



INTERNAL MANAGEMENT POLICY & PROCEDURE

Department of Corrections

Applicability: Adult Operation Only JUVENILE Operations Only DEPARTMENT-WIDE

IMPP #: 11-110A

PAGE #: 1 of 5

DECISION MAKING: Application for Release of Functionally Incapacitated Residents or Release Pending Imminent Death

Original Date Issued: 09-26-22 Replaces IMPP Issued: N/A CURRENT EFFECTIVE DATE: 09-26-22

Approved By:  Secretary

Next Scheduled Review: 08/2025

POLICY

Applications for the release of residents due to functional incapacitation as set forth within the provisions of K.S.A. 22-3728 or those residents who have a prognosis of death within thirty days pursuant to K.S.A 22-3729, shall be considered in accordance with the respective statute, Kansas Administrative Regulations, and the procedures contained within this policy. Residents serving a sentence for off-grid offenses are not eligible for release under the provisions of either statute. Those cases where the resident has a terminal medical condition likely to result in death within 30 days shall be processed in a separate manner from other applications for functional incapacitation release.

DEFINITIONS

Functional Incapacitation/Imminent Death: A medical or mental health condition, including one rendering the resident terminally ill to the extent that death is imminent, resulting in the afflicted resident not posing a threat to the public. A resident suffering from a terminal medical condition likely to cause death within 30 days must have such prognosis determined by a doctor licensed to practice medicine and surgery in Kansas.

PROCEDURES

I. Submission Of The Application

- A. Any staff member of the Kansas Department of Corrections or the Kansas Prisoner Review Board, any contractor, resident or resident family member, may request a resident's unit team to address the possibility of a resident's release based on functional incapacitation pursuant to K.S.A. 22-3728, or due to a prognosis of the resident's imminent death pursuant to K.S.A 22-3729.
- B. An application for release based on functional incapacitation or imminent death shall be submitted in writing and shall be processed through the resident's unit team.
- C. In the event that the unit team receives an application for release based on functional incapacitation or imminent death, a unit team counselor shall review the case, collect necessary information to assess the case, and discuss it with the unit team manager.

II. Initial Review

- A. The unit team manager shall consult with the classification administrator who shall then consult with the appropriate Deputy Warden (or Warden) of the facility regarding the application.
- B. The Warden or Warden's designee shall then consult with the Deputy Secretary for Facilities Management regarding the application.

- C. The Deputy Secretary for Facilities Management shall review the facts in consultation with the Secretary of Corrections and the Chairperson of the Kansas Prisoner Review Board.
- D. Once the Deputy Secretary has completed the informal review of the facts, he/she will notify the facility regarding whether or not to process the application at that time.

III. Processing The Application

- A. Following such a review, if a decision to not process the application is made, this shall be documented in the resident's central (or master) file.
- B. If a decision is made to process the application, the procedures contained within this section shall be followed.
- C. In the process of reviewing the application, information concerning the following factors as set out in K.S.A. 22-3728, K.S.A. 22-3729, and K.A.R. 45-700-1 shall be collected.
 - The person's age and personal history,
 - The person's criminal history,
 - The person's length of sentence and time the person has served,
 - The nature and circumstances of the current offense,
 - The risk or threat to the community if released,
 - Whether an appropriate release plan has been established, and
 - Any other factors deemed relevant by the board.
- D. The following steps shall be taken to process an application for release based on functional incapacitation/imminent death. None of the decisions made within the framework of the process shall be subject to an appeal of any kind.
 1. The resident, or his or her legal guardian, shall execute an Authorization and Release of Medical Information form (Attachment A).
 2. Medical Information for Application for Release of a Resident Based on Functional Incapacitation/Imminent Death form (Attachment B) shall be completed and signed by the department's Health Authority and/or Mental Health Director, as appropriate. A prognosis of death within 30 days must be made by a person licensed to practice medicine and surgery in Kansas.
 - a. It is not necessary to include lengthy medical records; rather a thorough description of the resident's medical condition should be provided, with a statement of how it impacts the question of whether the resident has a condition, including (but not restricted to) one that renders the resident terminally ill, resulting in the afflicted resident being rendered incapable of causing physical harm.
 3. The application in support of the request for release based on functional incapacitation shall be prepared by the resident's unit team counselor, using the Application for Release Based on Functional Incapacitation / Imminent Death form (Attachment C).
 - a. If the resident's file does not include the prosecuting attorney's version of the most recent crime of conviction, the unit team counselor shall contact the prosecuting attorney's office and request that the prosecutor provide his or her version of the crime.
 - b. Except in those cases in which the resident has a terminal medical condition which is likely to result in death within 30 days, the Unit Team Manager shall contact the Director of Victim Services who shall review any issues related to victim services and make such contact with any victim or survivor deemed necessary.
 - c. The unit team counselor shall confer with the IPO regarding a release plan.

- (1) In this process, the release planning procedure described in IMPP 14-103A shall not be required.
 - (2) However, the IPO shall forward a proposed residence plan to the Parole Director of the region to which the resident will be released.
 - (a) The Parole Director shall direct such review of the residence plan deemed appropriate, and the Director or designee shall provide feedback to the IPO, including recommendations about the residence plan and any other conditions of release deemed appropriate.
4. The application shall be submitted to the facility Classification Administrator who shall then forward it to the Warden.
5. The Warden shall make the decision whether to initially approve or disapprove the application for the next step. The Warden may consult such staff as he/she deems appropriate.
6. If the Warden disapproves the application, it shall be returned to the unit team counselor with this decision for placement in the file. It shall be in the Warden's discretion how to notify the person who requested the application of this outcome.
 - a. Unless the requestor has been included by the resident on the release of information (Attachment A), any notification provided the requestor shall not include specific medical and/or mental health data.
7. If the Warden approves the application, the Warden shall then forward the application and supporting attachments and other applicable documentation to the Office of the Deputy Secretary for Facilities Management. The Deputy Secretary will coordinate and facilitate processing of the application in Central Office including, but not limited to:
 - a. Distributing copies of the application and attachments for review and consideration to:
 - (1) Central Office Classification Manager;
 - (2) Executive Director of Programs and Risk Reduction;
 - (3) Administrator of Sexually Violent Predator Act program who shall confer with the chair of the Prosecuting Review Committee, to advise that the application is being reviewed, and seek input about whether the resident will be considered for prosecution as a sexually violent predator; and
 - (4) Director of Victim Services.
 - b. Based on the review of available information, the Deputy Secretary shall make a decision regarding the application.
8. If the Deputy Secretary of Facility Management disapproves the application, it shall be returned to the Warden, and shall be in the Warden's discretion as to how to notify the person who requested the application of this outcome. Unless the requestor has been included by the resident on the release of information (Attachment A) any notification provided the requestor shall not include specific details of medical and/or mental health data.
9. If the Deputy Secretary of Facility Management approves the application, it shall be forwarded to the Secretary of Corrections with a recommendation that the Secretary apply to the Kansas Prisoner Review Board for release of the resident based on functional incapacitation.

10. Except in those cases in which the resident has a terminal medical condition which is likely to result in death within 30 days, if, based on existing information, the Secretary wishes to continue with the application process, the Secretary shall:
 - a. Notify the prosecuting attorney and sentencing judge pursuant to the Notice Regarding Application of Resident Based on Functional Incapacitation form (Attachment C), together with,
 - (1) The completed Medical Information for Application for Release of a resident Based on Functional Incapacitation;
 - (2) The resident's release authorizing the release of medical information; and,
 - (3) Such further information as the Secretary deems appropriate
 - b. Notify the victim through the Director of Victim Services.
 11. Except in those cases in which the resident has a terminal medical condition which is likely to result in death within 30 days, based upon all assembled information, including any comments received from the prosecuting attorney, judge, and victim, the Secretary shall approve or disapprove the application.
 - a. Disapproved applications shall be returned to the Warden of the facility of origin with a statement as to why the application was disapproved.
 - b. Approved applications shall be forwarded to the Kansas Prisoner Review Board to be considered for release of the resident based on functional incapacitation, in keeping with K.S.A. 22-3728 and K.A.R. 45-700-1.
 - c. Approved applications for residents whose medical condition is likely to result in death within 30 days shall be forwarded directly to the chairperson of the Kansas Prisoner Review Board.
 12. If an application for release due to functional incapacitation is disapproved at any point, up to and including by the Secretary of Corrections, any future application shall specifically address what has changed since the disapproval that warrants further consideration of an application for the release for the resident based on functional incapacitation.
 13. At any point in the application process, the reviewer may request additional information from a department employee, a family member, a health care provider, or any other person in possession of information relevant to the application process.
 14. If the Board grants the request for release, the resident shall be supervised by the Division of Community and Field Services.
 - a. If the resident's medical condition is likely to result in death within 30 days, the Sentencing Judge(s), Prosecuting Attorney(s) and the Director of Victim's Services shall be notified of the resident's pending release (Attachment E).
 - b. The Parole Supervisor managing the case shall ensure that good time shall be awarded in accordance with IMPP 14-120A. Questions regarding computation of good time shall be directed to the Sentence Computation Group.
 - c. The resident's discharge date shall be presumed to be the projected discharge date unless otherwise adjusted.
- IV. Residents Released Due to Functional Incapacitation/Imminent Death May Have Their Supervision Revoked for Any Of The Following Reasons:

1. The individual presents a risk to public safety.
2. The individual fails to abide by the conditions of release.
3. The individual's illness or medical condition significantly improves.
4. If release was based upon the prognosis that death was imminent within 30 days and the individual does not die within 30 days of release.

NOTE: The policy and procedures set forth herein are intended to establish directives and guidelines for staff, residents, and residents and those entities that are contractually bound to adhere to them. They are not intended to establish State created liberty interests for employees, residents, or residents, or an independent duty owed by the Department of Corrections to employees, residents, residents, 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

None.

REFERENCES

K.S.A. 22-3728, 22-3729
IMPP 14-103A, 14-120A
K.A.R. 45-700-1

HISTORY

09-26-22 Original

ATTACHMENTS

Attachment	Title	Page Total
A	Authorization for Release of Medical Information for Application for Release of a Resident Based on Functional Incapacitation/Imminent Death	1 page
B	Medical Information for Application for Release of a Resident Based on Functional Incapacitation/Imminent Death	1 page
C	Application for Release of a Resident Based on Functional Incapacitation/Imminent Death	3 pages
D	Notice Regarding Application of Resident Based on Functional Incapacitation	1 page
E	Notice Regarding Release of Resident Due to Functional Incapacitation	1 page

AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION FOR APPLICATION FOR RELEASE OF A RESIDENT BASED ON FUNCTIONAL INCAPACITATION/IMMINENT DEATH

The undersigned, _____, No. _____, or _____ as his/her legal guardian, hereby authorizes the KDOC Director of Health Care Compliance, including the following persons _____ to provide information to the Kansas Prisoner Review Board, the Kansas Department of Corrections, including the Secretary of Corrections, the Deputy Secretary of Facility Management, the Classification Administrator, the Director of Victim Services, the Executive Director of Programs and Risk Reduction, the Administrator of the Kansas Sexually Violent Predator Act program, the Warden, Deputy Warden and Classification Administrator of the facility where I am housed, the Unit Team Manager of my unit, the Institutional Parole Officer and discharge planner of the facility where I am housed, the unit team counselor I have been assigned, the Parole Director of the parole region where I want to release, and any parole staff in that region who need to review my application or proposed residence plan, administrative and support staff of the Kansas Prisoner Review Board, and other employees or acting agents of the Kansas Department of Corrections who have a need to know: _____

_____ as well as the judge and prosecuting attorney on the case for which I am currently serving time, or designee, the victim(s) or survivor(s) of any of my crimes; and, the following other persons: _____

_____ the medical or behavioral health information necessary to describe my current condition; to describe how my condition impacts my functional incapacitation/Imminent Death, the source of the medical or behavioral health information; an opinion about whether my condition is likely or unlikely to improve and to provide input on my application for release based on functional incapacitation/Imminent Death.

I hereby agree to hold harmless the Kansas Department of Corrections, the KDOC Director of Health Care Compliance and acting agents, the Kansas Prisoner Review Board, the State of Kansas, any person named above by classification or name, and any of the heirs and assigns of said persons, on account of the release of this medical information for the purpose indicated herein.

This authorization will remain valid for 180 days from the date of my signature unless I revoke the authorization in writing.

I understand that I have the right to revoke this authorization by submitting written notice to that effect [addressed to: _____]

I understand that I can refuse to sign this authorization, but if I do not sign it, my application for release will not be considered.

Date Signature

I am the resident resident's legal guardian (check one).

Date Witness

**MEDICAL INFORMATION FOR APPLICATION FOR
RELEASE OF A RESIDENT BASED ON FUNCTIONAL
INCAPACITATION/IMMINENT DEATH**

Resident Name: _____ No: _____

An application has been submitted requesting this resident's release due to functional incapacitation/Imminent Death. Please provide the information requested below for consideration as part of the review process.

The resident's current medical/behavioral health condition is as follows:

The medical/behavioral health information that reflects the resident's condition that relates to his/her functional incapacitation/Imminent Death is as follows:

The source of this medical/behavioral health information is:

In my medical opinion, it **is likely** **is not likely** (check one) that the patient's condition will improve. (If the resident's condition is likely to result in death within 30 days, please so indicate in comments).

Comment:

Date

Signature of KDOC Director of Health Care Compliance or Director of Behavioral Health

A medical opinion the resident's condition is likely to result in death within 30 days requires the signature of a person licensed to practice medicine and surgery in Kansas.

APPLICATION FOR RELEASE OF A RESIDENT BASED ON
FUNCTIONAL INCAPACITATION/IMMINENT DEATH

Background Information

Resident Name: _____ No: _____ Current Age: _____

This resident is currently housed at _____ facility, and his/her custody is _____.

The resident's current conviction is:

This resident's criminal history is:

This resident has served _____ of _____ of his/her current sentence.

The prosecuting attorney's version of the current crime is:

Release Plan

The proposed release plan for this resident is (here include all contact that has been made to develop this information and the status of the viability of the release plan, e.g., housing is available, services are available, funds are available, etc.;

The residence plan has been reviewed by parole; their recommendation related to this residence plan is:

Information that is available about the victim's position about the resident's release based on functional incapacitation/imminent death:

Information that is available about the resident's family situation/relationships and their position about the resident's release based on functional incapacitation/imminent death:

Recommendations about conditions of release:

Attachments: Information from prosecuting attorney (Not required if a prognosis of death is within 30 days or release)
Information from parole
Medical information form

Approval/Disapproval/Comment: (attach additional pages as necessary to reflect input from all reviewers)

Approved Disapproved Comment:

Date Unit Team Manager

Approved Disapproved Comment:

Date Warden

Approved Disapproved Comment:

Date Deputy Secretary of Facilities Management

Approved Disapproved Comment:

Date Secretary of Corrections

Additional attachments for KPRB (Not required if the resident has a prognosis of death within 30 days of release):

Response from prosecutor or judge
Response from victims
Recommendations of reviewing staff

NOTICE REGARDING APPLICATION OF RESIDENT BASED ON FUNCTIONAL INCAPACITATION

TO: Prosecuting Attorney: _____
Judge: _____
Director of Victim Services

FROM: Secretary of Corrections

DATE: _____

RESIDENT (Name & Number): _____

You are hereby notified that an application has been submitted to the Secretary of Corrections for consideration for release of the referenced resident based upon functional incapacitation, pursuant to K.S.A. 22-3728 and K.A.R. 45-700-1.

With this notification you will receive information regarding the resident and the application for release due to functional incapacitation.

These documents provide information about the resident's medical condition, and reflect the basis for submitting the application, as well as the release plan proposed. If the Kansas Prisoner Review Board finds that the resident lacks the capacity to cause physical harm by virtue of his/her medical condition and concludes that release is appropriate in consideration of all the factors set out in the statute and regulations, the resident will be released subject to conditions imposed by the Board, and will be under supervision similar to post-release, conditional or parole release.

If you would like to provide input to the Kansas Prisoner Review Board regarding this application, please send your comments to:

Secretary of Corrections
714 SW Jackson, Suite 300
Topeka, KS 66603
ATTENTION: Functional Incapacitation Applications

Your comments should reach the Secretary of Corrections **no later than:** _____.

If you have questions, please do not hesitate to contact me by calling 785.296.3317.

Thank you.

Attachments

NOTICE REGARDING RELEASE OF RESIDENT BASED ON IMMINENT DEATH

TO: Prosecuting Attorney: _____
Judge: _____
Director of Victim Services

FROM: Secretary of Corrections

DATE: _____

RESIDENT (Name & Number): _____

You are hereby notified that the aforementioned resident was released from incarceration on (date) by the Secretary of Corrections due to a medical illness that will likely result in the resident's death within 30 days of release. This release was pursuant to) K.S.A 22-3729.

The attached documents provide information relative to the resident's medical condition and reflect the basis for the release. The resident is subject to conditions imposed by the Kansas Prisoner Review Board, and will be under supervision similar to post-release, conditional or parole release.

If you have questions, please do not hesitate to contact me by calling 785.296.3317.

Thank you.

Attachments