

KANSAS DEPARTMENT OF CORRECTIONS

	INTERNAL MANAGEMENT POLICY AND PROCEDURE	SECTION NUMBER 01-104D	PAGE NUMBER 1 of 3
		SUBJECT: ADMINISTRATION: Power of Attorney	
Approved By:  Secretary of Corrections		Original Date Issued: 11-03-15	Replaces Version Issued: N/A
		CURRENT VERSION EFFECTIVE: 11-03-15	

APPLICABILITY:	<input type="checkbox"/> ADULT Operations Only	<input type="checkbox"/> JUVENILE Operations Only	<input checked="" type="checkbox"/> DEPARTMENT-WIDE
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POLICY STATEMENT

By Kansas Administrative Regulations 44-12-209 and 123-12-209 no offender shall enter into any contract or incur any financial obligation without permission of the warden/superintendent. Offenders have access to notary service by way of IMPP 01-110D. A properly drafted and notarized power of attorney, the purpose and scope of which has been approved by the warden/superintendent, may be utilized by offenders to authorize those outside the custody and control of the warden/superintendent of the correctional facility to conduct appropriate limited defined business on behalf of the offender. The offender shall define and limit as much as possible the purpose of the grant of authority and the time frame within which the grant of authority is to remain effective.

DEFINITIONS

Power of Attorney: A power of attorney is an instrument in writing by which one person, as principal, appoints another as agent and confers upon such agent the authority to act in the place of the principal for the purposes set forth in the instrument.

Health Care: For the purpose of this policy, the term health care shall include, but not be limited to, dental, medical and behavioral health care and treatment.

PROCEDURES

I. Form of Power of Attorney Document

- A. The power of attorney document shall be in a form approved by the warden/superintendent.
- B. The warden/superintendent shall approve the use of a form (Attachment A) provided by the department of corrections for such purpose, provided the purpose, scope and extent of the grant of authority therein is consistent with the safety and security of the facility, is in the best interest of the offender, is sufficiently defined and is otherwise appropriate.
- C. Where possible, the offender should include in the document an ending date on the grant of the power of attorney to another.

II. Duties of the Warden/Superintendent and Staff

- A. The warden/superintendent shall designate a staff member to review and investigate as appropriate all power of attorney forms referred by staff notaries and unit team members to determine if permitting the offender to sign, notarize and send out the completed power of attorney is consistent with the above policy.

- B. The warden/superintendent has the discretion to approve the power of attorney as drafted, to provide suggested changes to permit the approval of the power of attorney or to refuse to permit the power of attorney to be notarized if it is in violation of this policy.
- C. All staff, including notaries public and unit team, shall send to the person designated by the warden/superintendent all power of attorney documents submitted to them for notarization. That designee shall determine initially whether the offender appears to be using the power of attorney for purposes that are consistent with the safety and security of the facility, in the best interest of the offender, are sufficiently defined and are otherwise appropriate.
- D. If the designee reviewing the power of attorney document is uncertain whether the offender appears to be using the power of attorney document for purposes that are consistent with the safety and security of the facility, are in the best interest of the offender, are sufficiently defined and are otherwise appropriate, the document should be returned to the offender with an explanation of what, if anything, can be done to make the instrument compliant with the facility's concerns.
- E. If the designee reviewing the power of attorney document submitted by the offender has a concern over whether the offender is able to understand what the offender is doing by granting the power of attorney to another or if it appears the offender is being coerced into making such a grant, a narrative report should be prepared and should be forwarded, with the power of attorney document, to the Enforcement, Apprehensions and Investigations section of the facility for further investigation.
- F. If the designee reviewing the power of attorney document submitted by the offender is satisfied that the offender appears to be using the power of attorney document for purposes that are inconsistent with the safety and security of the facility or are otherwise inappropriate, a narrative report should be prepared and should be forwarded, with the power of attorney document, to the Enforcement, Apprehensions and Investigations section of the facility for further investigation.

III. Subject Matter of the Power of Attorney

- A. Subject to the above qualifications and limitations, the offender may authorize certain powers to make decisions regarding that offender's personal and business affairs to another person who is not incarcerated.
- B. Nothing in this policy gives the person appointed as agent in the power of attorney form by the offender any unilateral or conclusive authority to act as to matters located within the scope of the business of the Department of Corrections.
 - 1. Such matters include, but are not limited to, the offender's health care, trust account, obligations owed to the Department of Corrections by the offender, actions the Department of Corrections is empowered by law to enforce against the offender, the disciplinary process, the grievance process or any process seeking the production of documents and things.
- C. A warden/superintendent may choose to neither accept such a power of attorney nor to rely upon its terms as to any offender grantor who is mentally competent at the time of the proposed request, action, or decision by the appointed agent.
 - 1. If an offender is mentally competent, the warden/superintendent need not deal with the agent appointed by the offender in the power-of-attorney document.
 - 2. Even if the offender is mentally incompetent, the warden/superintendent may nonetheless require formal appointment by a court of a guardian of the offender's person and/or conservator of the offender's estate (property), rather than accept the power-of-attorney

NOTE: The policy and procedures set forth herein are intended to establish directives and guidelines for staff and offenders and those entities that are contractually bound to adhere to them. They are not intended to establish

State created liberty interests for employees or offenders, or an independent duty owed by the Department of Corrections to employees, offenders, or third parties. Similarly, those references to the standards of various accrediting entities as may be contained within this document are included solely to manifest the commonality of purpose and direction as shared by the content of the document and the content of the referenced standards. Any such references within this document neither imply accredited status by a Departmental facility or organizational unit, nor indicate compliance with the standards so cited. The policy and procedures contained within this document are intended to be compliant with all applicable statutes and/or regulatory requirements of the Federal Government and the state of Kansas. This policy and procedure is not intended to establish or create new constitutional rights or to enlarge or expand upon existing constitutional rights or duties.

REPORTS REQUIRED

None.

REFERENCES

K.A.R. 44-12-209, 123-12-209
IMPP 01-110

ATTACHMENTS

Attachment	Title of Attachment	Page Total
A	Power of Attorney	1 page

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That I, _____, a resident of _____, _____ County, Kansas, do hereby appoint _____ whose address is _____, as my Attorney-In-Fact, to act for me in my name and stead as hereinafter set forth:

_____.

I hereby declare that this Power of Attorney shall be and remain in full force and effect until _____. If no such date of termination is specified, then this Power of Attorney shall remain in full force and effect until such time as such powers are later revoked by me in a writing that is delivered to the warden/superintendent of the facility in which I am then assigned, or if I have been released, to my supervising parole/conditional release officer.

On my own behalf as well as that of my estate or heirs-at-law, I do hereby release the State of Kansas, Kansas Department of Corrections, their officers, employees, agents, assigns, and heirs-at-law from any liability for any and all claims attaching to their reliance upon the contents of this form, unless and until I duly revoke it in writing delivered as stated above.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____ (month), _____ (year).

SIGNATURE

SUBSCRIBED AND SWORN TO before me this _____ day of _____ (month), _____ (year).

NOTARY PUBLIC

My Commission Expires: _____