



# INTERNAL MANAGEMENT POLICY & PROCEDURE

Department of Corrections

**Applicability:**  Adult Operation Only  JUVENILE Operations Only  DEPARTMENT-WIDE


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IMPP #: 11-114A

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**DECISION MAKING: Recommendation for Sentence Modification Pursuant to K.S.A 21-6702**

Original Date Issued: 08-31-22 Replaces IMPP Issued: N/A **CURRENT EFFECTIVE DATE: 08-31-22**

Approved By: , Secretary Next Scheduled Review: 02/2025

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## POLICY

Recommendations may be submitted to a sentencing court, on the behalf of a resident, for the modification of sentences imposed for a crime committed prior to July 1, 1993, in accordance with K.S.A. 21-6702. Such recommendations are to be developed with consideration to ensure that the interest of public safety is not jeopardized, and only in circumstances of exceptional merit.

## DEFINITIONS

Management Team (MT): A panel of Central Office management staff designated by the Secretary. Currently this panel is comprised of the Secretary; Deputy Secretaries; Chief Legal Counsel; Executive Director of Contracts and Finance; Executive Director of Programs and Risk Reduction; Executive Director of Public Affairs; Enforcement, Apprehension and Investigations Director; Human Resources Director; Chief Information Officer; Victim Services Director; Prisoner Review Board Chair, and the Fiscal Director.

Recommendation for sentence modification: A recommendation from the Secretary of Corrections to the sentencing court that consideration be given to a modification of the term of a resident's sentence to further the rehabilitative process, correct a sentencing inequity, or for some other defined purpose. Applies only to those residents sentenced for crimes committed prior to July 1, 1993.

## PROCEDURES

### **I. Initiating the Sentence Modification Process**

- A. The warden of each facility is to be the sole initiator of any formal recommendation to the Secretary of Corrections for the modification of the sentence of a resident.
  - 1. The warden is to base the recommendation on a report from the Unit Team which is approved by the Program Management Committee.
- B. The Secretary of Corrections is to be the sole initiator of any formal request to the sentencing court for the modification of the sentence of a resident.

### **II. Justifications for the Sentence Modification Recommendation**

- A. Factors to be considered in making a recommendation for modification of sentence are those listed below:

1. The sentence imposed is for a crime committed prior to July 1, 1993.
  2. A sentencing inequity exists in which a sentence imposed under a previous version of the criminal code exceeds that which could be imposed for the same offense under the current version of the criminal code.
  3. A change in approach by the court, a miscalculation of sentence, or other change by the court in which the recommendation of the Secretary is necessary to restore the jurisdiction of the court and such recommendations in keeping with current policy.
  4. A special resident medical or psychiatric condition exists which requires a parole to a special treatment program.
  5. A resident's medical condition has been diagnosed as terminal.
  6. A resident who is confined in a federal facility while under a Kansas sentence and cannot qualify for participation in a particular program or work release because of the resident's Kansas parole eligibility date, but whose case merits reduction of the minimum sentence to advance the parole eligibility and permit the rehabilitation process to proceed.
  7. The resident has sincerely taken advantage of available counseling and other programs as recommended by the initial Classification Committee and/or the unit team and has completed all or most of the elements of the Resident Program Agreement.
  8. The resident's behavior and attitude indicate a likelihood that the resident can live in society in a law abiding manner.
  9. A parole eligibility date which is established and controlled by statute and for which neither the alternative of direct recommendation and certification of parole eligibility by the Secretary, nor adjustment by the Prisoner Review Board, is possible.
  10. In conjunction with other factors, a resident who has served an appropriate period of time for the commission of a crime.
  11. A fundamental change in the resident has occurred which amounts to rehabilitation that is extensive and complete and there is the likelihood that further incarceration would have a negative impact on the resident.
  12. Other factors such as:
    - a. Respect for the law as it may be affected by the specific facts of the case;
    - b. Family and community support available to the resident;
    - c. The resident's employability and a need of financial support for the resident's family;
    - d. The proper expenditure of the taxpayers' money; and/or,
    - e. Other social and community related factors.
- B. If the behavior and attitude of the resident are unacceptable, successful completion of the elements of the Resident Program Agreement is not enough on its own to be adequate basis for a recommendation for sentence modification.
- C. If the resident's adjustment, behavior and attitude indicate the likelihood of a successful return to the community, the failure to complete all the elements of the Resident Program Agreement is not to preclude a recommendation for sentence modification unless:
1. The resident has refused to enter into an agreement; or,

2. The resident refuses to complete an agreement.
- D. A modification of sentence is not to be offered or promised to any resident as an incentive to improve the resident's performance, nor as a reward for any particular act of heroism or assistance to correctional personnel.
1. The resident is to be informed that the modification of sentence does not guarantee a favorable parole action.

### III. Documentation

- A. In the event the warden determines that a recommendation for a modification of sentence should be submitted, the warden is to support the recommendation with sufficient justification substantiated by reports and records, including the following documentation:
1. A comprehensive progress report describing the resident's:
    - a. Custody status;
    - b. Sentence and parole eligibility structure;
    - c. Adjustment history;
    - d. Program involvement and outcome;
    - e. Medical/health considerations (if applicable); ~~and~~,
    - f. Victim safety concerns; and
    - g. General circumstances which reflect other factors supporting the request.
  2. An informal preliminary release plan as established by the facility and the resident; and,
  3. A mental health evaluation and report indicating the mental status of the resident which:
    - a. Is to include the results of at least one projective test as clinically indicated in the judgment of the examining clinician; and,
    - b. Is to describe what the resident's mental status was at the time of entry into the correctional system, changes which have occurred, characteristics and diagnosis at the present time, and prognosis for the future.
- B. All facility reviews and actions (approvals and disapprovals) regarding sentence modifications is to be recorded in the Unit Team file.

### IV. Processing Recommendations

- A. A three (3) member committee, appointed by the Secretary and comprised of wardens and regional parole directors, is to meet at least two (2) times per year to review recommendations regarding sentence modifications.
1. The Secretary is to designate one warden as chairperson of the committee.
  2. In addition to the three (3) members appointed to the committee, the Department's Chief Legal Counsel is to designate a departmental attorney to serve in a non-voting advisory capacity.
  3. Special meetings of the committee may be called by the Secretary as necessary to expedite the processing of emergency or other special attention cases.

4. In those situations where a recommendation being considered originated at a warden member's facility, the Secretary of Corrections is to appoint an alternate member to the committee.
    - a. The alternate member is to serve to review, discuss and vote on any cases where such a conflict of interest is involved.
  5. Committee meetings may be held via teleconference following each member's independent review of case materials.
- B. The materials supporting the recommendation for the modification of sentence, accompanied by a written statement from the warden of the facility, is to be forwarded to the designated committee chairperson.
1. Wardens of other facilities where the resident has been housed is to provide comments in writing when requested by the committee.
- C. The committee recommendation on each case is to be forwarded to each deputy secretary, who is to review the recommendation and submit a written opinion to the Secretary.
- D. The Secretary of Corrections is to review the committee's recommendation, supporting documentation, written statements from each deputy secretary, and other information available and make a decision.
- E. If the Secretary approves the recommendation, the legal section is to submit the recommendation to the Court.
1. If the recommendation is disapproved by the Secretary, the Deputy Secretary of Facility Management or designee is to inform the resident and referring warden in writing of the denial.
    - a. Such notification is to occur within ten (10) working days from the date the denial decision is made.
- F. The Secretary of Corrections is to be represented by the department's legal counsel as necessary in all court hearings resulting from the recommendation.
1. Legal counsel is to be responsible for submitting the Secretary's recommendation to the court and is to appear at court hearings on the matter as required.
- G. If the resident is represented in the matter by Legal Services for Prisoners, Inc., or privately retained counsel, the Secretary may refer the matter to that attorney for representation of the resident.
1. Such representation is not to be required.
- H. The warden and facility staff recommending the modification is to be available to testify in court in support of the recommendation.
- I. If the court denies the request, the legal section is to inform the resident and referring warden in writing of the reasons for the denial.
1. Such notification is to occur within ten (10) working days from the date the denial decision is made by the court.

**V. Other Provisions and Requirements**

- A. If the court grants the modification but does not order the resident's release, the matter of parole is to be subject to a hearing before the Prisoner Review Board.

1. If the resident becomes eligible for parole as a result of a favorable decision by the court, the facility is to schedule the resident for an appearance before the Prisoner Review Board.
- B. If the sentence modification was recommended for the purpose of advancing the resident's parole eligibility date to allow participation in a federal program, or to allow observation of performance under a less structured environment, participation in the programs is to proceed following the modification of sentence.
- C. Unless further participation in training or observation in a less structured environment is required, and upon attaining parole eligibility, a pre-parole report is to be prepared as soon as practical and the resident scheduled for a hearing before the Prisoner Review Board.

**NOTE:** The policy and procedures set forth herein are intended to establish directives and guidelines for staff, residents, 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, residents, or offenders, or an independent duty owed by the Department of Corrections to employees, residents, 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**

None.

#### **REFERENCES**

K.S.A 21-6702

#### **HISTORY**

08-31-22 Original

#### **ATTACHMENTS**

None.