

 <p style="text-align: center;">KENTUCKY PAROLE BOARD Policies and Procedures</p>	Policy Number <p style="text-align: center;">KYPB 13-02</p>	Total Pages <p style="text-align: center;">6</p>
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References/Authority CPP 27-18-01, 27-19-01, 27-21-01; 501 KAR 1:040, , 1:080; KRS 439.3106, 439.330, 439.341, 439.352, 439.430, 439.440	Subject <p style="text-align: center;">REVOCATION OF SUPERVISION: FINAL REVOCATION HEARINGS AND DISPOSITIONS</p>	

POLICY and PROCEDURE:

- A. A final revocation hearing shall be held by the Parole Board, or a panel of the Parole Board, within sixty (60) days after the return of the offender to a state institution. The offender may request a delay or continuance for good cause may be approved by the Parole Board Chair or designee.
- B. Procedural and substantive rights shall be afforded to the offender to ensure due process at a final revocation hearing. An offender shall be provided an opportunity at the final revocation hearing to demonstrate that even if supervision conditions have been violated, mitigating circumstances may exist which suggest that the violations do not warrant revocation or if supervision is revoked, do not warrant returning the offender to prison.
- C. Following a finding of probable cause or a waiver of the probable cause hearing, the final revocation hearing process shall be initiated by service of a Notice of Final Revocation Hearing.
 - (1) The parole officer shall complete the following for the notice:
 - (a) Alleged violations;
 - (b) Evidence against the offender to be presented at the final revocation hearing;
 - (c) Witnesses upon whose statements revocation is based if disclosure of that information will not create a risk of harm to the witness;
 - (d) Time;
 - (e) Date;
 - (f) Location of the final revocation hearing; and

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- (g) The notice shall include a copy of a blank subpoena that can be used to request documents.
- (2) The notice shall also inform the offender that:
 - (a) A final revocation hearing will be conducted on the alleged violations;
 - (b) The standard of proof for the final revocation hearing shall be a preponderance of the evidence;
 - (c) The offender may call witnesses and present evidence in defense and mitigation of the charges;
 - (d) The offender may be entitled to have counsel present at the final revocation hearing; and
 - (e) If the offender wants to have counsel present at the final revocation hearing, he shall request the presence of counsel at the hearing in writing prior to the hearing date. The fact finder shall respond to his request within five (5) business days of receipt.
- D. A determination of whether the offender may have counsel present at the final revocation hearing shall be made on a case-by-case basis by the Parole Board within five (5) days after the request is received by the fact finder. In making this determination, the Parole Board shall consider whether the offender:
 - (1) Has articulated a timely and colorable claim that the offender did not commit the alleged violation of the conditions of supervision;
 - (2) Has articulated substantial reasons that:
 - (a) Justify or mitigate the violation;
 - (b) Make the revocation inappropriate; and
 - (c) Are complex or otherwise difficult to develop or present; and
 - (3) Appears to be capable of speaking effectively for himself.
 - (4) If the offender is allowed counsel at the final revocation hearing, 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.
- E. With the exception of offenders who are less than eighteen (18) years of age, an offender

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being held pursuant to a parole violation warrant may request to waive the final revocation hearing, after the probable cause hearing or acceptance of a waiver of the final revocation hearing.

- (1) An offender shall submit the waiver in writing to the Parole Board or its fact finder for approval.
- (2) The waiver may be accepted at the discretion of the Parole Board or its fact finder.
- (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 the violations charged occurred.
- (4) In the event that waiver of the final revocation hearing is accepted, the final decision on the revocation of the offender's supervision shall be made by the Parole Board without any further proceedings.

F. Final Revocation Hearing

- (1) The charges of violations and the evidence against the offender shall be explained to offender.
- (2) The offender shall then have the opportunity to present evidence in defense and mitigation of the charges.
- (3) The standard of proof shall be a preponderance of the evidence.
- (4) The final revocation 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 and provided no substantial rights are prejudiced.
- (5) The final revocation hearing shall be conducted on the record and may be recorded and preserved by any means practical, including electronically, mechanically, or stenographically. If requested by the Parole Board, the record of the proceedings shall be transcribed.

G. The fact finder shall provide the offender with written findings of fact concerning the alleged violations within twenty-one (21) days of the final revocation hearing. The Parole

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Board Chair or designee may extend the time for good cause. Notice of an extension shall be sent to the offender. The fact finder shall include a:

- (1) Determination of whether the fact finder found the offender to have committed the alleged violations by a preponderance of the evidence; and
- (2) List of:
 - (a) Mitigating evidence presented at the final revocation hearing; and
 - (b) Any findings of fact made concerning mitigating evidence presented at the final revocation hearing.

H. Revocation Decision

- (1) The Parole Board shall issue a decision in writing to determine whether parole is revoked based on:
 - (a) The findings of fact determined at the final revocation hearing; or
 - (b) Its own review of the facts and reasoning; and
- (2) The Parole Board's decision shall include an analysis of whether:
 - (a) The offender's violation constitutes a significant risk to the offender's victim or the community at large; and
 - (b) The offender can be appropriately managed in the community.
- (3) A copy of the decision shall be provided to the offender.

I. At the Parole Board's discretion, alternatives to further imprisonment may be used in decision making on supervision violations.

- (1) The offender may be continued on supervision status;
- (2) Further conditions may be imposed on the offender's supervision in lieu of incarceration; or
- (3) Pursuant to KRS 439.3106(2) the Parole Board may elect to subject a supervised individual to a supervision continuation sanction for a period of up to nine (9) months or until the completion of the individual's sentence, whichever is shorter.
 - (a) Upon completion of the Parole Board sanction, the offender shall be released to continue supervision under the same conditions as previously

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imposed.

- (b) If the Parole Board sanction is not successfully completed, the offender shall be rescheduled for a final revocation hearing.
 - (c) If the offender reaches expiration of the offender's sentence before the completion of the Parole Board sanction, the offender shall be processed for discharge.
- J. Future parole possibilities on the original charges shall not be forfeited if incarceration is determined necessary after the final revocation hearing for offenders specifically on parole supervision, but this shall not apply for offenders on Mandatory Reentry Supervision, Sex Offender Conditional Discharge, Post Incarceration Supervision, or Sex Offender Post Incarceration Supervision.
- K. A final revocation hearing shall not be required if supervision has been automatically revoked by operation of KRS 439.352 due to recommitment of an offender to prison or jail in Kentucky under the custody of the Department of Corrections on a new sentence received for a crime committed by the offender while on supervision. If requested in accordance with this section, the Parole Board shall hold a final disposition hearing to confirm whether an offender's supervision has been automatically revoked by operation of KRS 439.352.
- (1) To request a final disposition hearing, the Commissioner of the Department of Corrections or designee shall submit to the Parole Board a written request for issuance of a warrant to bring an offender before the Parole Board for a final disposition hearing. The request shall be accompanied by proof of the offender's recommitment on a new sentence pursuant to KRS 439.352.
 - (2) If the Parole Board votes to issue the warrant, the final disposition hearing shall take place within sixty (60) calendar days. The Parole Board Chair or designee may extend the time for good cause.
 - (3) At the final disposition, upon review of proof and establishment of the offender's conviction and recommitment on a new sentence for commission of a crime while on supervision, the Parole Board shall issue a final disposition order stating the offender's supervision has been automatically terminated by operation of KRS 439.352.
- L. After a final revocation hearing or final disposition hearing, the Parole Board shall inform the offender of the next parole eligibility date, if any, for the offender. If the offender has pending criminal charges or outstanding sentences to be served, the Parole Board shall not be required to inform the offender of a tentative release date at the time of the final revocation hearing or final disposition hearing.

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- M. An offender whose supervision is revoked and ordered returned to prison by the Parole Board, or the offender's legal representative, may request reconsideration of the decision pursuant to section F of KYPB 10-00.