

# KANSAS DEPARTMENT OF CORRECTIONS

 <p><b>INTERNAL MANAGEMENT POLICY AND PROCEDURE</b></p>	<p><b>SECTION NUMBER</b></p> <p><b>04-110A</b></p>	<p><b>PAGE NUMBER</b></p> <p><b>1 of 5</b></p>
	<p><b>SUBJECT:</b></p> <p><b>FISCAL: Processing Offender Garnishments</b></p>	
<p><b>Approved By:</b></p>  <p style="text-align: center;"><b>Secretary of Corrections</b></p>	<p><b>Original Date Issued:</b></p> <p style="text-align: right;"><b>12-30-14</b></p>	
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	<p><b>CURRENT VERSION EFFECTIVE:</b> <span style="float: right;"><b>12-12-17</b></span></p>	

<b>APPLICABILITY:</b>	<input checked="" type="checkbox"/> <b>ADULT Operations Only</b>	<input type="checkbox"/> <b>JUVENILE Operations Only</b>	<input type="checkbox"/> <b>DEPARTMENT-WIDE</b>
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## POLICY STATEMENT

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 an offender shall be processed by the banking section in accordance with this policy and applicable law, and shall be answered within seven (7) working days from the date service is received. In any garnishment proceeding, no payment shall be made from any offender trust account for any amount less than five dollars (\$5.00).

## DEFINITIONS

**Banking Section:** The servicing location of an offender's trust account is based upon the offender's current housing location. There are currently three (3) servicing locations for offenders 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 offender trust accounts is serviced by a fourth section, known as centralized offender banking.

## PROCEDURES

### **I. Service of Orders of Offender Garnishment**

- A. All service of orders of offender garnishment, whether personally served or served by certified or first-class mail, shall be forwarded to the appropriate facility's manager of the banking section who shall receive service of the garnishment.
- B. Upon receipt of service of the garnishment order, the facility's banking section 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 offender 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 date and time the answer to the order is made;
    - e. The date the answer is mailed; and,

- f. The amount the court seeks to garnish.
- C. Multiple garnishments received from the same garnishor on the same offender 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 Offender Garnishment

- A. If it is determined after the order is logged that the offender defendant of the garnishment is not a resident of any facility, the banking section manager or designee receiving the order shall execute an answer to the garnishment using the "Answer of Garnishee for Non-Resident Offender Defendant" form (Attachment A).
- B. If it is determined after the order is logged that the offender 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 offender 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 offender 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 using the "Answer for Offender/75-5268 Employed" form (Attachment B).
    - b. If the offender 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 using the "Answer to Earnings Garnishment for Offender" form (Attachment C).
    - c. If the inmate trust fund account balance of the offender 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 using the "Answer of Garnishee/Funds Under \$5.00" form (Attachment D).
      - (1) The "Order Releasing Garnishee" form (Attachment E) shall be forwarded to the court with the answer.
      - (2) The offender'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 offender 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 offender 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, notarized, and returned to the court.

- (2) In answering a garnishment from the Department for Children and Families (DCF) regarding child support, the answer shall separately list only the balance in the offender's trust account and the balance in the forced savings account; the balance in the mandatory savings account shall NOT be listed. In addition, the amount available for garnishment shall be included on the answer. The amount available is defined in the agreement between the Kansas Department of Corrections and Child Support Enforcement, dated February 23, 2009 which is an amount over \$30.00 in the offender's cash account and the amount over \$3,000.00 in the forced savings account.

C. Except in response to orders of child or spousal support, or in payment of delinquent taxes, no offender 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 offender garnishee.

### **III. Encumbrance of Offender 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 offender 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 offender 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 Offender Defendant of Garnishment**

A. In the event an offender's trust fund account is encumbered as being subject to garnishment, the offender 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.
2. A copy of the answer shall be retained in the offender's central file and a copy shall be delivered to the offender through the Unit Team.

B. If the offender's trust fund account is not encumbered, no notification of the offender 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, has been completed.

### **V. Transfer or Release of an Offender Under Attachment of Other Than Earnings - (Offender Trust Fund Account Garnishment)**

A. In the event an offender is transferred to another facility which results in a different banking section handling his/her offender trust fund, while all or a portion of his/her inmate 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 offender, 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 offender defendant's transfer and the new location of the garnished funds.
- B. In the event that an offender is released while all or a portion of his/her offender trust fund account is encumbered due to an order of garnishment, the amount of the offender'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 offender shall be given all unencumbered funds from his/her offender 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 offender trust fund.
    - a. The banking section manager or designee shall notify the court of record that the offender 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 offender'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 offender's master file and a copy sent to the offender through the unit team.

**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**

38 U.S.C. 5301; 42 U.S.C. 407  
K.S.A. 44-514, 60-721(c), 60-727, 60-729, 60-732, 60-734, 60-735, 60-736, 60-740, 60-743, 75-5211(a), 75-5268

**ATTACHMENTS**

<b>Attachment</b>	<b>Title of Attachment</b>	<b>Page Total</b>
A	Answer of Garnishee for Non-Resident Offender Defendant	2 pages
B	Answer to Earnings Garnishment for Offender/75-5268 Employed	2 pages
C	Answer to Earnings Garnishment for Offender	2 pages
D	Answer of Garnishee/Funds Under \$5.00	2 pages
E	Order Releasing Garnishee	1 page

**ANSWER OF GARNISHEE FOR NON-RESIDENT OFENDER DEFENDANT**

IN THE DISTRICT COURT OF \_\_\_\_\_ COUNTY, KANSAS

_____	)	
Plaintiff	)	
vs.	)	
_____	)	Case No.: _____
Defendant	)	
_____	)	
Garnishee	)	

**ANSWER OF GARNISHEE**

State Of Kansas )  
 ) SS:  
 County of \_\_\_\_\_ )

I, \_\_\_\_\_, being first duly sworn, say that on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, was served with an order of garnishment issued in the above-captioned proceeding concerning and pertaining to:

1. (\_\_\_\_\_) Earnings
2. (\_\_\_\_\_) Personal property of the defendant, other than earnings

I further state that the defendant, offender \_\_\_\_\_, # \_\_\_\_\_, was on the date first above mentioned no longer an offender of any facility and, consequently, neither the Kansas Department of Corrections nor any employee thereof now holds money or other personal property of any description or kind owing to, or belonging to, the defendant.

I further state that the defendant, offender \_\_\_\_\_, # \_\_\_\_\_, to the best of my knowledge, is living at the following location: \_\_\_\_\_.

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Facility: \_\_\_\_\_  
 City, State: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing ANSWER OF GARNISHEE was placed in the United States Mail, postage prepaid, to: Clerk of the District Court, \_\_\_\_\_, KS \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Name:

**ANSWER TO EARNINGS GARNISHMENT FOR OFFENDER/75-5268 EMPLOYED**

IN THE DISTRICT COURT OF \_\_\_\_\_ COUNTY, KANSAS

_____	)	
Plaintiff	)	
vs.	)	
	)	
	)	Case No.: _____
_____	)	
Defendant	)	
	)	
_____	)	
Garnishee	)	

ANSWER OF GARNISHEE

State Of Kansas )  
 ) SS:  
 County of \_\_\_\_\_ )

I, \_\_\_\_\_, being first duly sworn, say that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, I was served with an order of garnishment issued in the above-captioned proceeding concerning and pertaining to earnings, and further depose and state as follows:

1. The defendant, \_\_\_\_\_, # \_\_\_\_\_, is a convicted felon committed to the custody of the Secretary of Corrections and currently incarcerated at the \_\_\_\_\_ Facility, \_\_\_\_\_, Kansas.

2. The defendant, \_\_\_\_\_, # \_\_\_\_\_, is currently in a work release program pursuant to the provisions \_\_\_\_\_ of K.S.A. 75-5268, but is not employed by the \_\_\_\_\_ Facility, the garnishee to this action. The named offender is employed by \_\_\_\_\_

\_\_\_\_\_.

3. Accordingly, the plaintiff should take nothing pursuant to the instant order of garnishment.

WHEREFORE, the garnishee respectfully prays the Court to withdraw and strike the instant order of garnishment, and to hold all of its provisions for naught.

\_\_\_\_\_  
 Name:  
 Title:  
 Facility:  
 City, State:

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing ANSWER OF GARNISHEE was placed in the United States Mail, postage prepaid, to: Clerk of the District Court \_\_\_\_\_, KS \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Name:

**ANSWER TO EARNINGS GARNISHMENT FOR OFFENDER**

IN THE DISTRICT COURT OF \_\_\_\_\_ COUNTY, KANSAS

_____	)	
	)	Plaintiff
	)	
vs.	)	
	)	
	)	Case No.: _____
_____	)	
	)	Defendant
	)	
	)	
_____	)	
	)	Garnishee

**ANSWER OF GARNISHEE**

State Of Kansas )  
 ) SS:  
 County of \_\_\_\_\_ )

I, \_\_\_\_\_, being first duly sworn, say that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, I was served with an order of garnishment issued in the above-captioned proceeding concerning and pertaining to earnings, and further depose and state as follows:

1. The defendant, \_\_\_\_\_, # \_\_\_\_\_, is a convicted felon committed to the custody of the Secretary of Corrections and currently incarcerated at the \_\_\_\_\_ Facility, \_\_\_\_\_, Kansas.

2. The defendant, \_\_\_\_\_, # \_\_\_\_\_, is currently not in a work release program pursuant to the provisions of K.S.A. 75-5268.

3. Instead, said, \_\_\_\_\_, # \_\_\_\_\_, is employed in an ordinary offender work assignment, and draws only the stipend or gratuity provided for such assignments as authorized by K.S.A. 75-5211(a).

4. Said statute provides, in relevant part, as follows:

“(a) The secretary of corrections shall provide programs of employment, work, educational or vocational training for those inmates whom the secretary determines are available, willing and able to participate and are capable of benefiting therefrom. . . . For all purposes under state law, no inmate shall be deemed to be an employee of the state or any state agency. The secretary of corrections may credit to each inmate as a reward for such employment, an amount which shall be set by the secretary of corrections. . . .”

5. Accordingly, any funds held for \_\_\_\_\_,  
# \_\_\_\_\_, are not wages, salary or earnings within the meanings of those terms as used in K.S.A. 60-734, 60-735, and 60-740.

6. Accordingly, the plaintiff should take nothing pursuant to the instant order of garnishment.

WHEREFORE, the garnishee respectively prays the Court to withdraw and strike the instant order of garnishment, and to hold all of its provisions for naught.

\_\_\_\_\_  
Name:  
Title:  
Facility:  
City, State:

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_.

#### CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing ANSWER OF GARNISHEE was placed in the United States Mail, postage prepaid, to: Clerk of the District Court \_\_\_\_\_, KS \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Name: \_\_\_\_\_

**ANSWER OF GARNISHEE/FUNDS UNDER \$5.00**

IN THE DISTRICT COURT OF \_\_\_\_\_ COUNTY, KANSAS

_____	)	
	)	
Plaintiff	)	
vs.	)	
	)	
	)	Case No.: _____
_____	)	
	)	
Defendant	)	
	)	
_____	)	
	)	
Garnishee	)	

**ANSWER OF GARNISHEE**

State of Kansas )  
 ) SS:  
 County of \_\_\_\_\_ )

I, \_\_\_\_\_, being first duly sworn, say that on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, I was served with an order of garnishment issued in the above-captioned proceeding concerning and pertaining to:

- a. (\_\_\_\_\_) Earnings
- b. (\_\_\_\_\_) Personal property of the defendant, other than earnings.

1. The defendant, \_\_\_\_\_, #\_\_\_\_\_ is a convicted felon committed to the custody of the Secretary of Corrections and currently incarcerated at the \_\_\_\_\_ Facility, \_\_\_\_\_, Kansas.

2. The defendant has \$\_\_\_\_\_ in his/her account.

3. K.S.A. 60-727 states that no payment shall be made from any inmate trust account for any amount less than \$5.00; therefore, we pray for an order from the court to release the garnishee from an obligation to remit moneys to the court and cease withholding the foregoing funds.

\_\_\_\_\_  
 Name:  
 Title:  
 Facility:  
 City/State:

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

County of \_\_\_\_\_, State of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the above and foregoing ANSWER TO EARNINGS GARNISHMENT FOR OFFENDER FUNDS UNDER \$5.00 was placed in the United States Mail, postage prepaid, to: Clerk of the District Court, \_\_\_\_\_, Kansas, on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Name: \_\_\_\_\_

**ORDER RELEASING GARNISHEE**

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IN THE DISTRICT COURT OF \_\_\_\_\_ COUNTY, KANSAS

_____	)	
Plaintiff	)	
	)	
vs.	)	
	)	
	)	Case No.: _____
_____	)	
Defendant	)	
	)	
	)	
_____	)	
Garnishee	)	

**ORDER RELEASING GARNISHEE**

AND NOW, on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, upon review of the pleadings herein, including Garnishee's answer evidencing the fact that the defendant was, on the date of Garnishee's answer, an offender of the Kansas Department of Corrections, that Garnishee holds only funds in the defendant's inmate trust account, within the meaning of that term as set forth at K.S.A. 60-727, and that said funds on the date of Garnishee's answer were less than \$5.00, the Court hereby finds and determines that, pursuant to K.S.A. 60-721(c) and 60-727, the Garnishee is hereby released from any further obligation to withhold from defendant the amount of funds stated in Garnishee's answer dated \_\_\_\_\_, \_\_\_\_\_, or to remit it to this Court.

IT IS SO ORDERED.

\_\_\_\_\_  
Honorable \_\_\_\_\_  
District Judge