is accompanied by a parent, legal guardian, or an adult having a power of attorney from the minor child's parent or legal guardian vesting the person accompanying the minor child with authority to transport and supervise the minor child on the premises of the facility for the purpose of visiting the offender.

(3)(A) Notwithstanding any visiting list restrictions, an offender's attorney or a clergy member shall be permitted to visit the offender at reasonable times, unless a clear abuse of this privilege has occurred or unless there is reason to believe that such a visit could prove dangerous or

harmful to the security and order of the facility or to the rehabilitation of any offender.

(B) If an individual requests to visit an offender but is not listed on the offender's visitor list or if an individual is listed but has not yet been approved for visitation, the individual shall be interviewed and identified by authorized personnel. If the requested visit conforms to all facility and agency requirements, a one-time visit may be approved pending further investigation and approval of subsequent visits.

(C) No person who has been convicted of any felony or a narcotic offense shall be permitted to visit any offender, unless prior, written approval is given by the superintendent or designee.

(D) Each offender's refusal to see a particular visitor shall be documented in the offender's facility record.

(4) Each visitor in the facility shall meet the following requirements:

(A) Wear appropriate attire as described and published by the superintendent;

(B) not exchange any written material, article, or merchandise of any sort with the offender, unless doing so is in accordance with regulations, internal management policies and procedures, and facility orders;

(C) be on the approved visitor list of only one offender in the same facility, unless that visitor meets one of the following requirements:

(i) Is a member of the immediate family, as defined in paragraph(a)(2) of this regulation, of more than one offender in the facility; or

(ii) is an approved mentor, pursuant to a mentoring program approved by the commissioner or designee, to the offenders on whose list the visitor appears;

(D) sign the facility's register before and after each visitation;

(E) be subject to search, photographing, and fingerprinting;

(F) have visitation restricted or terminated if the facility's security needs so warrant; and

(G) not distribute anything inside the facility without prior, written permission from the superintendent or designee.

(5) No person who formerly was a juvenile justice authority employee, who formerly worked at a facility as an employee of an entity under contract to provide services to the facility, or who formerly was a volunteer at a facility shall be permitted to visit an offender except under either of the following conditions:

(A) At least one year has passed since the person's employment or volunteer status was terminated, unless the individual is related by blood or marriage to the offender. If the individual has a blood or marital relationship with the offender, the former employee, former contract employee, or former volunteer may nonetheless be subject to the minimum two-year waiting period under the requirements specified in paragraph (a)(5)(B). Approval of visits after one year shall be at the discretion of the superintendent upon written request of the offender or former employee, former contract employee, or former volunteer. If the superintendent disapproves the visits, the offender and the former-employee, former contract

employee, or former volunteer shall be notified by the superintendent of the specific reasons for the denial.

(B) If barred from a facility because of undue familiarity with an offender or for trafficking in contraband, whether or not convicted of any criminal offense in connection with the instance of undue familiarity or trafficking, the person shall not be permitted to have visits with any offender for a minimum of two years after the effective date of the order barring the person from any facility. The approval of visits after two years shall be given at the discretion of the superintendent and with the approval of the deputy commissioner of operations, upon written request of the offender or the former employee, former contract employee, or former volunteer.

(6) Any individual who is currently a juvenile justice authority employee, contract employee, or volunteer and who is related by blood or marriage to an offender may be permitted to visit the offender, at the discretion of the commissioner or designee and with the recommendation of the superintendent of the facility where the offender is assigned.

(7) Designated personnel shall be present during all visitations and shall supervise visits to the extent that is appropriate to protect the nature and privacy of the relationship between the offender and visitor and to maintain security and control.

(8) Any visitor's visiting privileges may be suspended if the visitor violates any regulation, internal management policy and procedure, or facility order pertaining to visitation. An offender's visiting privileges may be suspended if the offender is convicted of a disciplinary violation, whether or not the offender's conviction relates to the violation of a regulation, internal management policy and procedure, or facility order pertaining to visitation.

(A) The length of any suspension of visiting privileges shall be determined by the superintendent or designee, subject to the limitations specified in paragraph (a)(8)(B).

(B) The initial length of a suspension of visiting privileges imposed for violation of a facility order shall not exceed one year. At its termination, the suspension shall be subject to review by the superintendent or designee and may be extended for successive periods of six months each. Each extension of a suspension shall be reviewed by the superintendent or designee at its termination.

(9) Any visitor's visiting privileges may be permanently suspended, and the visitor may be barred from entering on the grounds of any facility if all of the following conditions are met:

(A) Some credible evidence demonstrates that the visitor has committed or attempted to commit, conspired regarding, or solicited any of the following types of misconduct:

(i) Facilitating an escape;

(ii) assaulting or battering a juvenile justice authority employee, contract employee, or volunteer;

(iii) communicating a threat proscribed by K.S.A. 21-3419, and amendments thereto, to a juvenile justice authority employee, contract employee, or volunteer;

(iv) engaging in sexual intercourse, sodomy, or lewd fondling and touching with an offender while on the

(continued)

grounds of a correctional facility, whether or not the sexual contact at issue was consensual; or

(v) violating K.S.A. 21-3826, and amendments thereto.

(B) The permanent suspension of visiting privileges and banning of the person from entering the grounds are recommended by the superintendent of the affected facility.

(C) The permanent suspension of visiting privileges and banning of the person from entering the grounds are approved by the deputy commissioner of operations.

(10) Upon a determination of reasonable suspicion, any person, including a visitor, shall be subject to search before entering and while remaining on the grounds of a correctional facility. A person's visiting privileges shall be suspended for a period of one year and restricted to noncontact visiting for an additional six months if the person refuses to be searched before or after gaining access to facility grounds for the purpose of visiting an offender.

(b) A place shall be provided that permits confidential conversation for private consultation by attorneys, clergy members, and other persons having a statutory right of privileged communication, except a spouse, who shall be treated as any other visitor. Only those measures necessary to preserve security shall be permitted to interfere with the consultation. Sound monitoring shall not be permitted, and visual monitoring shall be permitted only when necessary to maintain security.

(c) The requirements of this regulation shall apply only to the visitation provided for in the "offender privileges and incentives" IMPP or the facility's behavior management system. All visits to offenders authorized by a program otherwise implemented by regulation or internal management policy and procedure shall be governed by the provisions established for that program.

This regulation shall be effective on and after April 8, 2005. (Authorized by K.S.A. 2004 Supp. 75-7024 and K.S.A. 76-3203; implementing K.S.A. 75-7001, K.S.A. 2004 Supp. 75-7024, and K.S.A. 76-3203; effective April 8, 2005.)

Article 13.—OFFENDER DISCIPLINARY PROCEDURE

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 pro-

hibit 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.)

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.

(continued)

(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 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.)

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

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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.)

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

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(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 tel-

ephone 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:

(continued)

(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.)

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.)

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 seg-

regation 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

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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.)

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 institution'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 argu-

ment 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 PROCEDURE

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 commis-

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sioner. 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 as-

sist 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
(continued)

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.)

123-15-201. 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 INJURY AND PROPERTY 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.)

Denise L. Everhart
Commissioner

Doc. No. 031675

INDEX TO ADMINISTRATIVE REGULATIONS

This index lists in numerical order the new, amended and revoked administrative regulations and the volume and page number of the *Kansas Register* issue in which more information can be found. Temporary regulations are designated with a (T) in the Action column. This cumulative index supplements the 2003 Volumes and 2004 Supplement of the *Kansas Administrative Regulations*.

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71-2-12	Revoked	V. 23, p. 151
71-3-2	Amended	V. 23, p. 1286
71-3-4	Amended	V. 23, p. 1286
71-3-5	Revoked	V. 23, p. 151
71-3-9	New	V. 23, p. 1286
71-4-1	Amended	V. 23, p. 151
71-4-3	Revoked	V. 23, p. 152
71-6-1	Amended	V. 23, p. 383
71-6-5	Amended	V. 23, p. 718
71-7-1	New	V. 23, p. 152

AGENCY 82: STATE CORPORATION COMMISSION

Reg. No.	Action	Register
82-3-101	Amended	V. 23, p. 426
82-3-108	Amended	V. 23, p. 1739
82-3-123	Amended	V. 23, p. 1740
82-3-123a	Amended	V. 23, p. 1740
82-3-138	Amended	V. 23, p. 1741
82-3-208	Amended	V. 23, p. 1741
82-3-301	Revoked	V. 23, p. 1742
82-3-304	Amended	V. 23, p. 1742
82-3-312	Amended	V. 23, p. 1742
82-3-314	New	V. 23, p. 1743
82-3-600	Amended	V. 23, p. 429
82-3-600a	Amended	V. 23, p. 430
82-3-600b	Revoked	V. 23, p. 430
82-3-601a	Amended	V. 23, p. 430
82-3-601b	Amended	V. 23, p. 431
82-3-602	Amended	V. 23, p. 431
82-3-603	Amended	V. 23, p. 431
82-3-604	Amended	V. 23, p. 432
82-3-605	Revoked	V. 23, p. 432
82-3-606	Amended	V. 23, p. 432
82-3-607	New	V. 23, p. 433
82-3-700 through 82-3-704	Amended (T)	V. 23, p. 152-155
82-3-704 through 82-3-705	Amended	V. 23, p. 538-541
82-3-705 through 82-3-710	New (T)	V. 23, p. 155-158
82-3-710 through 82-3-710	New	V. 23, p. 541-544
82-3-1005	Amended	V. 23, p. 1743
82-4-3	Amended (T)	V. 24, p. 97
82-4-3a through 82-4-3m	New (T)	V. 24, p. 97-122

AGENCY 88: BOARD OF REGENTS

Reg. No.	Action	Register
88-16-5b	New	V. 23, p. 1595
88-23-2	Amended	V. 23, p. 276
88-23-2a	New	V. 23, p. 278
88-23-3	Revoked	V. 23, p. 279
88-23-3a	New	V. 23, p. 279
88-26-1 through 88-26-16	New	V. 23, p. 1487-1491
88-27-1	New	V. 23, p. 1491
88-27-2	New	V. 23, p. 1492

AGENCY 91: DEPARTMENT OF EDUCATION

Reg. No.	Action	Register
91-1-68a through 91-1-68e	Revoked	V. 23, p. 1111
91-1-230	New	V. 23, p. 1106
91-1-231	New	V. 23, p. 1107
91-1-232	New	V. 23, p. 1108
91-1-235	New	V. 23, p. 1108
91-1-236	New	V. 23, p. 1109
91-8-2	Revoked	V. 23, p. 1493
91-8-15	Revoked	V. 23, p. 1493
91-8-16	Revoked	V. 23, p. 1493
91-8-17	Revoked	V. 23, p. 1493
91-8-19	Revoked	V. 23, p. 1493
91-8-26	Revoked	V. 23, p. 1493
91-8-30 through 91-8-33	Revoked	V. 23, p. 1493
91-9-11	Revoked	V. 23, p. 1493
91-15-1	Amended	V. 24, p. 272
91-18-24	Revoked	V. 23, p. 280
91-18-27	Revoked	V. 23, p. 280
91-18-29	Revoked	V. 23, p. 280
91-18-34	Revoked	V. 23, p. 280
91-18-40	Revoked	V. 23, p. 280
91-25-1a	Revoked	V. 23, p. 1493
91-25-1c	Revoked	V. 23, p. 1493
91-25-2	Revoked	V. 23, p. 1493
91-25-3a	Revoked	V. 23, p. 1493
91-25-4a	Revoked	V. 23, p. 1493
91-25-17	Revoked	V. 23, p. 1493

91-25-18	Revoked	V. 23, p. 1493
91-25-19	Revoked	V. 23, p. 1493
91-35-1 through 91-35-4	Revoked	V. 24, p. 272

AGENCY 92: DEPARTMENT OF REVENUE

Reg. No.	Action	Register
92-26-4	Amended	V. 23, p. 1533

AGENCY 94: BOARD OF TAX APPEALS

Reg. No.	Action	Register
94-2-21	Amended (T)	V. 23, p. 896
94-2-21	Amended	V. 23, p. 1375

AGENCY 100: BOARD OF HEALING ARTS

Reg. No.	Action	Register
100-11-1	Amended (T)	V. 23, p. 580
100-11-1	Amended	V. 23, p. 1042
100-28a-1	Amended	V. 23, p. 1558
100-29-7	Amended	V. 23, p. 1558
100-49-4	Amended	V. 23, p. 1148
100-54-4	Amended (T)	V. 23, p. 383
100-54-4	Amended	V. 23, p. 1042
100-55-4	Amended (T)	V. 23, p. 383
100-55-4	Amended	V. 23, p. 1042
100-69-5	Amended	V. 23, p. 1558
100-72-8	New	V. 24, p. 14
100-72-9	New	V. 23, p. 1558

AGENCY 102: BEHAVIORAL SCIENCES REGULATORY BOARD

Reg. No.	Action	Register
102-2-8	Amended	V. 23, p. 1137
102-3-7a	Amended	V. 23, p. 1139
102-4-3a	Amended	V. 23, p. 1141
102-4-4a	Amended	V. 23, p. 1143
102-4-7a	Amended	V. 23, p. 1144
102-5-4a	Amended	V. 23, p. 1145
102-5-7a	Amended	V. 23, p. 1147

AGENCY 108: STATE EMPLOYEES HEALTH CARE COMMISSION

Reg. No.	Action	Register
108-1-1	Amended	V. 23, p. 1189
108-1-4	Amended	V. 23, p. 823

AGENCY 109: BOARD OF EMERGENCY MEDICAL SERVICES

Reg. No.	Action	Register
109-3-2	New	V. 23, p. 202

AGENCY 110: DEPARTMENT OF COMMERCE

Reg. No.	Action	Register
110-8-1 through 110-8-6	Revoked	V. 23, p. 1595
110-8-8 through 110-8-11	Revoked	V. 23, p. 1595
110-10-1	New	V. 23, p. 180

AGENCY 111: KANSAS LOTTERY

A complete index listing all regulations filed by the Kansas Lottery from 1988 through 2000 can be found in the Vol. 19, No. 52, December 28, 2000 Kansas Register. A list of regulations filed by the Kansas Lottery from 2001 through 2003 can be found in the Vol. 22, No. 52, December 25, 2003 Kansas Register. The following regulations were filed after January 1, 2004:

Reg. No.	Action	Register
111-2-151 through 111-2-156	New	V. 23, p. 95, 96
111-2-154	Amended	V. 23, p. 261
111-2-155	Amended	V. 23, p. 262
111-2-156	Amended	V. 23, p. 262
111-2-157	New	V. 23, p. 262
111-2-158	New	V. 23, p. 459
111-2-159	New	V. 23, p. 901
111-2-160	New	V. 23, p. 1655
111-2-161	New	V. 23, p. 1655

111-2-162	New	V. 23, p. 1655
111-2-163	New	V. 24, p. 15
111-2-164	New	V. 24, p. 199
111-2-165	New	V. 24, p. 296
111-2-166	New	V. 24, p. 296

111-3-13	Amended	V. 23, p. 1433
111-3-22	Amended	V. 23, p. 97
111-4-881	Amended	V. 23, p. 97
111-4-1448	Amended	V. 23, p. 98
111-4-2052	Amended	V. 23, p. 262
111-4-2055	Amended	V. 23, p. 263
111-4-2057	Amended	V. 23, p. 263
111-4-2074	Amended	V. 23, p. 98
111-4-2093	Amended	V. 23, p. 309
111-4-2094	New	V. 23, p. 100

111-4-2095 through 111-4-2115	New	V. 23, p. 264-275
111-4-2097	Amended	V. 23, p. 310
111-4-2098	Amended	V. 23, p. 310
111-4-2116 through 111-4-2125	New	V. 23, p. 311-318
111-4-2126 through 111-4-2146	New	V. 23, p. 459-471
111-4-2147 through 111-4-2160	New	V. 23, p. 901-909

111-4-2161 through 111-4-2173	New	V. 23, p. 1025-1033
111-4-2174	New	V. 23, p. 1074
111-4-2175	New	V. 23, p. 1075
111-4-2176	New	V. 23, p. 1076

111-4-2177 through 111-4-2180	New	V. 23, p. 1169-1171
111-4-2181 through 111-4-2185	New	V. 23, p. 1343-1346

111-4-2186 through 111-4-2195	New	V. 23, p. 1434-1438
111-4-2196 through 111-4-2205	New	V. 23, p. 1655-1659

111-4-2206 through 111-4-2213	New	V. 24, p. 15-22
111-4-2214 through 111-4-2227	New	V. 24, p. 199-207

111-4-2228 through 111-4-2235	New	V. 24, p. 297-300
111-5-96	Amended	V. 23, p. 101

111-5-111 through 111-5-115	New	V. 23, p. 245, 246
111-5-113	Amended	V. 23, p. 472
111-5-114	Amended	V. 23, p. 472

111-5-116 through 111-5-120	New	V. 24, p. 208, 209
111-6-1	Amended	V. 23, p. 1439
111-6-7	Amended	V. 23, p. 1440
111-6-26	New	V. 24, p. 23

111-7-188 through 111-7-192	New	V. 23, p. 319, 320
111-7-190	Amended	V. 23, p. 473
111-7-192	Amended	V. 23, p. 473

111-9-122	New	V. 23, p. 910
111-9-123	New	V. 23, p. 910
111-1-1 through 111-11-11	New	V. 23, p. 911-914
111-11-1	Amended	V. 23, p. 1077
111-12-1	New	V. 23, p. 914

AGENCY 112: RACING AND GAMING COMMISSION

Reg. No.	Action	Register
112-10-3	Amended	V. 23, p. 93
112-10-5	Amended	V. 23, p. 1073

112-10-6	Amended	V. 23, p. 1073
112-10-6a	New	V. 23, p. 1074
112-10-13	New	V. 23, p. 495
112-13-2	Amended	V. 23, p. 94

AGENCY 115: DEPARTMENT OF WILDLIFE AND PARKS

Reg. No.	Action	Register
115-2-1	Amended	V. 24, p. 147
115-2-2	Amended	V. 23, p. 1581
115-2-3	Amended	V. 23, p. 1581
115-2-3a	New	V. 23, p. 1582
115-3-2	Amended	V. 24, p. 148
115-4-6	Amended	V. 24, p. 148
115-4-6a	New	V. 24, p. 151
115-4-11	Amended	V. 24, p. 151
115-4-14	New	V. 23, p. 1583
115-5-1	Amended	V. 24, p. 152
115-7-1	Amended	V. 23, p. 1584
115-7-2	Amended	V. 24, p. 153
115-9-4	Amended	V. 24, p. 153
115-11-2	Amended	V. 24, p. 153
115-15-1	Amended	V. 24, p. 154
115-15-2	Amended	V. 24, p. 155
115-18-1	Amended	V. 24, p. 156
115-18-7	Amended	V. 24, p. 159
115-18-10	Amended	V. 23, p. 1043
115-18-14	Amended	V. 23, p. 1585
115-20-1	Amended	V. 24, p. 159
115-20-2	Amended	V. 24, p. 160

AGENCY 117: REAL ESTATE APPRAISAL BOARD

Reg. No.	Action	Register
117-2-2	Amended	V. 23, p. 1407
117-3-2	Amended	V. 23, p. 1408
117-4-2	Amended	V. 23, p. 1408
117-6-3	Amended	V. 24, p. 77
117-7-1	Amended	V. 24, p. 78
117-8-1	Amended	V. 24, p. 78
117-9-1	Amended	V. 23, p. 150

AGENCY 123: JUVENILE JUSTICE AUTHORITY

Reg. No.	Action	Register
123-1-101	New	V. 24, p. 301
123-12-101 through 123-12-107	New	V. 24, p. 301, 302
123-12-201 through 123-12-210	New	V. 24, p. 302, 303
123-12-301 through 123-12-315	New	V. 24, p. 303-305
123-12-317	New	V. 24, p. 305
123-12-318	New	V. 24, p. 305
123-12-319	New	V. 24, p. 306
123-12-321 through 123-12-325	New	V. 24, p. 306
123-12-327	New	V. 24, p. 306
123-12-328	New	V. 24, p. 307
123-12-401	New	V. 24, p. 307
123-12-501 through 123-12-505	New	V. 24, p. 307, 308
123-12-505b	New	V. 24, p. 308
123-12-506	New	V. 24, p. 308
123-12-601	New	V. 24, p. 308
123-12-602	New	V. 24, p. 310
123-12-702	New	V. 24, p. 310
123-12-801	New	V. 24, p. 310
123-12-901	New	V. 24, p. 310
123-12-902	New	V. 24, p. 310
123-12-1001	New	V. 24, p. 311
123-12-1002	New	V. 24, p. 311
123-12-1101	New	V. 24, p. 311
123-12-1201	New	V. 24, p. 312
123-12-1202	New	V. 24, p. 312
123-12-1301	New	V. 24, p. 312
123-12-1302	New	V. 24, p. 312
123-12-1303	New	V. 24, p. 312
123-12-1306	New	V. 24, p. 312
123-12-1308	New	V. 24, p. 313

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