

 <p>KENTUCKY PAROLE BOARD Policies and Procedures</p>	Policy Number KYPB 13-01	Total Pages 8
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References/Authority CPP 27-18-01, 27-19-01, 501 KAR 1:040, 1:080; KRS 439.330, 439.341, 439.352, 439.430, 439.510 SCR 7.300	Subject REVOCATION OF SUPERVISION : PROBABLE CAUSE HEARINGS	

POLICY and PROCEDURE:

- A. Probable cause hearings for the revocation of supervision shall be conducted by an Administrative Law Judge of the Parole Board, who shall have control over the proceedings and the reception of evidence at these hearings.
- B. Charges of supervision violation shall be initiated by a Parole Officer of the Department of Corrections by serving the offender, if the offender's location is known, with a written Notice of Probable Cause Hearing pursuant to Corrections Policy and Procedure (CPP) 27-19-01 within seventy-two (72) hours of the offender being placed into custody.
 - (1) The written Notice of Probable Cause Hearing shall be a charging documents stating the purpose of the hearing and to contain the following:
 - (a) the alleged violation
 - (b) evidence to be presented at the hearing,
 - (c) witnesses upon whose statements revocation is based, if disclosure of that information will not create a risk of harm to that witness,
 - (d) time,
 - (e) date, and
 - (f) place of the hearing.
 - (2) The Notice of Probable Cause Hearing shall also:
 - (a) Inform the offender of his right to be present;
 - (b) Inform the offender of his right to speak on the offender's own behalf;

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- (c) Inform the offender of his right to call witnesses and present evidence in defense of the charges;
 - (d) Inform the offender that he may have counsel present;
 - (e) Inform the offender that the hearing shall not be held sooner than five (5) business days after the offender is served with the notice of hearing, unless the offender waives this time period; and
 - (f) Inform the offender that he may request a continuance of the hearing for good cause.
 - (g) Include a copy of a blank subpoena that may be used to request documents.
- (3) The notice may be amended at any time prior to the close of the record of the probable cause hearing, within the discretion of the Administrative Law Judge, if a finding is made that the substantial rights of the offender will not be prejudiced by the amendment.
- (4) If the notice is amended, a continuance of the proceeding may be granted if the interest of justice so requires.
- (5) Failure to object to any defect in the notice prior to the close of the hearing shall be deemed a waiver of this objection.
- C. A probable cause hearing shall not be conducted earlier than five (5) business days after service of the notice of the hearing, unless this period is waived by the offender.
- (1) An offender appearing at a probable cause hearing may be represented by counsel. The offender may have a continuance for the purpose of obtaining the presence of counsel by making a motion for this purpose. More than two (2) appearances for the hearing without counsel by an offender who is capable of retaining counsel may be deemed an implicit waiver of counsel.
 - (2) Any duly appointed Parole Officer of the Commonwealth of Kentucky may appear before the Administrative Law Judge as representative of the Department of Corrections in matters relating to the revocation of parole in the absence of an attorney pursuant to SCR 7.300 sub-rule 3.
- D. Except for offenders who are less than eighteen (18) years of age, an offender charged with a violation of supervision may waive the probable cause hearing by waiving his appearance before an Administrative Law Judge.

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- (1) An offender shall submit the waiver in writing to a Probation and Parole Officer who shall forward it to the Parole Board or its Administrative Law Judge for approval.
- (2) The waiver may be accepted at the discretion of the Parole Board or its Administrative Law Judge.
- (3) A waiver shall not be accepted unless it is found that the offender:
 - (a) Made the waiver:
 - (i) Knowingly; and
 - (ii) Voluntarily; and
 - (b) Understands that the offender admits probable cause exists for the violations charged.
- (4) Notwithstanding the submission and acceptance of a waiver of the probable cause hearing, the offender may still have a final revocation hearing.
- (5) After approval of the waiver, the matter shall proceed in the same manner as if a hearing was held and probable cause determined.
- (6) If an offender being supervised in another state signs a waiver of probable cause hearing in that state, the waiver shall be reviewed by an Administrative Law Judge to determine if the waiver meets the requirements of section (D) of this Policy. If the administrative law judge determines that the waiver does not comply with this section, the board chair or designee shall refer the matter back to the Division of Probation and Parole and request that it take action necessary to ensure compliance with 501 KAR 1:040(4) and Subsection (D) of this Policy.

E. The probable cause hearing shall be held remotely with the offender in or near the community where one or more of the alleged violations occurred or at the location where the offender was taken into custody, except as follows:

- (1) The offender may waive the right to have the probable cause hearing held in a location at or near the community where the alleged violation(s) occurred or near the location where the offender was taken into custody.
 - (a) The waiver shall be voluntary and in writing and shall state that the offender consents to the location the probable cause hearing is to take place.
 - (b) If the waiver was not made before an Administrative Law Judge, the

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waiver shall be reviewed by an Administrative Law Judge to ascertain whether it was entered into voluntarily.

- (2) An offender's objection to the location of the probable cause hearing shall be deemed waived if the offender fails to raise the objection at or before the hearing.
 - (3) An offender supervised in another state or jurisdiction pursuant to the Interstate Compact for Adult Offender Supervision who waives his right to a probable cause hearing in the supervising state after being served notice of an alleged supervision violation and is then returned to Kentucky to the custody of the Department of Corrections without a probable cause hearing in the supervising state shall be deemed to have waived his right to have a probable cause hearing held in or near any community outside Kentucky where the alleged violation(s) occurred or at any location outside Kentucky where the offender was taken into custody.
- F. The probable cause hearing shall be conducted by an Administrative Law Judge who shall have control over the proceedings and the reception of evidence at the hearing.
- (1) The probable cause hearing shall be conducted on the record. The hearing may be recorded and preserved by any means practical including electronically, mechanically, or stenographically and maintained in accordance with the records retention schedule established by the Kentucky Department of Libraries and Archives.
 - (2) If requested by the Parole Board, the record of the proceedings shall be transcribed.
- G. Probable Cause Hearing Procedure:
- (1) The Administrative Law Judge may take judicial notice of acts of the Parole Board, including the conditions of supervision and all other matters that may be judicially noticed in the courts of this Commonwealth pursuant to KRE 201. Matters for which judicial notice was taken shall be included in the Administrative Law Judge's findings of facts.
 - (2) Witnesses appearing at the probable cause hearing to give testimony shall do so under oath, administered by the Administrative Law Judge, and shall be available for examination by the other party or the Administrative Law Judge, unless good cause dictates otherwise. The party arguing that a witness should not be available for examination shall submit documentation to the fact finder at least twenty-four (24) hours prior to the hearing date stating the name of the witness and the basis upon which the party argues the witness should not be made available for examination by the other party.
 - (3) Hearsay evidence may be presented and admitted into the record, at the discretion of the Administrative Law Judge, except that presentence investigation reports,

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special reports, and other reports prepared by a Parole Officer in the discharge of official duty that are privileged from disclosure pursuant to KRS 439.510 shall not be entered into evidence by the Administrative Law Judge unless ordered by the Parole Board.

- (4) The Parole Officer shall bear the burden of proof in establishing the elements of the violation.
- (5) The Parole Officer shall present evidence first, and the offender shall be given the opportunity to present evidence in defense or mitigation.
- (6) Any further proceedings shall be conducted at the discretion of the Administrative Law Judge.
- (7) The probable cause hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown.
- (8) At the request of either party, the Administrative Law Judge may, within his or her discretion, leave the record open for reception of additional evidence if no substantial rights are prejudiced. The record shall not be left open for longer than fourteen (14) business days unless good cause is shown and approved by the Administrative Law Judge.
- (9) The Administrative Law Judge, in the absence of any specific statutory authorization, shall not consider matters of bail or any other form of release from custody for those persons accused of a violation of a supervision condition.

H. At the close of the hearing or within a reasonable time thereafter, the Administrative Law Judge shall make a determination, from the evidence produced at the hearing as well as any evidence of which judicial notice is taken, whether there exists probable cause to believe that the offender has committed any or all of the violations alleged in the Notice of probable cause hearing.

- (1) The Administrative Law Judge shall issue a written decision, which shall be provided to the supervising officer and offender or counsel, if the offender was represented by counsel at the probable cause hearing, within seven (7) business days after the hearing or the close of the record under subsection F(8) . The Parole Board may extend the time for good cause.
 - (a) The Administrative Law Judge shall verbally inform the offender of the decision immediately after the hearing, except that immediate verbal notification shall not be required if it would present a security risk, or if the Administrative Law Judge takes the case under submission and does not decide the case at the time of conclusion of the hearing.

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- (b) The written decision shall record all findings and conclusions of the Administrative Law Judge and summarize the evidence presented at the hearing, as well as any evidence of which judicial notice is taken.
- (c) If probable cause is not found by the Administrative Law Judge:
 - (i) The offender shall continue on supervision without further action by the Parole Board, if no supervision violation warrant has been issued; or
 - (ii) If a supervision violation warrant has been issued, the matter shall be referred to the Parole Board for the warrant to be rescinded.
- (2) If probable cause is found to exist, the case shall be referred to the Parole Board. If a supervision violation warrant has not already been issued, the matter shall be referred to the Parole Board for issuance of a warrant. The Parole Board chair shall issue the warrant. A vote of the Parole Board shall not be necessary.
- I. If the alleged violation of supervision, as set forth in the Notice of Probable Cause Hearing, is new criminal conduct that does not also constitute a technical violation of the conditions of supervision, the case shall not be referred to the Parole Board for supervision revocation consideration unless it is shown that the offender has received a conviction in a court of law or there exists some other form of judicial admission, such as a plea of guilty, concerning the alleged criminal conduct, or it is found that the criminal conduct or a substantial part of it, was committed in the presence of a duly appointed Parole Officer of the Commonwealth of Kentucky. Nothing in this subsection shall prevent revocation of parole for a technical violation, which also happens to partially or wholly involve criminal conduct.
- J. For any Kentucky offender being supervised in another state or jurisdiction pursuant to the Interstate Compact for Adult Offender Supervision who is charged with violating one or more conditions of supervision:
 - (1) If a probable cause hearing is held by the supervising state for an offender being supervised in another state, and the supervising state concludes as a result of the hearing that a violation has occurred, the case shall first be reviewed by an Administrative Law Judge of the Parole Board, who shall determine whether the proceedings held in the supervising state complied with due process.
 - (a) If the Administrative Law Judge determines that the proceedings held in the supervising state did not comply with due process, the Administrative Law Judge shall schedule the offender for a probable cause hearing in Kentucky as provided under subsection J(2) of this Policy.

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- (b) If the Administrative Law Judge determines that the proceedings held in the supervising state did comply with due process, the Administrative Law Judge shall refer the case to the Parole Board as set forth in subsection H(2) of this Policy.
 - (2) A probable cause hearing shall be conducted pursuant to sections A through H of this Policy, if:
 - (a) A parole violation warrant has been issued for an offender without a probable cause hearing; and
 - (b) The parolee is apprehended in Kentucky or returned to Kentucky from another state or jurisdiction without a probable cause hearing, or a probable cause hearing determined under subsection I(1)(a) not to have met due process, having taken place in the other state or jurisdiction .
 - (3) Except as provided in subsection J(4) of this Policy, following the probable cause hearing, the offender shall be ordered returned to the appropriate institution of the Department of Corrections for further consideration by the Parole Board if the Administrative Law Judge finds there is probable cause to believe that:
 - (a) The offender committed any of the violations contained in the warrant; and
 - (b) The warrant was validly issued as to any of the charges contained in it.
 - (4) If the Administrative Law Judge finds no probable cause, the case shall be referred to the Parole Board which shall withdraw the warrant and return the offender to supervision.
 - (5) If probable cause is found, the Administrative Law Judge shall refer the case back to the Parole Board.
 - (6) If the Parole Board decides to withdraw the warrant, the offender shall be returned to normal supervision, subject to any additional conditions the Parole Board may impose.
 - (7) If the Parole Board decides to exercise the warrant, the offender shall be ordered returned to the appropriate institution.
- K. Notwithstanding any other provision of this Policy, a probable cause hearing shall not be required under the following circumstances:
- (1) A probable cause hearing shall not be required if an offender's parole has been automatically terminated pursuant to KRS 439.532 because the offender has been

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recommitted to prison under the custody of the Department of Corrections on a new sentence received for commission of a crime while on parole.

- (a) Upon receipt by the Parole Board of a written request for issuance of a warrant accompanied by proof of the offender's recommitment on a new sentence pursuant to KRS 439.352, the Parole Board shall schedule a final disposition hearing for the offender in accordance with KYPB 13-02 section (K) and a probable cause hearing shall not be required.
 - (b) The Parole Board shall then conduct a final disposition hearing pursuant to KYPB 13-02 section (K) to determine whether the offender has been recommitted to prison on a new sentence pursuant to KRS 439.352.
 - (c) If the Parole Board determines that the offender has been recommitted to prison on a new sentence pursuant to KRS 439.352, the Parole Board shall issue an order documenting the final disposition that the offender's parole has been revoked pursuant to KRS 439.352.
- (2) A probable cause hearing shall not be required if an offender has waived his right to a probable cause hearing pursuant to 501 KAR 1:040(4) and section D of this Policy.