

## **SUMMARY OF REGULATIONS AMENDMENTS**

### **KANSAS DEPARTMENT OF CORRECTIONS**

**(August 3, 2016)**

**K.A.R. 44-12-301. Fighting.** This regulation is amended in several respects. First, it is subdivided into three subsections. Secondly, the first sentence of the current text of the regulation is amended by deletion of the final clause, “unless such activity is in self-defense,” so as to remove proof that self-defense was not in fact involved in the charged inmate’s actions as an element of the charge. Thirdly, a new subsection (b) is added which provides that self-defense is an affirmative defense to this charge, with the defendant inmate bearing the sole burden of proof in regard to this defense. The history section is also updated.

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. ~~1990~~ 2015 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; amended, T-\_\_\_\_\_, \_\_\_\_\_.)

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.