

Article 9.-- PAROLE, POSTRELEASE SUPERVISION, AND HOUSE ARREST

44-9-101 Definitions.

- (a) "Board" means the prisoner review board established by L. 2011, ch. 130.
- (b) "Conditional release," for offenders serving indeterminate sentences for offenses committed before July 1, 1993, means release subject to supervision under terms and conditions determined by the board after serving the maximum sentence less all projected good time credits, subject to adjustment for any forfeiture of good time credits.
- (c) "Correctional facility" means any of the facilities identified in K.S.A. 75-5202, and amendments thereto.
- (d) "Docket" means the board's prearranged schedule of hearings.
- (e) "Executive clemency" means the power of the governor to commute or pardon a criminal sentence.
 - (1) "Commute a criminal sentence" means to reduce the penalty imposed on a convicted person.
 - (2) "Pardon" means to forgive completely the punishment of a person convicted of a crime.
- (f) "Good time credits" means the statutorily authorized reduction in time on an inmate's sentence as specified by K.S.A. 21-6821 and K.S.A. 22-3717, and amendments thereto, and K.A.R. 44-6-101, K.A.R. 44-6-115a, K.A.R. 44-6-115b, K.A.R. 44-6-115c, K.A.R. 44-6-125, K.A.R. 44-6-126, and K.A.R. 44-6-145.
- (g) "House arrest" means the confinement of an inmate or offender under postincarceration supervision in the residence of the inmate or offender pursuant to the release provisions of L. 2010, ch. 136, §249, as amended by L. 2011, ch. 100, §19, and amendments thereto, or as a sanction of an offender under postincarceration supervision for violation of a condition of supervision, subject to conditions imposed by the secretary or designee or by the board, or as otherwise permitted by law.
- (h) "In absentia" means a status in which an inmate is committed to the custody of the secretary and is serving the sentence out of state or in another jurisdiction.
- (i) "Parole" means, for crimes committed before July 1, 1993 and off-grid offenses designated in K.S.A. 22-3717 and amendments thereto, the release of an inmate to the community by the board before the expiration of the inmate's sentence, subject to conditions imposed by the board and administered under the secretary's supervision.
- (j) "Postincarceration supervision" means the supervision of any offender released to the community after service of the requisite term of incarceration. This term shall include parole, conditional release, and postrelease supervision.
- (k) "Postrelease supervision" means, for crimes committed on or after July 1, 1993, the release of an inmate, subject to conditions imposed by the board, to the secretary's supervision and to the community after the inmate has served a period of imprisonment or after the inmate has served equivalent time in a facility where credit for time served is awarded as specified by the court.
- (l) "Public comment session" means the board's regular, scheduled meeting with interested parties in the community for the purpose of receiving comments concerning the publicly announced listing of persons to be considered for parole by the board.
- (m) "Secretary" means the secretary of corrections.
- (n) "Unit team" means the group of correctional facility staff that is responsible for monitoring the overall management, supervision, custody, and rehabilitation plan of an inmate, as initiated by the classification committee, and that recommends custody changes and prepares progress summaries.

(o) "Warden" means the person in charge of the operation and supervision of a correctional facility.

(Authorized by K.S.A. 2011 Supp. 21-6609, as amended by L.2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3701, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp.22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A.2011 Supp. 75-5251; implementing K.S.A. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp.22-3701, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A.2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3; effective May 1, 1980; amended May 1, 1985; amended May 1, 1987; amended March 23, 2012.)

44-9-102 (Authorized by K.S.A. 75-5251, K.S.A. 1980 Supp. 21-4603, 21-4604, 75-5210, 75-5210(c); effective May 1, 1980; revoked May 1, 1981.)

44-9-103 (Authorized by and implementing K.S.A. 75-5216, 75-5251, K.S.A. 1988 Supp. 75-5217, effective May 1, 1980; amended May 1, 1984; amended May 1, 1987; amended March 12, 1990, revoked July 11, 1994.)

44-9-104 (Authorized by and implementing K.S.A. 22-3717, 75-5216, 75-5251; and K.S.A. 1988 Supp. 75-5217; effective May 1, 1980; amended May 1, 1984; amended May 1, 1986; amended March 12, 1990; revoked July 11, 1994.)

44-9-105 Preliminary hearing for alleged violators.

Alleged parole violators, conditional release violators, postrelease supervision violators, and house arrest condition violators shall be afforded a hearing to determine if there has been any violation of any conditions of supervision, unless the releasee knowingly and voluntarily waives the hearing. The requirements for the hearing shall be as follows:

(a) The releasee shall be informed of the charges in writing with sufficient particularity and sufficient time in advance of the hearing to prepare a defense. The hearing shall be held within three to 14 days after service of the notice of charges, subject to authorized continuances. If evidence of any new violation of conditions of supervision is discovered after service of the original notice of charges upon the offender but before the hearing and a determination is then made that the releasee should be so charged, notice of any additional charge of violation shall be given to the releasee in the same manner as that for the original statement of charges. The hearing shall be continued for an appropriate interval if the releasee receives notice of any additional charge of violation less than three days before the original hearing date, unless the releasee waives advance service of the notice of amended charges.

(b) The purpose of the hearing shall be to determine whether probable cause exists to believe that a condition of supervision has been violated. The hearing shall be held before a party not involved in the case. Pending the hearing, the releasee shall remain incarcerated.

(c) If evidence of any new violation of conditions of supervision not yet charged is produced or placed on the record during the hearing, other than a new violation based solely upon a voluntary admission by the offender during the hearing, and it is determined by the hearing officer that the new charge should be added to the statement of charges for consideration, then a recess shall be declared by the hearing officer and a statement of any additional charge of violation of conditions of supervision shall be served upon the releasee in the same manner as that for the original statement of charges. The recess shall be for an appropriate interval of at least three days to permit

the releasee to prepare a defense to any such additional charge, unless the releasee waives the three day period and agrees to proceed with a hearing of the additional charge or charges within a shorter time period. Pending resumption of the hearing, the releasee shall remain incarcerated.

(d) The hearing shall be held at or reasonably near to the site of the arrest or commission of the alleged violation. The hearing may be held at a correctional facility.

(e) The releasee shall be entitled to call witnesses to appear on the releasee's behalf at the hearing.

(1) The hearing officer may restrict the witnesses to those who can testify to the facts relevant to the occurrence of the alleged violation. Character reference witnesses may be excluded.

(2) Witnesses may testify by telephone if the releasee is able to hear the testimony of the witness contemporaneously with the hearing officer.

(f) The releasee shall have the right to be made aware of adverse evidence. The releasee shall be allowed to cross-examine adverse witnesses unless the hearing officer decides that the witness could be physically harmed if the witness's identity is revealed.

(g) The hearing officer shall issue a written decision indicating whether or not there is probable cause to hold the releasee on each charge of violation of a condition of release and also indicating the evidence relied upon for each finding of probable cause. If a finding of probable cause is made on the basis of a voluntary admission by the releasee of any new violation during the hearing, then the hearing officer shall cause an amended statement of charges of condition violations reflecting the new condition violation or violations to be added to the record. The hearing officer shall then refer the case record to the board for a final revocation hearing, but a charge of violation of a condition of supervision shall not be referred to the board unless a finding of probable cause for that violation is included in the case record. The releasee shall be given a written statement of the basis for the decision and, if applicable, an amended statement of charges of condition violations.

(h) If the releasee had not previously been returned to a correctional facility, upon finding of probable cause, the releasee shall be returned to a correctional facility designated by the secretary of corrections pending a final revocation hearing by the board.

(Authorized by K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5217; implementing K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 75-5216, K.S.A. 2011 Supp. 75-5217; effective May 1, 1980; amended July 11, 1994; amended March 23, 2012.)

44-9-106 Expungement of record process explained to parolee.

All persons who have been convicted and placed on probation or parole, and who are otherwise eligible for expungement of conviction record, shall be informed of the proper procedure to be followed in obtaining consideration from the court for the grant of an order expunging the record.

(Authorized by K.S.A. 75-5251, K.S.A. 1979 Supp. 21-4619, 22-3717, 75-5210, 75-5210(b) and (f), 75-5215; effective May 1, 1980.)

44-9-107. House arrest program.

All inmates and offenders under postincarceration supervision placed in the house arrest program shall be subject to the sanctions and conditions that are prescribed by the

secretary in published internal management policies and procedures for house arrestees, ordered by the board, or otherwise permitted by law.

(Authorized by and implementing K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, and K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3; effective March 23, 2012.)

44-9-501. General provisions.

Each offender who is returned on a violator warrant issued by the secretary shall be brought before the board as soon as practical for a final revocation hearing of postincarceration supervision or house arrest status, unless the offender is eligible for and chooses to waive the right to the hearing as provided in K.A.R. 44-9-504. At any time before a final revocation hearing is held under K.A.R. 44-9-502, the warrant may be withdrawn at the request of the secretary, and the offender may be rereleased on parole, conditional release, postrelease supervision, or house arrest. At that time, new conditions may be established, or the conditions of parole, conditional release, postrelease supervision, or house arrest may be modified by the board.

(Authorized by and implementing K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, and K.S.A. 2011 Supp. 75-5217; effective March 23, 2012.)

44-9-502. Final revocation hearings.

(a) After an offender is returned to a correctional facility under K.A.R. 44-9-501, the offender may request a hearing before the final decision on revocation by the board. Any offender on postrelease supervision or assigned to house arrest may waive the final revocation hearing as provided in K.A.R. 44-9-504. The final revocation hearing shall be held without unnecessary delay and shall be conducted by the board or any member of the board. After the board considers all pertinent evidence, an appropriate order shall be entered by the board. If the violation is established to the satisfaction of the board, the parole, conditional release, postrelease supervision, or assignment to house arrest may be reinstated, modified, or revoked by the board.

(b) Before the final revocation hearing, the following information shall be provided to the offender by the board:

- (1) Written notice of the alleged violations of the conditions of release; and
- (2) the evidence against the offender. If the board finds that there are additional violations other than those contained in the written notice, the hearing shall be continued so that a written notice of the additional violations and a statement of the evidence against the offender can be prepared.

(c) Each offender shall have the right to confront and cross-examine adverse witnesses, unless the board finds good cause for not allowing confrontation. If the board does not allow the offender to confront a witness, the evidence relied upon and the reasons for this determination shall be specified by the board. If the offender had the opportunity to cross-examine a witness at the probable cause hearing provided in K.A.R. 44-9-105, the record may be relied upon by the board, in lieu of calling that witness.

(d) Each offender shall have an opportunity to be heard in person and to present documentary evidence and witnesses who can provide information relevant to the allegations of the violation of the conditions of release or house arrest. The attendance of witnesses favorable to the offender shall be the responsibility of the offender and shall be at the offender's expense. The hearing may be continued to allow for the attendance of witnesses.

(e) All relevant evidence, including letters and affidavits, shall be received by the board. If the violation of the conditions of release or house arrest results from a conviction for a new felony or misdemeanor, the only question considered by the board shall be whether or not the new conviction warrants revocation.

(f) Each offender shall be entitled to have legal counsel present at the hearing, at the offender's expense.

(1) Legal counsel may be appointed by the board upon the request of the inmate or on the board's own motion. The appointment of legal counsel shall be based upon either of the following claims by the offender, which shall be timely and on its face plausible:

(A) A claim that the offender has not committed the alleged violation of the conditions of release or house arrest; or

(B) a claim that there are substantial reasons that justify or mitigate the violation and make revocation inappropriate.

(2) The board's decision regarding the appointment of counsel shall take into account whether or not the offender is capable of speaking effectively for that individual and whether or not the circumstances are complex or otherwise difficult to develop or present.

(3) In all cases in which a request for appointed counsel at a preliminary hearing or final revocation hearing is denied, the grounds for denial shall be stated in writing.

(g) If the offender's release or assignment to house arrest is revoked, a written statement as to the evidence relied upon and reasons for revoking the release or assignment to house arrest shall be given to the offender by the board.

(Authorized by and implementing K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, and K.S.A. 2011 Supp. 75-5217; effective March 23, 2012.)

44-9-503. Sanctions; computation of time.

(a) (1) Any offender whose parole has been revoked may be required by the board to serve all or any part of the remaining time on the sentence up to the original conditional release date, plus all good time forfeited by the board.

(2) Any offender whose conditional release has been revoked may be required by the board to serve all or any part of the remaining time on the sentence.

(3) Each offender whose postrelease supervision has been revoked for reasons other than conviction of a new crime shall serve a six-month period of confinement beginning on the date of the final revocation hearing or the effective date of the waiver of the final revocation hearing under K.A.R. 44-9-504. The six-month period of confinement may be reduced by not more than three months based on the offender's conduct, work, and program participation during this incarceration period, in accordance with regulations adopted by the secretary.

(4) Each parole violator with a new conviction and sentence shall achieve parole eligibility for the new sentence or sentences as determined by K.S.A. 22-3717 and K.S.A. 21-6606, and amendments thereto, and in accordance with regulations adopted by the secretary.

(5) Each postrelease violator whose postrelease supervision has been revoked due to conviction of a new crime shall serve one of the following periods of time:

(A) If the new crime is a felony, a period of confinement equal to the entire remaining balance of postrelease supervision; or

(B) if the new crime is a misdemeanor, a period of confinement to be determined by the board, which shall not exceed the entire remaining balance of the period of postrelease supervision.

(6) Each inmate whose house arrest has been revoked shall serve the remaining balance of that inmate's underlying prison sentence incarcerated.

(b) Good time credits earned while on parole before the parole revocation date may be forfeited upon order of the board. Upon order of the board, the good time credits earned while on postrelease supervision may likewise be forfeited, before the postrelease supervision revocation date or the effective date of the waiver of the final revocation hearing.

(c) All of the available good time credits shall be withheld for the review period in which the revocation for house arrest occurs.

(d) Good time and program credits previously earned on the prison portion of the sentence of house arrestees may be forfeited by the disciplinary administrator in accordance with K.A.R. 44-6-115a(i) and K.A.R. 44-6-125(f).

(e) If the secretary has issued a warrant for the return of a released offender and it is determined that the warrant cannot be served, the released offender shall be deemed to be a fugitive from justice. If it appears that this fugitive has violated any of the provisions of release, the time from the violation of the provision to the date of arrest, as determined by the department of corrections, shall not be counted as time served under the sentence unless approved by the board.

(Authorized by and implementing K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, and K.S.A. 2011 Supp. 75-5217; effective March 23, 2012.)

44-9-504. Waiver of final revocation hearing.

(a) (1) For purposes of this regulation, "misdemeanor" shall mean a class A, B, or C misdemeanor or a criminal charge of an equivalent class under a city ordinance.

(2) For purposes of this regulation, "detainer" shall mean a warrant, electrical or electronic transmission, 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 the current period of parole or postrelease supervision.

(b) Each supervised offender who is serving only a determinate sentence and who meets all of the following conditions shall be eligible to waive the final revocation hearing before the board:

(1) The offender is not charged with a condition violation alleging conviction of a new crime.

(2) The offender is not the subject of any pending criminal misdemeanor charge, felony charge, or detainer for a misdemeanor or felony. If an offender is arrested on a new felony charge and formal criminal charges are not filed by the county or district attorney within 10 days of the offender's arrest, the offender shall be eligible to waive the final revocation hearing.

(3) The offender is detained in a Kansas correctional facility, jail, or detention center. A supervised offender serving an indeterminate sentence, or a sentence with a lifetime period of postrelease supervision, shall not be permitted to waive the final revocation hearing before the board.

(c) Any eligible offender may waive the final revocation hearing when the statement of condition violations is served, if the eligible offender simultaneously waives the

preliminary hearing on those violations as provided by K.A.R. 44-9-105. If the offender elects not to waive the preliminary hearing, the revocation proceeding shall advance to a preliminary hearing. If, after that hearing, probable cause is established in regard to at least one of the alleged condition violations, the offender shall again be afforded the opportunity to waive the final revocation hearing before the board.

(d) If, before the final revocation hearing, the board receives notice that the criminal charges or a pending detainer has been dismissed, the offender shall again be given the opportunity to waive the final revocation hearing.

(e) At the time of presentation of the written waiver form by parole services staff, each offender shall be orally advised of the following:

(1) Execution of the waiver form signifies that the offender admits to guilt on all condition violations charged, unless the hearing officer specifically finds that a condition violation is not supported by probable cause.

(2) The offender waives the right to counsel and the right to present witnesses or the offender's own testimony to the board because no hearing will be held if the offender executes the waiver form.

(3) Upon receipt of the waiver form, the offender's postrelease supervision may be continued, modified, or revoked by the board, or other orders may be entered by the board as the board sees fit.

(f) Each offender shall make an election by indicating in writing upon the waiver form whether or not the offender desires to accept the offer of waiver. The waiver shall be executed in the presence of parole services staff, or the offender shall acknowledge to parole services staff the authenticity of the offender's signature upon the form, which shall then be executed by parole services staff in the capacity of witness. If the offender refuses to accept the waiver form or to execute it, the waiver shall be deemed rejected, and the revocation proceeding shall advance to the final revocation hearing before the board.

(g) Upon execution of the waiver form, the penalty period of incarceration prescribed by K.S.A. 75-5217(b), and amendments thereto, shall begin, unless the board continues the offender's postrelease supervision. If a waiver is executed under circumstances described in subsection (d) of this regulation, the penalty period of incarceration shall begin on the date the criminal charge or pending detainer was dismissed. 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 shall begin on the date the waiver is signed by the offender or an earlier date determined by the board, which shall not precede the date on which that felony arrest warrant was issued.

(h) Each offender who is serving only a determinate sentence and who either was supervised in a foreign jurisdiction under terms of the interstate compact for adult offender supervision, K.S.A. 22-4110 and amendments thereto, or was apprehended in another state after absconding from Kansas supervision shall be afforded the opportunity to waive the final revocation hearing as provided in subsection (c). This opportunity shall be afforded upon the offender's return to a Kansas correctional facility. Presentation of the waiver form, the formalities of its execution, and the effect of the waiver shall be governed in all respects by the provisions of subsections (e), (f), and (g).

(i) A signed waiver of a final revocation hearing shall be deemed invalid if it is discovered that the offender has been convicted of a new misdemeanor or felony that occurred during a period of postrelease supervision on the current active sentence. Under these circumstances, the offender shall be docketed for a hearing before the board.

- (j) (1) An offender shall not rescind a written waiver of final revocation hearing that is before the board unless the offender petitions the board, in writing and in the form directed by the board, and proves any of the following to the satisfaction of the board:
- (A) The offender was under duress at the time of execution of the waiver form.
 - (B) The offender's execution of the waiver form was procured through fraud.
 - (C) The offender was not advised that execution of the waiver form constitutes admission of guilt of the charged condition violation or violations.
 - (D) The offender was not advised of the rights that the offender would forego by execution of the waiver form. The petition for rescission shall be submitted to the board and postmarked on or before the date no later than 14 calendar days after the date of the allegedly defective waiver.
- (2) If the board grants the offender's petition, the charge of any condition violation shall be rescheduled for a preliminary hearing or a final revocation hearing, as applicable. If postrelease supervision is revoked by the board at the final hearing and the offender is ordered to serve an incarceration penalty period, this penalty period shall begin on the date of the revocation.
- (k) Each inmate assigned to house arrest shall be eligible to waive the final revocation hearing before the board as provided in subsections (c), (e), and (f).
- (1) The inmate shall serve the remaining balance of the prison portion of the sentence incarcerated.
 - (2) The inmate may also be issued a disciplinary report based upon the facts underlying the revocation.

(Authorized by and implementing K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, and K.S.A. 2011 Supp. 75-5217; effective March 23, 2012.)