

STATE OF KANSAS
DEPARTMENT OF CORRECTIONS
NOTICE OF HEARING ON PROPOSED AMENDMENTS
OF ADMINISTRATIVE REGULATION

A public hearing will be conducted at 9:00 a.m., October 6, 2016, in the Department of Corrections Large Conference Room, Suite 300, 714 S.W. Jackson, Topeka, Kansas, to consider the adoption of a permanent amendment of a Kansas Department of Corrections administrative regulation.

The regulation proposed for permanent amendment is K.A.R. 44-12-301.

This 60-day notice constitutes a public comment period for the purpose of receiving written public comments on the proposed permanent regulation amendment.

All interested parties may submit written comments prior to the hearing to Linden G. Appel, Chief Legal Counsel, Kansas Department of Corrections, 714 S.W. Jackson, Suite 300, Topeka, Kansas, 66603 or by e-mail at Linden.Appel@doc.ks.gov. All interested parties will be given a reasonable opportunity at the hearing to present their views orally on the adoption of the proposed amendments. In order to give all parties an opportunity to express their views, it may be necessary to request each participant to limit 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 amendments and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Linden Appel at (785) 296-4508 or [TDD (785) 296-8443], or (785) 296-0014, FAX, or by e-mail at Linden.Appel@doc.ks.gov.

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SECRETARY OF STATE

Handicapped parking is located on the east side of S.W. Jackson Street immediately in front of the west entrance to the building (known as Jayhawk Walk), which is the public access entrance, and which is accessible to individuals with disabilities.

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

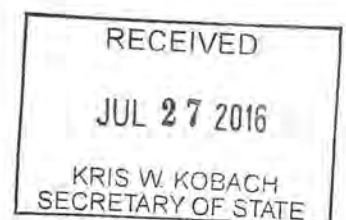
K.A.R. 44-12-301. Fighting. This regulation is amended by striking the clause “unless such activity is in self-defense” from the first sentence of the current version of the regulation. It is further amended by adding a new subsection (b) which provides that self-defense is an affirmative defense to a charge of Fighting, and that the offender so charged bears the entire burden of proof in regard to that defense. Regulatory history is updated.

No quantifiable economic impact on offenders, the Department, any other governmental agency or body, or private individuals in the public is now anticipated as a result of this amendment.

A complete copy of the proposed permanent regulation amendment, and a complete economic impact statement, may be obtained by writing to: Linden G. Appel, Department of Corrections, at the mailing addresses specified above, by calling (785) 296-4508, [TDD (785) 296-8443], 8:00 A.M. to 5:00 P.M., Monday through Friday, or by e-mail to:

Linden.Appel@doc.ks.gov.

Joe Norwood
Secretary of Corrections



44-12-301. Fighting. (a) Fighting or any other activity ~~which~~ that constitutes violence, or which is likely to lead to violence, ~~is shall be prohibited unless such activity is in self-defense.~~

(b) It shall be an affirmative defense, for which the offender shall bear the sole burden of proof, if the offender is engaged in self-defense.

(c) Violation of this rule-regulation shall be a class I offense. (Authorized by and implementing K.S.A. 4990 2015 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; amended, T-_____, _____; amended P-_____.)

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KDOC Legal Department

ATTORNEY GENERAL
JUL 19 2016
APPROVED BY *EF*

APPROVED
JUL 15 2016
DEPT. OF ADMINISTRATION

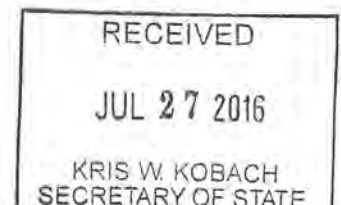
KANSAS DEPARTMENT OF CORRECTIONS
ECONOMIC IMPACT STATEMENT
K.A.R. 44-12-301

I. Summary of Proposed Regulation Amendment, Including Its Purpose.

K.A.R. 44-12-301, Fighting, is amended by striking the clause “unless such activity is in self-defense” from the first sentence of the current version of the regulation, and by creating a new subsection (b) which recognizes self-defense as an affirmative defense, but conditions its use upon the offender bearing the entire burden of proof in regard to successfully defending a charge of Fighting. These changes come in response to the recent decision of the Kansas Supreme Court in the case of May v. Cline, Case No. 110,095, on June 17, 2016, in which the Court ruled that, as a matter of construing the plain language of the regulation, the reporting officer charging an offender with violation of this regulation has the burden of proof to show that the offender was not engaged in self-defense during the incident.

In the opinion of the Secretary of Corrections and his staff, such a construction presents a practical and formidable obstacle to efficient and appropriate efforts to enforce the prohibition on mutual physical combat between or among offenders in correctional facilities, and thereby unfavorably derogates the ability of correctional staff to maintain safety and security of persons within the facilities. At the same time, the Secretary wishes to preserve the opportunity of a charged offender to affirmatively plead and prove a legitimate, good-faith claim of self-defense, provided that the offender alone bears the burden of proof to establish that defense.

II. Reason or Reasons the Proposed Regulation Is Required, Including Whether or Not the Regulation is mandated by Federal Law.



The proposed regulation amendment is not mandated by federal law, nor is it required to participate in or implement a federally-subsidized or assisted program. The proposed regulation does not exceed any requirements of federal law.

III. Anticipated Economic Impact upon the Kansas Department of Corrections.

The proposed regulation amendment is not expected to have quantifiable economic impact on the Department of Corrections. The implementation of the provisions of the regulation amendment can be handled within the Department's existing resources.

IV. Anticipated Economic Impact upon Other Governmental Agencies and upon Private Business or Individuals.

The regulation amendment proposed is not expected to have a quantifiable economic impact upon offenders, their families, the general public, private business or other governmental agencies.

V. Less Costly or Intrusive Methods That Were Considered, but Rejected, and the Reason for Rejection

No less costly or intrusive alternatives to achieve the desired results were identified.

