

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of State Police**  
**(Amendment)**

**502 KAR 50:010. Admissibility of evidence.**

RELATES TO: KRS 16.140

STATUTORY AUTHORITY: KRS 16.140(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.140 establishes a trial board within the Department of State Police to hear charges against officers. KRS 16.140(8) provides that the commissioner may promulgate reasonable rules and administrative regulations governing the procedure before the trial board. This administrative regulation is necessary to define the standards for the admissibility of evidence in proceedings before the trial board.

Section 1. Presiding Officer. The designated members of the trial board will, prior to the beginning of a trial, select one (1) of its members as the presiding officer. The presiding officer may~~[, if desired,]~~ have the assistance of counsel in order to rule on evidentiary or procedural matters. The presiding officer shall not vote or otherwise participate in the trial board's determination of guilt or innocence or in the setting of the punishment, if any.

Section 2. Strict Rules of Evidence Not to Apply. Any evidence which would be admissible under the statutes of the Commonwealth of Kentucky and under the rules of evidence followed by circuit courts of the Commonwealth of Kentucky shall be admitted in hearings before the trial board; however, the presiding officer may admit evidence that would be inadmissible in the courts if the evidence is of the type commonly relied upon by a reasonable, prudent person ~~[men]~~ in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded and the presiding officer shall give effect to the rules of privilege recognized by the laws of the Commonwealth of Kentucky.

Section 3. Discovery. Any officer against whom trial board charges have been filed may discover evidence. Discovery may be accomplished by use of the Open Records Law. Requests for documents shall be directed to the official custodian of records for the Kentucky State Police. Accused officers may also request the commissioner or presiding officer issue a subpoena for documents held by the agency that are relevant to an accused officer's defense. Discovery privileges, including the deliberation process and work product rule, shall be observed.

Section 4. Judicial Notice. The presiding officer may take judicial notice of matters of common knowledge that are beyond reasonable dispute, statutes, and official court records.

Section 5. Interrogation of Witnesses. The rules of law that apply to state court proceedings concerning the manner and scope of examination and cross-examination of witnesses shall apply to trial board proceedings.

Section 6. Impeachment of Witnesses. The rules of law concerning the impeachment of witnesses that apply to state court proceedings shall apply to trial board proceedings.

Section 7. Continuances. (1) A continuance of a scheduled hearing may be granted by the commissioner for good cause.

(2) A request for a continuance shall:

(a) Be made in writing;

(b) State the reason for the request;

(c) Include proposed dates for rescheduling the hearing;

(d) Be filed with the commissioner; and

(e) Be mailed to all parties at least ten (10) days prior to the scheduled hearing.

(3) An objection to a request for a continuance shall:

(a) Be made in writing;

(b) State the reason for the objection to the request for continuance;

(c) Be filed with the commissioner; and

(d) Be mailed to all parties at least five (5) days prior to the scheduled hearing.

(4)(a) The commissioner shall transmit to all parties an order either granting or denying the request for continuance.

(b) If the continuance is granted, the order shall state the date on which the hearing has been rescheduled or that the hearing has been continued generally.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 4:00 p.m. on November 23, 2021 at 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Katherine George, Staff Attorney, 4449 Kit Carson Drive, Funderburk Building, Richmond, Kentucky 40475, phone (859) 622-3801, fax (859) 622-5027, email [katie.george@ky.gov](mailto:katie.george@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Katherine George

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the necessary and appropriate procedures to be utilized before the trial board.

(b) The necessity of this administrative regulation: This regulation is necessary to define the standards for the admissibility of evidence in proceedings before the trial board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation conforms to the authorizing statute by establishing the procedural requirements necessary for the discipline and removal of officers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation clearly outlines the evidentiary and discovery processes used to effectuate trial board proceedings.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment establishes the procedure to follow in order to request the continuance of a proceeding before the trial board.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to streamline the trial board proceeding process and remove the existing ambiguity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statute by more clearly defining the procedural requirements necessary for the discipline and removal of officers.

(d) How the amendment will assist in the effective administration of the statutes: The revised text within the regulation will remove the existing ambiguity as to when a continuance may be requested.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky State Police, the trial board established within the Kentucky State Police, those involved in proceedings with the trial board.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The regulated entities can now effectively ascertain when a continuance may be granted.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Nothing.

(c) As a result of compliance, what benefits will accrue to the entities: The process is now more clearly defined.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment of this administrative regulation does not establish any new fees or increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky State Police, the trial board established within the Kentucky State Police, those involved in proceedings with the trial board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 16.140

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? Nothing.

(d) How much will it cost to administer this program for subsequent years? Nothing.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: None.