

 <p><b>KENTUCKY CORRECTIONS</b> Policies and Procedures</p>	Policy Number	Total Pages
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Authority/References  KRS 196.035, 439.3106, 439.315, 439.340, 439.341, 439.430, 439.470, 439.480, 533.050; SCR 3.700 ; <i>Morrissey v. Brewer</i> , 408 U.S. 471 (1972); <i>Gagnon v. Scarpelli</i> , 411 U.S. 778 (1973) JONES V BAILEY 576SW.3.d128(2019)KAR;40 P&P ACA 2B-05, 2B-06, 2B-07, 2B-08, 2B- 09, 2B-10, 2B-11	Subject  <b>PROBABLE CAUSE AND FINAL REVOCATION HEARING</b>
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## I. DEFINITIONS

“Administrative law judge” means one who presides at an administrative hearing with power to administer oaths, take testimony, rule on questions of evidence and make agency determination of fact.

“Detainer” means a written instrument issued by the Probation and Parole officer as a result of an allegation of a violation of probation or parole that authorizes the temporary confinement of an offender in a jail pending further action by the releasing authority.

“Evidence” means proof submitted to ascertain the truth to include testimony, documents, records, and exhibits.

‘Fact finder’ means the person or entity that determines the facts at a hearing and includes the administrative law judge or the parole board depending on which conducts the hearing.

“Notice of hearing” means a document used to inform the offender of the alleged violation, time and place of preliminary revocation hearing, and rights at the hearing.

“Parolee” means for the purposes of this policy, an offender on Parole, Mandatory Reentry Supervision, Sex Offender Conditional Discharge, Sex Offender Post Incarceration or Post Incarceration Supervision.

“Probable Cause” hearing” means a hearing conducted to determine whether probable cause exists that the offender has violated a probation or parole condition and at which the administrative law judge (ALJ) gathers factual data to be reported to the releasing authority for review to determine whether a warrant should be issued or final revocation hearing scheduled.

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“Releasing authority” means the sentencing court or the Parole Board.

“Revocation hearing” means a hearing before the releasing authority to determine whether to revoke his probation or parole.

“Working day” means a business day that does not include Saturday, Sunday, or legal holiday.

## II. POLICY

It is the policy of the Department of Corrections to afford offenders alleged to have violated probation or parole with procedural due process which includes the following:

- A. The right to a timely probable cause hearing, before an impartial judge or administrative law judge in or reasonably near the county where the arrest or violation is alleged to have occurred. The offender may waive the right to a hearing site. (2B-06)
- B. The right to a timely revocation hearing before the releasing authority at the discretion of the releasing authority's scheduling.
- C. The right to:
  - 1. Written notice of alleged violations and as the time and place of the probable cause hearing.
  - 2. Disclosure of evidence.
  - 3. Opportunity to present evidence in person and to present witnesses and documentary evidence.
  - 4. The right to confront and cross-examine witnesses. The judge or administrative law judge shall have the discretion to disallow the confrontation of an adverse witness.
  - 5. To have counsel of choice present, or in the case of indigent persons who request assistance to adequately present the case, have counsel appointed.
  - 6. Request postponement of the hearing for good cause. (2B-07)
  - 7. Receive a timely, written decision in parole cases and a written or oral decision in probation cases. (2B-07)

## III. PROCEDURES FOR PROBABLE CAUSE REVOCATION HEARINGS

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#### A. Investigation Process

The Probation and Parole officer shall investigate and submit alleged violations of probation or parole according to the procedure established in CPP 27-15-01 (Investigating and Reporting Violations and Unusual Incidents).

#### B. Scheduling a Probable Cause Hearing for Offenders not in Custody.

After discussing the case with the supervisor, the officer may decide to schedule a probable cause hearing on the alleged violation, but not to detain the offender at that time. If the offender is not detained based on the alleged violation of probation or parole, the officer shall:

1. Serve a notice of probable cause hearing, stating the alleged violations and the date and place of the scheduled hearing.
2. Notify the releasing authority of the violation by preparing an approved violation report through the supervisor to the releasing authority. The violation report shall state that the offender was not detained based on the violation charges.
3. The judge or administrative law judge shall hold the probable cause hearing and determine if probable cause exists on the alleged violations. The administrative law judge shall make a verbal ruling immediately after the conclusion of the hearing, unless the hearing is continued for good cause. The hearing decision may remain open for further evidence upon request for good cause. (2B-09)
4. The administrative law judge shall forward copies of the written results of the hearing to the Probation & Parole officer. The officer shall provide one copy to the offender and retain a copy in the case record.
5. A copy of the results of the probable cause hearing shall be submitted to the releasing authority by the administrative law judge.
6. The written results of the probable cause hearing shall be given to the offender within twenty-one (21) days of the hearing. (2B-10)

#### C. Lodging Process

##### 1. Felony Probationer

Unless extenuating or emergency circumstances exist, a warrant shall be obtained from the court, according to procedures established by the Circuit

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Court. For extenuating and emergency circumstances, see CPP 27-18-01 (Probation and Parole Issuance of Detainer or Warrant).

#### 2. Parolee

The Probation and Parole Officer shall comply with the process outlined in CPP 27-18-01(Probation and Parole Issuance of Detainer or Warrant) and CPP 27-04-02 (External Movement).

#### 3. Advising of Right to Five (5) Day Waiting Period

When a probable cause hearing is scheduled, the offender shall be advised by the Probation & Parole Officer of the right to a five (5) day waiting period to allow time to gather any evidence or information needed prior to the hearing. (For the purpose of clarification in probation cases, some judicial circuits do not require or wish to have a probable cause hearing; and, therefore, the date of the scheduled revocation hearing shall be at the discretion of the court.) (2B-08)

#### 4. Counsel

An offender appearing before an administrative law judge for the probable cause hearing may be represented by counsel if he so desires, and may have, upon motion thereof, a continuance for the purpose of obtaining the presence of counsel. Multiple appearances at a hearing without counsel by an offender who is capable of retaining counsel, however, may be deemed as a waiver of counsel.

### D. Process for Scheduling Probable Cause Hearing

A probable cause hearing shall be held within fourteen (14) calendar days of the arrest and detention of the offender, unless good cause is shown for delay or postponement. (2B-05)

#### 1. Probation

The Probation and Parole officer shall contact the court or designated staff to schedule a revocation hearing. The established process for revocation proceedings shall be followed according to the judicial circuit. If a probable cause hearing is desired by the court, the Probation and Parole officer shall follow the procedure outlined for parolees.

#### 2. Parolee

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For a parolee, the Probation and Parole officer shall schedule the probable cause hearing by contacting the Parole Board or district designee in charge of scheduling hearings. At that time, the Probation and Parole officer shall advise if the offender wishes to waive the five (5) day waiting period.

#### E. Serving Notice of Probable Cause Hearing and Rights-PHASE I

##### 1. Parole

- a. The Probation and Parole officer shall prepare the notice of probable cause hearing.
- b. The Probation and Parole officer shall serve written notice of the probable cause hearing to the offender within seventy-two (72) hours of the offender being taken into custody, and at least three (3) working days prior to the probable cause hearing. The Probation & Parole Officer shall include date, time and location of hearing. If a specific date is not available, a date of fourteen (14) days from the time the notice of probable cause hearing is served shall be entered. When the actual date is available, the date shall be corrected on the notice of probable cause hearing and the Probation & Parole Officer shall re-serve the notice of probable cause hearing bearing the correct date. The alleged violations and rights shall be read and explained to the offender when written notice is served. Each alleged violation shall be specific. The dates and times of each alleged violation shall be given. If the violation is a new conviction, the date the conviction occurred shall be included. The offender shall sign the notice in the space marked 'releasee'. Each signature shall be witnessed. If the offender refuses to sign the notice, a hearing date shall be scheduled and, the last section of the document shall be completed by the Probation and Parole officer and witnessed by a person present at the time the notice was read to the offender. The offender shall be given a copy of the notice of probable cause hearing.
- c. In the case of absconders, the Probation and Parole officer shall follow the procedure outlined in CPP 27-17-01 (Absconder Procedure).
- d. In the absence of the offender's supervising Probation and Parole officer, another Probation and Parole officer shall perform the above duties.

##### 2. Probation

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Hearing notice shall be provided as required by the Circuit Court or the Judicial District of the Circuit Court. The court shall be advised of KRS 533.040(3), when applicable.

#### F. Submission of Violation Report

An approved violation report shall be completed outlining the violations. The violation shall be forwarded to the releasing authority through the supervisor. The offender SHALL NOT be provided a copy of the violation report. A copy shall be maintained in the offender management system.

#### G. Supporting Documentation for Evidence-Probation and Parole Officer

The officer shall gather evidence to support the alleged violations. This evidence may include all testimony of a witness, introduction of records and documents. All court records shall be certified. The officer may have witnesses subpoenaed by making a request to the appropriate releasing authority. When requesting a subpoena, the officer shall provide the name and address of the witness. The request to the Parole Board shall be made not less than seven (7) days in advance of the date of the probable cause hearing. The Probation and Parole Officer shall subpoena all witnesses pertinent to the presentation of the officer's case. A copy of the evidentiary packet shall be provided to the defense attorney and a copy shall remain in the case file.

#### H. Preparation of Notice of Probable Cause Hearing if an offender is in custody or located out of Judicial District

The offender's supervising officer shall contact the officer in the area where the offender is in custody or located to give the officer the necessary information to complete the notice of probable cause hearing or detainer within seventy-two (72) hours. The supervising officer and assisting officer shall coordinate the execution of the detainer or notice of probable cause hearing to ensure all time frames are met. The assisting officer may conduct the hearing for the supervising officer. If the offender does not waive the probable cause hearing being held in or reasonably near the county where the violation is alleged to have occurred, transportation arrangements shall be coordinated by the assisting and supervising officers or supervisor.

#### I. Procedures for Conducting the Probable Cause Hearing

The probable cause hearing shall be conducted in a place, in or reasonably near the county where the alleged violation or arrest occurred, unless waived by the offender. The hearing may be moved to accommodate witnesses. The room shall allow for privacy and quiet, as well as security. The probable cause hearing shall be recorded by the administrative law judge and court. (2B-06)

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Procedures for Probation and Parole officer's presentation shall be as follows:

1. Personal introduction: after being sworn, officer identifies himself, including his full name, title and district.
2. Background summary of case: the Probation and Parole officer shall provide the offender's:
  - a. Full name
  - b. Original charge
  - c. Date probated or paroled
  - d. Signed copy of the conditions of supervision
3. Identification of the Alleged Violation

The Probation and Parole officer shall provide evidence which supports each violation which may include testimony (witnesses), signed documents, or certified records.

#### 4 Defense Testimony

- a. The defense attorney or the offender shall have the right to present evidence to refute the alleged violations.
- b. The defense shall have the right to cross examine witnesses.
- c. The offender may choose not to present evidence on his own behalf.

#### 6. Further Statements from the Probation and Parole Officer

At the close of the hearing, the Probation and Parole officer may request the opportunity to make any further comments or recommendations. Any comment or recommendation shall be stated prior to the close of the hearing. A recommendation or stipulation of alternatives shall only be made if public safety is not endangered.

#### 7. Conclusions

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The judge or administrative law judge, upon hearing all of the evidence, shall determine if there is probable cause to believe a violation of probation or parole has occurred. The administrative law judge shall orally make findings and rulings on the record immediately after the conclusion of the hearing unless the record remains open upon request for good cause. In probation cases, if probable cause is not found, the Probation and Parole officer shall immediately contact the probating judge for further instructions. (2B-09; 2B-10)

#### 8. Motions

##### a. Motion to Reschedule / Motion for Continuance to Alternative Date

A motion to reschedule or motion to continue to another date may be used to reschedule a probable cause hearing. A motion to reschedule shall be used only to advance a hearing to a later date. The officer, parolee, or defense counsel may request the probable cause hearing be reset or continued to another date. The administrative law judge shall complete and sign the appropriate document and distribute accordingly.

##### b. Motion for Indefinite Continuance

Only a Probation and Parole officer may initiate a motion for indefinite continuance without another date being set. This type of motion may be used in circumstances where the officer requests alternatives to revocation and incarceration are considered and used to the extent public safety allows. The officer shall not initiate the motion unless the parolee or defense counsel agrees to the motion. By agreeing, the parolee is waiving the right to the hearing. (2B-11)

#### J. Procedures after Probable Cause Hearing Held

##### 1. Parolee

a. If probable cause is not found, the offender shall be released from custody on that date. When the offender is release from custody, the detainer shall be obtained from the jail. The probation and parole officer shall complete the external movement.

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- b. If probable cause is found at the hearing, the offender shall be held in custody until a decision is made by the Parole Board regarding the issuance of a parole violation warrant.

If the offender has not been in custody prior to the hearing and probable cause is found at the hearing, the offender shall be lodged and held in custody until a decision is made by the Parole Board.

- (1) If a warrant is issued, the detainer previously filed shall be replaced with the warrant issued.
- (2) If the Parole Board decides not to issue a warrant, the Probation and Parole officer shall be advised and the offender shall be released from custody on that date and continued under supervision.

- c. If, at any time, the offender contacts the Probation and Parole officer requesting a waiver of the final revocation hearing, the officer shall take a waiver of final revocation hearing to the offender. If the offender freely and voluntarily requests to waive the final hearing or requests a serve out, the offender may sign and date the form and the officer shall witness the signature. This will not apply to offenders under (eighteen) 18 years of age. The Probation and Parole officer shall forward the waiver to the parole board or administrative law judge for approval.
- d. The administrative law judge shall issue a written decision stating the determination concerning probable cause, reasons for the determination and the evidence relied upon. The decision shall be sent to the probation and parole officer and counsel if represented at the probable cause hearing. Upon receiving the written decision, the probation and parole officer shall provide the written decision to the offender within seventy two (72) hours.

## K Serving Notice of Final Revocation Hearing Rights- PHASE 11

### Parolee

- a The Probation and Parole officer shall prepare the notice of final hearing.
- b The Probation and Parole officer shall locate the time and the date of the next available final revocation hearing.
- c The probation and parole officer shall serve written notice of final

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revocation hearing to the offender within seventy two (72) hours of the offender being taken into custody or immediately after the probable cause hearing findings have been delivered to the offender and at least three (3) working days prior to the final revocation hearing. The alleged violation shall be specific. The dates and times of each alleged violation shall be given. If the violation is a new conviction, the date the conviction occurred shall be included. The offender shall sign the notice of final hearing in the space marked "release". Each signature shall be witnessed. If the offender refuses to sign the notice of final hearing, the last section of the document shall be completed by the Probation and Parole officer and witnessed by a person present at the time of the notice of final hearing.

- d. In the case of absconders, the Probation and Parole officer shall follow the procedure outlined in CPP 27-17-01 (Absconder Procedure).
- e. In the absence of the offender's supervising Probation and Parole officer, another Probation and Parole officer shall perform the above duties.
- f. The officer shall contact the administrative law judge or designee to schedule the final revocation hearing unless the offender knowingly and voluntarily waives the hearing. If the date location and time has not been assigned, the administrative law judge or designee shall be contacted to schedule the final revocation hearing.

#### L. Procedures to Waive a Probable Cause Hearing

With the exception of offenders less than eighteen (18) years of age, a parolee offender may request to waive the final revocation hearing, after the probable cause hearing or acceptance of a waiver of the final revocation hearing if the offenders admits the alleged violations.

- a The waiver shall be submitted to the parole board or fact finder for approval.
- b Defense counsel maybe present during the time of this procedure, and if present shall sign the document.
- c The waiver maybe accepted at the discretion of the parole board or fact finder.

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- d. A waiver shall not be accepted unless it is knowingly and voluntarily, and acknowledges guilt to the violations (2B-07)
  
- 1. A hearing date and time shall be obtained from the administrative law judge or designee. The parolee shall be served with a completed notice of hearing.
- 2. The parolee shall be advised that he may waive his probable cause hearing if he admits the alleged violations. The procedure shall be explained in detail to the parolee including an explanation of his right to submit mitigating evidence or a written statement in mitigation.
- 3. The parolee shall be advised that he has the right to obtain counsel before making this decision. If the parolee wishes to waive counsel, that shall be done in the same manner (sign waiver on Notice of Hearing). If counsel is requested, the same procedures shall be followed as if the case was going to proceed to hearing.
- 4. Once the officer is convinced that the parolee, without duress, voluntarily wishes to waive his preliminary hearing, the waiver of preliminary hearing shall be explained to the parolee and completed by the parolee and the officer. Defense counsel may be present during this procedure, and shall sign the document.
- 5. The officer shall advise the parolee that he has the right to submit mitigation evidence to the Parole Board and provide the parole board address.
- 6. The administrative law judge shall be notified as soon as possible after the waiver is effected so that the hearing may be removed from the docket to accommodate other cases.
- 7. The waiver document shall be submitted in the following manner:
  - (a) Completed waiver shall be scanned and electronically retained in offender's case record in the offender management system.
  - (b) Completed waiver shall be sent electronically with email notification to the designated email waiver box, P&P Notice of Hearings – [Justice.Notice@ky.gov](mailto:Justice.Notice@ky.gov). If the violation is a result of a new felony conviction, a copy of the judgement shall be attached to the waiver.
- 8. Parole Board Services shall review the submitted documents and decide whether to accept the waiver. In making this decision, Parole Board

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Services shall review the documents for proper completion and to determine that the waiver was made freely, voluntarily and knowingly.

9. If the waiver is accepted, a brief order shall be entered by the administrative law judge either referring the case to the Board (if no warrant is outstanding) or ordering the parolee's return to the institution (if a valid warrant is outstanding). The Probation and Parole officer shall wait for the Parole Board decision.
10. If the waiver is rejected, the Parole officer shall be notified and a hearing shall be scheduled unless the deficiencies can be corrected. If the deficiencies are corrected, the administrative law judge shall so notify the Probation and Parole officer, who shall address and correct the deficiencies immediately with the parolee and his counsel. If there is not an agreement to correct the deficiencies, a preliminary hearing shall be scheduled immediately.
11. In the event the parolee decides at the last minute to waive
  - (a) Prior to the hearing. The completed waiver shall be scanned and electronically retained in the offender's case record, in the offender management system and emailed to [Justice.Notice@ky.gov](mailto:Justice.Notice@ky.gov).
  - (b) During the hearing. He shall do so in the presence of the administrative judge who shall render a decision with or without the waiver. If the waiver is completed, the waiver document shall be sent to Parole Board Services for processing.
12. The waiver of probable cause and final revocation hearings shall not be required if the offender receives a new felony conviction and is remanded to the Department.

#### M. Conduct of Final Revocation Hearing

1. The purpose of the final revocation hearing shall be to determine if the offender has committed the violation of presented mitigating evidence to the violation.
2. Hearing Procedure
  - a. The final revocation hearing shall be conducted in a place reasonably near the county where the alleged violation or arrest occurred, unless waived by the offender. The hearing maybe moved to accommodate the witness. The room shall allow for privacy and quiet as well as

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security. The final revocation hearing shall be recorded by the administrative law judge.

- b. Procedures for the Officer shall follow in the same manner as the probable cause hearing including evidence presented as noted in subsection 1 1-3.
- c. The charges of violations and the evidence against the offender shall be presented.
- d. The defense attorney or the offender shall have the right to present evidence to refute the alleged violations.
- e. The defense may introduce statements of extenuating or mitigating circumstances.
- f. The defense shall have the right to cross examine witnesses.
- g. The offender may choose not to present evidence on his own behalf.

The fact finder upon hearing all the evidence shall determine if a violation of supervision has occurred.

In the decision from the final hearing, the fact finder shall provide a recommendation for the offender's status on supervision to the Parole Board.

#### N. Written Findings of Fact and Decision.

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.

#### O. Final Revocation Decision by the Parole Board – PHASE III

- 1. The purpose of the final revocation review by the Parole Board is to determine if the offender' supervision should be revoked. The Parole Board's review shall include findings of facts determined in the final revocation hearing, and in totality of all supporting evidence presented, if the offender was found to have committed the alleged violations.
- 2. Upon final examination of all supporting evidence and findings of fact, the Parole Board shall determine a final decision and fact finding reasons for the decision.

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3. The Parole Board shall issue a final decision, either adopting or rejecting the results of the final revocation hearing. The Parole Board decision shall be one of the following:-

- (a) Revocation of Supervision.
- (b) Determination to reinstate parole.
- (c) Continued on parole board sanction.
- (d) Serve out.

#### Probation

After a probable cause revocation hearing on a probationer, the case shall be referred to the court by the administrative law judge for final revocation determination.

#### P      Return of Violator

##### 1.      Parole

In the cases of parole violation, the offender shall be placed within the Department of Correction's custody according to classification and statutorily requirements. Transportation to the Assessment Center shall be the responsibility of the jail.

##### 2.      Probation

In cases of probation revocation, transportation to the institution shall be the responsibility of the local sheriff's office.