

KANSAS DEPARTMENT OF CORRECTIONS

	INTERNAL MANAGEMENT POLICY AND PROCEDURE	SECTION NUMBER 01-126	PAGE NUMBER 1 of 4
		SUBJECT: ADMINISTRATION: Declaration of Marital Status, Affidavit of Common-Law Marriage, and Marriage Ceremonies for Inmates	
Approved By:  Secretary of Corrections		Original Date Issued: 12-13-88 Current Amendment Effective: 04-28-08 Replaces Amendment Issued: 11-07-02	
Reissued By:  Policy & Procedure Coordinator		The substantive content of this IMPP has been reissued as per the appropriate provisions of IMPP 01-101. The only modifications within the reissue of this document concern technical revisions of a non substantive nature. Date Reissued: 05-26-11	

POLICY

Inmates shall declare their marital status upon admission to KDOC custody as a part of the intake assessment and evaluation (i.e., RDU) process. The marital status declared by inmate self-report upon admission shall be accepted as true and accurate and shall be used as the temporary basis for determining an inmate eligibility for privileges that may be linked with or dependent upon marital status, such as, but not limited to, offender to offender correspondence, and primary visitor declaration.

Inmates who believe they are a partner to a common-law marriage shall attempt to resolve any question of such a relationship through the use of an Affidavit of Common-Law Marriage. Notations on hard copy and in computerized records shall accurately reflect the inmate's current marital status.

Parties to common-law marriage and other inmates who wish to formalize their marital status may request authorization for a marriage ceremony conducted within a correctional facility in accordance with provisions of this IMPP and applicable facility general orders. () Prior to the warden's approval of a marriage ceremony, the inmate shall provide proof of his/her eligibility for marriage, complete marriage preparation counseling, and provide details regarding the proposed ceremony and persons in attendance. All expenses associated with the marriage ceremony shall be the responsibility of the inmate or prospective spouse. The inmate shall not be granted a pass, escorted, or furloughed for the purpose of obtaining a marriage license.

Inmates shall not be permitted to marry other inmates. However, this prohibition shall not be interpreted to mean or preclude two inmates from executing an Affidavit of Common Law Marriage and providing documentation that the requirements for a common law marriage were met by the two prior to one or the other's current incarceration.

Information concerning the existence of any marriage contracted by an inmate, including marriages of common law, may, at a warden's discretion, be released to any governmental agency(ies).

DEFINITIONS

Admission documents: Documents, which may contain information regarding an inmate's marital status. Such documents include, but are not limited to, the admission data sheet, visiting list, and any related printouts from the OMIS database.

Age of consent: As established by statute in Kansas, the minimum age of consent for common-law marriage is eighteen (18) years for both females and males.

Common-law marriage: A legal status of marriage without the statutory requirements of a marriage license. The necessary requirements for common-law marriage are: (1) The parties must have capacity to marry. This includes the ability to understand, no existing marriage, and sufficient age (minimum age of consent is eighteen (18) years for both females and males). (2) A present agreement to be married to each other must exist. This is an explicit intent to be married at the present, and not at some time in the future. (3) A holding out as husband and wife to the public is required. Persuasive evidence of common-law marriage shall include, but not be limited to: co-habitation, joint tax returns, documents naming the other as a spouse, joint checking or savings accounts, driver's license using the name of the other, and other such similar items.

Master file: The primary hard copy record. It is located at the confining facility and contains the original and certified copies of commitment papers and other documents required by the Secretary and/or State statute.

PROCEDURES

I. Inmate Declaration of Marital Status

- A. The marital status declared or claimed by the inmate upon admission shall be recorded in the Offender Management Information System (OMIS) Master Record, in accordance with OMIS coding instructions as, one of the following:
 - 1. Single/Never Married
 - 2. Married/Ceremonial
 - 3. Married/Common Law
 - 4. Divorced/Annulment Granted
 - 5. Separated
- B. Inmates may, during the course of their incarceration and in conjunction with their regularly scheduled review, request to change their declared/claimed marital status but, to do so, shall be required to provide documentation in support of the change. Such documentation may include but is not limited to divorce decrees, death certificates, marriage certificates, and/or execution of an Affidavit of Common Law Marriage (Attachment A, Form # 01-126-001).
 - 1. Inmates on an annual review cycle may make such requests in conjunction with their regularly scheduled review, and each 120 days thereafter, until their next regularly scheduled annual review.
- C. Documented changes in an inmate's marital status shall be subject to the verification and approval of the facility Classification Administrator or higher authority.
- D. Approved changes in an inmate's marital status shall be recorded (entered) into OMIS in accordance with coding instructions for the modification of the Master Record.

II. Establishment of Common-Law Marriage Status

- A. When OMIS Records indicate an inmate's declared/claimed marital status is something other than Married/Common Law and the inmate requests to change his/her declared/claimed marital status to Married/Common Law, the inmate shall be required to complete an Affidavit of Common-Law Marriage (Attachment A, Form # 01-126-001).
 - 1. No other form, save Attachment A, form 01-126-001, shall be accepted for purposes of carrying out the intent of the above procedure.

- B. Execution of an Affidavit of Common Law Marriage does not, in and of itself, create or establish a Common Law Marriage. The affidavit merely establishes that the parties know and understand the requirements for a common law marriage and the requirement that either a divorce or annulment is necessary in order to terminate the marriage.
- C. Upon completion of the Affidavit of Common-Law Marriage by the inmate, the Correspondence to Claimed Common-Law Spouse (Attachment B, Form #01-126-002) shall be sent by either a Clinical Chaplain or a member of the unit team staff to the claimed spouse together with a second affidavit for completion and return. The following information and/or items shall be included in the inmate's file:
 - 1. The date the affidavit was sent.
 - 2. To whom the affidavit was sent.
 - 3. The address to which the affidavit was sent.
 - 4. A signed and notarized copy of the affidavit.
- D. The inmate shall bear the expense of mailing both the Correspondence to Claimed Common-Law Spouse and the second affidavit to the inmate's claimed spouse.
- E. A transmittal letter shall be sent to the claimed spouse with the affidavit, which shall state the purpose of the affidavit, and to whom and at what address the affidavit should be returned.
 - 1. A copy of the transmittal letter shall be maintained in the inmate's facility master file.
- F. In the event a completed Affidavit of Common-Law Marriage is not returned by the claimed spouse, the Department of Corrections shall not afford the claimed spouse the status of being a common-law spouse. However, the inmate affiant to a common-law marriage shall not be permitted to claim additional spousal relationships without one of the following:
 - 1. Proof of a divorce or an annulment form, or the death of the person originally identified as a common-law spouse in the inmate's initial affidavit; or,
 - 2. A response by the claimed spouse stating that no such relationship exists.
- G. In the event the claimed spouse responds by stating that no such relationship exists, that response shall be placed in the inmate's master file and Department records shall not reflect a common-law relationship with the claimed spouse.
 - 1. The fact that a claimed spouse responds by stating that no such relationship exists shall not form the basis for a claim of perjury or a disciplinary action pursuant to the provisions of IMPP 01-110 (Notarization of Inmate Documents).
- H. Affirmative responses from the claimed spouse, indicating that the relationship exists, shall be subject to review and action by the Classification Administrator or higher authority, as set forth within procedural section I.C..

III. Marriage Ceremonies

- A. If a warden has reason to believe that an inmate is already married, the warden shall not permit the marriage ceremony, unless the inmate produces satisfactory proof that the prior marriage has been terminated.
- B. The inmate and prospective spouse shall jointly complete a series of not less than three marriage preparation counseling sessions with either a clergyman, social worker, or psychologist.
 - 1. If not completed, the ceremony shall be denied.

- C. An inmate shall submit a written request for a marriage ceremony to the warden of the institution or facility at least 60 days prior to the desired date of the ceremony.
 - 1. This time frame may be waived by the warden for good cause.
 - 2. The full name and address of the prospective spouse, witnesses, celebrant, and all other details of the requested marriage and ceremony shall be submitted to the warden in writing at least ten days prior to the scheduled date of the marriage ceremony.
 - a. All arrangements shall be subject to approval by the warden.
- D. The warden of each facility shall publish general orders regarding marriage ceremonies.
 - 1. The general orders shall establish reasonable restrictions on the nature and circumstances of the ceremony and the number of persons attending.

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.S.A. 23-104a, 60-1601 et seq.
IMPP 01-110, 10-109
ACO 2-CO-3C-01

ATTACHMENTS

Attachment A - Affidavit of Common-Law Marriage, 1 page
Attachment B - Correspondence to Claimed Common-Law Spouse, 1 page

(FACILITY LETTERHEAD)

Correspondence to Claimed Common-Law Spouse

Date

Addressee

Subject: Common-Law Marriage Affidavit

Dear Mr./Ms. _____:

Enclosed is a copy of an *Affidavit of Common-Law Marriage* which _____ has completed. We are sending it to you for the purpose of clarifying marital status in regard to the issues of visitation, telephone privileges, emergency notification, and claiming the body of _____, should (s)he die while in the physical custody of the Kansas Department of Corrections. Also enclosed is a blank affidavit form for your use.

We respectfully request that you carefully read the Affidavit, and then respond to its contents by either claiming a common-law marriage by circling "am" in the fourth line of the blank Affidavit and then signing it before a notary public, or by denying that the marriage exists by circling "am not" in the same line of the Affidavit and then signing it. For the purpose of denying that such a common-law marriage exists, a simple letter will also suffice. Please send either the Affidavit or letter, as applicable, to the undersigned at the address listed in the letterhead above.

Failure to respond to this letter and its request will result in the denial of the inmate's claimed marriage to you by the Kansas Department of Corrections for the purposes previously mentioned.

When you respond, you may keep the copy of inmate _____'s signed Affidavit. We recommend that you keep a copy of your own signed Affidavit or letter for your own reference.

Thank you for your help. If you have any questions, please contact me at () _____ .

Sincerely,

Clinical Chaplain/Unit Team Staff

cc: Warden
DWP
File

Form #01-126-002