



INTERNAL MANAGEMENT POLICY & PROCEDURE

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

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PAGE #: 1 of 4

INFORMATION TECHNOLOGY AND RECORDS: Expungement of Resident and Offender Records; Reversed/Vacated/Dismissed Conviction(s)

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POLICY

Orders for Expungement, or Reversing, Dismissing or Vacating a resident's or offender's conviction, which meet statutory requirements from courts of competent jurisdiction shall result in the collection of all information contained in the Department of Corrections' resident/offender records pertaining to the conviction specified in the court document. Provisions shall be made to ensure that all information regarding expunged, reversed, vacated, or dismissed convictions are secured separately from any other records related to the resident/offender, accessible only to designated staff. Information regarding such case records shall be released only by the Department's Legal Counsel.

DEFINITIONS

Expungement: An action by a court of competent jurisdiction which sets aside, for limited purposes, a criminal conviction and requires the sealing of arrest, conviction, and confinement records by law enforcement, court, and corrections agencies.

Facility Records Office: The records storage area for the facility.

Offender: A person under post-incarceration supervision with the Secretary of Corrections.

Parole Records Office: The records storage area for parole services.

Records: Information concerning the resident or offender's criminal, personal, and medical history and behavior and activities while in custody, including but not limited to commitment papers, court orders, detainers, personal property receipts, visitors lists, photographs, fingerprints, custody level, disciplinary infractions and actions taken, grievance reports, work assignments, program participation and miscellaneous correspondence. This information may be computerized and contained in the Management Information System, Athena, Electronic Medical Records System, hard copies, or imaged files of documents contained in various files within a facility, parole office and/or Central Office Records.

Resident: A person who is in the legal custody of the Secretary of Corrections housed in a correctional facility.

Reversed/Vacated/Dismissed Conviction(s): An action by a court that removes a conviction(s) from the resident's/offender's record.

State Archive: A collection of records operated by the Kansas State Historical Society.

PROCEDURES

I. Processing of Expungement Orders

- A. All actions to enforce the expungement of resident/offender records by Department personnel shall be initiated by the Central Office Records Unit.
 - 1. Expungement orders received directly from the court by facility personnel or field service staff shall be forwarded to the Central Office Records Unit.
- B. Upon receipt of an order of expungement, the Central Office Records Unit shall inquire of the KDOC legal counsel as to whether the expungement order meets statutory requirements.
- C. If the expungement order is determined to be invalid, the KDOC Chief Legal Counsel shall return it to the court of jurisdiction with an explanation as to why the order was not honored.
 - 1. Only a copy of the explanatory letter of transmittal to the court shall be filed in the resident/offender's file.
- D. If the order is determined to be valid, the Central Office Records Unit shall direct the collection of all hard copy records relating to the individual's conviction upon which the expungement order applies.
- E. The Central Office Records Unit shall request the retrieval of all files from each facility of confinement for the subject of the expungement order.
 - 1. Facility records units shall be responsible for collecting all hard copies of any records or documents pertaining to the individual's conviction upon which the expungement order applies.
 - 2. All hard copies pertaining to the individual's conviction shall be sent to the Central Office records clerk.
 - 3. All information regarding the resident's/offender's conviction as specified in the expungement order shall be copied to an archiving location, then deleted from the computerized information system.
 - 4. All electronic copies of resident/offender documents stored in the Department's Imaging System will be re-indexed to a secure area of the system and made available to only the Records Administrator.
- F. All hard copy records pertaining to the conviction for which the expungement action applies shall be filed electronically in the Imaging system.
- G. Staff having questions relating to the disclosure of expunged records shall direct those questions to departmental legal staff.
- H. The Central Office Records Unit shall send a request to the State Archive to mark as "expunged", any records for the subject of the expungement.

II. Processing Court Orders Reversing or Vacating a Sentence

- A. When a Court order reversing or vacating a resident's/offender's sentence is received by the Department or a facility:
 - 1. Appropriate legal counsel shall be provided a copy of the order and shall provide guidance regarding the impact of the order; and,
 - 2. The file shall be reviewed to determine whether there are detainers or other sentences against the resident/offender.
- B. If the Department has no authority to hold the resident in custody, the prosecuting attorney in the vacated or reversed case shall be notified and advised that the resident will be released unless a detainer is filed immediately.

- C. If a detainer is received and the Department has no other basis to continue to hold the resident, local law enforcement shall be requested to take custody of the resident and hold for the requesting agency.
- D. The KDOC Victim Services Director shall be notified of the resident's release and the reason for the release, per IMPP 21-101A, for a determination if victim notification is applicable.

III. Processing of Reversed/Vacated/Dismissed Convictions

- A. Upon receipt of a court order reversing, vacating or dismissing a conviction(s) or sentence the following actions shall be taken:
 - 1. Notify the Sentence Computation Unit that an order has been received and forward a copy of the order.
 - 2. Upon receipt of the order, the Sentence Computation staff shall take the following actions;
 - a. Verify that the order has been certified and is authentic;
 - b. Review the order with a member of the Legal staff;
 - c. Make an electronic copy of the order;
 - d. Indicate in the automated Sentence Record Summary that the conviction(s), case or sentence has been reversed/dismissed or vacated.
 - e. Review the sentence for any existing active convictions, cases or sentences.
 - f. Notify the Chief Records Administrator or designee at the facility in which the resident is housed that the sentence has been modified.
 - 3. If the resident is eligible for immediate release, the facility record staff shall initiate standard release procedures including, but not limited to conducting a check for warrants or wants in accordance with IMPP 05-108A.
 - 4. If the offender is on release status, the supervising parole officer shall be notified and shall:
 - a. Notify the KDOC Public Information Officer (PIO) and the Parole Supervisor, and
 - b. Review KASPER the following business day to ensure that the sentence record information is correctly displayed.

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

IMPP 21-101A

HISTORY

12-21-22 Original

ATTACHMENTS

None.