

 <p style="text-align: center;">KENTUCKY PAROLE BOARD Policies and Procedures</p>	Policy Number	Total Pages
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References/Authority	Subject	
<p>ACA Standards 2-1099 through 2-1105; 501 KAR 1:080; KRS 196.075, 197.440, 439.330, 439.340(3), 439.341, 439.346, 439.430, 439.563, 439.480, 439.561, 439.562, 439.570, 532.043, 532.060(3), 532.400</p>	<p>REVOCATION OF POSTINCARCERATION SUPERVISION: PRELIMINARY HEARINGS</p>	
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	Amended 10/13/15	December 4, 2015

POLICY and PROCEDURE:

- A. The Preliminary Hearing for an offender under postincarceration supervision pursuant to KRS 532.043 or KRS 532.400 shall be conducted by an Administrative Law Judge of the Board pursuant to KRS 439.341 and this Policy.
- B. Charges of violation of one or more conditions of postincarceration supervision shall be initiated by a Parole Officer of the Department of Corrections by serving the Board and the offender, if the offender's location is known, with a written Notice of Preliminary Hearing.
 - (1) The written Notice of Preliminary Hearing shall be a charging document containing the time and place of the hearing. The Notice of Preliminary Hearing shall advise the offender in writing of the offender's right to:
 - (a) Present evidence and favorable witnesses;
 - (b) Disclosure of evidence introduced at the hearing for purposes of proving the alleged grounds for revocation, except that that disclosure shall not be required of records or information:
 - (i) protected from disclosure pursuant to KRS 439.510;
 - (ii) if disclosure would reveal confidential informants or sources of information; or
 - (iii) if disclosure would create or constitute a threat to safety or security of the participants in the hearing or any other person;
 - (c) Confront adverse witnesses, unless the witness is subject to a risk of harm or unless it would create or constitute a threat to safety or security of the participants in the hearing or any other person;

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- (d) Have counsel present; and
 - (e) Request postponement of the hearing for good cause.
- (2) The notice may be amended at any time prior to the close of the record of the Preliminary 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.
 - (3) If the notice is amended, a continuance of the proceeding may be granted if the interest of justice so requires.
 - (4) 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. The Preliminary Hearing shall be held within fourteen (14) calendar days after the arrest and detention of the offender on the detention warrant or detainer. The Board may extend the time period for good cause.
- (1) A Preliminary Hearing shall not be conducted earlier than five (5) days after service of notice of the hearing, unless the waiting period is waived by the offender, in writing.
 - (2) Any party appearing before an Administrative Law Judge of the Board may be represented by counsel if the party so desires. The party may have, upon motion thereof, a continuance for the purpose of obtaining the presence of counsel; except that chronic appearance for hearing without counsel by an offender who is capable of retaining counsel may be deemed an implicit waiver of counsel.
 - (3) Any duly appointed Parole Officer may appear before the Board or its Administrative Law Judge as representative of the Department of Corrections in matters relating to the revocation of postincarceration supervision; except that the probation and parole officer shall not make opening or closing arguments, conduct direct examination or cross-examination of witnesses, or take any other action that would constitute the unauthorized practice of law.
- D. The Preliminary Hearing shall be held in or near the community where the alleged violation(s) occurred or at the location the offender was taken into custody, except as follows:

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- (1) The offender may waive the right to have the Preliminary 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 Preliminary Hearing is to take place.
 - (b) If the waiver was not made before an Administrative Law Judge, the waiver shall be reviewed by an Administrative Law Judge to determine whether it complies with the applicable requirements of this Policy.
 - (2) An offender's objection to the location of Preliminary Hearing shall be deemed waived if the offender fails to raise the objection at or before the Preliminary 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 Preliminary Hearing in the supervising state after being served notice of an alleged violation and is then returned to Kentucky to the custody of the Department of Corrections without a Preliminary Hearing in the supervising state shall be deemed to have waived his right to have a Preliminary 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.
- E. The Preliminary Hearing shall be an evidentiary hearing conducted on the record.
- (1) The Preliminary Hearing shall be electronically recorded and maintained in accordance with the records retention schedule established by the Kentucky Department of Libraries and Archives.
 - (2) If requested by the Board, the record of the proceedings shall be transcribed.
 - (3) At the Preliminary Hearing, the offender shall present all evidence the offender desires to make part of the administrative record.
 - (4) Except as provided in Subsection C(2) and (3) of KYPB 30-02, the record shall not be supplemented with any new or additional evidence after the conclusion of the Preliminary Hearing.
- F. The Preliminary Hearing shall be conducted by an Administrative Law Judge of the Board who meets the qualifications set forth in KRS 439.341 and this Policy, and who shall be fair and impartial, and shall not have been previously involved in the pending

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case.

- (1) The Administrative Law Judge may take judicial notice of acts of the Board, including the conditions of postincarceration supervision and all other matters which may be judicially noticed in the courts of this Commonwealth pursuant to KRE 201.
- (2) Witnesses appearing at the Preliminary 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.
- (3) Hearsay evidence may be presented and admitted into the record, at the discretion of the Administrative Law Judge, except that presentence investigation reports, 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 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 offender may, within reasonable limits, present evidence solely for the purpose of mitigation of his conduct, including evidence of his mental condition. If presented, this evidence shall be subject to rebuttal by the probation and parole officer.
- (8) The Preliminary 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.
- (9) At the request of either party, the Administrative Law Judge may, within his discretion, leave the record open for reception of additional evidence if no substantial rights are prejudiced.
- (10) 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

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custody for those persons accused of a violation of a condition of postincarceration supervision.

- G. 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 Preliminary Hearing.
- (1) The Administrative Law Judge shall issue a written decision, which shall be provided to the offender and the Board within twenty one (21) calendar days after the hearing or the case stands submitted. The Board may extend the time period 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.
 - (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) The offender's case shall not be referred to the Board and the offender shall not be returned to prison unless probable cause is found at the Preliminary Hearing by the Administrative Law Judge.
 - (2) If probable cause is found to exist, the case shall be referred to the Board for a Final Hearing, and:
 - (a) Except as provided under Subsection G(2)(b) of this Policy, the Board shall issue a postincarceration supervision violation warrant pursuant to Subsection B(1) of KYPB 30-00, which shall cause the offender to be brought before the Board for a Final Hearing.
 - (b) If the Administrative Law Judge finds that there exist substantial mitigating factors, the Administrative Law Judge may issue with the written decision a recommendation that the offender be returned to supervision and not be reincarcerated for the violation. If the Administrative Law Judge makes that finding and recommendation, the case shall be referred to the Board for their vote on the issuance of the

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postincarceration supervision violation warrant pursuant to Subsection C of KYPB 30-00.

- (i) The recommendation of the Administrative Law Judge shall be advisory only and shall not be binding on the Board.
- (ii) If the Board votes to issue the warrant, the offender shall be brought before the Board for a Final Hearing.

H. If the alleged violation of parole, as set forth in the Notice of Preliminary Hearing, is new criminal conduct which does not also constitute a technical violation of the conditions of supervision, or the conditions of parole, the case shall not be referred to the Board for parole 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.

I. For any Kentucky offender being supervised in another state or jurisdiction pursuant the Interstate Compact for Adult Offender Supervision who is charged with violating one or more conditions of supervision:

- (1) If a preliminary revocation 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 Board, who shall determine whether or not 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 Preliminary Hearing in Kentucky as provided under Subsection I(2) of this Policy.
 - (b) 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 refer the case to the Parole Board as set forth in Subsection G of this Policy.
- (2) A Preliminary Hearing shall be conducted pursuant to Subsections A through H of this Policy, if:
 - (a) A warrant has been issued for an offender without a preliminary revocation hearing; and

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- (b) The offender is apprehended in Kentucky or returned to Kentucky from another state or jurisdiction without a preliminary revocation hearing having taken place in the other state or jurisdiction.
 - (3) Except as provided in Subsection I(4) of this Policy, following the Preliminary Hearing, the offender shall be ordered returned to the appropriate institution of the Department of Corrections for further consideration by the Board if the Administrative Law Judge finds that 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 Board which shall withdraw the warrant and return the offender to supervision.
 - (5) If probable cause is found, the Administrative Law Judge may refer the case back to the Board to decide whether the warrant should be exercised or withdrawn if:
 - (a) The Parole Officer moves for a referral; or
 - (b) The Administrative Law Judge finds that there are overwhelming mitigation factors present that were not known to the Board at the time of the warrant's issuance.
 - (6) If referred back to the Board, the Administrative Law Judge may include a recommendation that the warrant be rescinded. This recommendation shall be advisory only and shall not be binding on the Board.
 - (7) If the Board decides to withdraw the warrant, the offender shall be returned to normal supervision, subject to any additional conditions the Board may impose.
 - (8) If the Board decides to exercise the warrant, the offender shall be ordered returned to the appropriate institution.
- J. Notwithstanding any other provision of this Policy, a Preliminary Hearing shall not be required under the following circumstances:
- (1) If the offender has received a new conviction for a crime committed while on postincarceration supervision. Proof of the conviction shall establish a presumption of probable cause of a violation of the conditions of the offender's

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postincarceration supervision.

- (a) Upon receipt by the Board from the Commissioner of the Department of Corrections or designee of a written request to schedule a Final Hearing because an offender has received a new conviction for a crime committed while on postincarceration supervision, the Board may issue a warrant pursuant to KYPB 30-00 and schedule the offender for a Final Hearing under KYPB 30-02.
 - (b) The written request for issuance of the warrant shall be accompanied by proof of the new criminal conviction for the offender's crime committed while on postincarceration supervision.
 - (c) At a Final Hearing scheduled by the Board pursuant to paragraph (a) of this subsection, the Board shall provide the offender a reasonable opportunity to present evidence in mitigation and evidence, if any, that the offender was not convicted of a crime while on postincarceration supervision, as provided in Subsection C of KYPB 30-02.
- (2) Any offender charged with one or more violations of postincarceration supervision may waive the Preliminary Hearing by admitting to the violations and waiving the right to appear before an Administrative Law Judge for a Preliminary Hearing.
- (a) For offenders subject to postincarceration supervision pursuant to KRS 532.043, any offender desiring to waive the Preliminary Hearing shall appear before an Administrative Law Judge of the Board and make the waiver on the record.
 - (b) For offenders subject to postincarceration supervision pursuant to KRS 532.400, any offender desiring to waive the Preliminary Hearing shall submit the waiver in writing to the Board or the Administrative Law Judge for approval.
 - (c) The waiver may be accepted within the discretion of the Administrative Law Judge or the Board. A waiver shall not be accepted unless the offender avers or affirms, or the Administrative Law Judge or the Board otherwise finds, that that the waiver was entered into voluntarily and that the offender is, and clearly understands, that the offender is admitting guilt as to the violations charged.
 - (d) For offenders being supervised in another state or jurisdiction pursuant to the Interstate Compact when the alleged violation occurred, a waiver of an

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offender's right to right to a Preliminary Hearing under the laws and procedures of the supervising state shall be given effect by the Board after the offender has been returned to Kentucky, if it can be determined that the waiver was consistent with the requirements of the Interstate Compact and due process.

- (i) Upon receipt of notice and documentation from the Commissioner of the Department of Corrections or designee that an offender supervised in another state pursuant to the Interstate Compact has waived his right to a preliminary hearing, the Board shall forward the notice and documentation to an Administrative Law Judge of the Board.
- (ii) The Administrative Law Judge shall review the waiver to determine if the waiver meets the requirements of Subsection J(2) of this Policy. If the Administrative Law Judge determines that the waiver does not comply with Subsection J(2) of this Policy, the Board Chairperson or designee shall refer the matter back to the Administrative Law Judge for a Preliminary Hearing or to the Division of Probation and Parole to request that action be taken to ensure compliance with this provision.
- (e) After approval of the waiver, the matter shall proceed in the same manner as after a hearing before an Administrative Law Judge.
- (f) Notwithstanding the submission and acceptance of a waiver of the Preliminary Hearing, the offender may still submit evidence in mitigation of his conduct pursuant to Subsection C(2) of KYPB 30-02.