

1994

# John Kocher v. Scott Carver, Warden, and Utah State Board of Pardons: Brief of Appellant

Utah Court of Appeals

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Lorenzo K. Miller.

David S. Steed.

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UTAH COURT OF APPEALS  
BRIEF

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IN THE UTAH COURT OF APPEALS

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JOHN KOCHER,	:	
	:	<b>BRIEF OF APPELLANT</b>
Petitioner/Appellant,	:	
	:	
v.	:	Case No. 940141-CA
	:	
SCOTT CARVER, Warden; and	:	
UTAH STATE BOARD OF PARDONS,	:	Argument Priority: 3
	:	
Respondent/Appellee.	:	

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APPEAL FROM A FINAL ORDER OF FEBRUARY 8, 1994,  
DISMISSING APPELLANT'S PETITION FOR WRIT OF HABEAS CORPUS  
IN THE THIRD JUDICIAL DISTRICT COURT FOR THE COUNTY OF SALT LAKE  
STATE OF UTAH, THE HONORABLE JUDGE ANNE M. STIRBA PRESIDING

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NO NEED FOR ORAL ARGUMENT

**FILED**

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COURT OF APPEALS

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## CONSTITUTIONAL PROVISIONS

The Fourth Amendment, United States Constitution, provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

The Fourteenth Amendment, United States Constitution, provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law.

## OTHER PROVISIONS

On May 20, 1992, the Utah Board of Pardons issued a order that granted inmate John Kocher parole effective August 24, 1993 subject to the following condition:

It is further ordered that if and in the event that the above named applicant shall be guilty of any infractions of the rules and regulations of the Utah State Prison or shall fail or refuse to perform duties as assigned by the Utah State Prison or is found guilty of any other law of the State of Utah prior to the effective date of said parole, then this Order of Parole is revoked and becomes null and void.

The "Department of Corrections, Utah State Prison, Wasatch Facility, Inmate Orientation Handbook" (hereinafter "handbook") contains the following relevant procedure at pages 33-34:

### URINE COLLECTION AND TESTING

1. Staff may request a urine sample at any time. Failure of the inmate to produce one will result in disciplinary action.
2. It shall be the inmate's responsibility to provide a sample within **ONE** (1) hour from the time of the request.

3. If the inmate refuses or is unable to produce the requested sample within the given time frame, a disciplinary report shall be issued to the inmate for failure to comply with a direct order.
4. When an inmate alleges a psychological condition (shy bladder/bashful kidneys) which would preclude giving a sample while being observed, the inmate shall be strip searched, showered and dressed in clothing provided by a staff member. The inmate shall be given at least 16 ounces of water to drink prior to being placed in a secure (dry) holding area. The inmate shall be given **ONE** (1) hour within which to produce the required sample. If the sample is not provided within the one (1) hour time frame, the inmate shall be offered the option of medical catheterization. For further information refer to Policy and Procedure FER2/01.00.



### **QUESTION PRESENTED FOR REVIEW**

The issue requiring review is when disciplinary decisions are sufficiently "final" to trigger the automatic rescission provision of the Utah Board of Pardons' parole order.

### **STANDARD OF REVIEW**

The applicable standard of review is well-settled:

On appeal from denial of habeas corpus relief, "we survey the record in the light most favorable to the findings and judgment; and we will not reverse if there is a reasonable basis therein to support the trial court's refusal to be convinced that the writ should be granted."

Webb v. Van Der Veur, 853 P.2d 898 (Utah App. 1993) (citing cases).

### **DISTRICT COURT'S ORDER OF DISMISSAL**

On February 8, 1994, Judge Anne M. Stirba, District Court Judge of the Third Judicial District Court for Salt Lake County, State of Utah, issued an order granting the Respondent/Appellee's Motion to Dismiss, denying the relief sought by the Petitioner and dismissing Petitioner/Appellant John Kocher's Petition for Writ of Habeas Corpus based on the following findings and conclusions:

1. For the reasons stated in Respondent's Motion to Dismiss, Petitioner's petition for Writ of Habeas Corpus is improperly asserted as a Rule 65B(b) or (c) action.

2. Petitioner's claims are properly characterized as Rule 65B(e) claims.

3. There is no record before the Court which demonstrates that the Respondent's failed to follow the statutes, rules or regulations governing their actions, exceeded their authority or abused their discretion.

### **STATEMENT OF JURISDICTION**

The Utah Court of Appeals has jurisdiction over this appeal from the denial of a Petition for Writ of Habeas Corpus pursuant to §78-2a-2(g), Utah Code Ann. 1953, as amended. See e.g. Padilla v. Utah Board of Pardons, 820 P.2d 473 (Utah 1991).

### **STATEMENT OF THE CASE**

#### **Nature of the Case**

This is an appeal from a denial of the Petitioner/Appellant's [hereinafter "Appellant's"] petition for habeas corpus alleging that the Utah Board of Pardons improperly rescinded his August 24, 1993 parole date based on representations made by prison officials that he had been found guilty of violating a rule or regulation of the Utah State Prison. Although the prison Institutional Disciplinary Officer [hereinafter "IDHO"] found Appellant guilty of disobeying a direct order by refusing to provide a timely and adequate urine sample, that decision was never sufficiently "final" to trigger the automatic rescission provision of the Utah Board of Pardon's parole order where: (1) the officer's denial of the alternative procedure of dry cell and catheterization violated Appellants right against unreasonable searches and seizures; (2) that denial also prevented the reporting officer from providing sufficient evidence to support the disciplinary decision; and (3) official inaction, following the ALJ's remand of the case to the IDHO with instructions for the IDHO to obtain additional information about Appellant's requests for the dry cell/catheterization alternative and whether there was medical documentation indicating that Petitioner needed that alternative,

prevented the IDHO's decision from being "final" enough to trigger the automatic rescission provision of the Board's parole order.

#### Course of the Case and Disposition Below

On September 23, 1993, Appellant filed a Petition for Habeas Corpus and Post Conviction Relief, alleging that was not able to provide enough urine to test, the officer refused his request for a dry cell or catheter despite his kidney problems. He was found guilty without enough evidence. Even though the disciplinary case was on appeal before Judge Robinson, the Board of Pardons revoked Appellant's parole date and established a new parole date almost four months later. He alleged those actions violated due process.

Despite the foregoing scenario, Judge Anne Stirba determined "there is no record before the Court which demonstrates that the Respondent's failed to follow the statutes, rules or regulations governing their actions, exceeded their authority or abused their discretion Respondents," granted Respondent's Motion to Dismiss, and dismissed Petitioner's petition for Writ of Habeas Corpus.

#### Statement of Facts

- a. Petitioner John Kocher was convicted of Theft, a third-degree felony under § 76-6-4122(1)(c) U.C.A. (1989).
- b. On May 20, 1992, the Utah Board of Pardons ordered John Kocher a parole date of August 24, 1992 conditioned on the following provision:

It is further ordered that if and in the event that the above named applicant shall be guilty of any infractions of the rules and regulations of the Utah State Prison or shall fail or refuse to perform duties as assigned by the Utah State Prison or is found guilty of any other law of the State of Utah prior to the effective date of said parole, then this Order of Parole is revoked and becomes null and void.

- c. Before April 7, 1993, Utah State Prison inmate John Kocher # 19261 was transferred to the Wasatch Facility and was required to undergo reception and orientation, including review of a Document entitled "Department of Corrections, Utah State Prison, Wasatch Facility, Inmate Orientation Handbook" (hereinafter "handbook").
- d. Pages 33-34 of that handbook contains the following relevant procedure:

URINE COLLECTION AND TESTING

1. Staff may request a urine sample at any time. Failure of the inmate to produce one will result in disciplinary action.
  2. It shall be the inmate's responsibility to provide a sample within **ONE** (1) hour from the time of the request.
  3. If the inmate refuses or is unable to produce the requested sample within the given time frame, a disciplinary report shall be issued to the inmate for failure to comply with a direct order.
  4. When an inmate alleges a psychological condition (shy bladder/bashful kidneys) which would preclude giving a sample while being observed, the inmate shall be strip searched, showered and dressed in clothing provided by a staff member. The inmate shall be given at least 16 ounces of water to drink prior to being placed in a secure (dry) holding area. The inmate shall be given **ONE** (1) hour within which to produce the required sample. If the sample is not provided within the one (1) hour time frame, the inmate shall be offered the option of medical catheterization. For further information refer to Policy and Procedure FEr2/01.00.
- e. As a practical matter, the foregoing procedure presumes that any inmate who fails or refuses to provide a timely urine sample, must be doing so in order to prevent the prison personnel from determining that the inmate's urine sample contains prohibited drugs or alcohol. Any inmate refusing to timely comply with the request to provide is issued a disciplinary violation report for disobeying a direct order and is subject to punishment as though drugs or alcohol had been found in his urine sample. A limited exception is provided for those who claim that they can't provide the sample. The exception requires the officer to use a secure (dry) cell or catheterization to obtain the requested urine sample.

- f. On April 7, 1993, a prison officer ordered inmate John Kocher to provide a urine sample within an hour. Kocher was only able to produce a small amount of urine. The officer threw that sample away, stating that, "it was not enough!" Kocher told the officer he was unable to provide the requested urine sample due to kidney problems which were documented in his medical files. The prison officer rejected inmate Kocher's request to be put in the secure (dry) cell and denied Kocher's request that he be taken to the infirmary for catheterization.
- g. In the subsequent disciplinary violation hearing held on April 23, 1993, inmate Kocher argued that he was denied the opportunity to be placed in a dry cell or to be taken to the prison infirmary to be catheterized. Although he showed IDHO Hobbs the explicit language of the relevant prison policy and claimed he had requested a secure (dry) cell or catheterization, Institution Disciplinary Hearing Officer (IDHO) Hobbs found Kocher "guilty" of disobeying a direct order and sentenced Kocher to 15 days punitive isolation.
- h. On April 23, 1993, Kocher appealed the IDHO's decision to the Department of Corrections' Administrative Law Judge Spencer Robinson. On June 3, 1993, ALJ Robinson remanded the case back to IDHO C. Hobbs with instructions for the IDHO to obtain information about whether Kocher had asked to be placed in a dry cell or to be catheterized.
- i. Thereafter, neither IDHO Hobbs nor ALJ made any further contact with inmate John Kocher about the outcome of his disciplinary appeal.
- j. By letter dated June 16, 1993, Enid Pino, Hearing Officer for the Utah Board of Pardons, notified John Kocher that he would be provided a recision hearing on June 30, 1993 at 10:00 a.m. to discuss a Recision Request from prison authorities indicating that Kocher had disciplinaries.
- k. On July 13, 1993, the Utah Board of Pardons affirmed the June 30, 1993 interim decision, rescinded inmate Kocher's August 8, 1993 parole date, and ordered a new parole date of December 14, 1993.
- l. On September 23, 1993, John Kocher filed a Petition for Writ of Habeas Corpus alleging *inter alia*, and somewhat unartfully, that he was not guilty of disobeying a direct order to provide the urine sample because he alleged that he had a kidney condition that prevented him from giving the urine sample while being observed that required the officer to place him in a dry cell or, that failing, to offer him the option of being medically catheterized in

lieu of the violation report. Kocher also, unartfully, alleged that the prison misrepresented that he had been found guilty of the disciplinary violation before that decision was "final" ("without the results of [A.L.J.] Robinson's decision. He also alleged that the Board of Pardons should not have used the misrepresentation by the Prison that he had been found "guilty" of a rule violation because that decision was not yet "final".

- m. On October 14, 1993, Judge Anne M. Stirba issued an order stating that she had determined that petitioner's request for relief was "not frivolous on its face" and requiring respondents to Answer the Petition.
- n. Instead of answering the petition, respondents' filed a Motion to Dismiss and memorandum on October 28, 1993.
- o. Following a hearing on Respondent's Motion to Dismiss, Judge Anne M. Stirba characterized petitioner's claims as Rule 65B(e) claims, stated that "[t]here is no record before the court that demonstrates that the Respondents failed to follow statutes, rules or regulations governing their actions, exceeded their authority or abused their discretion", granted Respondent's Motion to Dismiss for the reasons stated therein and dismissed the petition for Writ of Habeas Corpus.
- p. Judge Stirba signed the order dismissing the petition on February 8, 1994 and Petitioner filed a notice of appeal of that decision on March 2, 1994.

#### **SUMMARY OF THE ARGUMENT**

By order dated May 20, 1992, the Utah Board of Pardons' gave Appellant a parole date of August 24, 1993 subject to the condition that he not be found guilty of violating any rule or regulation of the Utah State Prison. Although Appellant was subsequently found guilty of disobeying a direct order to provide an officer a timely and adequate urine sample, his subsequent appeal of that decision to the Department of Corrections Administrative Law Judge ["ALJ"] was remanded to the IDHO with instructions to obtain additional information regarding Appellant's request for a dry cell or for a

Appellant's alleged need for an alternative. Despite the remand order, Appellant never received a hearing or other determination of the validity of the disciplinary charge against him. Nevertheless, the Utah State Board of Pardons used representations made by prison staff that the Appellant had been found guilty of violating a Utah State Prison rule or regulation and the Board of Pardons rescinded the Appellant's parole date based on that misrepresentation.

The issue presented by this appeal is whether the decision of the Utah State Prison's IDHO was sufficiently "final" to support the Board of Pardon's decision to rescind Appellant's parole date where: (1) the reporting officer's refusal to provide the Appellant with the dry cell and catheterization alternative was unreasonable under the Fourth Amendment; (2) since provision of the alternative procedure was a condition precedent to the officer's right allege that Appellant disobeyed the officer's direct order, the officer's refusal to provide that procedure removed the presumption that the failure or refusal to provide a urine sample violated the officer's direct order to provide that sample and removing the very evidence that normally would be sufficient to support the IDHO's decision; and (3) the ALJ's remand of the case to the IDHO with instructions for the IDHO to obtain additional information regarding Appellant's requests and his need for the alternative procedure, and both the IDHO's and ALJ's subsequent inaction thereon, prevented the IDHO's decision that the Appellant was found guilt of violating from ever becoming sufficiently "final" to trigger the automatic rescission provision of the Utah Board of Pardon's conditional parole order.

## ARGUMENT

### I. THE PURPOSE AND SCOPE OF HABEAS CORPUS

Although the original purpose of the writ of habeas corpus was to test the lawfulness of the cause of a person's restraint, or the propriety of proceedings relating thereto, it is not to be doubted that the understanding of the nature of the writ has been expanded to test other alleged violations of basic rights. See Ziegler v. Miliken, 583 P.2d 1175 (Utah 1978).

The Utah Supreme Court has made it clear that habeas review of the actions of the Utah Board of Pardons is available under certain circumstances. Foote v. Board of Pardons, 808 P.2d 734, 735 (Utah 1991) ("It is the province of the judiciary to assure that a claim of the denial of due process by an arm of government be heard and, if justified, that it be vindicated").

Notwithstanding the foregoing, in order to state a ground for relief, it must appear from such a petition: (1) that there is a violation of a basic right; and (2) that the petitioner exhausted his administrative remedies, before seeking relief from the court. The reason for this requirement is that, consistent with its policy of judicial restraint, courts are reluctant to intrude into the operations or management of the internal affairs of a prison and will only do so in an unusual exigency where it appears that there is some oppression or injustice that is occurring that it would be unconscionable not to examine the alleged grievance. Id. at 1176.

In this case, Appellant has alleged that, having alleged that he had kidney problems that were preventing him from giving the



requested urine sample, he was entitled to the secure (dry) cell process and the opportunity to submit to catheterization by medical staff before he could be charged with disobeying a direct order. Appellant also alleges that the prison hearing officer's decision that he was guilty of disobeying a direct order was contrary to the evidence and violated the mandatory language of the secure or dry cell process and catheterization option. Finally, the Appellant alleges the officer's decision that he was guilty of disobeying a direct order when he refused to provide the urine sample was not sufficiently "final" to allow the Board of Pardons and Parole to trigger imposition of the automatic recision provision of the Board's parole order.

As to the requirement that he exhaust administrative remedies, see Smith v. Turner, 362 P.2d 581 (1961), the Appellant appealed the Institutional Disciplinary Hearing Officer determination that he was "guilty" of disobeying the officer's direct order to provide a urine sample where Appellant told the officer that he suffered from kidney problems that would prevent him from providing a urine sample while being observed by the officer and the officer refused to afford him the mandatory secure (dry) cell process and medical catheterization option before issuing him a disciplinary violation report for refusing a direct order.

The ALJ remanded the case to the IDHO with instructions that he obtain additional information regarding Appellant's request to use a secure (dry) cell and, if necessary, medical catheterization to ensure his ability to give an adequate urine sample. Appellant

is unaware of any fact or indication that the IDHO or ALJ ever took any further action on the charges against him nor provided him any further hearing or remedy. Appellant further alleges that since due process protections must be provided at a meaningful time and in a meaningful manner, the Institutional Disciplinary Hearing Officer and the Departmental Administrative Law Judge have lost the ability to deal with this matter further. See e.g. Palmer v. City of Monticello, 31 F.3d 1499, 1508 (10th Cir. 1994) (hearing provided some 21 months after police officer's termination was "not granted at a meaningful time and in a meaningful manner").

Therefore, this case presents a factual pattern where there is a likelihood of such oppression and injustice to the extent that it would be unconscionable not to examine the alleged grievance. See Ziegler v. Miliken, 583 P.2d 1175, 1176 (Utah 1978).

## II. THIS APPEAL SHOULD NOT BE DISMISSED AS MOOT

Although the Appellant has been released on parole, his appeal should not be dismissed for mootness.

Mootness allows the court to refrain from adjudicating a case on the merits if the requested judicial relief cannot affect the rights of the litigants. Duran v. Morris, 635 P.2d 43 (Utah 1981).

However, one of the recognized exceptions to the principle of mootness allows the Court to hear the case when the case presents sufficiently compelling circumstances. In Wickham v. Fisher, 629 P.2d 896 (Utah 1981), the Utah Supreme Court held that:

The principles that determine the justiciability of the instant case are well-established rules which permit a court to litigate an issue which, although technically

moot as to the particular litigant at the time of the appeal, is of wide concern, affects the public interest, is likely to recur in a similar manner, and because of the brief time any one person is affected, would otherwise likely escape judicial review.

In this case, the petitioner/appellant complains of official refusal to apply a mandatory procedure available to prisoners as a defense against the procedural presumption that failure or refusal to provide timely and adequate urine samples justifies disciplinary convictions for disobeying a direct order and punishment as though the inmates were guilty of actually using drugs.

### III. FOURTH AMENDMENT IMPLICATIONS

When an prisoner is subject to punishment for disobeying an officer's order for failing or refusing to provide a urine sample, his Fourth Amendment rights are implicated. Lucero v. Gunter, 17 F.3d 1347, 1349 (10th Cir. 1994). But, the fact that those rights are implicated does not mean that random urinalysis collection and testing violates the Fourth Amendment. Id. at 1349-1350.

The unauthorized use of narcotics is a problem that plagues virtually every penal and detention center in the country. *E.g.* Block v. Rutherford, 468 U.S. 576, 588-89, 104 S.Ct. 3227, 3234, 82 L.Ed.2d 438 (1984). Prison officials have a "significant and legitimate" interest in preventing unauthorized drug usage among prison inmates. Therefore, random urine collection and testing of prisoners is a reasonable means of combating unauthorized use of narcotics and does not violate the Fourth Amendment. Lucero v. Gunter, 17 F.3d 1347, 1350 (10th Cir. 1994).

Since urinalysis collection and testing constitutes a search and seizure for the purpose of the Fourth Amendment, Schmerber v. California, 384 U.S. 757, 767-68, 86 S.Ct. 1826, 1834, 16 L.Ed.2d 908 (1966), and Lucero v. Gunter, 17 F.3d 1347, 1349 (10th Cir. 1994), urinalysis collection and testing must be conducted in a reasonable manner. Id. at 771-72, 86 S.Ct. at 1836.

In Levoy v. Mills, 788 F.2d 1437, 1439 n. \*\* (10th Cir. 1986), the Tenth Circuit Court of Appeals stated:

In [Bell v.] Wolfish, [441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed. 2d 447 (1979)] the Supreme Court assumed that prison inmates retain some measure of Fourth Amendment rights. Id. We do not believe that the Supreme Court's decision in Hudson v. Palmer, 468 U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984), in which the Court held that a prisoner has no reasonable expectation of privacy in his prison cell, eviscerates the requirement set forth in Wolfish that personal body searches must be reasonable under the circumstances.

This means that the officer's order must be based upon random selection and cannot be imposed as a mechanism to harass prisoners. Lucero v. Gunter, 17 F.3d 1347, 1350 (10th Cir. 1994).

Another factor that affects the "reasonableness" of a urine collection and testing procedure permitting punishment of inmates for refusing to submit to the urinalysis is the concern that the inmate has actually refused to provide the urine sample. While prison disciplinary proceedings only require "some evidence" to support a disciplinary charge, see Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985), procedures that help ensure recovery of the urine sample rather than to punish the inmate for failing or refusing to provide the sample make the rule more reasonable.

An example of this principle is found in the portion of the Utah State collection and testing procedure, which provides:

4. When an inmate alleges a psychological condition (shy bladder/bashful kidneys) which would preclude giving a sample while being observed, the inmate shall be strip searched, showered and dressed in clothing provided by a staff member. The inmate shall be given at least 16 ounces of water to drink prior to being placed in a secure (dry) holding area. The inmate shall be given **ONE** (1) hour within which to produce the required sample. If the sample is not provided within the one (1) hour time frame, the inmate shall be offered the option of medical catheterization. For further information refer to Policy and Procedure FEr2/01.00.

However, the limited exception to the rule, allowing inmates who legitimately are unable to provide a urine sample alternative ways to ensure that sample is provided, is part of what makes the prison's urinalysis collection and testing rule appear reasonable. Application of the four-part inquiry of Turner v. Safely, 482 U.S. 78, 89, 107 S.Ct. 2254, 2261-62, 96 L.Ed.2d 64 (1987) suggests the alternative provision is necessary to prevent the otherwise harsh consequences of that part of the rule that creates an irrebuttable presumption that any inmate who refuses **or fails** to provide a urine sample may be punished in a similar manner to an inmate whose urine sample tests positive for drugs. See Clifton v. Craig, 924 F.2d 182, 184 (10th Cir. 1991), *cert. denied*, 112 S.Ct. 97, 116 L.Ed.2d 68 (1991) (application of Turner four part inquiry).

A narrower interpretation of the provision may reimpose the overly harsh consequences of the irrebuttable presumption. The current rule requires the inmate to allege psychological condition that prevents him from providing the urine sample while he is being

observed by the officer. Although a provision requiring the mere allegation of inability to provide the urine sample may be a better procedure, it is sufficiently likely that the inability to provide a sample is caused by a psychological condition. Since the purpose of the urine collection and testing procedure is to ensure that the inmate provides a timely and adequate urine sample for testing, it would be unreasonable to deny inmates' requests for an alternative process that is reasonably designed to ensure the inmate provides the requested urine sample. It may also be unreasonable to require documentation of an inmate's psychological condition in an inmate's file before applying such an alternative.

Therefore, to the extent that the Utah State Prison's urine collection and testing procedure allows prison personnel to deny inmates who are not able to provide the requested urine sample an opportunity to ensure that urine sample is provided, *i.e.* through the dry cell and catheterization process, that procedure may not be constitutional within the meaning of the Fourth Amendment.

#### IV. DUE PROCESS OF LAW

##### A. LIBERTY OR PROPERTY INTEREST

The threshold question in determining whether there has been a deprivation of due process of law is whether either the federal Due Process Clause or state law has created a liberty or property interest that triggers the procedural and substantive protections of the Fourteenth Amendment. Absent either a liberty or property interest, federal law does not dictate what process must be provided.

## 1. LIBERTY INTEREST

Liberty interests protected by the Fourteenth Amendment may arise from two sources -- the Due Process Clause itself and the laws of the states. Hewitt v. Helms, 459 U.S. 460, 466, 103 S.Ct. 864, 869, 74 L.Ed.2d 675 (1983). The Due Process Clause standing alone offers prisoners only a "narrow range of protected liberty interests." Id. at 467, 103 S.Ct. at 868.

In Hewitt, the Supreme Court suggested that courts focus on "the repeated use of explicitly mandatory language in connection with requiring specific substantive predicates" to decide whether a particular state provision created a protected liberty interest in the prison context. Id. at 472, 103 S.Ct. at 871-72; Kentucky Department of Corrections v. Thompson, 490 U.S. 454, 463, 109 S.Ct. 1904, 1910, 104 L.Ed.2d 506 (1989).

Utah prison regulations authorize officers to issue an inmate a disciplinary violation report for disobeying the officer's direct order to provide a urine sample within one hour. However, once an inmate alleges that he is suffering from some condition that could prevent him from giving a sample while being observed, the officer is required institute the procedure designed to ensure the inmate can provide a urine sample. The language of the rule provides:

When a inmate alleges a psychological condition ([like] shy bladder/bashful kidneys) which could preclude giving a sample while being observed, the inmate shall be strip searched, showered and dressed in clothing provided by a staff member. The inmate shall be given at least 16 ounces of water to drink prior to being placed in a secure (dry) holding area. The inmate shall be given **ONE** (1) hour to produce the required sample. If the sample is not provided within the one (1) hour time frame, the inmate shall be allowed the option of medical catheterization....

One purpose of that rule is to provide a procedure designed to help inmates provide a urine sample rather than being charged with the rule violation and forfeiting the parole date. When an inmate alleges that he has a psychological condition (*i.e.* shy bladder or bashful kidneys) that prevents him from providing the urine sample in front of the guard, that allegation, without more, triggers the mandatory alternative procedures involving placement of the inmate in a dry cell for one hour, and if that procedure is unsuccessful in helping the inmate to provide the urine sample, offering the prisoner the option of submitting to catheterization to obtain the urine sample.

That procedure is expressed in mandatory language and does not provide the enforcing officer any discretion once an inmate alleges that he cannot provide the urine sample because of a psychological condition that prevents him from doing so in front of the officer.

In this case, Appellant told the officer who ordered him to provide a urine sample that he suffered from kidney problems that prevented him from easily providing a urine sample while someone was watching, and he asked to be placed in a dry cell or have the opportunity to submit to catheterization. The officer denied that request and issued Appellant an inmate violation report.

Although the Appellant raised the language of that rule as his sole defense at his disciplinary hearing before the IDHO, the IDHO found him guilty of disobeying the direct order to provide a urine sample and sentenced him to 15 days of punitive isolation. The prison notified the Board of Pardons that Appellant has been found



"guilty" of a disciplinary violation. Although the IDHO found the Appellant guilty of disobeying a direct order, the order should not have been used to trigger the automatic rescission provision of the Board of Pardon's order until Appellant had the opportunity to test that decision on appeal to the Department ALJ.

The Appellant appealed the IDHO's determination to the ALJ at the Utah Department of Corrections. The ALJ remanded the appeal back to the prison's disciplinary hearing officer with instructions for that hearing officer to obtain additional information regarding the inmate's requests for the dry cell or a catheter and obtain medical information on whether the inmate needed an alternative. Neither the IDHO nor the ALJ ever contacted Appellant following that remand.

In this case, Appellant's failure to provide a requested urine sample resulted in the automatic recision of his parole date and a concurrent grant of the new parole date approximately four months after the previous parole date. Under the forgoing conditions, it is very likely that the issues presented will recur and the issue would otherwise likely escape judicial review because of the brief time that the prisoner is affected.

Appellant alleges the dry cell/catheter procedure contains repeated mandatory language in connection with requiring specific substantive predicates to the officer's power to charge him with disobeying a direct order, which charge directly caused his parole date to be revoked. He also alleges the disciplinary officer's determination that he was guilty of refusing to obey a direct order

by failing or refusing to provide a urine sample had been appealed the Department ALJ and therefore was not sufficiently "final" to trigger the automatic revocation of his parole.

The foregoing analysis supports the conclusion that Appellant had a liberty interest sufficient to trigger federal due process protections as discussed in Wolff v. McDonnell, 418 U.S. 539, 556, 94 S.Ct. 2963, 2974, 41 L.Ed.2d 935 (1974), and in Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985).

## 2. PROPERTY INTEREST

The procedural protections mandated by federal law may also be triggered by state procedures that create a property interest. See Board of Regents v. Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972) (property interests are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law, rules or understandings securing certain benefits and that support claims of entitlement thereto); Abbott v. McCotter, 132 F.3d 1439, 1442 (10th Cir. 1994); Gillihan v. Schillinger, 872 F.2d 935, 939 (10th Cir. 1989).

Utah State Prison inmate disciplinary rules subject inmates to the potential penalty of being fined and thereby being deprived of property. Even though Appellant was not required to pay a fine in this case, he was subjected to the "potential" of being fined and that potential is sufficient to implicate the federal procedural due process protections.

### 3. SUFFICIENCY OF EVIDENCE

Under federal law, due process requires that "some evidence" exist to support a prison disciplinary decision. Superintendent, Massachusetts Correctional Institution, Walpole v. Hill, 472 U.S. 445, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985). Under that standard, the reviewing court is not to reweigh all the evidence. Instead, "the relevant question is whether there is any evidence in the record that could support the decision reached by the disciplinary board." Id. at 455-56, 105 S.Ct. at 2774.

The Utah courts have required a "residuum" of legal evidence competent in a court of law to support the state administrative rulings. See Wagstaff v. Department of Employment Security, 826 P.2d 1069, 1072 (Utah App. 1992) (hearsay evidence is admissible in administrative proceedings. Yacht Club v. Utah Liquor Control Comm'n, 681 P.2d 1224, 1226 (Utah 1984) (While nothing was wrong with admission of hearsay evidence, "findings of fact cannot be based exclusively on hearsay evidence. They must be supported by a residuum of legal evidence competent in a court of law). See Dept. of Air Force v. Dept. of Employment Security, 786 P.2d 1366, 1369 (Utah App.), *cert. denied*, 795 P.2d 1139 (Utah 1990).

In this case, the only evidence of the Petitioner/Appellant's guilt of a rule violation is his failure or refusal to provide the urine sample. However, the same procedure required the officer to take the necessary steps to place Appellant into a secure (dry) cell for an hour and, if that did not result in the necessary urine sample, to offer the Appellant an opportunity to submit to medical

catheterization. Where Appellant demonstrated by his willingness to allow himself to be subjected to the steps necessary to comply with the alternative procedure, but was prevented from doing so by the officer who ordered the prisoner to provide the urine sample, it would not be fair to allow the prisoner to be found guilty of disciplinary charges based upon the prisoner's refusal to provide the urine sample. On the contrary, whenever it is applicable, the alternative procedure operates as a "condition precedent" to the officer's ability to take advantage of the presumption that any prisoner who fails or refuses to provide a requested urine sample is guilty of disobeying a direct order.

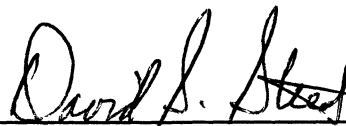
Since there was no evidence to support the presumption that Appellant refused to provide a urine sample, the IDHO's application of that presumption to Appellant's disciplinary charge violated due process.

#### **CONCLUSION**

Based upon the foregoing reasoning, this Court should grant the Appellant's Petition for Writ of Habeas Corpus,

Filed on this 16th day of November, 1994.

HILTON & STEED, P.C.

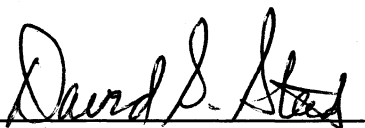
A handwritten signature in cursive script, appearing to read "David S. Steed", written over a horizontal line.

David S. Steed  
Attorneys for  
Petitioner/Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed four true and correct copies of the foregoing APPELLANT'S BRIEF, first-class postage prepaid, to the following record counsel for Respondent/Appellee on the 16th day of November, 1994:

LORENZO K. MILLER  
Assistant Attorney General  
330 South 300 East, Second Floor  
Salt Lake City, Utah 84111

  
David S. Steed  
Attorney for  
Petitioner/Appellant

ADDENDUM A - BOARD OF PARDON PAROLE ORDER [5/20/1992]

Norman H. Bangerter  
Governor  
H.L. (Pete) Haun  
Chairman



19261

Members  
Donald E. Blanchard  
Michael R. Sibbett  
William L. Peters  
Heather N. Cooke

## BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

ORDER OF PAROLE  
UTAH STATE OBSCIS NO. 00050755  
UTAH STATE PRISON NO. 19261  
IN THE MATTER OF THE APPLICATION OF KOCHER, JOHN RICHARD

APR 23 1993

This matter of application for parole, termination of sentence, or expiration of sentence having come before the Utah State Board of Pardons in a regularly scheduled hearing on the 20th day of May, 1992, and the applicant appearing in person or having waived in writing the right to appearance and the Board having heard the case, issues the following order:


It is hereby ordered that KOCHER, JOHN RICHARD be paroled from the punishment and sentence heretofore imposed upon him/her by a judge of the Second District Court in and for the County of Davis, Weber for the crime(s) of AUTO THEFT, 3rd degree felony, Expiration 01/28/94; AUTO THEFT, class A misdemeanor, Expiration 04/22/90; THEFT, 3rd degree felony, Expiration 02/26/97.

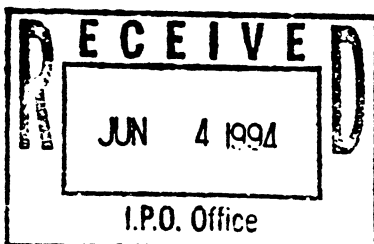
The parole shall not become effective until 24th day of August, 1993. The applicant agrees to the conditions of parole and evidences his agreement by signing the parole agreement. The parole agreement or contract shall be administered by duly authorized agents of the Utah State Department of Corrections for the Utah State Board of Pardons.

It is further ordered that if and in the event the above named applicant shall be guilty of any infractions of the rules and regulations of the Utah State Prison or shall fail or refuse to perform duties as assigned by the Utah State Prison or is found to be in violation of any other law of the State of Utah prior to the effective date of said parole, then this Order of Parole is revoked and becomes null and void.

Dated this 20th day of May, 1992.

By Order of the Board of Pardons of the State of Utah, I have this 28th day of May, 1992, reduced its decision in this matter to writing and hereby affix my signature as Chairman for and on behalf of the State of Utah, Board of Pardons.

  
H.L. HAUN, Chairman



## ADDENDUM B - INMATE ORIENTATION HANDBOOK



**DEPARTMENT OF CORRECTIONS**  
**UTAH STATE PRISON**  
**WASATCH FACILITY**  
**INMATE ORIENTATION HANDBOOK**

## **WASATCH HOUSING UNIT**

### **ORIENTATION PACKET**

#### **INTRODUCTION**

The program of orientation outlined in this packet is intended as a source of information. For specific information, refer to Policy and Procedures, sections A or F.

All inmates accepted to the Wasatch Housing Unit will complete orientation during the first week.

Any questions that you may have can most likely be answered by reading this orientation packet. If you find that you have any further questions after completely reading this packet, please feel free to speak to one of your housing unit Officers.

It is the goal of the Wasatch Housing Unit staff to maintain a safe, secure, clean, orderly unit and to help integrate the new Wasatch inmate to his new environment.

## **ORGANIZATIONAL CHART**

**Kim Thompson, Director Institutional Operations**

**Tamara Holden, Warden**

**W. Fred Hurst, Deputy Warden**

**William Johnson, Security Director**

**Steve S. Miner, Executive Officer Wasatch**

**L. Richard Smith, Captain Wasatch**

**Jeff Myers, Lieutenant A Block**

**Mark Bailey, Lieutenant B Block**

**Russell Andrus, Lieutenant C & D Blocks**

**Lead Officers**

**Line Officers**

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## **BARBER**

An institutional barber will be available in the Wasatch facility on each block, once a week. There is a haircut sign-up list located in the block office. If you require a haircut you must sign-up on that list. Housing unit staff will establish priorities for allocated barber time.

## **BOARD OF PARDONS**

The Utah State Board of Pardons is the paroling/releasing authority for the State of Utah and functions separately from the Department of Corrections.

All South Point Board of Pardons Hearings are conducted in the Board Room in the Oquirrh V Facility. Regular hearing dates are Wednesdays and Fridays.

The Board conducts hearings at which the inmate has a right to be present. They are as follows:

1. Original Parole Grant Hearings,
2. Rehearings,
3. Rescission Hearings, and
4. Revocation Hearings.

The Board also conducts hearings at which the inmate does not have a right to be present. They are as follows:

1. Special Attention Hearings,
2. Redetermination Hearings,
3. Courtesy Hearings,
4. Evidentiary Hearings,
5. Commutation Hearings, and
6. Termination Hearings.

Decisions made by the Board of Pardons cannot be grieved nor appealed at any time. For more information concerning the Board of Pardons, contact your caseworker.

## **CASEWORKER**

To make an appointment to see your assigned caseworker, get a Request for Informal Interview with Unit Manager Form from one of your housing unit Officers. Fill it out to the best of your ability and place it in the caseworker's basket in the Officer's cage.

## **CELL ACTIVITIES**

During out of cell time inmates shall:

1. Not enter any cell other than the cell to which they are assigned,
2. behave in a polite, reasonable manner,
3. not climb on fixtures,
4. not litter,
5. be dressed in designated uniform, except when going to and coming from recreational facilities where authorized gym clothes may be worn, or as directed by institutional staff,
6. **NOT** loiter on stairwells, shower areas, hallways, etc., and
7. be required to use the shower facility designated for their assigned housing section/unit, unless otherwise directed by institutional staff.

## **CELL STANDARDS**

All inmates are responsible for keeping their living quarters clean. The day shift lead officer will conduct or designate another officer to conduct a daily inspection beginning at 0900 hours. Gigs will be issued for areas not meeting standards. Continued gigs will result in a disciplinary report. All inmates will be out of bed and beds made no later than 0800 hours. Unless, you have a medical lay-in or you are a graveyard shift worker.

1. **BED:** Will be made prior to inspection. Inmates will not be on or in bed during inspection. All bedding will be tucked in and the blanket will be on the bed. Blankets shall not hang over the edge of the bunk obstructing the view of the officer. There will be nothing stored on the top bunk, at any time. Bedding shall not be used as curtains, rugs or for any purpose other than its intent.
2. **DESK:** Cleaned and dusted daily. Nothing attached to the desk, no plant of any kind allowed. They shall not be cluttered or messy.
3. **FLOOR:** Mopped daily concentrating on corners and toilet area. Not to be cluttered with clothes or any thing else.

#### **CELL STANDARDS (continued)**

4. **LIGHT:** No light covers are allowed. No coloring of the light bulbs. Light should be in place and secure. Nothing shall be hung from the light fixture.
5. **TOILET:** Cleaned daily inside and out. No toilet seat covers are allowed. No water line or ring shall be allowed on the inside of the toilet.
6. **MIRROR:** Shall be cleaned daily. Nothing is to be attached to the mirror, including personal mirrors.
7. **SINK:** Shall be cleaned daily inside and out on a daily basis. No soap residue shall be present on the inside or outside of the sink.
8. **WALLS:** Nothing shall be attached to the walls in any way except in bulletin board areas. Walls will be painted one solid color, that is approved by the Captain. Bulletin boards will be of a uniform size and placement.
9. **WINDOW:** Shall be cleaned daily. Report any broken windows to the officer on duty. Nothing is allowed to cover or obstruct the view out of the window.
10. **WINDOW SILL:** Shall be cleaned or dusted on a daily basis. Nothing will be stored on the window sill.
11. **TRASH CAN:** Shall be emptied on a daily basis.
12. **CLOTHES LINE:** Are NOT allowed!
13. **LOCKER BOX INSERT:** Must be kept in the locker box, no where else.
14. **PRIVACY CURTAIN:** Privacy curtains ordered from the commissary are the only curtains that will be approved.
15. **AIR VENT:** Nothing will be attached to or cover the air vent at any time.



## **CHAIN OF COMMAND (command structure)**

The line of authority/chain of command shall be in a progressive line of increasing authority.

- A. Officer
- B. Lead Officer/Sergeant
- C. Clinical Social Worker
- D. Psychologist
- E. Ethnic Minority Resource Specialist (EMRS)
- F. Lieutenant
- G. Duty Officer
- H. Captain
- I. Officer In Charge (OIC)
- J. Correctional Administrator(Executive Director)X.O.
- K. Deputy Warden/Chief
- L. Warden/Bureau Director
- M. Director of Institutional Operations (DIO)
- N. Deputy Director, UDC
- O. Executive Director

## **PROCESS TO SEE THE ABOVE PEOPLE**

1. Initial informal interview request may be obtained from your housing unit Officer.
2. Complete the entire form and give it to the housing unit Officer or Unit Lieutenant.
3. If your request is of a confidential nature, seal it in an envelope and address it to the appropriate staff member.

Forms for all types of communication are available in the Officer's cage of each unit. For further information regarding the chain of command and how in functions please refer to FAr03/01.00.

## **CLASSIFICATION**

The Utah State Prison uses an inmate classification system to place inmates in the proper housing area and security level in an attempt to provide safety for the community, the staff and other inmates.

## **CLASSIFICATION (continued)**

Each inmate is classified while in the Reception and Orientation Unit.

1. KAPPA - assertive and sometimes aggressive;
2. OMEGA - not usually the aggressor or the victim; and
3. SIGMA - more passive and easy going.

Wasatch has been designated a type C facility and will house custody levels III, IV and V with all AIMS designations. Questions regarding classification will be routed through the informal request system to the Housing Unit/Unit Caseworker, Lieutenant or Captain.

## **CODE OF CONDUCT**

All inmates are expected and required to adhere to the following rules and regulations pertaining to the inmate code of conduct.

1. Inmates shall respect the civil and legal rights of all other inmates, visitors and staff;
2. Inmates shall be respectful, courteous and civil with the public, staff and each other, and shall not use coarse, loud, profane or unnecessarily harsh language;
3. Inmates shall meet established standards and report conditions or circumstances that would prevent them or others from meeting these standards;
4. Inmates shall observe and abide by housing unit rules;
5. Inmates shall not engage in "horseplay" or the playing of pranks at any time;
6. Inmates shall not engage in discussion or debates nor speak disparagingly of the nationality, race or beliefs of any persons to the detriment of safety, security, management or control of the institution;

## **CODE OF CONDUCT (continued)**

7. Inmates shall not act in such a manner that adversely affects the safety, security, management or control of the institution;
8. Inmates shall not engage in any act or conduct which violates Federal, State or Local laws or ordinances;
9. Inmates shall not become involved or become a member of any organization, association, movement, group, gang, or combination, which has adopted a policy of advocating violence or acts of force to deny others their constitutional rights, advocate racial or religious discrimination as a political philosophy or objective, or who may threaten the safety, security, management or control of the institution;
10. Inmates shall not ridicule, mock, deride, taunt or belittle any person or group of persons, willfully, embarrass, humiliate or do anything that might incite any person to act out in an inappropriate manner;
11. Inmates shall not engage in or encourage others to engage in any form of sit-down, slow-down or work stoppage for any reason, against the institution;
12. Inmates shall comply with institutional policies and procedures;
13. Inmates shall not conduct themselves or cause or encourage others to conduct themselves in a manner which may have a negative impact on the safety, security, management or control of the institution;
14. Inmates shall **NOT** use equipment, facilities, supplies, etc., for anything other than the purpose it was intended, or without proper authorization;
15. Inmates shall perform assigned duties or tasks promptly as directed and as required by law, and consistent with institutional policy and procedures;

#### **CODE OF CONDUCT (continued)**

16. Inmates shall be provided by the institution an identification (ID) card and shall be required to maintain this card in his personal possession when away from assigned housing unit;
17. Inmates shall request clarification from staff on unclear instructions, orders, policies, procedures, etc.;
18. Inmates shall not accept loans, gifts, compensations or barter from other inmates;
19. Inmates shall not purchase, bargain, etc., for items belonging to other inmates;
20. Inmates shall not sell, trade or loan items to other inmates;
21. Inmates shall not have any involvement in the setting or maintaining of any fire;
22. Inmates shall not engage in or incite a riot (create or engage in a disturbance of Correctional operations);
23. Inmates shall not escape, attempt to escape or plan an escape;
24. Inmates shall not be in possession or use a firearm, explosive weapon, or infernal device;
25. Inmates shall not take any hostage;
26. Inmates shall not intentionally cause the death of another;
27. Inmates shall not tamper, interfere with, alter, jam, jack, or otherwise damage or destroy a lock, locking device, locking mechanism or security device;
28. Inmates shall not be in possession or use of any intoxicants or unauthorized drugs, positive urinalysis, breath analysis or refusal to submit to same;

## **CODE OF CONDUCT (continued)**

29. Inmates shall not deliberately damage, loose, destroy state property or the property of another;
30. Inmates shall not be in the possession of or use escape tools or materials;
31. Inmates shall not be in the possession of any weapon;
32. Inmates shall not be involved in gambling, loan sharking or extortion;
33. Inmates shall not resist arrest or required movement, or refuse a direct order;
34. Inmates shall not interfere with an investigation, make false statements, or provide false identification;
35. Inmates shall not use any disguise or mask, or be in possession of any correctional staff member's, volunteer's or private citizen's clothing, or any part of any official uniform;
36. Inmates shall not violate any contract, any community release agreement, classification, day pass agreement or any other agreement involving a community release agreement;
37. Inmates shall not be in an area where drugs, intoxicants or alcohol are being used;
38. Inmates shall not encourage participation in any act or conduct which establishes, maintains or promotes a staff member's relationship with an offender or an offender's immediate family which is outside the color of employment for personal benefit or gain which compromises a member's professional role;
39. Inmates shall not give or offer a bribe or anything of value to any correctional employee, law enforcement officer, government authority, volunteer, or any agent of the Department;

## CODE OF CONDUCT (continued)

40. Inmates shall not be in possession of stolen property and/or obtain goods under false pretenses;
41. Inmates shall not create a health, safety or fire hazard, i.e., clogging of any sink, shower, drain, toilet, water line, sewage system or ventilation system;
42. Inmates shall not abuse the mail, telephone or visiting privileges;
43. Inmates shall not engage or encourage others to engage in prohibited sexual activities, homosexual activities or indecent exposure;
44. Inmates shall not participate in, give or receive any tattoo;
45. Inmates shall not be in possession of any item that may be considered contraband; and/or
46. Inmates shall not make obscene gestures, or use any derogatory language towards any employee, volunteer or agent of the Department or towards any non-inmate citizen.
47. Inmates shall not display pictures and/or photographs showing nude genitalia, buttocks, and female breasts on their cells walls. The display of these types of pictures and/or photographs on cell walls or in plain view of visitors, staff, or other inmates is prohibited. Inmates possessing these types of pictures and/or photographs may retain them, but they must keep them out-of-sight either in their footlocker or with other personal property.

## COMMISSARY

To order commissary, a commissary slip must be filled out and attached to a money transfer and turned into housing unit staff. These forms are located on the housing unit. Staff will witness the inmate signature and ensure the forms are delivered to Control I by 0700 hours on the day designated as commissary day for Wasatch facility.

An inmate may maintain in his possession commissary items not identified on the approved property list if:

1. proof of purchase is provided;

## **COMMISSARY (continued)**

2. items were purchased through the commissary;
3. the items are on the inmate's approved commissary list for the facility.

Inmates will present their I.D. cards when receiving commissary items. All commissary orders and transfers are to be filled out completely, to include entire name, USP number and cell number, with designation for top or bottom bed. Failure to follow these procedures will result in the return of the request and will not be accepted until the next scheduled commissary order day.

Commissary orders may be submitted once per week. Commissary orders will be delivered to the Wasatch Facility once per week.

1. Commissary is a privilege, not a right, and may be lost as a result of disciplinary action;
2. the institution has commissary items available for inmates to purchase;
3. commissary items shall be limited according to the classification status of the inmate;
4. commissary orders shall be refused if the inmate's financial account is inadequate;
5. time frames for ordering and delivering of commissary items vary according to the housing unit assignment.

**NOTE:** Inmates will be informed as to the days of the week commissary orders must be submitted and when the orders are filled in each unit. Commissary order slips must be filled out, signed, witnessed by staff and placed in the commissary box. Commissary will be distributed to inmates in accordance with the housing unit activities.

## **COMMUNITY EDUCATION**

College courses are available to those who qualify. A high school diploma or G.E.D. is required. Those wishing to gain a high school degree will need to obtain Level III and apply for the High School Program through the education program.

Community Education classes will be taught by volunteers. A wide variety of classes are being offered. These classes will be offered without credit toward graduation, but rather to enhance the inmate's life skills and to allow him to develop his talents in many areas.

Access to the Community Education classes will be based on the inmate's classification level III through VI.

## **COUNT**

Whenever a count is announced, all inmates are expected to be in their assigned housing area. Failure to be in the assigned area is a violation of Policy and Procedure and disciplinary action can be implemented upon the inmate. Count times are as follows:

1. 1130 hours (11:30 A.M.)
2. 1600 hours ( 4:00 P.M.)
3. 2030 hours ( 8:30 P.M.)
4. 2300 hours (11:00 P.M.)

An emergency count can be called within the facility at any time. If an inmate fails to be in his assigned area, disciplinary action may be implemented upon the inmate.

## **CULINARY**

All inmates except those on punitive isolation and lockdown status are required to eat their meals in the culinary. Breakfast paged at 0600 hours and ends at 0700 hours, Lunch begins at 1130 hours and ends at 1230 hours, and dinner begins at 1600 hours and ends at 1700 hours.



## **CULINARY (continued)**

If an inmate is on lockdown status, the inmate will be fed in his assigned cell for the duration of the lockdown period.

## **DAY PASS**

**LEVEL V inmates may be granted Day Passes utilizing the following criteria:**

- 1. Shall be no more than six (6) months to parole, termination or expiration;**
- 2. Shall be disciplinary free a minimum of 60 days minor and 120 days major for a period immediately preceding the request for the Day Pass;**
- 3. Inmates must have 90 days above standard work reports for the period immediately preceding request for the Day Pass;**
- 4. Inmates with detainers shall be authorized in writing by the detaining agency prior to the granting of a Day Pass;**
- 5. Interstate compact inmates shall be authorized in writing by the state of commitment prior to the granting of a Day Pass;**
- 6. Inmates shall have no escapes/absconsions within the past five (5) years;**
- 7. Inmates shall be able to demonstrate ongoing participation in educational, therapeutic programs, recreation and religious activities.;**
- 8. Inmates shall have no negative incident reports or c-notes relating to Day Pass, nor shall they have any disciplinaries relating to Day Pass, within the past five (5) years of last incarceration;**
- 9. Staff will also consider the inmates comprehensive institutional record, performance on/off property placement and work assignments, and notoriety of criminal record;**

#### **DAY PASS (continued)**

- 10. Housing staff shall verify that no pending disciplinary actions exist prior to an inmate being released on a Day Pass;**
- 11. Disciplinary action received after a Day Pass has been approved shall automatically cancel the Day Pass.**

**Day Pass applications are located on the block/unit. Inmates will complete the application and return it to the block/unit staff. The applications must be submitted for approval by the Monday preceding the proposed week end pass requested. The Day Pass will be reviewed approved/denied by the Housing Lieutenant, Captain.**

#### **DISCIPLINARY ACTION**

**The inmate Disciplinary System was established to promote safety and order within the institution.**

**Major disciplinary hearings for the Wasatch facility are held on Friday mornings by the Inmate Disciplinary Hearing Officer (IDHO), Major infractions include acts of misconduct for which a serious or grievous loss can be imposed as punishment. Major actions require a due process hearing.**

**Minor disciplinary hearings are held on a weekly basis and are conducted by the unit manager/designee. Minor infractions include violations of institutional rules and may be handled informally by housing unit staff. Such sanctions shall not constitute a grievous or serious loss to the inmate.**

#### **EMERGENCY (weather related)**

**Emergency actions in case of fire or natural disaster instructions to ring-in or evacuate will be paged over the loudspeakers. Evacuation plans and routes are be posted on the housing area bulletin boards.**

#### **GRIEVANCE**

**Inmates may file grievances regardless of status or classification. Every effort should be made to resolve the grievance at the lowest possible level.**

## **GRIEVANCE (continued)**

Grievance forms are located on each housing unit. Inmates may obtain grievance forms from the housing unit staff.

**Informal Process:** Inmates must begin the informal process by completing Section 1 of the Inmate Grievance Form. This completed form is processed by the assigned block/unit staff, the E.M.R.S., the Captain, or the Lieutenant.

**Formal Process:** If the inmate is not satisfied the issue has been resolved, he may continue the grievance process by completing Section 3 of the Inmate Grievance Form. The completed grievance form must be placed in the envelope labeled Grievance. The envelope is placed in the institution mail box located on the housing unit.

In general, all inmate complaints may be grieved, except complaints against decisions and procedures of the Board of Pardons, disciplinary decisions and classification decisions.

1. inmates with complaints regarding Board of Pardons decisions, shall be referred to the Board of Pardons;
2. inmates with complaints regarding disciplinary decisions shall be referred to the disciplinary appeals process;
3. inmates with complaints regarding classification decisions shall be referred to the classification challenge process.

### **MALICIOUS and/or FRIVOLOUS GRIEVANCES**

1. a "malicious grievance" is any grievance where the inmate willfully falsified information with the intent to vex, annoy, slander or injure a member or any other person;
2. a "frivolous grievance" is any grievance that the inmate knows or should have known is utterly without merit, irresponsible, or has no rational basis in fact or law;

### **GRIEVANCE (continued)**

3. malicious or frivolous grievances may subject the inmate to criminal, civil or disciplinary action, including assessment of restitution for incurred investigative costs;
4. a malicious or frivolous allegation may be declared at either the informal or formal level;
5. the filing of disciplinary, action based on frivolous or malicious grievances, shall be approved by the Inspector General's Office.

The inmate grievance process is designed to resolve issues at the lowest administrative level.

If additional information concerning the inmate grievance process is needed, an inmate may ask a staff member for a copy of the Inmate Grievance Policy and Procedure, FD02.

### **GROOMING STANDARDS:**

Inmates are expected to keep their hair neat, clean and trimmed. Sideburns and moustaches are allowed, however, sideburns shall not exceed below the bottom of the ear and shall not fan out excessively across the cheek. Moustaches shall not extend to the side beyond the upper lip or below the corner of the mouth. Hair must not cover the collar or extend below the bottom of the ear. "Tails" that extend past the collar are prohibited.

1. Inmates at the facility will be required to observe hair length standards which define maximum hair length as:
  - A. Not below the eyebrows;
  - B. Not below the uniform shirt collar (tails included); and
  - C. Not below the bottom of the ear lobe.
2. Sideburns will not extend below the ear lobe.
3. Mustaches are permitted, but must be neatly trimmed and are not to extend below the corner of the mouth.

## **GROOMING STANDARDS (continued)**

4. Inmates will be clean shaven, with the exception of inmates with active beard permits. This may be issued by the Medical Unit. Those with beard permits must keep beard length to 1/4 inch or less and may not shave selectively. Inmates shall produce a beard permit upon request.
5. Inmates shall not be allowed to alter their natural hair color.
6. Any violation of the beard policy may result in disciplinary action and a recommendation to the Medical Unit to review the continued need for the permit

## **IDENTIFICATION CARDS**

1. Inmates shall be provided an I.D. card during the R&O process and shall be required to maintain the card in their personal possession when away from their designated housing unit.
2. Inmates shall report lost or stolen I.D. cards immediately to the Housing Unit Captain or designee.
3. Inmates that lose their I.D. card or intentionally destroy their I.D. card, shall pay a \$5.00 replacement fee, except inmates on indigent status.
4. If proof has been determined by the Executive Officer or designee and is documented that an I.D. card has been stolen, the institution will replace the I.D. card at no cost to the inmate.
5. I.D. cards should be replaced the following working day from the date of the report.
6. The Housing Unit Captain or designee shall arrange within the housing unit to have a new I.D. card issued.
7. The inmate shall submit a money transfer to the Housing Unit Captain or designee for replacement fee prior to being issued a new I.D. card.

### **IDENTIFICATION CARD (continued)**

8. The Housing Unit Captain or designee shall verify with Inmate Accounting if the inmate has money on his account.
9. If an inmate refuses to pay the replacement fee, the I.D. card shall be issued and the Housing Unit Captain shall request that Inmate Accounting freeze the inmate's account until the fee has been paid.
10. It shall be the responsibility of the Housing Unit Captain to advise Inmate Accounting when it is no longer necessary for the inmate's books to be frozen.

### **INDIGENT STATUS**

Indigent status is determined by the business office. An inmate who has not had over three dollars in his inmate account for 14 days consecutive may be eligible for indigent status. The information is then sent to housing unit staff.

Indigent status shall include mail privileges, personal hygiene items (i.e., a toothbrush every 90 days, toothpaste once a week, soap once a week, a small comb and 1 disposable razor per week), duplication of legal papers (25 copies per week), I.D. cards (inmates on indigent status shall NOT be required to pay the \$5.00 replacement fee for a new I.D. card if theirs is lost or stolen), urine sample retest (if an inmate on indigent status disagrees with a positive result, he may request a retest and the institution shall bear the cost of the test), information from USP records and writing materials.

### **INDIGENT MAIL**

1. Inmates approved for indigent mail may receive a maximum of up to five (5) First Class, one-ounce envelopes or equivalent per week, unless otherwise approved by the Support Services Manager.
  - A. One First Class, one-ounce letter consists of one (1) envelope and five (5) 8 1/2 inch by 11 inch sheets of paper.
2. Inmates who do not use their weekly postage allocation shall not be allowed to carry it over to the following week.

## **INDIGENT STATUS (continued)**

### **INDIGENT MAIL (continued)**

3. Housing Units shall issue writing paper, envelopes, pencils and institutional pens to the inmates.
4. Postage shall be placed on envelopes at the mail unit upon receipt. An inmate requiring additional postage on privileged correspondence shall have a Request for Additional Privileged Mail Postage form attached to the correspondence containing the court/attorney, case number and provide an explanation as to why additional postage is required.
5. Authorization shall be seven (7) days, however, initial authorization may be for less than seven (7) days to allow for a common accounting period (the first day of each month).
6. Misuse or abuse of indigent status shall subject the inmate to disciplinary action.
7. The inmate who qualifies for indigent status shall request the approved items as needed as per indigent status. For further information refer to FDr15/01.00.

## **INMATE EMPLOYMENT**

It will be an expectation for all inmates to work. However, classification level, Board of Pardons actions, and violation reports/disciplinary dispositions impact on selection.

Applications for inmate employment are posted on the housing units. The Inmate Housing Assignment Committee authorizes all employment off property..

In general, level III inmates may work within the secure perimeter. Level IV inmates may work outside the secure perimeter if they have appeared before the Board of Pardons and have a date of less than three (3) years. Level V inmates may work outside the secure perimeter and in the community under supervision.

## **INMATE EMPLOYMENT (continued)**

**ROAD CREW:** Applications are located in the Wasatch sallyport. Inmates shall complete the application and deliver it to the Work Release Office located in the main corridor (Wasatch). Inmates who work on the road crew are housed at the North Point Facility.

**UCI (Utah Correctional Industries):** Job announcements are located in the corridor across from Control II. Applications may be obtained on the housing unit. Completed applications are to be returned to Control II and forwarded to UCI.

## **INMATE FUNDS**

### **Inmate Money Transfers**

1. A money transfer properly completed by the inmate and signed by the appropriate staff member shall allow an inmate to carry out appropriate business transactions while at the institution.
2. Money transfers are available in each housing unit area.
3. The inmate may request assistance from staff members when completing information required by these forms.
4. If the money transfer is not properly completed and signed by staff, it shall be rejected by the accounting office.
5. All inmate signatures must be witnessed by appropriate staff members, therefore do not sign your money transfer until you are in the presence of the appropriate staff member.
6. Money transfers maybe turned in daily and are taken to the business office once each week by the Unit Manager or designee.
7. The inmate shall be informed by staff members as to the appropriate method and day to forward the money transfer to the accounting office.



## **INMATE FUNDS (continued)**

8. Money transfers **ARE NOT** to be returned to an inmate after having been witnessed by a staff member.
9. Stop payments initiated by inmates for money transfers are prohibited. You may initiate a stop payment of a check being sent by the business office at a cost of \$10.00.

## **IHAC (Inmate Housing Assignment Committee)**

Inmate Housing Assignment Committee is charged with managing the population of inmates at the Draper site. The committee meets each week and assigns housing to new commitments, parole violators, and inmates returned from other secure facilities. Inmates are moved between facilities on the Draper site and to other secure facilities within and without the State of Utah.

## **INMATE HOUSING CHANGES**

Inmates may be moved from one cell to another with the authorization of the Captain/Lieutenant.

## **INSTITUTIONAL PROPERTY**

Inmates shall be responsible for the proper maintenance and care of institutional property and equipment assigned to them.

Inmates shall be responsible for the replacement of property deliberately or maliciously damaged.

Inmates shall surrender all institutional property upon release or transfer from the institution

## **INSTITUTIONAL RULES/POLICIES AND PROCEDURES**

All inmates are required to follow institutional policies and procedures. All rules and regulations are to be followed. Failure to do so may result in a "C-note" or "Disciplinary Report". If you are unclear as to any policies, procedures, rules or regulations, it is **YOUR** responsibility to contact staff members of your assigned facility to clarify any questions you may have. You may request to review the information in written form.

## **INSTITUTIONAL RULES/POLICIES AND PROCEDURES (continued)**

1. There will be no movement on or off the housing unit(s) except during scheduled movement times. This includes school, work, and laundry issue. Exceptions will be determined on a case by case basis.
2. Grooming standards will be strictly enforced as per policy FC04/09.
3. Cell standards will be enforced as per policy FC05/00. Privacy curtains will not be up when not in use, including the string. Curtains will not be up after 2300 hours (11:00 p.m.) noncompliance will result in confiscation.
4. There will be not indigent supplies issued to inmates who are not on indigent status. If the commissary is out of essential items, (razors, toothpaste, etc.), bring a copy of your commissary slip for issue.
5. The property matrix will be strictly enforced. If your property does not fit in your lockerbox it is subject to confiscation.
6. Clotheslines will only be up between the hours of 1600 and 2300. There will be no exceptions.
7. Tiermen will pick up supplies on Wednesdays and Saturdays ONLY.
8. There will be no loitering in or near the stair wells or in the sallyport area at any time.

Failure to follow any of these rules will subject any inmate to disciplinary action. There will be not exceptions.

## **LAUNDRY ISSUE**

Inmates shall be responsible to ensure that all clothing/linens assigned to them are appropriately maintained and routinely laundered.

## **LAUNDRY ISSUE (continued)**

Prison-issue clothing submitted for laundry service **MUST** be properly marked and identified before being sent to the laundry for service.

1. The inmate's assigned USP number shall be stamped in black indelible ink on the inside of the rear waistband on both pockets of pants.
2. The inmate's assigned USP number shall be stamped above the left breast pocket and on the rear center back below the yoke of shirts.
3. The inmate's assigned USP number shall be stamped above the left breast pocket and centered four (4) inches below the collar of coats.
4. The inmate's assigned USP number shall be stamped on the flap of laundry bags (pin bags).
5. The inmate's assigned USP number shall be stamped on the rear inside waistband of shorts.
6. The inmate's assigned USP number shall be stamped on the side below the elastic top of socks.

Each inmate is responsible to ensure that his own assigned clothing and linen bag are properly marked and identified. For further information, refer to FD10/01.00.

## **LEGAL ACCESS**

1. Inmates shall be provided reasonable access to courts and legal counsel. The primary means of access to legal services shall be provided by Contract Attorneys paid for by Department.
2. Inmates may seek legal council at their own expense if they prefer not to use a contracted legal firm or they may represent themselves.
3. Inmates may request public interest groups such as the ACLU, Legal Aid Society, Salt Lake County Bar, Legal Services, etc., to represent them. Inmates may represent themselves, but not other inmates.

#### **LEGAL ACCESS (continued)**

4. Visits between inmates and legal council shall not be monitored and shall occur in areas of facilities which permit maximum privacy. However, privacy requirements shall not prohibit visual observation, not jeopardize security in any way.
5. Each facility utilizes a specific procedure for attorney appointments. It is the inmate's responsibility to comply with this procedure.
6. Inmates charging a fee or attempting to receive payment for providing legal assistance to other inmates shall be subject to major disciplinary action.
7. The department shall provide copies of non-confidential documents to non-indigent inmates at a specified price per sheet.
8. There are specified procedures for copying legal papers. Upon the inmate's arrival at his assigned facility, it shall be his responsibility to become familiar with and observe the procedures regarding copying of legal papers.
9. Inmates shall be permitted to make telephone calls to their attorneys/representatives which shall originate from inmate telephones located in their assigned housing unit.
10. Attorneys/representatives may leave telephone messages requesting the inmate to return a call.
11. Calls between inmates and attorneys/representatives shall not be monitored by prison staff.
12. Inmates calling their attorney/representative are responsible to notify staff that they are placing a call to their attorney/representative to avoid being monitored. Staff may monitor the call long enough to verify it is a legal call.
13. Visits and telephone calls with the attorney or representative may be cancelled due to any emergency situation.

## **LEGAL ACCESS (continued)**

All inmates have access to legal counsel. Fill-out an Attorney Request form, put it in an envelope marked "Legal Correspondence" and place it in the mail box. You will then be placed on the prisons attorney's list. If you need papers notarized, contact a staff member assigned to your unit to make an appointment. If you are required to make a "legal call" (to your attorney), contact your caseworker to set up an appointment.

## **LIBRARY**

All inmates will have access to library materials. Ask staff members assigned to your unit for a library schedule and information regarding the library.

## **MAIL**

Mail call shall be held Monday through Friday in the evening. A mail list will be posted in each unit. Inmates must have their I.D. card to receive mail. If the inmate fails to pick up his mail at this time, it will be returned to the Mail Department.

Inmate mail shall be handled in accordance with U.S. Postal Service regulations insofar as safety, security or operational requirements of the Utah State Prison are met. Outgoing mail is picked up Monday through Friday, except on holidays, from the mailbox located by the Wasatch culinary, prior to 0900 hours.

There is no limit to the number of letters an inmate may sent, as long as there are funds in the inmate's individual account to cover the postage. If an inmate does not have sufficient funds (not more than \$3.00 in his account during the immediate past 14 days), he may qualify for free mailing privileges, otherwise known as indigent mail status. Free mailing privileges allow an inmate to send up to five First Class letters a week. An inmate may not save free mailing credits or let other inmates use their credits.

Inmates are prohibited from receiving currency or personal checks. When currency or personal checks are received, they shall be returned to the sender. All acceptable forms of money orders and cashiers checks for an inmate will be placed in an envelope, separate from other mail. This envelope

**MAIL (continued)**

will not contain any letters, pictures or other material. This envelope can be mailed to:

Inmate Accounting  
Inmate Name and USP Number  
P.O. Box 250  
Draper, Utah 84020

The sender's name and address must be written on the top left hand corner of the envelope.

Funds may also be deposited at the Property Department window in the form of money orders or cashiers checks only. The Property Department is located just off of the Frontage Road between the Women's Correctional Facility and the Young Adult Correctional Facility.

**MEDICAL AND DENTAL**

Utah State Prison inmates have access to reasonable medical services through the Medical Unit. Some of the services provided are: sick call, dental services, mental health, optometry and pharmacy, as well as referral services. If an inmate has a need for one of these services, appointments with the medical staff may be arranged by filling out an appropriate sick call request form and placing it in the box provided at each housing unit. Urgent or emergency care should be requested through the floor officer.

Medical personnel are typically available in the housing area twice a day during pill lines. Medical staff are on duty 24 hours per day, 7 days per week. They will dispense medication and provide other services such scheduling appointments. Inmates will receive medication and other medical services at the section doors unless otherwise directed by the staff.

Inmates desiring medical attention shall contact the Medical Technician during pill-line. Pill-line is held every morning from 07:15 hours to 07:30 hours and every evening from 18:00 hours to 18:30 hours.

## **MEDICAL AND DENTAL (continued)**

**Pill Line:** Inmates receive their medication during two (2) regularly scheduled pill lines:

- 1) Approximately 0600 hours until approximately 0715 hours daily; and
- 2) Approximately 1610 hours until approximately 1700 hours daily.

**Sick Call:** Medical and dental appointments are requested by the inmate. Inmates may obtain a sick call form from the housing unit officer and complete it. The form is given to the medical staff during pill line. Medical staff review the forms and make the appointments. Medical staff notify the inmates when their appointment is scheduled.

## **MONEY TRANSFERS:**

*Inmates use money transfers for all financial transactions, i.e., to purchase commissary, send money home to their family/friends, pay restitution, etc..*

Money transfers are provided to inmates upon request and are found on each block. Money transfers must be filled out completely. Staff **MUST** witness the signature of the inmate signing the money transfer is indeed the correct inmate. Staff will verify that the use of the transfer is appropriate.

## **MOVEMENT/NON MOVEMENT**

The inmate movement on the housing units is controlled by a schedule posted on each housing unit. During non movement times the housing unit grating doors are closed and inmates are not to be in the corridors.

## **OUT OF BOUNDS**

The central officers station will be secure at all times and be out of bounds/off-limits to all inmates. All office areas, unless accompanied by staff, are out of bounds/off-limits. Culinary utility areas, unless employed there, are out of bounds/off-limits. All areas which are posted "out of bounds" are off-limits.

## **PERSONAL HYGIENE STANDARDS**

Inmates shall be required to maintain cleanliness and acceptable standards of personal hygiene to avoid offensive body odors.

Provided that the opportunity and means are available, personal hygiene standards should be:

- 1) Inmates shall bath or shower with soap and water a minimum of three times per week;
- 2) Inmates shall wash their hair a minimum of once per week;
- 3) Inmates shall launder their clothing and bedding on a weekly basis, consistent with housing unit laundry procedures;
- 4) Inmates shall brush their teeth on a daily basis, preferably after each meal;
- 5) Inmates shall be responsible and accountable for all items in their cell;
- 6) Inmates shall NOT tape or attach items on the walls, ceilings, floors, fixtures, etc., except as authorized in the housing unit; and
- 7) Inmates shall NOT store or place items or possession on any electrical or security device, i.e., intercom, light, door, bars, etc..

## **PROPERTY**

The property officer will distribute property on the unit. Property calls are on Mondays between 18:00 hours and 20:00 hours. Inmates are prohibited from loaning and/or borrowing, selling, buying or trading property from other inmates. Property not authorized to be in the possession of the inmate will be regarded as contraband, the property will be confiscated and a write-up may be issued.



## **PROPERTY (continued)**

The property that an inmate may have in his possession is divided into two categories, state and personal. State property which is issued to an inmate is subject to the following conditions:

1. any damage, destruction, alteration or loss of the state-issued property may result in disciplinary action and/or restitution;
2. when state property is issued to an inmate, he shall inspect the item immediately and report any damage to the issuing officer;
3. an inmate shall not have more than the authorized amount and/or type of state property in his possession;
4. an inmate shall not have in his possession state property which has been issued to another individual;
5. the amount and type of state property an inmate is allowed is subject to change and removal from the inmate's possession; and
6. state property shall be used for the purpose for which it was issued. The inmate shall return all state property upon release from the institution.

Personal property is subject to the following conditions:

1. all personal property shall be obtained through authorized channels;
2. the inmate shall retain in his possession an authorization or property receipt for any personal property item in his possession;
3. an inmate shall not have, use, borrow or be in possession of any property belonging to another individual;

#### **PROPERTY (continued)**

4. an inmate shall not lend his property to any other inmate;
5. inmates shall not buy or sell to any other inmate any property item;
6. an inmate's personal property is subject to the facility rules and regulations which dictate the type and amount of personal property;
7. the alteration of any personal property from its original state or condition is prohibited;
8. altered property shall be considered contraband and is subject to confiscation;
9. the state shall not be liable for damage, destruction or loss of personal property in the possession of another inmate; and
10. the state may assume limited liability for damage, destruction or loss of inmate personal property when that property is in the possession of the state.

If an inmate is moved to a housing unit which disallows any or all of his personal property, that property shall be placed in the property room and the inmate shall have a specified time limit in which to dispose of the property; failure to do so shall result in the property being disposed of by the State. For more detailed information regarding property, the inmate may refer to Department Policy and Procedure.

The property schedule is available on each housing unit. This schedule identifies the days you will be issued property and the days/hours property can be left for you.

If inmates have visitors who are bringing in personal property for them, it should be left at the property office based on the posted schedule. Approved property will then be forwarded to the inmate, along with a personal property slip.

## **PROGRAMS**

There are a number of programs at the institution in which inmates may participate. AA/NA, sex offender treatment and counseling, 12 step alcohol, individual and group therapy are just a few of the available programs. Inmate participation in programs shall be dependent upon inmate's classification status. For additional information regarding institutional programs, inmates should contact their caseworker.

## **RECREATION**

Inmates shall have access to recreational opportunities based on security, safety and management needs. A regular schedule for recreation activities, including special activities and tournaments, will be provided through posted notices by the Recreation Department. All recreation equipment must be checked out by inmates using their I.D. cards. All recreation tournaments will have rules published in the notices, which must be followed by all participants. Recreation privileges are outlined according to the inmate's classification status.

## **PUNITIVE ISOLATION**

As a result of a finding of guilt through the disciplinary process, an inmate may be removed from population and kept isolated in his cell. The inmate may be subject to the following limitations:

- 1) No phone calls except legal;
- 2) No visiting except legal;
- 3) No recreation;
- 4) Showers every Monday, Wednesday, Friday for a period of fifteen (15) minutes;
- 5) Mail, meals, medical and laundry will be delivered to the inmate in his cell;
- 6) Commissary is limited to hygiene items and envelopes; and
- 7) Religious counseling in the cell school and work attendance is suspended.

## **RELIGIOUS COUNSELING**

Inmates in the Utah State Prison will be allowed access to religious services, except when the inmate's behavior poses a safety threat to the religious counselor or others attending the religious service. Persons conducting religious services shall be properly cleared and are required to complete volunteer training.

Various religious services are available to the inmates, LDS Services, Catholic Services, Non-Denominational Services and LDS Institute.

Level III, IV, V and VI inmates may attend scheduled religious services in the chapel.

## **RING IN (Head Count)**

Ring in may be called at any time for reasons of safety, security, natural disaster, or management needs. Inmates report directly to their assigned housing unit. During counts the cell doors will be closed and locked.

## **SEARCHES**

You may be subject to a "searches", "skin search", and/or "pat search" at any given time.

## **SMOKING POLICY**

Smoking is allowed in specific designated areas. Those areas are in the dorms/rooms and the outside of the building.

Smoking is NOT permitted while you are laying down in your bed. This is for your own safety as well as the safety of others.

Throwing of cigarette butts, in other than receptacles provided, is grounds for disciplinary action.

## **TELEPHONES**

1. Telephones are available on a limited basis for use by inmates. Telephones are available for use between 0630 hours and 2200 hours as posted.

## TELEPHONES (continued)

2. Policy allows for three fifteen (15) minute phone calls per day. Each housing unit has its own telephone usage rules and regulations.
3. The use of the telephone is a **PRIVILEGE** which can be lost by misuse, abuse and/or violation of rules and regulations.
4. Personal telephone calls may be monitored and/or recorded. Calls are subject to termination if circumstances indicate that there is a threat to the order, discipline or security of the facility.
5. Incoming telephone calls to inmates shall not be accepted, however, in the event of an emergency situation, the facility staff will relay a message to that particular inmate.
6. Use of any telephone not specifically designated for inmate use is prohibited.
7. Credit card calls and third party billings are prohibited.
8. Phone conversations shall be in English, unless prior authorization has been obtained from the inmate's housing unit administration.
9. Inmate calls to attorneys shall not be monitored, however, steps may be taken on the part of staff to verify that the call is, in fact, to an attorney.
10. Inmates shall not engage in threatening, harassing, foul, abusive calls, or misuse the telephone or telephone equipment. Such behavior shall subject the inmate to disciplinary action.
11. In emergency situations, an inmate shall be required to terminate his telephone conversation at once and return to his assigned area.

## **TELEPHONES (continued)**

12. For additional information on the use of telephones, inmates should contact their housing unit administration.

## **TELEVISIONS**

Use of contract televisions is a revocable privilege. Inmates shall have sufficient funds to offset deposits and costs. The sound system of any television is accessible only by headphones.

## **TESTING**

Psychological and psychiatric services are available through the Medical Services Unit. A psychologist or psychiatrist assigned to the Utah State Prison from the Department may be used as a resource. They may provide services and counsel inmates as the need arises, and in cooperation with unit managers and social workers. Any inmate housed at the Utah State Prison may be referred to psychological or psychiatric services, as well as other resource areas.

## **INMATE UNIFORM**

Inmates shall be responsible to maintain their prison-issued uniforms in a clean and neat manner. They shall be dressed in designated uniform, except when going to and from the shower area or when going to or from recreational facilities where authorized gym clothes may be worn, or as directed by institutional staff.

## **URINE COLLECTION AND TESTING**

1. Staff may request a urine sample at any time. Failure of the inmate to produce one will result in disciplinary action.
2. It shall be the inmate's responsibility to provide a sample within **ONE (1)** hour from the time of the request.

### URINE COLLECTION AND TESTING (continued)

3. If the inmate refuses or is unable to produce the requested sample within the given time frame, a disciplinary report shall be issued to the inmate for failure to comply with a direct order.
4. When an inmate alleges a psychological condition (shy bladder/bashful kidneys) which would preclude giving a sample while being observed, the inmate shall be strip searched, showered and dressed in clothing provided by a staff member. The inmate shall be given at least 16 ounces of water to drink prior to being placed in a secure (dry) holding area. The inmate shall be given **ONE (1)** hour to produce the required sample. If the sample is not provided within the one (1) hour time frame, the inmate shall be allowed the option of medical catheterization. For further information, refer to Policy and Procedure FEr21/01.00.

### VISITING

Inmates are eligible for visiting based on their matrix and institution policy and procedure.

Employees, contractors, volunteers, or students working or providing services for the institution shall not be permitted to visit or be placed on a visiting list of any inmate.

Any employee, contractor, volunteer or student who has terminated employment or services may not be cleared for visits with an inmate until a period of one year has elapsed from the time of termination of employment or services.

Clearance  
Name of

*[Handwritten signature]*

*[Handwritten signature]*  
*[Handwritten signature]*  
*[Handwritten signature]*

ADDENDUM C - INMATE GRIEVANCE APPEAL FORM [4/23/1993]



**UTAH STATE PRISON  
DISCIPLINARY APPEAL FORM**

LAST NAME <i>Kocher</i>	FIRST <i>John</i>	MIDDLE	UPS # <i>19261</i>	CELL <i>106-B</i>
CASE # <i>393-37496</i>	HEARING DATE <i>4-23-93</i>	APPEAL DATE <i>4-23-93</i>		

I REQUEST AN APPEAL REVIEW OF MY DISCIPLINARY HEARING FOR THE FOLLOWING REASON(S):

- ☒ THE DISCIPLINARY PROCESS WAS NOT PROPERLY FOLLOWED.
- ☒ THERE WAS NOT SUBSTANTIAL EVIDENCE TO SUPPORT THE IDHO'S FINDINGS.
- ☐ THE DISCIPLINARY SANCTIONS ARE CLEARLY EXCESSIVE.

FOR EACH BOX CHECKED ABOVE, PROVIDE SPECIFIC DETAIL.

*I was told by an officer to talk to the capt. before going to disciplinary or getting my statement or grievance done. I asked to postpone this hearing since I have not talked to the capt. and do not have anything ready.*

*I was found guilty with nothing to prove. I refused to submit.*

*I was not allowed any water to drink and was refused a secure (dry) cell or holding area and the option of medical catheterization as to policy and procedure. FEE 21/04.00.*

*I did everything I could to comply with the request and had my urine thrown away when there was plenty to be tested. I did not refuse and*

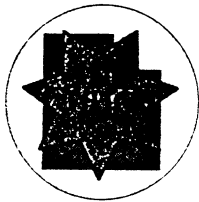
*still received a disciplinary write-up with I was unjustly found guilty.*

SIGNATURE <i>John Kocher #19261</i>	DATE <i>4-23-93</i>
--	------------------------

APR 28 1993

The Disciplinary Officer Stated policy  
and procedure FER-24/01.00. is wrong  
and said I'm guilty even with them  
throwing my ruin away and being  
refused a medical catheterization and  
(they) tell which I requested through  
the whole incident.

ADDENDUM D - ADMINISTRIVE LAW JUDGE REMAND [6/3/1993]



Michael O. Leavitt  
Governor  
O. Lane McCotter  
Executive Director

# State of Utah

DEPARTMENT OF CORRECTIONS  
EXECUTIVE OFFICES

6100 South Fashion Boulevard  
Murray, Utah 84107  
(801) 265-5500

June 3, 1993

Inmate John Kocher  
USP #19261  
P.O. Box 250  
Draper, UT 84020

Re: Disciplinary Appeal #393-3746

Inmate Kocher:

On May 10, 1993, I reviewed the above-noted appeal. No new evidence is considered. The review is of what was done below. **THIS REVIEW IS FINAL.** There is no further review within the Department of Corrections. Based on my review, I have made the following determination.

This matter is remanded to the IDHO with instructions to obtain information regarding your requests for a dry cell or a catheter. The IDHO is further instructed to obtain medical information on whether you need an alternative.

R. Spencer Robinson  
Administrative Law Judge  
Utah Department of Corrections

pc: IDHO  
file

*Medical Info in file on Nov. 19, 1990*

ADDENDUM E - BOARD OF PARDONS HEARING OFFICER LETTER [6/16/1993]



# State of Utah

## BOARD OF PARDONS AND PAROLE

**Michael O. Leavitt**  
Governor  
**Michael R. Sibbett**  
Chairman  
**Donald E. Blanchard**  
**H.L. (Pete) Haun**  
**Curtis L. Garner**  
**Cheryl Hansen**  
Members

448 East 6400 South - Suite 300  
Murray, Utah 84107  
Tel (801) 261-6464  
Fax (801) 261-6481

June 16, 1993

John Kocher, USP# 19261  
P.O. Box 250  
Draper, Utah 84020

Dear Mr. Kocher:

This is to notify you that a Rescission Request has been received at the Board that indicates you have disciplinaries. This may effect your current status. Therefore, please be prepared to appear before a Board of Pardons Staff Member on June 30, 1993 at 10:00 am at the Utah State Prison Main Facility; Draper, Utah in a Rescission Hearing to discuss this matter.

In connection with your upcoming hearing, everything in your Board file may be considered. Like other offenders' files, your file contains its own variation of the following categories of information:

- (1) Public information, including judgment and commitment orders, prior Board dispositions, parole agreements, and the like;
- (2) Information generated from Adult Probation and Parole, including presentence and postsentence reports, probation violation reports, parole progress and violation reports, diagnostic reports, and so forth;
- (3) Prison information, including board reports, disciplinaries, progress and rescission reports, psychologicals, etc.;
- (4) Information generated internally for the Board, including worksheets, routings, guideline matrices, alienist reports, warrant requests;
- (5) Other criminal justice information, including police and prosecutorial reports, recommendations from sentencing judges, criminal record data, other court documents;
- (6) Other correspondence sent to the Board concerning you.

Any other specific items of information to be considered by the Board will be identified for you at the hearing and you will have an opportunity to respond at that time.

If you have further questions, please ask your caseworker.

Sincerely,

M.R. SIBBETT, CHAIRPERSON  
UTAH STATE BOARD OF PARDONS

*Enid O. Pino/pc*

Enid O. Pino, Hearing Officer  
Utah State Board of Pardons

cc: USP Records  
File

ADDENDUM F - BOARD OF PARDONS INTERIM DECISION FORM [6/30/1993]



## BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

The status of KOCHER, JOHN RICHARD, USP No. 19261, OBSCIS No. 50755 came before the Utah State Board of Pardons on the 30th day of June, 1993, for the following consideration:

### RESCISSION HEARING

CRIME OF COMMITMENT	COURT CASE #	JUDGE	EXPIRATION
1 AUTO THEFT	5 6202	PAGE	01/28/1994
3 THEFT	5 921900119	HYDE	02/10/1997

### ORDER

After the statement of John Richard Kocher and the following witnesses,  
1) \_\_\_\_\_ 2) \_\_\_\_\_,

and for good cause appearing, the Board of Pardons made the following decision:

Rescind 8/24/93 parole date,

Begin parole on 12/14/93 with the following special conditions:

- |  |                                    |
|--|------------------------------------|
| 1. <u>I.S.P.</u>   | 4. <u>Restitution 624 96 #0199</u> |
| 2. <u>No Alcohol</u>   | 5. _____                           |
| 3. <u>Restitution 4,308<sup>00</sup></u><br><u>Case # 6202</u> | 6. _____                           |

Amend parole agreement to add/delete/modify the conditions described above

Terminate sentence (including parole supervision) on \_\_\_\_\_

Expiration of sentence to be effective on \_\_\_\_\_

Schedule rehearing for \_\_\_\_\_

Other: \_\_\_\_\_

The reasons for this decision are identified on the attached page.

At the discretion of the Board of Pardons, this decision is subject to review and modification at any time prior to actual release from custody.

By order of the Board of Pardons of the State of Utah, I affix my signature on behalf of the Chairperson of the Board this 30th day of June, 1993.

M. R. Sibbett / A. W.  
M. R. Sibbett, Chairperson



ADDENDUM G - BOARD OF PARDONS RESCISSION FORMS [7/13/1993]



## BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

UTAH STATE OBSCIS NO. 50755

Consideration of the Status of KOCHER, JOHN RICHARD PRISON NO. 19261

The above-entitled matter came on for consideration before the Utah State Board of Pardons on the 13th day of July, 1993, for:

### RESCISSION HEARING

After a review of the submitted information and good cause appearing, the Board makes the following decision and order:

### RESULTS

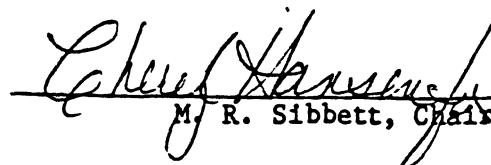
Rescind 08/24/1993 parole. Parole effective 12/14/1993. Interim decision of 06/30/93 affirmed.

- 1 Successfully complete ISP Program.
- 2 Not consume or possess any alcohol.
- 3 Pay restitution of \$4308.00 - CASE# 6202.
- 4 Pay restitution of \$624.96 - CASE# 0119.

No	Crime	Sent	Case No.	Judge	Expiration
1	AUTO THEFT	5	6202	PAGE	01/28/1994
3	THEFT	5	921900119	HYDE	02/10/1997

This decision is subject to review and modification by the Board of Pardons at any time until actual release from custody.

By order of the Board of Pardons of the State of Utah, I have this date 13th day of July, 1993, affixed my signature as Chairman for and on behalf of the State of Utah, Board of Pardons.

  
M. R. Sibbett, Chairman

Michael O. Leavitt  
Governor  
Michael R. Sibbett  
Chairman



Members  
Donald E. Blanchard  
H L. (Pete) Haun  
Curtis L. Garner  
Cheryl Hansen

## BEFORE THE BOARD OF PARDONS AND PAROLE OF THE STATE OF UTAH

ORDER OF PAROLE  
UTAH STATE OBSCIS NO. 00050755  
UTAH STATE PRISON NO. 19261  
IN THE MATTER OF THE APPLICATION OF KOCHER, JOHN RICHARD

This matter of application for parole, termination of sentence, or expiration of sentence having come before the Utah State Board of Pardons in a regularly scheduled hearing on the 13th day of July, 1993, and the applicant appearing in person or having waived in writing the right to appearance and the Board having heard the case, issues the following order:

It is hereby ordered that KOCHER, JOHN RICHARD be paroled from the punishment and sentence heretofore imposed upon him/her by a judge of the Second District Court in and for the County of Davis, Weber for the crime(s) of AUTO THEFT, 3rd degree felony, Expiration 01/28/94; AUTO THEFT, class A misdemeanor, Expiration 04/22/90; THEFT, 3rd degree felony, Expiration 02/10/97.

The parole shall not become effective until 14th day of December, 1993. The applicant agrees to the conditions of parole and evidences his agreement by signing the parole agreement. The parole agreement or contract shall be administered by duly authorized agents of the Utah State Department of Corrections for the Utah State Board of Pardons.

It is further ordered that if and in the event the above named applicant shall be guilty of any infractions of the rules and regulations of the Utah State Prison or shall fail or refuse to perform duties as assigned by the Utah State Prison or is found to be in violation of any other law of the State of Utah prior to the effective date of said parole, then this Order of Parole is revoked and becomes null and void.

Dated this 13th day of July, 1993.

By Order of the Board of Pardons of the State of Utah, I have this 15th day of July, 1993, reduced its decision in this matter to writing and hereby affix my signature as Chairman for and on behalf of the State of Utah, Board of Pardons.

  
\_\_\_\_\_  
M.R. Sibbett, Chairman

ADDENDUM H - PETITION FOR WRIT OF HABEAS CORPUS [9/23/1993]

JOHN KOCHER (name)  
 Attorney Pro Se  
 Utah State Prison  
PO Box 250 (address)  
DRAPER, UT (address)

IN THE 3<sup>rd</sup> DISTRICT COURT, SALT LAKE COUNTY  
 STATE OF UTAH

JOHN KOCHER (name), \*  
 Petitioner, \*  
 vs. \* PETITION FOR WRIT OF  
 \* HABEAS CORPUS AND POST  
 \* CONVICTION RELIEF  
 \*  
UTAH STATE BOARD OF PARDONS \* Case No. \_\_\_\_\_  
Scott Carver Respondent. \* Judge \_\_\_\_\_  
Warden

COMES NOW the Petitioner, JOHN KOCHER (name),  
 pursuant to the following Rule of Civil Procedure (check only one):

- ☐ Rule 65B(b) since claim is based on original commitment, or  
☐ Rule 65B(b) since claim is based on parole violation, or  
☐ Rule 65B(b) since claim is based on probation violation, or  
☒ Rule 65B(c) since claim is based on parole grant hearing,

and for cause of action alleges as follows:

1. Petitioner is being illegally restrained at the following  
 location (list your address): UTAH STATE PRISON P.O. Box 250 DRAPER, UT

2. Petitioner was convicted and sentenced at the following  
 Court: (list the district and county of the court or indicate that  
 it is a Board of Pardons hearing that you are challenging):

UTAH STATE BOARD OF PARDONS HEARING

The dates of the proceedings in which the conviction (or Board of  
 Pardons decision) was entered are as follows: 6-30-93

PETITION FOR WRIT OF HABEAS CORPUS AND POST CONVICTION RELIEF

The case number for these proceedings is: ☒ not known; ☐ known and is case number \_\_\_\_\_.

3. In plain and concise terms, all of the facts on the basis of which the Petitioner claims a substantial violation of rights as the result of the commitment (or terms of parole) are as follows:

ON 4-7-93 I GAVE A URINE SAMPLE WHICH THE OFFICER  
THREW AWAY STATING "IT WAS NOT ENOUGH". I WAS REFUSED  
A DRY CELL OR CATHETER UPON REQUEST. WHICH IN MY MEDICAL  
FILES IS NOTED THAT I HAVE KIDNEY PROBLEMS. THE PRISON  
FOUND ME GUILTY WITHOUT ANY EVIDENCE AND NEGLECTING TO  
ALLOW ME A DRY CELL OR CATHETER. THE BOARD OF PARDONS  
VIOLATED MY DUE PROCESS BY GIVING ME EXTRA TIME  
BASED ON THE INFORMATION GIVEN WITHOUT EVIDENCE. (See ATTACH  
Paper

4. The judgment of conviction or the commitment for violation of probation or parole has been reviewed on appeal.

☐ Yes The number and caption or title of the appellate proceeding and the results of the review are as follows:

\_\_\_\_\_  
\_\_\_\_\_

☐ No It was not appealed because \_\_\_\_\_

☒ Question not applicable since this claim concerns a parole grant

PARAGRAPH #3

CONT.

THE BOARD OF PARDONS ASSUMES THAT A REFUSAL IS ADMITTING GUILT. I DID NOT REFUSE. THE OFFICE DIDN'T ALLOW ME A DRY CELL OR CATHETER.

ON JUNE 3, 1993, THROUGH AN APPEAL, JUDGE ROBINSON REMANDED THE IDHO TO INVESTIGATE THIS ISSUE. ON JUNE 30, 1993, THE BOARD RESCINDED MY DATE AND GAVE ME MORE TIME. THIS HEARING AND ACTION WAS DONE ON FALSE INFORMATION AND WITHOUT THE RESULTS FROM JUDGE ROBINSON'S DECISION. THIS VIOLATES MY DUE PROCESS. WHICH THE COURTS HAVE RULED THAT ARE NOT TO BE VIOLATED.

PETITION FOR WRIT OF HABEAS CORPUS AND POST CONVICTION RELIEF  
hearing for which there is no appeal or administrative remedy.

5. The legality of the commitment for violation of probation or parole or the legality of the parole grant hearing has been reviewed on appeal. \_\_\_\_ Yes X No If so, the reasons for the denial of relief in the prior proceeding are as follows:

---

---

6. Petitioner requests that he be appointed legal counsel based on the attached motion and affidavit of impecuniosity.

7. The following documents are attached hereto and incorporated herein by reference (check all that apply):

- X Affidavits that support Petitioner's allegations
- X Copies of records that support Petitioner's allegations,
- X Other evidence that supports Petitioner's allegations
- \_\_\_\_ Copies of pleadings, orders and memoranda of the Court in any other post-conviction or civil proceeding that adjudicated the legality of Petitioner's commitment

8. Petitioner was unable to obtain and attach the following documents because (list the efforts you made to obtain the documents and the results of your efforts): Medical Records  
IN Prison files INDICATING previous KIDNEY  
PROBLEMS. Prison won't Release TO INMATES

9. That pursuant to URCP Rules 65B(b)(12) and 54(d), Petitioner requests that this Court order the Respondent to obtain such transcripts of proceedings or court records which are relevant



PETITION FOR WRIT OF HABEAS CORPUS AND POST CONVICTION RELIEF

and material to this case and requests that the county in which he was originally charged be directed to pay the costs of the proceeding. (See attached motion and affidavit of impecuniosity).

10. Due to the continuing nature of the illegal restraint, the statute of limitations set forth in Utah Code Ann. §78-12-31.1 does not bar this action. *§78-12-31.1 is unconstitutional.*

WHEREFORE, Petitioner prays that this Court:

1. Schedule an evidentiary hearing at which time Petitioner may be present and represented by counsel.

2. Permit Petitioner, who remains indigent, to proceed without prepayment of costs, fees or other assessments.

3. Grant Petitioner the authority to obtain subpoenas in Forma Pauperis, for witnesses and documents necessary to assist in the proof of the facts alleged in the petition as stated above.

4. Issue an Order for Post Conviction Relief to have the Petitioner brought before it, to the end that he may be discharged from the illegal and unconstitutional confinement and restraint.

5. (other relief) request another hearing before the Board of Pardons

Dated this 23<sup>rd</sup> day of Sept, 1993.

John Kocher (sign name)  
JOHN KOCHER (print name)  
Attorney Pro Se

ADDENDUM I - ORDER REQUIRING RESPONDENT'S PLEADING

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

-----

JOHN KOCHER,	:	ORDER REQUIRING RESPONDENT'S
		PLEADING
Petitioner,	:	
vs.	:	CASE NO. 930905892
UTAH STATE BOARD OF PARDONS,	:	
SCOTT CARVER, WARDEN,	:	
Respondents.	:	

-----

Before the Court is the petitioner's Writ request for extraordinary relief pursuant to Rule 65B(c) of the Utah Rules of Civil Procedure. In accordance with subparts (4) and (5) of that rule, the Court has reviewed the Petition and has determined that the petitioner's request for relief is not frivolous on its face.

The Court further determines that it is appropriate that the respondent file an Answer to the Petition and that such filing be made within twenty (20) days from the date of this Order. The Court will issue a hearing order for a hearing in accordance with the aforementioned rule following receipt of the respondent's Answer above-referenced. The clerk of the court shall mail a copy

KOCHER V. BD. OF PARDONS

PAGE TWO

ORDER

of the petitioner's moving documents to the Utah State Attorney General's Office forthwith.

Dated this 14<sup>th</sup> day of October, 1993.

15/  
ANNE M. STIRBA  
DISTRICT COURT JUDGE

**MAILING CERTIFICATE**

I hereby certify that I mailed a true and correct copy of the foregoing Order Requiring Respondent's Pleading, to the following, this\_\_\_\_\_day of October, 1993:

John Kocher  
P.O. Box 250  
Draper, Utah 84020

Utah Attorney General  
Writ Division  
330 South 300 East  
Salt Lake City, Utah 84111

---

ADDENDUM J - RESPONDENTS' MOTION TO DISMISS AND MEMORANDUM

JAN GRAHAM (1231)  
Utah Attorney General  
LORENZO K. MILLER (5761)  
Attorneys for Respondents  
Assistant Attorney General  
330 South 300 East, Second Floor  
Salt Lake City, Utah 84111  
Telephone: (801) 575-1600

---

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

---

JOHN KOCHER,	:	
	:	MOTION TO DISMISS
	:	
Petitioner,	:	
v.	:	
	:	
UTAH STATE BOARD OF PARDONS,	:	
<u>et al.</u> ,	:	Judge Anne M. Stirba
	:	
Respondents.	:	Case No. 930905892 HC
	:	

---

RESPONDENTS, through Lorenzo K. Miller, Assistant Attorney General, hereby move the court to dismiss Petitioner's petition for writ of habeas corpus relief, pursuant to Rule 65B(c)(5) and 12(b)(6) of the Utah Rules of Civil Procedure. This motion is supported by the accompanying memorandum of law.

DATED this 28<sup>th</sup> day of October, 1993.

JAN GRAHAM  
Attorney General

  
Lorenzo K. Miller  
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that on the 27<sup>th</sup> day of October 1993, I  
cause to be mailed an exact copy of the foregoing Motion to  
Dismiss to:

JOHN KOCHER  
UTAH STATE PRISON  
P.O. BOX 250  
DRAPER, UTAH 84020

Marilyn J. Lester



JAN GRAHAM (1231)  
Utah Attorney General  
LORENZO K. MILLER (5761)  
Attorneys for Respondents  
Assistant Attorney General  
330 South 300 East, Second Floor  
Salt Lake City, Utah 84111  
Telephone: (801) 575-1600

---

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

---

JOHN KOCHER,	:	MEMORANDUM IN SUPPORT
	:	OF MOTION TO DISMISS
Petitioner,	:	
v.	:	
	:	
UTAH STATE BOARD OF PARDONS,	:	
<u>et al.</u> ,	:	Judge Anne M. Stirba
	:	
Respondents.	:	Case No. 930905892 HC
	:	

---

RESPONDENTS, through Lorenzo K. Miller, Assistant Attorney General, respectfully submit this memorandum in support of their motion to dismiss Petitioner's petition for writ of habeas corpus relief pursuant to Rule 65B(c) of the Utah Rules of Civil Procedure.

**MATERIAL FACTS**

For the purpose of this motion, the Respondents assume, without admitting, that all facts alleged in Petitioner's petition are true.

## ARGUMENT

### I. PETITIONER HAS IMPROPERLY BROUGHT HIS CLAIMS UNDER THE HABEAS CORPUS PROVISIONS OF RULE 65B

Rules 65B(b) and 65B(c) of the Utah Rules of Civil Procedure govern all petitions for extraordinary relief claiming a right to post-conviction relief or an unlawful restraint of a personal liberty, but neither rule governs Petitioner's claims in this case. Since Petitioner does not claim that his commitment or sentence is unlawful or that he is unlawfully restrained of his personal liberty, his petition is improperly brought under the habeas corpus provisions of Rule 65B(c). See Petition at 1-4; Preece v. House, 848 P.2d 163 (Utah App. 1993) (attached) (procedural due process claims are properly brought under Rule 65B(e), not 65B(c)); see also Northern v. Barnes, 825 P.2d 696, 698-99 (Utah App. 1992).

Here, Petitioner merely alleges that the Utah Board of Pardons rescinded his tentative<sup>1</sup> parole date based upon a disciplinary write-up by the prison. Petitioner also alleges that disciplinary was inappropriate and should not have been considered by the Board. See Petition at 2. Such claims clearly

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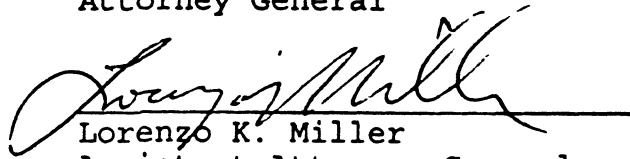
<sup>1</sup> The Board's initial order of parole stated that it was subject to "review and modification at any time prior to actual release from custody." See Exhibit 1. Furthermore, Rule 671 of the Utah Administrative Code specifically states, "Any prior Board decision may be reviewed and rescinded by the Board at any time until the offender's actual release from [prison] custody." Utah Admin. Code 671-310-1 (1993).

fall outside the provisions of Rule 65B(c) of the Utah Rules of Civil Procedure. See Preece, 848 P.2d at 3; see generally Utah R. Civ. P. 65B(a) (petitions for extraordinary relief categorized); Utah R. Civ. P. 65B(e) (1-2) (1992) (failure to exercise a duty prescribed by law). Petitioner is mistaken as to the Board "giving [him] extra time." The Board does not sentence criminal offenders but merely commutes sentences already imposed by the court. Therefore the Board did not "give" any time; instead it chose not to grant Petitioner an early release to which he was not entitled to receive. See generally Preece v. House, 848 P.2d 163 (Utah App. 1993); Beal v. Turner, 454 P.2d 624, 626 (Utah 1969) (parole decisions are not part of the sentencing process, nor are they part of the criminal process).

Accordingly, the petition requesting habeas corpus relief in the form of release should be dismissed as a matter of law since subparagraph (c) does not cover the specific claims that Petitioner has made. See Rule 65B(a) & (c) (1) (1993).

Dated this 28<sup>th</sup> day of October, 1993.

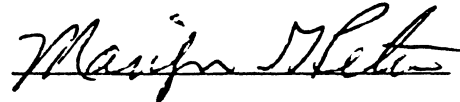
JAN GRAHAM  
Attorney General

  
Lorenzo K. Miller  
Assistant Attorney General  
Attorneys for Respondents

CERTIFICATE OF MAILING

I certify that on the 29<sup>th</sup> day of October 1993, I caused to be mailed, postage prepaid, an exact copy of Respondents' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS to:

JOHN KOCHER  
UTAH STATE PRISON  
P.O. BOX 250  
DRAPER, UTAH 84020



ADDENDUM K - ORDER OF DISMISSAL

FILED IN CLERK'S OFFICE  
Salt Lake County, Utah

FEB 08 1994

By

Deputy Clerk

LORENZO K. MILLER (5761)  
Attorneys for Respondents  
JAN GRAHAM (1231)  
Utah Attorney General  
Assistant Attorney General  
330 South 300 East, Second Floor  
Salt Lake City, Utah 84111  
Telephone: (801) 575-1600

---

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

---

JOHN KOCHER,	:	
	:	
Petitioner,	:	ORDER OF DISMISSAL
v.	:	
	:	
UTAH STATE BOARD OF PARDONS,	:	
<u>et al.</u> ,	:	Judge Anne M. Stirba
	:	
Respondents.	:	Case No. 930905892 HC
	:	

---

The above-entitled matter came before this Court on December 10, 1993, for Respondents' Motion to Dismiss. The Respondents present being represented by Lorenzo K. Miller, Assistant Attorney General, and Petitioner was also present. The Court hereby FINDS AND CONCLUDES:

1. For the reasons stated in Respondents' Motion to Dismiss, Petitioner's petition for Writ of Habeas Corpus is improperly asserted as a Rule 65B(b) or (c) action.

2. Petitioner's claims are properly characterized as Rule 65B(e) claims.

3. There is no record before the Court which demonstrates that the Respondents failed to follow statutes, rules or regulations governing their actions, exceeded their authority or abused their discretion Respondents.

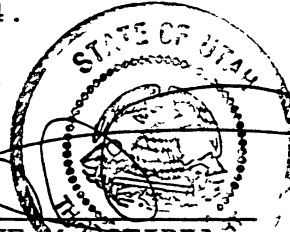
Having made the foregoing Findings and Conclusions, the Court orders the following:

1. Respondents' motion to dismiss is granted.
2. The relief Petitioner seeks is denied.
3. The case is hereby dismissed.

DATED this 8th day of February, 1994.

BY THE COURT:

  
HONORABLE ANNE M. STIRBA  
Third District Court



ADDENDUM L - NOTICE OF APPEAL



HILTON & STEED, P.C.  
David S. Steed #A3676  
Attorneys At Law  
Provo Office  
P.O. Box 50371  
Provo, Utah 84605-0371  
(801) 377-2222

HILTON & STEED, P.C.  
Matthew Hilton #A3655  
Attorneys At Law  
Springville Office  
P.O. Box 781  
Springville, Utah 84663  
(801) 489-1111

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

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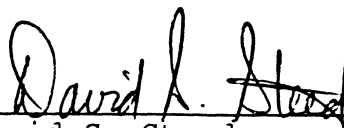
JOHN KOCHER,	)	
	)	NOTICE OF APPEAL
Plaintiff/Appellant,	)	
	)	
v.	)	Trial Court No. 930905892 HC
	)	
SCOTT CARVER, Warden; and	)	
UTAH STATE BOARD OF PARDONS,	)	Judge Anne M. Stirba
	)	
Defendant/Appellee.	)	

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NOTICE is hereby given that Plaintiff JOHN R. KOCHER, through his counsel, David S. Steed and HILTON & CLARK, P.C., appeals to the Utah Court of Appeals the final order of the Honorable Anne M. Stirba entered in this matter on February 1, 1994 dismissing his Petition for Writ of Habeas Corpus (Extraordinary Relief).

This appeal is taken from the entire order.

Dated this 2nd day of March, 1994.

  
David S. Steed

Certificate of Mailing

I hereby certify that I mailed a true and correct photocopy of the foregoing NOTICE OF APPEAL to the following identified record counsel for the Defendant/Appellee on this 2nd day of March, 1994;

LORENZO K. MILLER  
Assistant Attorney General  
330 South 300 East, Second Floor  
Salt Lake City, Utah 84111

David S. Steed

ADDENDUM M - CONSTITUTIONAL PROVISIONS

## CONSTITUTIONAL PROVISIONS

The Fourth Amendment, United States Constitution, provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

The Fourteenth Amendment, United States Constitution, provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law.

## ADDENDUM N - OTHER PROVISIONS

## OTHER PROVISIONS

On May 20, 1992, the Utah Board of Pardons issued a order that granted inmate John Kocher parole effective August 24, 1993 subject to the following condition:

It is further ordered that if and in the event that the above named applicant shall be guilty of any infractions of the rules and regulations of the Utah State Prison or shall fail or refuse to perform duties as assigned by the Utah State Prison or is found guilty of any other law of the State of Utah prior to the effective date of said parole, then this Order of Parole is revoked and becomes null and void.

The "Department of Corrections, Utah State Prison, Wasatch Facility, Inmate Orientation Handbook" (hereinafter "handbook") contains the following relevant procedure at pages 33-34:

### URINE COLLECTION AND TESTING

1. Staff may request a urine sample at any time. Failure of the inmate to produce one will result in disciplinary action.
2. It shall be the inmate's responsibility to provide a sample within **ONE** (1) hour from the time of the request.
3. If the inmate refuses or is unable to produce the requested sample within the given time frame, a disciplinary report shall be issued to the inmate for failure to comply with a direct order.
4. When an inmate alleges a psychological condition (shy bladder/bashful kidneys) which would preclude giving a sample while being observed, the inmate shall be strip searched, showered and dressed in clothing provided by a staff member. The inmate shall be given at least 16 ounces of water to drink prior to being placed in a secure (dry) holding area. The inmate shall be given **ONE** (1) hour within which to produce the required sample. If the sample is not provided within the one (1) hour time frame, the inmate shall be offered the option of medical catheterization. For further information refer to Policy and Procedure FEr2/01.00.