KANSAS DEPARTMENT OF CORRECTIONS

SUBMISSION TO CITIZENS REGULATORY REVIEW BOARD

PROPOSED PERMANENT AMENDMENTS OF

K.A.R. 44-12-211;44-12-212;44-12-601

(March 5, 2014)

STATE OF KANSAS

DEPARTMENT OF CORRECTIONS

NOTICE OF HEARING ON PROPOSED AMENDMENTS

OF ADMINISTRATIVE REGULATIONS

A public hearing will be conducted at 9:00 a.m., May 14, 2014, in the Department of Corrections Training Conference Room, Suite 300, 714 S.W. Jackson, Topeka, Kansas, to consider the adoption of permanent amendments of three Kansas Department of Corrections administrative regulations.

The regulations proposed for permanent amendment are K.A.R. 44-12-211, 44-12-212, and 44-12-601.

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

Due to the fact that the Kansas Department of Corrections Central Office will move from its present quarters and mailing address to a new location and address in April, 2014, all interested parties may submit written comments prior to the hearing in the following manner:

PRIOR TO APRIL 20, 2014, to Linden G. Appel, Chief Legal Counsel, Kansas Department of Corrections, 4th Floor, Landon State Office Building, 900 S.W. Jackson, Topeka, Kansas, 66612-1284; and

ON OR AFTER APRIL 20, 2014, to Linden G. Appel, Chief Legal Counsel, Kansas Department of Corrections, Suite 300, 714 S.W. Jackson Street, Topeka, Kansas 66603.

All interested parties will be given a reasonable opportunity at the hearing to present their views orally on the adoption of the proposed permanent amendments of the regulations. 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, new regulations, 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 LindenA@doc.ks.gov

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.

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

K.A.R. 44-12-211. Telephones or other communication devices. This regulation is amended by adding a prohibition on inmate use of telephones to communicate with a minor, defined as a person under the age of 18, unless correspondence with the minor is authorized as provided in K.A.R. 44-12-601. The latter regulation's text concerning correspondence with minors is likewise proposed for certain amendments, as explained below. The history section of the regulation is also updated.

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

K.A.R. 44-12-212. Accessing unauthorized computer based information; unauthorized computer communications. This regulation is first amended by adding the second clause in the regulation title above, to note addition of rules concerning unauthorized, prohibited inmate electronic communications. It is next amended by addition of a rule prohibiting electronic communications, or attempts to communicate, with minors, unless correspondence with the minor is authorized by K.A.R. 44-12-601 as amended, and as explained below. Finally, it is amended by adding a rule prohibiting inmates from communicating or attempting to communicate with any person through the use of another inmate's authorized electronic mail account. The history section of the regulation is also updated.

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

K.A.R. 44-12-601. Mail. This regulation is amended in a number of regards.

First, a definition of the term "minor" is added in new paragraph (a)(3), stipulating that any person under 18 is such.

Secondly, in subsection (b), paragraph (5), language concerning the authorized means of transmitting funds to an inmate is updated to reflect current practice, requiring all funds sent by private parties to inmates to be transmitted by an electronic funds transfer sent through the Department's electronic funds transfer vendor, and further providing that any such funds sent for deposit to an inmate's trust account by any means other than an electronic funds transfer, shall be immediately returned to the sender, with notice provided to the intended inmate recipient, without need of formal censorship.

Thirdly, subsection (b), paragraph (7), is amended by removing the requirement for formal censorship procedures to be employed in the instance of incoming mail which lacks either the sender's name, return address, or both, in favor of immediate destruction of same. In such instances, as a practical matter, it is frequently impossible to give notification of the proposed censorship to either or both the sender and the intended inmate recipient.

Fourthly, at subsection (b), paragraph (10), former subparagraph (B), language requiring written objection to correspondence from an inmate or inmates by the parent or guardian of a minor to be filed with the Department's Director of Victim Services is stricken, in favor of new rules next explained.

Fifthly, at subsection (b), new paragraph (11), the paradigm governing correspondence between inmates and minors is shifted from one permitting such correspondence unless the parent or guardian of a minor affirmatively objects to same in

writing, to one in which such correspondence is generally prohibited. Two circumstances in which correspondence between inmates and minors is permitted are then outlined—1) a parent or guardian of the minor has affirmatively filed written authorization for the correspondence between an identified inmate and the child with the Director of Victim Services; or 2) the minor is the biological or adoptive child of the inmate, and is not the victim of the inmate's crime for whom the child's legal custodian has filed written objection to the correspondence, unless in the latter instance, the inmate has secured a court order which permits the correspondence over the custodian's objection.

In the case of the second circumstance, i.e., the minor is the inmate's natural or adoptive child and otherwise eligible to correspond with the inmate, the inmate is also required to formally register the child's name, date of birth, and address with the Director of Victim Services.

Sixthly, at subsection (b), new paragraph (12), a rule prohibiting inmates from mailing or attempting to mail bodily substances, which are real, represented by the inmate as real, or reasonably perceived to be actual bodily substances, is added.

Seventhly and finally, at subsection (h), violation of any provision of the regulation is elevated from a Class II disciplinary violation to a Class I violation. The history section of the regulation is also updated.

With the exception of the amendment requiring that all funds sent to inmates be provided by means of electronic funds transfers, no economic impact is anticipated for amendments to this regulation.

As to the amendment requiring electronic funds transfers, it has an economic impact upon both the Department and private individuals who send funds to inmates, as more fully set forth and explained in the Economic Impact Statement prepared and filed by the Department with the Kansas Secretary of State.

Summarizing those economic impacts, as to the Department, the fees charged by the two current vendors handling such electronic funds transfers yields—J-Pay, Inc., and Keefe Commissary Network LLC—respectively yield commissions on each transaction processed of $0.50 and $1.00. Since the J-Pay, Inc. contract has been in effect, the Department has received total commissions of $126, 953.05 from transfers processed thereunder. Since the Keefe Commissary contract has been in effect, the Department has received total commissions of $59,908.00 under that contract. In both instances, the commission receipts have been placed in the Department's Central Office Inmate Benefit Fund, which is used to support inmate services and programs not otherwise supported by appropriated funds.

As to private individuals making such funds transfers to inmates, they pay a service fee for each transaction, which is priced according to the amount of funds transferred, and the method of the transfer from the sender/customer to the vendor. These fees range from a low of $3.00 for a lobby kiosk deposit of cash in an amount between $0.01 and $19.99 handled by Keefe Commissary, to a high of $11.70 for a transfer made by telephone for an amount between $200 and $300, for both vendors. In aggregate figures, it is estimated that electronic funds sender/customers have paid J-Pay, Inc. a total of $1,757,000.00 in fees since inception of that contract in March, 2009, while customers of Keefe

Commissary, Inc. have paid that firm $308,000.00 since that contract commenced in October, 2010.

A complete copy of the proposed permanent regulation amendments, 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: LindenA@doc.ks.gov

Ray Roberts
Secretary of Corrections

TEXT OF PROPOSED PERMANENT REGULATIONS AMENDMENTS

K.A.R. 44-12-211. Telephones or other communication devices. (a) When using any authorized inmate telephone, no inmate shall perform or engage in any of the following:

(1) Use another inmate's personalized identification number (PIN) or permit another inmate to use the inmate's PIN;

(2) be a party to call forwarding;

(3) call any telephone number not listed on the inmate's authorized calling list;

(4) participate in any call involving a party at a phone number other than that originally called, including receiving information relayed by an intermediary, and either relaying or receiving information over any telephone service other than that authorized by the secretary of corrections for inmate usage;

(5) initiate any call to a party on the inmate's authorized calling list and then permit the telephone to be used by another inmate, whether in speaking to the authorized party or to another party; ~~or~~

(6) use the telephone in furtherance of any illegal activity; or

(7) use the telephone to communicate or attempt to communicate with a minor, unless correspondence with the minor is authorized by K.A.R. 44-12-601.

(b) Except as specified in subsection (a), the use or possession of any telephone or any communication device by an inmate without the permission of the warden or warden's designee shall be prohibited.

(c) For purposes of this regulation, "minor" shall mean a person under the age of 18.

(d) Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. ~~2006~~ 2013 Supp. 75-5210; effective July 13, 2007; amended, T-_____, _____; amended P-_____.)

K.A.R. 44-12-212. Accessing unauthorized computer-based information; unauthorized computer communications. (a) No inmate shall perform any of the following:

(1) Access, or attempt to access, any information, data, images, or other material residing on or stored in any computer or available through any computer network, unless the information, data, images, or other material has been authorized for inmate access by the secretary of corrections and established and maintained by the information technology division of the department of corrections for that purpose;

(2) communicate or attempt to communicate with a minor through any computer or computer network, unless correspondence with the minor is authorized by K.A.R. 44-12-601; or

(3) communicate or attempt to communicate with any person through use of another inmate's authorized electronic mail account.

(b) For purposes of this regulation, "minor" shall mean a person under the age of 18.

(c) Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. ~~2006~~ 2013 Supp. 75-5210; effective July 13, 2007; amended, T-_____, _____; amended P-_____.)

K.A.R. 44-12-601. Mail. (a) Definitions.

(1)(A) "Legal mail" means mail affecting the inmate's right of access to the courts or legal counsel. This term shall be limited to letters between the inmate and any lawyer, a judge, a clerk of a court, or any intern or employee of a lawyer or law firm, legal clinic, or legal services organization, including legal services for prisoners.

(B) "Official mail" means any mail between an inmate and an official of the state or federal government who has authority to control, or to obtain or conduct an investigation of, the custody or conditions of confinement of the inmate.

(C) "Privileged mail" means any mail between the inmate and the inmate's physician, psychiatrist, psychologist, or other licensed mental health therapist.

(2)(A) "Censor" means to remove or change any part or all of the correspondence or literature.

(B) "Inspect" means to open, shake out, look through, feel, or otherwise check for contraband without reading or censoring. This term shall include any cursory reading necessary to verify that mail is legal or official in nature as permitted by paragraph (f)(3).

(C) "Read" means to read the contents of correspondence or literature to ascertain the content.

<u>(3) "Minor" means a person under the age of 18.</u>

(b) General provisions.

(1) Each inmate shall comply with the mail procedures and restrictions established by the order of the warden of the facility. Failure to comply with mail procedures or restrictions, or circumventing or attempting to circumvent mail procedures or restrictions by any means, shall be prohibited. The delivery of mail through an

employee, volunteer, teacher, or any other person who is not authorized to perform functions related to the established mail-handling system shall be prohibited.

(2) Contraband. Items identified as contraband shall be dealt with as provided in subsection (d) and then either returned to the sender at the inmate's expense or destroyed, at the inmate's option. Items illegal under Kansas or U.S. federal law shall be seized and held as evidence for other law enforcement officers.

(3) All incoming mail shall identify the inmate recipient by name and inmate identification number.

(4) Violation of mail regulations of the department of corrections, orders of the warden, or the laws of Kansas or the United States may result in additional mail restrictions upon the offender that are sufficient to prevent the continuation or reoccurrence of the violation.

(5) All funds sent for deposit to an inmate's trust account shall be in the form of ~~a money order, a cashier's check, or a certified check~~ an electronic funds transfer sent through an entity under contract with the department of corrections to conduct those transactions. These funds shall be sent to the centralized banking location or individual work release location designated by the secretary. All other funds sent for deposit to an inmate's trust account, other than governmental checks, warrants, and worker's compensation benefit checks, shall be returned immediately to the sender, and the intended inmate recipient shall be so notified in writing, without need of formal censorship. Except for correspondence qualifying as legal mail in which funds are enclosed in an envelope clearly marked as such, correspondence or other material sent with funds shall not be forwarded and shall be discarded.

(6) Any incoming or outgoing mail other than legal, official, or privileged mail may be inspected or read at any time.

(7) Incoming mail addressed solely to a specific inmate and not otherwise subject to censorship shall be delivered regardless of whether the mail is sent free of charge or at a reduced rate. All incoming mail shall nonetheless bear the sender's name and address on the envelope, or this mail shall not be delivered and shall be ~~subject to censorship in accordance with subsection (d)~~ immediately destroyed.

(8) Any outgoing first-class letters may be sent to as many people and to whomever the inmate chooses, subject to the restrictions in this regulation.

(9) Outgoing inmate mail shall bear the full conviction name, inmate number, and address of the sender, and the name and address of the intended recipient. No other words, drawings, or messages shall be placed on the outside of the envelope or package by an inmate except words describing the mail as being legal, official, privileged, or intended to aid postal officials in delivery of the item. Outgoing inmate mail shall be stamped by the facility to indicate that it was mailed from a facility operated by the department of corrections and that it has not been censored.

(10) Inmates shall not correspond with any person, either directly or through third parties, who has filed a written objection to the correspondence with the director of victim services in the department of corrections central office. The director of victim services in the department of corrections central office shall notify the warden of the facility where the offender is incarcerated of any written objections to correspondence sent by the offender within three business days of its receipt.

(A) The inmate shall be notified of the objection in writing when it is received, but shall not be required to be informed of the exact contents of the objection.

(B) ~~In the instance of unwanted correspondence to a minor, the objection shall be filed by the parent or guardian of the minor.~~

~~(C)~~ Orders shall be developed by the warden of each facility to prevent further correspondence from being sent to those who have filed an objection.

~~(D)~~ (C) This regulation shall not prevent an inmate from writing to the inmate's natural or adoptive child, unless the child was the victim of the crime for which the inmate is incarcerated ~~and~~, the person having legal custody of the child files a written objection with the director of victim services in the department of corrections central office, and the inmate has not obtained a court order permitting this written communication with the child. The director of victim services in the department of corrections shall inform the warden of the facility where the inmate is assigned of any objection from the person having legal custody of the child within three business days of its receipt.

(11)(A) No inmate shall correspond with a minor, either directly or through any third party, unless one of the following conditions is met:

(i) A parent or legal guardian of the minor has filed written authorization for the correspondence between the inmate and the minor with the director of victim services in the department of corrections central office.

(ii) If the minor is the inmate's natural or adoptive child, the correspondence is authorized pursuant to paragraph (b)(10)(C), and the inmate has registered the child by

providing the name, date of birth, and address of the natural or adoptive child to the director of victim services.

(B) The director of victim services shall notify the warden of the facility where the inmate is incarcerated of any written authorization for correspondence with a minor who is not the natural or adoptive child of the inmate, as well as the registration information of the inmate's natural or adoptive child.

(12) An inmate shall not mail or attempt to mail any of the following:

(A) Any bodily substance;

(B) a substance represented by the inmate as being a bodily substance; or

(C) a substance that a reasonable person would conclude is a bodily substance.

(c) Legal, official, and privileged mail.

(1) Subject to the provisions of paragraph (f)(3), outgoing privileged, official, or legal mail sent by any inmate shall be opened and read only upon authorization of the warden for good cause shown. However, if any inmate threatens or terrorizes any person through this mail, any subsequent mail, including official or legal mail, from the inmate to the person threatened or terrorized may, at the request of that person, be read and censored for a time period and to the extent necessary to remedy the abuse.

(2) Incoming mail clearly identified as legal, official, or privileged mail shall be opened only in the inmate's presence. This mail shall be inspected for contraband but shall not be read or censored, unless authorized by the warden based upon a documented previous abuse of the right or other good cause.

(3) All legal mail and official mail ~~will~~ shall be indefinitely forwarded to the inmate's last known address. If any mail is returned to a facility as undeliverable when

sent to the inmate's last known address, the mail shall be returned to the sender with a notice that the mail was forwarded unsuccessfully and is now returned to the sender for further disposition.

(d) Censorship grounds and procedures.

(1) Incoming or outgoing mail, other than legal, official, or privileged mail, may be censored only when there is reasonable belief in any of the following:

(A) There is a threat to institutional safety, order, or security.

(B) There is a threat to the safety and security of public officials or the general public.

(C) The mail is being used in furtherance of illegal activities.

(D) The mail is correspondence between offenders, including any former inmate regardless of current custodial status, that has not been authorized according to subsection (e). Correspondence between offenders may be inspected or read at any time.

(E) The mail contains sexually explicit material, as defined and proscribed by K.A.R. 44-12-313.

(2) If any communication to or from an inmate is censored, all of the following requirements shall be met:

(A) Each inmate shall be given a written notice of the censorship and the reason for the censorship, without disclosing the censored material.

(B) Each inmate shall be given the name and address of the sender of incoming mail, if known, or the addressee of outgoing mail and the date the item was received in the mail room. Notice of the censorship of correspondence by the facility shall be

provided to the sender, if known, by staff in the facility's mail room within three business days of the decision to censor.

(C) The author or addressee of the censored correspondence shall have 15 business days from the date of the notice of censorship to protest that decision.

(D) All protests shall be forwarded to the secretary of corrections or the secretary's designee for final review and disposition.

(E) Each inmate shall have the option of having censored correspondence or other materials in their entirety either mailed out at the expense of the inmate or discarded.

(e) Offender correspondence with other offenders.

Offenders sentenced to the custody of the Kansas department of corrections shall not correspond with any person who is in the custody of or under the supervision of any state, federal, county, community corrections, or municipal law enforcement agency, or with any former inmate regardless of current custodial status, unless either of ~~these~~ the following conditions is met:

(1) The proposed correspondents are members of the same immediate family or are parties in the same legal action, or one of the persons is a party and the other person is a witness in the same legal action.

(2) Permission for correspondence is granted due to exceptional circumstances. Verification and approval of offender correspondence shall be conducted pursuant to the internal policies and procedures of the department of corrections.

(f) Writing supplies and postage.

(1) Stationery and stamps shall be available for purchase from the inmate canteen.

(2) Indigent inmates, as defined by the internal management policies and procedures of the department of corrections, shall receive reasonable amounts of free writing paper, envelopes, and postage for first-class domestic mail weighing one ounce or less, not to exceed four letters per month.

(3) All postage for legal and official mail shall be paid by the inmate, unless the inmate is indigent, as defined by the internal management policies and procedures of the department of corrections. The cost of postage for legal or official mail paid by the facility on behalf of an indigent inmate shall be deducted from the inmate's funds, if available. Credit for postage for legal and official mail shall be extended to indigent inmates under the terms and conditions of the internal management policies and procedures of the department of corrections. Outgoing legal or official mail sent with postage provided on credit shall be subject to inspection and a cursory reading in the presence of the inmate for the purpose of ascertaining that the mail is indeed legal or official mail, and the inmate shall then be permitted to seal the envelope containing the mail.

(4) The facility shall not pay postage for inmate groups or organizations.

(5) The mailing of postage stamps by an offender shall be prohibited.

(g) Publications.

(1) Inmates may receive books, newspapers, and periodicals as permitted by the internal management policies and procedures of the department of corrections. All books, newspapers, and periodicals shall be purchased through account withdrawal

requests. Only books, newspapers, and periodicals received directly from a publisher or a vendor shall be accepted. However, an inmate shall be permitted to receive printed material, including newspaper and magazine clippings, if the material is included as part of a first-class letter that does not exceed one ounce in total weight.

(2) The procedures for censorship of mail listed in subsection (d) ~~of this regulation~~ shall be used for censorship of publications.

(3) No publication that meets either of the following conditions shall be allowed into the facility:

(A) Contains sexually explicit material, as described in K.A.R. 44-12-313, or is otherwise illegal, in whole or in part; or

(B) meets, in whole or in part, the test for censorship of mail in subsection (d) ~~of this regulation~~.

(4) Inmates shall have the option of having censored publications in their entirety either mailed out of the facility at their own expense or discarded.

(5) Before transferring between facilities, the inmate shall arrange for a change of address for the inmate's mail, including newspapers and periodicals. Mail, with the exception of legal mail or official mail, shall not be forwarded for more than 30 days after the date of transfer.

(h) Regulation violation. Each violation of this regulation shall be a class ~~II~~ I offense. (Authorized by K.S.A. ~~2006~~ 2013 Supp. 75-5210, K.S.A. 2013 Supp. 75-5251; implementing K.S.A. ~~2006~~ 2013 Supp. 75-5210, K.S.A. 2013 Supp. 75-5251, and K.S.A. 75-5256; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended May 1, 1986; amended May 1, 1988; amended April 20, 1992; amended Jan. 3, 1995;

amended April 17, 1998; amended Feb. 15, 2002; amended, T-44-3-19-04, March 19, 2004; amended July 2, 2004; amended July 13, 2007; amended, T-_____, _____; amended P-_____.)

KANSAS DEPARTMENT OF CORRECTIONS
ECONOMIC IMPACT STATEMENT
K.A.R. 44-12-211; 44-12-212; 44-12-601

I. Summary of Proposed Regulation Amendments, Including Their Purpose

Amendments to K.A.R. 44-12-211, 44-12-212, and 44-12-601 are proposed for both temporary and permanent adoption. An important objective of amendment of all three regulations is to install a new paradigm governing inmate communications with minors, defined as persons under 18 years of age, so as to generally prohibit such communications, except for two circumstances, as further explained below. The alterations to K.A.R. 44-12-211 and 44-12-212, which respectively concern telephone and computer communications, are keyed to the amendments made to K.A.R. 44-12-601, the regulation governing written correspondence. A number of other unrelated amendments to these regulations are also proposed, as explained below in the summary for each individual regulation, which now follows:

K.A.R. 44-12-211. Telephones or other communication devices. This regulation is amended by adding a prohibition on inmate use of telephones to communicate with a minor, defined as a person under the age of 18, unless correspondence with the minor is authorized as provided in K.A.R. 44-12-601. The latter regulation's text concerning correspondence with minors is likewise proposed for certain amendments, as explained below. The history section of the regulation is also updated.

K.A.R. 44-12-212. Accessing unauthorized computer based information; unauthorized computer communications. This regulation is first amended by adding the second clause in the regulation title above, to note addition of rules concerning

unauthorized, prohibited inmate electronic communications. It is next amended by addition of a rule prohibiting electronic communications, or attempts to communicate, with minors, unless correspondence with the minor is authorized by K.A.R. 44-12-601 as amended, and as explained below. Finally, it is amended by adding a rule prohibiting inmates from communicating or attempting to communicate with any person through the use of another inmate's authorized electronic mail account. The history section of the regulation is also updated.

K.A.R. 44-12-601. Mail. This regulation is amended in a number of regards.

First, a definition of the term "minor" is added in new paragraph (a)(3), stipulating that any person under 18 is such.

Secondly, in subsection (b), paragraph (5), language concerning the authorized means of transmitting funds to an inmate is updated to reflect current practice, requiring all funds sent by private parties to inmates to be transmitted by an electronic funds transfer sent through the Department's electronic funds transfer vendors, and further providing that any such funds sent for deposit to an inmate's trust account by any means other than an electronic funds transfer, shall be immediately returned to the sender, with notice provided to the intended inmate recipient, without need of formal censorship.

Thirdly, subsection (b), paragraph (7), is amended by removing the requirement for formal censorship procedures to be employed in the instance of incoming mail which lacks either the sender's name, return address, or both, in favor of immediate destruction of same. In such instances, as a practical matter, it is frequently impossible to give notification of the proposed censorship to either or both the sender and the intended inmate recipient.

Fourthly, at subsection (b), paragraph (10), former subparagraph (B), language requiring written objection to correspondence from an inmate or inmates by the parent or guardian of a minor to be filed with the Department's Director of Victim Services is stricken, in favor of new rules next explained.

Fifthly, at subsection (b), new paragraph (11), the paradigm governing correspondence between inmates and minors is shifted from one permitting such correspondence unless the parent or guardian of a minor affirmatively objects to same in writing, to one in which such correspondence is generally prohibited. Two circumstances in which correspondence between inmates and minors is permitted are then outlined—1) a parent or guardian of the minor has affirmatively filed written authorization for the correspondence between an identified inmate and the child with the Director of Victim Services; or 2) the minor is the biological or adoptive child of the inmate, and is not the victim of the inmate's crime for whom the child's legal custodian has filed written objection to the correspondence, unless in the latter instance, the inmate has secured a court order which permits the correspondence over the custodian's objection.

In the case of the second circumstance, i.e., the minor is the inmate's natural or adoptive child and otherwise eligible to correspond with the inmate, the inmate is also required to formally register the child's name, date of birth, and address with the Director of Victim Services.

Sixthly, at subsection (b), new paragraph (12), a rule prohibiting inmates from mailing or attempting to mail bodily substances, which are real, represented by the inmate as real, or reasonably perceived to be actual bodily substances, is added.

Seventhly and finally, at subsection (h), violation of any provision of the regulation is elevated from a Class II disciplinary violation to a Class I violation. The history section of the regulation is also updated.

II. Reason or Reasons the Proposed Amendments to Regulations Are Required, Including Whether or Not the Amendments Are Mandated by Federal Law.

The amended regulations are not mandated by federal law, nor are they required to participate in or implement a federally-subsidized or assisted program. The proposed amendments to regulations do not exceed any requirements of federal law.

III. Anticipated Economic Impact upon the Kansas Department of Corrections

In regard to the amendment of K.A.R 44-12-601 requiring electronic funds transfers, the Department in fact first implemented electronic funds transfers for deposits into inmate trust accounts in March, 2009, as an optional means of making such transfers, eventually making that method of deposits mandatory, commencing on January 1, 2011.

The Department contracted with J-Pay, Inc. first, commencing in March, 2009, and to date has received the following amounts of commission payments for the fiscal years involved, as follows: FY '09--$581.70; FY '10--$7,263.00; FY '11--$22,562.35; FY'12--$37,325.50; FY '13--$40,974.50; FY '14, from 7/1/13 to 11/30/13--$18,246.00, for a total amount of $126,953.05.

The Department's commission per transaction under the contract is $0.50.

The Department also later contracted with Keefe Commissary Network LLC, effective 10/1/10, to provide the same service, and to date, has received the following amounts in commission payments for the fiscal years involved, as follows: FY '11--

$10,532.00; FY ’12--$22,399.00; FY ’13--$18,974.00; FY ’14—from 7/1/13 to 11/30/13--$8,003.00, for a total amount of $59,908.00.

The Department’s commission per transaction under the contract with Keefe Commissary is $1.00.

All commission payments are deposited in the Department’s Central Office Inmate Benefit Fund, where they are expended to support a variety of inmate programs and services which would otherwise not be provided from state general fund monies.

In regard to the remainder of the proposed amendments, the Department does not anticipate any resulting economic impact upon its operations.

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

The Department does not anticipate economic impact upon offenders, other governmental agencies or private businesses (other than its electronic funds transfers services vendors), as a result of any of these regulation amendments. Governmental benefits and other government payments, transfers of offender funds from jails, and workers comp payments are not subject to the electronic funds transfer requirement.

As to economic impact upon private individuals, persons desiring to provide funds to inmates must, of course, pay service fees to the vendor selected by the individual to handle the transfer. Various methods besides online funds transfers are provided by the vendors, with differing fees charged for the various methods of depositing, and on a sliding scale for differing ranges of transferred funds amounts. The current schedule of service fees charged by each vendor for transfer services now actually provided by each (the services are <u>not</u> identical) is as follows:

J-Pay, Inc.:

Fees for Electronic Money Transfer Transactions				
Deposit Type	Online	Phone	Lock Box	Walk In
$0.01 - $19.99	$3.70	$4.70	$1.50	$6.95
$20.00 - $99.99	$6.70	$7.70	$1.50	$6.95
$100.00 - $199.99	$8.70	$8.70	$1.50	$6.95
$200.00 - $300.00	$10.70	$11.70	$1.50	$6.95

Keefe Commissary Network LLC:

Fees for Electronic Money Transfer Transactions					
Deposit Type	Online	Phone	Lobby Kiosk		Lock Box
			Credit Card	Cash	
$0.01 - $19.99	$3.70	$4.70	$3.70	$3.00	$5.95
$20.00 - $99.99	$6.70	$7.70	$6.70	$3.00	$4.00
$100.00 - $199.99	$8.70	$8.70	$8.70	$3.00	$4.00
$200.00 - $300.00	$10.70	$11.70	$10.70	$3.00	$4.00

The Department has requested actual-experience data from both vendors in regard to total fees charged to private individuals using the various deposit/funds transfer services under their contracts with KDOC, and that request is currently pending. Based upon the commission payments received by KDOC, the following estimates of aggregate amounts of fees paid per fiscal year since commencement of the respective contracts with KDOC are provided, to wit:

J-Pay, Inc.—FY ’09-$14,000.00; FY ’10--$173,000.00; FY ’11-$342,000.00; FY ’12-$480,000.00; FY’13-$535,000.00; FY ’14 (7/1/13 to 11/30/13)-$213,000.00, for a total amount of $1,757,000.00.

Keefe Commissary Network LLC—FY ’11-$50,000.00; FY ’12-$113,000.00; FY ’13--$101,000.00; FY ’14 (7/1/13 to 11/30/13)-$44,000.00, for a total amount of $308,000.00

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

In regard to the amendment requiring electronic funds transfers, the Department undertook such transfers for the twin primary purposes of improving security at its facilities by reducing mail volume and the associated opportunities to introduce contraband through the U.S. mail, and reducing staff time devoted to processing paper-based funds transfers, such as checks and money orders. A secondary purpose was to provide another revenue source to support inmate programming and services. In light of current technologies available, in the Department’s judgment, all of these purposes together could best be achieved by implementing a requirement for electronic funds transfers, which are still relatively inexpensive, and are no more intrusive in regard to providing personal information than are certified or cashiers checks and money orders sent through the U.S. mail.

In regard to the remainder of the amendments, due to the fact that no quantifiable economic impact is now foreseen as a result of these amendments, the Department of Corrections has had no occasion to consider less costly or intrusive methods in accomplishing its goals.