

INTERNAL MANAGEMENT POLICY & PROCEDURE

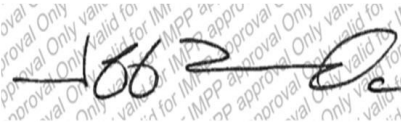
Applicability: ☒ Adult Operation Only ☐ JUVENILE Operations Only ☐ DEPARTMENT-WIDE

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FISCAL: Processing Resident Garnishments

Original Date Issued: 12-30-14 Replaces IMPP Issued: 12-12-17 **CURRENT EFFECTIVE DATE: 09-27-23**

Approved By: , Secretary Next Scheduled Review: 12/2025

POLICY

A garnishment order issued by a Kansas court which seeks to garnish either wages or property other than wages held by the Department on behalf of a resident shall be processed by the banking section in accordance with this policy and applicable law, and shall be answered within ten (10) working days from the date service is received. In any garnishment proceeding, no payment shall be made from any resident trust account for any amount less than five dollars (\$5.00).

DEFINITIONS

Banking Section: The servicing location of a resident's trust account is based upon the resident's current housing location. There are currently three (3) servicing locations for residents in work release status, which are the Hutchinson Correctional Facility – Work Release, Topeka Correctional Facility – Work Release, and Wichita Work Release Facility. The balance of resident trust accounts is serviced by a fourth section, known as centralized inmate banking.

PROCEDURES

I. Service of Orders of Resident Garnishment

- A. All service of orders of resident garnishment, whether personally served or served by certified or first-class mail, or email shall be forwarded to the appropriate banking section who shall receive service of the garnishment.
- B. Upon receipt of service of the garnishment order, the facility's banking manager or designee shall record the service of the garnishment in a log book.
 1. The information logged concerning the garnishment shall include, at a minimum:
 - a. The name and number of the resident who is the subject of the garnishment;
 - b. The date and time the garnishment order was served;
 - c. The date an answer to the order is due;
 - d. The amount the court seeks to garnish.
- C. Multiple garnishments received from the same garnishor on the same resident shall be considered separate events unless otherwise ordered by the court, and a cumulative running balance of them shall not be maintained.

II. Processing of Orders of Resident Garnishment

- A. If it is determined after the order is logged that the resident defendant of the garnishment is not a resident of any facility, the banking section manager or designee receiving the order answer on the garnishment order provided by the court or collection agency.
- B. If it is determined after the order is logged that the resident defendant of the garnishment is a resident of a facility, a further determination shall be made by the appropriate banking section manager or designee as to whether the garnishment order is a garnishment of earnings or a garnishment of other than earnings.
 - 1. If it is determined that the garnishment order is an attachment of earnings, a further determination shall be made as to whether the resident who is the defendant to the garnishment is participating in a program of work release or job training (non-prison paid employment) pursuant to the provisions of K.S.A. 75-5268. (For purposes of garnishment orders that are attachments of earnings, stipend or incentive pay shall not be considered earnings or income.)
 - a. If the resident who is the defendant to the earnings garnishment is a work release or job training participant pursuant to the provisions of K.S.A. 75-5268, an answer to the garnishment shall be completed on the garnishment order provided by the court or collection agency.
 - b. If the resident who is the defendant to the earnings garnishment is NOT a work release or job training participant pursuant to the provisions of K.S.A. 75-5268, an answer to the garnishment shall be completed on the garnishment order provided by the court or collection agency.
 - c. If the resident trust fund account balance of the resident who is the defendant to the earnings garnishment is less than five dollars (\$5.00) or the garnishment amount sought is less than five dollars (\$5.00), an answer to the garnishment shall be completed on the garnishment order provided by the court or collection agency.
 - (1) The resident's funds shall remain encumbered until the banking section receives an order from the court to release the moneys.
 - 2. If it is determined that the garnishment order is of other than earnings, the appropriate banking section manager or designee shall immediately determine the total amount of funds which the resident defendant to the garnishment currently has owing to him/her by the Department or has reserved in his/her forced or mandatory savings accounts.
 - a. After determining the total amount of funds, which the resident defendant to the garnishment has owing to him/her by the Department, the appropriate banking section manager or designee shall complete an answer to the order of garnishment by using forms provided by the court.
 - (1) Such forms shall be completed with the proper information, executed, and returned to the court.
- C. Except in response to orders of child or spousal support, or in payment of delinquent taxes, no resident funds shall be subjected to garnishment if those funds were accrued from any of the following sources:
 - 1. Social security benefits;
 - 2. Veterans' Administration benefits; or,
 - 3. Workers' compensation benefits paid to the resident garnishee.

III. Encumbrance of Resident Trust Funds Subject to Garnishment

- A. Except as indicated below, the appropriate banking section manager or designee shall ensure that any funds currently owed to the resident defendant of a garnishment of other than earnings are immediately encumbered until further order of the court is received.
 - 1. No garnishment from an order issued on or after 04-04-1996, shall be made from any resident inmate trust account for any amount less than five dollars (\$5), unless otherwise ordered by the court.
 - 2. On DCF garnishments regarding child support, the appropriate banking section manager or designee shall ensure that the lesser of the available trust and forced savings balances or the amount due per the garnishment is encumbered.

IV. Notification of Resident Defendant of Garnishment

- A. In the event a resident's trust fund account is encumbered as being subject to garnishment, the resident shall be notified of the answer filed to the garnishment.
 - 1. Upon completion, the appropriate banking section manager or designee shall send the answer of the garnishment per the distribution list on the form provided by the court or collection agency.
 - 2. A copy of the answer shall be retained in the resident's central file and a copy shall be delivered to the resident through the Unit Team.
- B. If the resident's trust fund account is not encumbered, no notification of the resident by the banking section shall be required. The appropriate banking section manager or designee shall ensure that procedures in Section II.A. or II.B., above, have been completed.

V. Transfer or Release of a Resident Under Attachment of Other Than Earnings - (Resident Trust Fund Account Garnishment)

- A. In the event a resident is transferred to another facility which results in a different banking section handling his/her resident trust fund, while all or a portion of his/her resident trust fund account is encumbered due to an order of garnishment, the facility's banking section manager or designee of the receiving banking section shall be notified.
 - 1. Upon forwarding the trust account funds of such resident, the banking section manager or designee of the sending banking section shall ensure that copies of both the garnishment order and the sending banking section's answer are included with any funds so transferred.
 - a. The banking section manager or designee of the sending banking section shall contact the receiving banking section manager or designee to verify the documents were received.
 - 2. The banking section manager or designee of the sending banking section shall also notify the court of record of the resident defendant's transfer and the new location of the garnished funds.
- B. In the event that a resident is released while all or a portion of his/her resident trust fund account is encumbered due to an order of garnishment, the amount of the resident's account subject to the garnishment order shall be retained by the releasing banking section in an encumbered account.
 - 1. At the time of release, the resident shall be given all unencumbered funds from his/her resident trust fund account.

2. The amount subject to the order of garnishment shall be retained by the banking section as an encumbered balance within the facility's resident trust fund.
 - a. The banking section manager or designee shall notify the court of record that the resident defendant to the garnishment has been released from custody and request a speedy disposition as to the final disbursement of the garnished funds.

VI. Payment of the Garnishment

- A. The banking section manager or designee shall expend from the resident's account the amount required by the order to pay and mail the same to the party identified in the order to receive such funds.
- B. A copy of the order to pay shall be retained in the resident's central file and a copy sent to the resident via the court or collection agency.

VII. This IMPP must serve as final policy in all departmental facilities, and no General Orders shall be developed or implemented on this subject.

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

None.

REFERENCES

38 U.S.C. 5301; 42 U.S.C. 407
K.S.A. 60-721(c), 60-727, 60-734, 60-735, 60-740, 75-5268

HISTORY

12-30-14 Original
12-12-17 Revision 1
09-27-23 Revision 2

ATTACHMENTS

None.