



Department of Corrections

# INTERNAL MANAGEMENT POLICY & PROCEDURE

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

**IMPP #: 14-144A**

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**PAROLE SERVICES: Waiver of Final Revocation Hearing**

**Original Date Issued: 04-23-18 Replaces IMPP Issued: 04-23-18 CURRENT EFFECTIVE DATE: 07-17-19**

**Approved By:**  **, Acting Secretary** **Next Scheduled Review:** July 2020

## POLICY

Upon the establishment of probable cause for the revocation of post-release supervision status, offenders serving determinate sentences who meet designated criteria must be afforded the opportunity to waive their final revocation hearing before the Prisoner Review Board (PRB). All offenders serving an indeterminate sentence must be docketed and scheduled for a hearing before the PRB.

## DEFINITIONS

Detainer: A warrant, teletype, or written correspondence from a law enforcement or correctional agency citing a misdemeanor or felony charge or conviction in that jurisdiction that results from criminal activity that occurred during a period of post release supervision on the current sentence.

Prisoner Review Board (PRB) Staff: Kansas Department of Corrections staff assigned to administrative and clerical duties in the office of the Prisoner Review Board.

Off Grid Sentence: A sentence for which the term of imprisonment must be life.

Post-release Supervision: Refers only to the supervision of offenders released as the result of Sentencing Guidelines.

Pending Misdemeanor Charge: A misdemeanor charge must be considered to be pending if an offender has been issued a citation or summons or is arrested for a Class A, B, or C misdemeanor or the equivalent class under city ordinance for an offense that occurred during a period of post release supervision on the current sentence. A charge must be considered to be "pending" unless resolved by dismissal, acquittal, or conviction. Offenses which meet statutory criteria for A,B,C misdemeanors may include but are not limited to DUI, Driving While Suspended, Possession of Drugs or Drug Paraphernalia, Battery, Assault, Domestic Battery, Lewd & Lascivious, Prostitution, Criminal Trespass, Disorderly Conduct, Interference with Law Enforcement and Fraud or Financial crimes. Offenses not equivalent to a Class A, B, or C misdemeanor, such as minor traffic offenses, must not constitute a pending misdemeanor charge.

Pending Felony Charge: A felony charge must be considered to be pending if an offender is arrested on a felony charge that occurred during a period of post release supervision on the current sentence. Formal criminal charges not filed by the County or District Attorney within 10 days of the offender's arrest on the new felony charge, then charges must no longer be considered to be pending and the offender must become eligible for the revocation waiver.

Probable Cause: A set of facts and circumstances which would induce a reasonable person to believe that an offender had committed a specific violation; reasonable grounds to make or believe an accusation.

Probation Violation Charge: For purposes of this IMPP, a charge lodged against an offender with a probation case, who has allegedly violated the terms of that probation. A probation violation does not constitute a pending

misdemeanor or felony charge. An offender with a pending probation violation charge is eligible for the revocation waiver.

Revocation Hearing: A hearing before the revoking authority to determine whether revocation of parole or post release supervision is to be made final.

Waiver: An intentional relinquishment of some right or interest. The relinquishment must be free of any force or coercion and be in the form of a written statement.

## **PROCEDURES**

### **I. Eligibility and Penalty Periods**

- A. Offenders serving a determinate sentence must be eligible to waive their final revocation hearing before the PRB unless they were sentenced under Jessica's law or are serving a lifetime period of post release supervision.
- B. Offenders who meet the criteria in I.A., and are in custody in a KDOC facility or Kansas jail or detention center must be presented with the waiver form as part of the revocation process unless they:
  - 1. Have been convicted of a new felony or misdemeanor offense that occurred during a period of post release supervision associated with the current sentence which has not been addressed by KDOC;
  - 2. Have a pending misdemeanor or felony charges or other detainers that occurred during a period of post release supervision associated with the current sentence
- C. Offenders ineligible for the revocation waiver due to the existence of pending misdemeanor or felony charges or detainers at the time of the presentation of the Statement of Charges/Notice of Hearing, or at the finding of probable cause by the hearing officer, must become eligible and must be presented with a revocation waiver form by the parole officer, if the offender remains in the county jail, or by the Institutional Parole Officer after admission to a KDOC facility if;
  - 1. The misdemeanor charges resulted in dismissal or acquittal; or
  - 2. Felony charges were not filed within a 10-day time frame by the County or District Attorney, or were dismissed prior to the return of the offender to KDOC custody; and
  - 3. The offender would otherwise be eligible for the waiver had charges not been present;
- D. When an offender is offered the waiver after initially being ineligible due to pending charges, the penalty period must commence upon the date the criminal charge or pending detainer was dismissed or acquittal finding reached.
  - 1. If an offender is detained on the basis of a felony arrest for which no formal charges are filed within a 10-day time frame, the penalty period of incarceration must begin on the date the revocation waiver is signed by the offender or an earlier date determined by the board, which must not precede the date on which that felony arrest warrant was issued.
- E. Offenders serving any indeterminate or off grid sentence will not be allowed to waive their final revocation hearing before the PRB. This does not preclude the offenders from refusing to attend the hearing, however, these offenders will be docketed and scheduled for a hearing before the Prisoner Review Board.

### **II. Presentation of the Waiver of Final Revocation Hearing Form**

- A. Eligible offenders who have been served with a Statement of Charges/Notice of Hearing, as outlined in IMPP 14-142A, and waive the preliminary hearing must be presented with the Waiver of Final

Revocation Hearing Form (Attachment A). This form must be read to the offender and the offender must be advised that if he/she decides to waive the final hearing before the PRB, he/she will be:

1. Admitting guilt on all charges outlined in the Statement of Charges/Notice of Hearing;
  2. Waiving the right to appear before the KPB and speak on his/her behalf;
  3. Waiving the right to present evidence to the KPB;
  4. Waiving the right to present witnesses who can give relevant information;
  5. Waiving the right to confront and cross-examine adverse witnesses; and
  6. Waiving legal counsel.
- B. Eligible offenders, who have been served with a Statement of Charges/Notice of Hearing as outlined in IMPP 14-142A, who request a preliminary hearing, must be presented with the Waiver of Final Revocation Hearing Form if probable cause is established at the preliminary hearing. The presentation and explanation of the waiver form must be conducted as outlined above in Section II., Subsection A.
1. If a preliminary hearing is conducted and probable cause is not found in all charges outlined in the Statement of Charges/Notice of Hearing, then a notation must be made at the bottom of the Waiver of Final Revocation Hearing Form indicating those charges for which probable cause was not established.
- C. In order for the Final Revocation Hearing to be considered as “waived”, the offender must have signed and dated the revocation waiver section of the form.
1. The parole officer serving the Waiver of Final Revocation Hearing Form must witness the signing of the form and verify that the correct date is noted on the form.
- D. Within three (3) working days of the signing of the waiver form, the parole officer or designee must enter the “RW” OMIS movement reflecting the date of the offender’s decision to waive his/her final hearing.
- E. An offender wishing to have a Final Revocation Hearing must sign and date in the appropriate box on the form.
- a. The parole officer serving the Waiver of Final Revocation Hearing Form must witness the signing of the form by signature and verify that the correct date is noted on the form.
- F. If the offender refuses to accept or sign the Waiver of Final Revocation Hearing Form, the offender must shall be considered to have requested a final hearing before the Prisoner Review Board.
- a. If the offender refuses to sign the revocation waiver form, the parole officer must note that the offender “refused to sign” and indicate the date at the bottom of the form.
- G. The offender must be provided a signed copy of the Waiver of Final Revocation Hearing Form.
- H. Offenders initially refusing to waive the final revocation hearing must not subsequently be permitted to waive their final revocation hearing

### **III. Revocation Packet Submission for Offenders Who Waive Final Hearing**

- A. For eligible offenders who have waived the final hearing before the PRB, a modified revocation packet must be forwarded to the PRB staff in accordance with IMPP 14-141A.
- B. PRB support staff may forward the modified packet along with the central office file to the PRB so that a final decision may be made by the KPB regarding the offender’s case.

1. The offender's Final Action Notice must include the date of the final revocation hearing.

**IV. Interstate Cases/Kansas Cases Arrested and Detained Outside of Kansas/Eligible Offenders Arrested in Kansas Not Offered the Waiver Prior to Admission**

- A. Upon return to a Kansas Correctional facility, offenders who meet the criteria in Section I., Subsection A., must be offered the opportunity to waive their final hearing before the Prisoner Review Board.
- B. The Interstate Compact unit staff, must:
  1. Determine which interstate cases will meet the criteria for eligibility as outlined in Section I.;
  2. Track the eligible offenders until they have been returned to a KDOC facility;
  3. Upon the offender's return, send electronic copies of the Statement of Charges/Notice of Hearing, the Final Notice of Hearing, and the violation report(s) to the Institutional Parole Officer (IPO) or designee, of the facility in which the offender is housed; and
  4. Forward the revocation packet to the PRB staff within three (3) working days.
- C. The Institutional Parole Officer (IPO) or designee must:
  1. Serve the offender with the final notice of hearing within three (3) working days of receipt of the final notice of hearing;
  2. Present the waiver form to the offender as outlined in Section II., Subsection A.;
  3. Complete the appropriate OMIS movement within three (3) working days of the signing of the waiver form;
    - a. For eligible offenders arrested outside of Kansas the admission date must be reflected in OMIS as the effective date of the RW.
    - b. For eligible offenders arrested in Kansas that were not offered a waiver prior to admission the IPO/designee must contact the PRB administrator to obtain the date that must be reflected in OMIS as the effective date of the RW.
  4. Provide a signed copy of the waiver form to the offender.
- D. The IPO or designee must provide an electronic copy of the signed waiver form to the PRB staff and it must become part of the revocation packet.

**V. Procedure to Rescind Waiver of Hearing**

- A. Offenders may not rescind a written waiver of final revocation hearing before the Prisoner Review Board unless:
  1. The offender petitions the PRB in writing within 14 calendar days from the allegedly defective waiver was signed; and
  2. The offender proves to the satisfaction of the PRB that the waiver decision was the product of fraud, duress, or that the offender was not advised of the fact of admission of guilt of the charged condition violations or the rights that he/she would forego by agreeing to the waiver of the final revocation hearing.
- B. In the event that the PRB grants the offender's petition, the offender must be scheduled for a final revocation hearing.

1. In such cases, if the PRB revokes the offender's post-release supervision and orders the offender to serve an incarceration penalty period, such penalty must commence on the date of revocation.

**VI. Offenders Who: Are Erroneously Allowed to Waive Final Hearing; or, Incur a New Criminal Charge Subsequent to Issuance of the Waiver.**

A. When an offender with a determinate sentence has waived the final revocation hearing and it is later discovered he/she has incurred a misdemeanor or felony conviction, the following actions must take place:

1. If the conviction is discovered while the offender is still in the county jail, the parole officer must present an amended Statement of Charges/Notice of Revocation Hearing to the offender.
2. If the conviction is discovered after the offender has been admitted to a KDOC facility, the Institutional Parole Officer must present an amended Statement of Charges/Notice of Revocation Hearing to the offender and the offender must be docketed for a hearing before the Prisoner Review Board.
3. If it is discovered that a misdemeanor or felony charge had been filed prior to the offender having waived the final hearing, or misdemeanor or felony charges are filed after the offender has waived the final hearing, the waiver must remain in force. A signed waiver of a final hearing will become invalid only if it is discovered that the waiver was presented to an offender with an indeterminate sentence, the offender had been convicted of a misdemeanor or felony prior to the signing of the waiver, or the offender is convicted of a misdemeanor or felony after the signing of the waiver during the revocation penalty period.

a. Offenders charged with a criminal offense after presentation of the revocation waiver must be considered to be serving their violation penalty period and must not be cited with the additional criminal charge while serving the violation time.

- (1) If the offender is still in the county jail upon completion of the revocation period, the condition violation warrant must be withdrawn. It must be within the discretion of the parole officer and supervisor to issue a subsequent warrant for a previously unaddressed felony criminal charge that occurred during a term of post release supervision.
- (2) It must be within the discretion of the parole officer and supervisor to issue a warrant for an offender who has waived the final revocation hearing, has been returned to a KDOC facility, and is subsequently released to the detainer for a felony criminal offense that occurred on a period of post release supervision.
- (3) If the offender is ultimately convicted of a felony that occurred while serving a post release supervision term, the offender must be processed for revocation and scheduled for hearing with the PRB under the provisions of Sentencing Directive #37.

B. When facility staff determine that an offender with an indeterminate sentence has erroneously been allowed to waive the final revocation hearing, the offender will be scheduled for a final hearing before the Prisoner Review Board.

**VII. Administrative Actions for Offenders Serving the Violation Penalty Period in the County Jail**

A. When circumstances exist in which the offender will not be transported to a KDOC facility prior to the date of completion of his/her violation penalty period:

1. The PO of record must request the final action notice and post release certificates from the PRB Administrator, and request that they be forwarded to the parole officer and/or parole supervisor of record;
2. The parole officer of record must consult with the Central Office Sentence Computation Unit staff to ensure that the offender's sentence has been accurately computed and good time entries made;
3. The parole officer of record must ensure that the KDOC warrant/hold is removed from the local detention facility and the proper OMIS/TOADS entries are made when the offender's violation time is completed; and
4. The parole officer of record must ensure that the offender is provided with the release certificate and reporting instructions, if applicable.

**VIII. Transmission of Information to Facility Staff**

- A. Information regarding the disposition of misdemeanor or felony charges affecting presentation of the revocation waiver must be placed in the Contact Notes, Transportation Memo, and Closing Summary contained in the TOADS database.

**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 procedures are not intended to establish or create new constitutional rights or to enlarge or expand upon existing constitutional rights or duties.

**REPORTS**

None.

**REFERENCES**

KSA 22-3717, 75-5217, 1999 Supp.  
KAR 44-9-105  
IMPP 14-134A, 14-141A, 14-142, 14-143

**HISTORY**

04-23-18 Original  
07-31-18 Policy Memorandum #18-07-001

**ATTACHMENTS**

<b>Attachments</b>	<b>Title of Attachments</b>	<b>Page Total</b>
A	Waiver of Final Revocation Hearing Form	1 page

## Kansas Department of Corrections Waiver of Final Revocation Hearing

TO: \_\_\_\_\_  
Offender Name and KDOC Number

\_\_\_\_\_  
Date

I have read or had read to me the charges against me that are listed in the Statement of Charges and/or Final Notice of Hearing. I understand the charges against me, my rights, and the revocation process. I am knowingly making a choice regarding my final revocation hearing by signing in one of the boxes below.

**I wish to have a final revocation hearing before the Prisoner Review Board.**

- I understand that once I have requested my final hearing, I will not have the opportunity to waive my final hearing again.
- I understand that if my post release supervision is revoked, my violation time will not begin until the date of my final revocation hearing with the Prisoner Review Board

\_\_\_\_\_  
Signature of Offender and KDOC Number

\_\_\_\_\_  
Date of Decision

**I wish to waive my final revocation hearing before the Prisoner Review Board.**

I understand that in waiving the revocation hearing, that

- I plead guilty to the violations against me, as outlined in my Statement of Charges and/or Final Notice of Hearing.
- I forfeit the right to appear before the PRB and speak on my own behalf.
- I forfeit the right to present evidence to the PRB on my behalf.
- I forfeit the right to present witnesses who can give relevant information.
- I forfeit the right to confront and cross-examine adverse witnesses.
- I forfeit any right I may have regarding legal counsel.

I understand that once I have waived my final hearing, I will not have the opportunity to request a final hearing again. *Requests to rescind the waiver of the final revocation hearing must be submitted in writing to the Prisoner Review Board within 14 days of waiver execution. In order to be considered by the Board, information must be included indicating that the decision was the product of fraud, duress, or that the offender was not advised of the fact of admission of guilt of the charged condition violations or the rights that he/she would forego by agreeing to the waiver of the final revocation hearing.*

\_\_\_\_\_  
Signature of Offender and KDOC Number

\_\_\_\_\_  
Date of Decision

\_\_\_\_\_  
Parole Officer/Witness

\_\_\_\_\_  
Date

**For cases with a preliminary hearing, where the final revocation hearing was subsequently waived, please note the outcome of the hearing:**

- ( ) Probable cause was found for all charges listed on the Statement of Charges/Notice of Hearing form.  
( ) Probable cause was found for all charges listed on the Statement of Charges/Notice of Hearing form except:

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