

501 KAR 16:300. Execution procedures concerning attorneys representing the condemned, witnesses, visitors, and demonstrators.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.220, 431.224, 431.240, 431.250, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. KRS 431.250 establishes persons who may attend the execution. This administrative regulation establishes preliminary and post execution procedures concerning witnesses, visitors, and demonstrators.

Section 1. Designation of Victim's Family to Witness Execution. (1) The commissioner shall mail a letter to any of the victim's family described in KRS 431.250 for whom the commissioner has received an address.

(2) The letter sent to the victim's family shall:

(a) State the scheduled execution date; and

(b) Request the victim's family member contact the commissioner to notify him in writing if he wants to be considered for designation as a witness to the execution.

(3) The commissioner may seek an address for the victim's family by:

(a) Review of the condemned person's file; or

(b) Request made to the Commonwealth's Attorney who maintains information concerning the victims of the crime committed by the condemned person.

(4) The commissioner shall designate pursuant to KRS 431.250 the three (3) members of the victim's family who may witness the execution. If the commissioner receives more than three (3) requests from members of the victim's family to witness the execution, the commissioner shall:

(a) Give first preference to a victim's spouse;

(b) Give second preference to a victim's adult child; and

(c) Hold a drawing to select a witness if the requests exceed three (3) after consideration of the preferences or if the requests within a preference exceed three (3).

(5) A letter stating the commissioner's designation shall be mailed to each member of the victim's family who is designated to witness the execution.

Section 2. Additional Notifications Concerning Execution. (1) The department shall mail a letter that states:

(a) The time that the person shall arrive to witness the execution; and

(b) The location where the person shall go.

(2) The letter shall be mailed to the:

(a) Designated victim's family;

(b) Condemned person's clergy witness and his other three (3) designated witnesses;

(c) Media representatives selected pursuant to Section 3 of this administrative regulation;

(d) Coroner of the county where the execution is to be conducted; and

(e) Sheriff of the county where the condemned person was convicted.

Section 3. Media Representative Procedures. (1) The department shall send notice to the three (3) news organizations specifically identified in KRS 431.250 as being allowed to have

one (1) representative. The notice shall request the identity of the representative who the news organization will designate to attend and witness the execution. The three (3) news organizations shall send the names of the representatives in writing at least fourteen (14) days prior to the execution, unless notice from the department indicates a different time to send the names of the representatives. The notice may request additional information about the representative as needed for security or management.

(2) The Kentucky Press Association may select by lottery three (3) representatives for the newspapers within the state as authorized by KRS 431.250. The Kentucky Press Association shall send the names of the representatives in writing at least fourteen (14) days prior to the execution, unless notice from the department indicates a different time to send the names of the representatives. The department may request additional information about the representatives as needed for security or management.

(3) Selection of the three (3) representatives for broadcast media identified in KRS 431.250 shall be made in the following manner:

(a) The Central Office Public Information Officer shall send a press release advising broadcast media that they may nominate a representative of their organization to attend and serve as an official media witness to the execution. The nomination shall be sent to the commissioner's office in writing at least fourteen (14) days prior to the execution unless notice from the department indicates a different time to send the names for nomination.

(b) A drawing shall be held to select the three (3) representatives for broadcast media in the office of the commissioner.

(4) After media representatives to the execution are separated from other media in preparation for transfer to the witness room, media representatives shall not be permitted to use:

(a) Any item at the execution other than a pen or pencil and paper which shall be provided by the department; and

(b) Audio or video recording devices.

Section 4. Visitors. (1) Notwithstanding 501 KAR 6:020, CPP 16.1 and 501 KAR 6:040, KSP 16-01-01, visits to the condemned person after receipt of the execution order shall be governed by this administrative regulation.

(2) The visitor shall call the Kentucky State Penitentiary in advance of the requested visit to schedule the visit.

(3) The warden shall designate the location of the visit.

(4) For any visit allowed in this administrative regulation on the day of execution, the condemned person shall not have more than one (1) visitor at a time.

(5) The condemned person may refuse any visitor.

(6) The warden may approve a request from the condemned person for a visitor that is not on the visitation list.

(7) A pat down search may be performed on all visitors before and after the visit.

(8) Media visitors.

(a) Prior to the day of the execution, a member of the media:

1. Shall not bring any item into the penitentiary, unless prior approval is given by the warden;

2. Shall make any request to bring items into the penitentiary when calling to request an appointment to visit; and

3. May request daily visits on weekdays.

(b) On the day of the execution:

1. The department may establish a media:

a. Staging area where media shall be directed to gather before entering into the peniten-

tiary; and

b. Assembly room where scheduled press briefings may be held prior to the execution. Reporters may submit written questions at each press briefing for response at a subsequent briefing, except for the final briefing; and

2. Media shall not be allowed visits.

(c) Seven (7) days prior to the execution, the department communication director may issue a press advisory stating the date and approximate time of the pending execution.

(9) Clergy visitors and minister of record visits.

(a) A member of the clergy or the minister of record may request to bring religious items into the penitentiary by making the request to the penitentiary chaplain. The chaplain shall notify the warden of the request. The warden shall:

1. Give due consideration to any request to bring religious items into the penitentiary; and

2. Not deny a religious item needed for an end-of-life ceremony unless it poses a significant operational problem or security risk.

(b) Prior to the day of execution, a member of the clergy or the minister of record may request daily visits.

(c) On the day of the execution:

1. Clergy visits shall not be allowed, except for the minister of record;

2. The minister of record shall call for an appointment for the visit prior to the day of execution;

3. The minister of record may visit for thirty (30) minutes up to two (2) hours before the execution;

4. The visit shall not be a contact visit, unless a religious ceremony, sacrament, or rite accepted by the religion being practiced by the condemned person requires contact to be accomplished; and

5. If a contact visit is necessary pursuant to subparagraph 4 of this paragraph, then the need for a contact visit shall be stated in the call for the appointment.

(10) Personal visitors.

(a) Prior to the day of execution:

1. A personal visitor who is listed on the condemned person's visitation list may request daily visits; and

2. Personal visitors shall be limited to four (4) at a time.

(b) A personal visitor shall not bring any item into the penitentiary.

(c) On the day of execution, a personal visitor shall not be allowed a visit.

(11) Attorneys defending the condemned person and staff employed by the office of an attorney defending the condemned person.

(a) An attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person may bring into the penitentiary:

1. Pens;

2. Pads of paper without metal; and

3. Legal documents for a visit with the condemned person. The legal documents and other items shall be searched, but shall not be read by staff performing the search.

(b) Prior to the day of execution, an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person:

1. Shall be allowed a visit daily between 7:30 a.m. and 2:30 p.m.; and

2. May request additional visits.

(c) On the day of execution:

1. An attorney defending the condemned person:

a. Shall be allowed a visit between 7:30 a.m. and 2:30 p.m.;

b. May request additional visits until three (3) hours prior to the execution; and
c. Visits shall be noncontact, unless there is a need for the condemned person to sign a document. If a document needs to be signed, the attorney shall be allowed to obtain the signature of the condemned person in a location designated by the warden; and

2. One (1) attorney representing the condemned person may request phone contact with the condemned person at or near two (2) hours prior to the execution. The call shall be allowed when a break in the execution preparations can be taken without delaying the execution at or near two (2) hours prior to the execution.

3. One (1) attorney representing the condemned person shall be allowed to have phone contact with the condemned person at or near one (1) hour prior to the execution, if requested. The call shall be allowed when a break in the execution preparations can be taken without delaying the execution at or near one (1) hour prior to the execution.

(d) The warden shall notify the condemned person of all requests from an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person for a phone call from the condemned person.

Section 5. (1) An attorney representing the condemned person shall be allowed a space designated by the warden on the day of the execution at the Kentucky State Penitentiary. The space shall include access to a phone and restroom. The attorney shall be escorted to food and drink if needed.

(2) One (1) attorney representing the condemned person shall be allowed to have phone contact with the condemned person, if requested, during a temporary stay that delays the start of the execution.

Section 6. Security and Management Issues. (1) Witnesses may be staged at the discretion of the warden.

(2) The warden may deny entrance to the Kentucky State Penitentiary to any person, including a witness, media representative, or visitor, who is determined to be a security risk or who becomes disruptive while at the penitentiary.

(3) The warden may limit the:

(a) Items brought onto the grounds of the penitentiary;

(b) Areas where persons may enter or remain at the penitentiary; and

(c) Time allowed in an area or on the grounds of the penitentiary.

(4) The warden may in his discretion make an exception to the limitations on visitors in Section 4 of this administrative regulation.

Section 7. Demonstrator Procedures. (1) The warden may designate an area for demonstrators.

(2) A press advisory shall be issued to identify the locations for demonstrators and the time allowed for demonstrations.

Section 8. Notice of Stay. (1) Prior to the day of execution, an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person shall give notice of a stay of execution by providing a copy of the stay to the warden.

(2) On the day of execution, an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person shall give notice of a stay of execution by calling the penitentiary at its main number unless a different phone number is designated by the warden.

(3) If the warden designates a different number, he shall give notice of the designated

phone number to the individual at the phone number provided by an attorney defending the condemned person.

(4) An attorney defending the condemned person shall designate an individual to whom the notice in subsection (3) of this section shall be provided by calling the penitentiary and providing the information to the warden's secretary at least three (3) days prior to the day of execution.

Section 9. Obtaining Medical Records. (1) If an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person provides an appropriate authorization signed by the condemned person to release medical and mental health records to them, the warden shall make the record available for inspection within twenty-four (24) hours.

(2) After an execution order is signed, a request for inspection or copies of the condemned person's medical or mental health records shall be made in writing to the warden. (36 Ky.R. 1560; 2089-M; 2039-A; eff. 5-7-2010; 44 Ky.R. 1887, 2339, 2496; eff. 7-6-2018.)