

Kansas Administrative Regulations

Department of Corrections

Article 9.—Parole, Postrelease Supervision, and House Arrest

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.)

***** Authenticated Kansas Administrative Regulation *****