

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Protection and Permanency

(Amendment)

922 KAR 1:330. Child protective services.

RELATES TO: KRS 159.140, 194A.005(1), ~~{194A.050(1), }~~202A.011, 211.684, 214.036, 431.600(1), (8), 503.110(1), 508.125(1), 529.010(5), ~~(16){(13)}~~, 532.045, 600.010, 600.020, 605.090(3), 605.130, ~~{605.150(1), }~~610.010(2)(d), (9), 620.010-620.050, 620.070, 620.072, ~~{620.180(1), }~~620.350, 620.990, 42 U.S.C. 5106a

STATUTORY AUTHORITY: KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. KRS 620.180(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 620. KRS 620.029(2)(a) requires the cabinet, in consultation with agencies serving victims of human trafficking, to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, and services. 42 U.S.C. 5106a(b) establishes eligibility requirements for a state to receive a grant for a child abuse and neglect prevention and treatment program. This administrative regulation establishes cabinet procedures, congruent with eligibility requirements under 42 U.S.C. 5106a(b), for a child protection investigation or assessment of abuse, neglect, or dependency.

Section 1. Definitions.

(1) "Alternative response" means a preventive, proactive approach through which the cabinet engages with a family and connects a family to community-based services as an alternative to conducting an investigation.

~~(2) "Assessment" means the collection and analysis of information to determine the strengths and needs of a family in order to provide appropriate services{inform decision-making about or service provision to a child or a family, including:}~~

~~{(a)} [An observable threat or threatening condition to the child's safety;}~~

~~{(b)} [A factor present that increases the likelihood of child abuse, neglect, or dependency; and}~~

~~{(c)} [Child or family strengths and protective capacities].~~

~~(3) {(2)}~~ "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).

~~(4) {(3)}~~ "Caretaker" means a parent, guardian, fictive kin, person in a position of authority or special trust as defined in KRS 532.045(1), or other person exercising custodial control or supervision of a child.

~~(5) {(4)}~~ "Child fatality" is defined by KRS 211.684(1)(a).

~~(6) {(5)}~~ "Child protective services" means preventive and corrective services directed toward:

(a) Safeguarding the rights and welfare of an abused, neglected, trafficked, or dependent child;

(b) Assuring for each child a safe and nurturing home;

(c) Improving the abilities of parents to carry out parental responsibilities;

- (d) Strengthening family life; and
- (e) Assisting a parent or other person responsible for the care of a child in recognizing and remedying conditions detrimental to the welfare of the child.
- (7) ~~((6))~~ "Dependent child" is defined by KRS 600.020(20).
- (8) ~~((7))~~ "Female genital mutilation" is defined by KRS 508.125(1).
- (9) ~~((8))~~ "Human trafficking" is defined by KRS 529.010(7)~~((5))~~.
- (10) ~~((9))~~ "Initial determination" means an evaluation made of risk factors to determine the presence of immediate safety threats and risk factors,~~[of harm]~~ resulting in a decision whether to proceed with an:
 - (a) Investigation; or
 - (b) Assessment.
- (11) ~~((10))~~ "Investigation" means a process of gathering facts and collecting information to evaluate risks and ~~[evaluating risk factors to]~~ determine a finding~~[if a child:]~~
 - ~~((a)) [Has been abused or neglected;]~~
 - ~~((b)) [Is dependent; or]~~
 - ~~((c)) [Is a victim of human trafficking].~~
- (12) ~~((11))~~ "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).
- (13) ~~((12))~~ "No finding" means that the information contained in a report that met criteria to open an investigation has been found to be false or erroneous and no longer meets acceptance criteria.
- (14) ~~((13))~~ "Preponderance of evidence" means that evidence is sufficient to conclude that it is more likely than not that an alleged perpetrator committed an act of child abuse or neglect as defined by KRS 600.020(1).
- (15) ~~((14))~~ "Prior involvement" means any assessment or investigation, of which the cabinet has record, with a child or family in the area of protection and permanency prior to the child's fatality or near fatality investigation.
- (16) ~~((15))~~ "Services needed" means a low risk finding with no perpetrator that indicates a family needs to be linked to community services.
- (17) ~~((16))~~ "Sexual abuse" is defined by KRS 600.020(61).
- (18) ~~((17))~~ "Sexual exploitation" is defined by KRS 600.020(62).
- (19) ~~((18))~~ "Substantiated" means:
 - (a) An admission of abuse or neglect by the person responsible;
 - (b) A judicial finding of child abuse or neglect; or
 - (c) A preponderance of evidence exists that abuse or neglect was committed by the caretaker.
- (20) ~~((19))~~ "Unable to locate" means that:
 - (a) Identifying information about the family is insufficient for locating them; or
 - (b) The family has moved and their new location is not known.
- (21) ~~((20))~~ "Unsubstantiated" means there is insufficient evidence, indicators, or justification present for substantiation of abuse or neglect.
- (22) ~~((21))~~ "Victim of human trafficking" is defined by KRS 529.010(16)~~[529.010(13)]~~.

Section 2. A Report of Child Abuse, Neglect, Human Trafficking, Female Genital Mutilation, or Dependency.

- (1) In accordance with 42 U.S.C. 5106a(b)(2)(B)(i), the cabinet shall accept reports of alleged child abuse, neglect, human trafficking, female genital mutilation, or dependency made pursuant to KRS 620.030.
 - (a) A twenty-four (24) hour on-call response system and the child abuse hotline, for the receipt of emergency reports after normal office hours, shall be made available to those in a community who may have information regarding:
 - 1. Child abuse, neglect, or dependency; or
 - 2. Human trafficking of a child.

(b) Cabinet staff or designee shall attempt to elicit from the person reporting suspected child abuse, neglect, dependency, female genital mutilation, or human trafficking as much information about the child's circumstances as possible, including:

1. Specific information as to the nature and extent of:
 - a. Abuse, neglect, or dependency;
 - b. Female genital mutilation; or
 - c. Human trafficking;
2. The cause of the abuse, neglect, or dependency;
3. The location of the child and family;
4. Knowledge or suspicion of a previous incident;
5. Identifying information regarding a witness to the alleged incident that resulted in the child's condition;
6. An action taken by the reporting person, if applicable;
7. Present danger or threat of danger to the child or cabinet staff; and
8. Information in accordance with KRS 620.030(2) through (4).

(c) The reporting person's identity shall remain confidential, unless ordered to be divulged by a court of competent jurisdiction.

(d) The cabinet shall investigate or accept as an assessment an anonymous report that provides sufficient information regarding an incident involving a child:

1. Who is alleged to be dependent; or
2. And alleged:
 - a. Abuse or neglect perpetrated by a caretaker;
 - b. Female genital mutilation, whether the person alleged to have caused it is a caretaker or not; or
 - c. Human trafficking of the child.

(e) Immunity from liability shall be in accordance with 42 U.S.C. 5106a(b)(2)(B)(vii) and KRS 620.050(1) and (2).

(2) The cabinet shall not undertake an investigation or assessment for a report of abuse or neglect allegedly perpetrated by a non-caretaker, with the exception of a report of human trafficking or female genital mutilation or a joint investigation with law enforcement pursuant to KRS 620.040(3), but shall refer the matter in compliance with KRS 620.030(1).

(3) Pursuant to KRS 620.040(1)(b) and (2)(b), if a report does not meet an acceptance criterion for an investigation or assessment, the cabinet shall:

- (a) Not accept the report for investigation or assessment;
- (b) Refer the caller to a community resource that may meet family needs if available; and
- (c) Keep a record of the report in accordance with 42 U.S.C. 5106a(b)(2)(B)(xii).

(4) Acceptance criteria for an investigation or assessment. The cabinet shall:

(a) Investigate or conduct an assessment upon the receipt of a report of physical abuse if the report alleges:

1. An injury that is, or has been, observed on a child that was allegedly inflicted non-accidentally by a caretaker;
2. Physical abuse if no current observable injury is seen;
3. A child being hit in a critical area of the body, such as the head, neck, genitals, abdomen, or back;
4. Physical injury to a child, as defined by KRS 600.020(49), that is the result of an altercation between the child and the caretaker. The cabinet shall explore the following:
 - a. Age of the child;
 - b. Precipitating factors;
 - c. Degree of appropriateness of force used by the caretaker; and

- d. Need for further services to assist in eliminating violent behavior in the home;
 5. A situation in which a child is likely to be physically abused; or
 6. Physical injury to a child involved in an incident of domestic violence;
- (b) Investigate or conduct an assessment upon receipt of a report that alleges neglect of a child perpetrated by a caretaker that may result in harm to the health and safety of a child in the following areas:
1. Hygiene neglect if:
 - a. A child has physical symptoms that require treatment due to poor care; or
 - b. The child's physical health and safety are negatively affected due to an act or omission by the caretaker;
 2. Supervision neglect if the individual reporting has reason to believe that the physical health and safety of the child is negatively affected by lack of necessary and appropriate supervision;
 3. Food neglect if a child shows symptoms of:
 - a. Malnutrition;
 - b. Dehydration; or
 - c. Not having been provided adequate food for a period of time that interferes with the health needs of the child, based on height or weight norms for the child's age;
 4. Clothing neglect if a child suffers from:
 - a. Illness;
 - b. Exposure; or
 - c. Frostbite due to inadequate clothing provided to the child or the clothing provided is insufficient to protect the child from the elements;
 5. Environmental neglect, if a serious health and safety hazard is present and the caretaker is not taking appropriate action to eliminate the problem;
 6. Educational neglect if the:
 - a. School system has exhausted its resources to correct the problem and complied with its duties pursuant to KRS 159.140; and
 - b. Caretaker's neglect prevents the child from attending school or receiving appropriate education;
 7. Medical neglect, in accordance with 42 U.S.C. 5106a(b)(2)(C), if a child has not received a medical assessment or is not receiving treatment for an injury, illness, or disability that if left untreated may:
 - a. Be life-threatening;
 - b. Result in permanent impairment;
 - c. Interfere with normal functioning and worsen; or
 - d. Be a serious threat to the child's health due to the outbreak of a vaccine preventable disease, unless the child is granted an exception to immunization pursuant to KRS 214.036;
 8. Neglect due to a caretaker's use of drugs or alcohol that results in:
 - a. A child born exposed to drugs or alcohol, as documented by a health care provider pursuant to:
 - (i) 42 U.S.C. 5106a(b)(2)(B)(ii); and
 - (ii) KRS 620.030(2);
 - b. A child's facilitated access to and use of drugs or alcohol that may result in a life-threatening situation for the child; or
 9. Exploitation neglect if the caretaker has:
 - a. Used ~~[Caretaker has used]~~ a child or child's financial resources for personal gain; or
 - b. Enticed ~~[Caretaker has enticed]~~ a child to become involved in criminal activities;~~or]~~

- ~~[c.] [Child is a victim of human trafficking;]~~
- (c) Investigate or conduct an assessment upon the receipt of a report of sexual abuse if the report~~[-]~~
- ~~[1.]~~ Alleges sexual abuse of a child committed or allowed to be committed by a caretaker. An investigation may be conducted without a specific allegation if a child:
1. Has a sexually transmitted disease; or
 2. Exhibits ~~[Alleges a situation in which the factors provided in the report indicate that.]~~
- ~~[a.] [An act of sexual abuse, sexual exploitation, or prostitution involving a child may have occurred; or]~~
- ~~[b.] [The child exhibits]~~ physical or behavioral indicators of sexual abuse;
- (d) Investigate or conduct an assessment upon the receipt of a report that alleges emotional injury or risk of emotional injury to a child by a caretaker pursuant to KRS 600.020(26), for which the cabinet may contract directly if necessary to meet this requirement in a timely manner;~~[-and]~~
- (e) Investigate upon the receipt of a report that alleges human trafficking of a child pursuant to KRS 620.029, whether the alleged perpetrator is a caretaker or not. This shall include:
1. Child sex trafficking when the report includes a sex act involving a child performed in exchange for something of value or the offer or intent to exchange a sex act involving a child for something of value; or
 2. Child labor trafficking when the report includes:
 - a. Labor or services provided by a child; or
 - b. A child being subjected to involuntary servitude, debt, or slavery; and
- (f) Investigate or conduct an assessment upon the receipt of a report that alleges dependency if the report alleges that a child is dependent pursuant to KRS 600.020(20).
- (5) The following criteria shall be used in identifying a report of abuse, neglect, human trafficking, or dependency not requiring a child protective services investigation or assessment:
- (a) The victim of the report of abuse, neglect, human trafficking, or dependency is age eighteen (18) or older at the time of the report;
 - (b) There is insufficient information to locate the child or to explore leads to locate;
 - (c) The problem described does not meet the statutory definitions of abuse, neglect, human trafficking, or dependency;
 - (d) The reporter notifies the cabinet that a child is injured, but the reporter does not allege injuries were the result of abuse or neglect;
 - (e) The report concerns custody changes, custody related issues, or lifestyle issues, without allegations of abuse, neglect, human trafficking, or dependency;
 - (f) Pursuant to KRS 503.110(1), corporal punishment appropriate to the age of the child, without an injury, mark, bruise, or substantial ~~[risk of]~~ harm; or
 - (g) An allegation of spouse abuse to a married youth under the age eighteen (18).
- (6) An abandoned newborn infant pursuant to KRS 620.350 shall be determined to be dependent unless indicators of child physical abuse or child neglect are present.

Section 3. Initial Investigation or Assessment.

- (1) Based upon an accepted report of child abuse, neglect, human trafficking, or dependency, the cabinet shall, in accordance with KRS 620.040(1)(b) or (2)(b), and 42 U.S.C. 5106a(b)(2)(B)(iv), make an initial determination as to the presence of safety threats and risk factors~~[immediate safety and risk of harm]~~ to a child.
- (2) The cabinet shall have face-to-face contact with the child or, in the case of a child fatality, initiate the investigation within four (4) hours after acceptance of the report if a

report of child abuse, neglect, human trafficking, or dependency:

(a) Includes a child who is:

1. The alleged victim of a fatality or near fatality; or
2. A surviving child in the care of the alleged perpetrator of a child fatality or near fatality; or

(b)

1. Involves a child who is:

- a. Under four (4) years of age; or
- b. Unable to verbally or nonverbally communicate the child's needs as provided by the reporting source; and

2. Indicates an immediate safety threat~~[a high risk of harm]~~ to the child due to:

- a. Physical abuse in accordance with Section 2(4)(a) of this administrative regulation;
- b. Supervision neglect in accordance with Section 2(4)(b)2. of this administrative regulation; or
- c. Sexual abuse in accordance with Section 2(4)(c) of this administrative regulation, and the alleged:

(i) Perpetrator has access to the child; or

(ii) Perpetrator's access to the child is unknown by the reporting source.

(3) The cabinet shall have face-to-face contact with the child within twenty-four (24) hours after acceptance of the report, if a report of child abuse, neglect, human trafficking, or dependency:

(a)

1. Indicates the presence of safety threats and risk factors~~[a high risk of harm]~~ to the child; or

2. Alleges the child is the victim of human trafficking or female genital mutilation; and

(b) Criteria of subsection (2) of this section are not met.

(4) If the report of child abuse, neglect, human trafficking, or dependency indicates a moderate level of risk~~[risk of harm]~~ to a child, the cabinet shall have face-to-face contact with the child within forty-eight (48) hours after acceptance of the report.

(5) If the report of child abuse, neglect, human trafficking, or dependency indicates a low level of risk ~~[of harm]~~ to a child, the cabinet shall have face-to-face contact with the child within seventy-two (72) hours after acceptance of the report.

(6) If the report of child abuse, neglect, or dependency is eligible for alternative response, the cabinet shall have face-to-face contact with the child within five (5) working days.

~~(7) [(6)]~~ Cabinet staff shall be permitted to interview an alleged victim of child abuse or neglect without obtaining the consent of the caretaker in accordance with KRS 620.072.

~~(8) [(7)]~~ Cabinet staff may~~[shall]~~ incorporate an unannounced home visit in accordance with ~~[provisions in]~~ KRS 620.072.

~~(9) [(8)]~~ Cabinet staff shall:

(a) Advise the individual under investigation of the complaints or allegations in accordance with 42 U.S.C. 5106a(b)(2)(B)(xviii); and

(b) Notify the parent or legal guardian of the child alleged to be abused, neglected, or dependent pursuant to KRS 620.050(5).

~~(10) [(9)]~~ A written assessment shall:

(a) Be completed by the cabinet on every report that meets acceptance criteria~~[investigation]~~; and

(b) Document efforts if the cabinet is unable to locate the family.

~~(11) [(10)]~~ The cabinet shall provide or make a referral to any community-based service:

(a) Available to a child, caretaker, or a child's family:

1. In accordance with 42 U.S.C. 5106a(b)(2)(B)(v),(vi),(ix),(xi), or (xxi); or

2. Pursuant to KRS 620.029 or 620.040(1)(b) or (2)(b); and
- (b) Necessary to:
 1. Reduce risk to a child; and
 2. Provide family support.
- ~~(12)~~ ~~{(11)}~~ The cabinet shall make a referral for early intervention services pursuant to 42 U.S.C. 5106a(b)(2)(B)(xxi) for a child under the age of three (3) who is involved in a substantiated case of abuse or neglect.
- ~~(13)~~ ~~{(12)}~~
 - (a) The cabinet may develop a plan for services at any point during an investigation or assessment to protect the health and safety of a child.
 - (b) The plan shall be:
 1. Developed in conjunction with a family and the family's identified support system;
 2. Agreed upon by the participants;
 3. Signed by all parties identified to participate in the plan, unless a party is unwilling or unable to sign; and
 4. Provided to all participants.
- ~~(14)~~ ~~{(13)}~~ If an investigation or assessment is conducted as a result of a child being referred pursuant to Section 2(4)(b)8. of this administrative regulation, the cabinet shall develop a plan in accordance with 42 U.S.C. 5106a(b)(2)(B)(iii).
- ~~(15)~~ ~~{(14)}~~ Collateral contact shall be made pursuant to KRS 620.030, 620.040, and 620.050.
- ~~(16)~~ ~~{(15)}~~
 - (a) A medical or psychological examination may be required if a report of female genital mutilation; human trafficking; or child abuse, neglect, or dependency alleges that a child has suffered physical or sexual harm or emotional injury.
 - (b) A medical examination shall be conducted in accordance with KRS 620.050(14).
- ~~(17)~~ ~~{(16)}~~ Cabinet staff shall coordinate an investigation with a children's advocacy center governed by 922 KAR 1:580, in accordance with KRS 620.040(6) and (7).
- ~~(18)~~ ~~{(17)}~~ Pursuant to KRS 620.030(6), an agency, institution, or facility serving the child or family shall provide cooperation, assistance, and information necessary for the cabinet to conduct an investigation or assessment.
- ~~(19)~~ ~~{(18)}~~ Photographs may be taken of a child or a child's environment during a protective services investigation or assessment in accordance with KRS 620.050(14).
- ~~(20)~~ ~~{(19)}~~ An interview with a child shall be conducted pursuant to KRS 620.040(6).
- ~~(21)~~ ~~{(20)}~~
 - (a) A child sexual abuse, female genital mutilation, or human trafficking investigation shall be conducted jointly with law enforcement and other multidisciplinary team members pursuant to KRS 431.600(1) and (8), 620.040(3), and 42 U.S.C. 5106a(b)(2)(B)(xi).
 - (b) The cabinet's primary responsibility shall be the protection of the child.
- ~~(22)~~ ~~{(21)}~~ If there is reason to believe a child is in imminent danger, or if a parent or caretaker of a child refuses the cabinet entry to a child's home or refuses to allow a child to be interviewed, the cabinet may request assistance:
 - (a) From law enforcement; or
 - (b) Through a request for a court order pursuant to KRS 620.040(5)(a).
- ~~(23)~~ ~~{(22)}~~
 - (a) If the court issues a search warrant for execution by law enforcement, cabinet staff may accompany law enforcement officers.
 - (b) Except as provided in KRS 605.090(3), the cabinet shall not remove a committed child from the child's home without a court order.

(24) ~~[(23)]~~ At the request of law enforcement, the cabinet shall, pursuant to KRS 620.040(3):

- (a) Provide assistance in interviewing an alleged child abuse victim in a non-caretaker~~[noncaretaker]~~ report; and
- (b) Not be the lead investigator in a non-caretaker~~[noncaretaker]~~ investigation.

Section 4. Alleged Perpetrators of Abuse or Neglect Age Twelve (12) to Eighteen (18).

- (1) A report of child abuse or neglect involving alleged perpetrators in a caretaking~~[care-taking]~~ role age twelve (12) to eighteen (18) shall be subject to investigation or assessment.
- (2) If substantiated, a child age twelve (12) to eighteen (18) shall be identified as the alleged perpetrator.

Section 5. Child Fatality or Near Fatality Investigations.

- (1) The cabinet shall investigate a report of child fatality or near fatality alleged to be the result of abuse or neglect in accordance with KRS 620.040.
- (2) If there is a surviving child in the care of the alleged perpetrator, the cabinet shall determine the safety of the surviving child through immediate assessment in accordance with this administrative regulation.
- (3) If a child fatality or near fatality allegedly due to abuse or neglect occurs, cabinet staff shall immediately notify the service region administrator or designee.
- (4) If a fatality or near fatality occurs to a child in the custody of the cabinet in an out-of-home placement, the cabinet shall make an immediate effort to notify:
 - (a) The biological or legal parents; and
 - (b) The Office of the Director of the Division of Protection and Permanency.
- (5) If parental rights have been terminated, and there are special circumstances including ongoing contact with the child, the cabinet shall notify a child's biological or legal parents of the child's fatality or near fatality.
- (6) The cabinet shall notify the Department of Public Advocacy, Protection and Advocacy Division, in the Justice and Public Safety Cabinet if:
 - (a)
 - 1. A child identified as a protection and advocacy client dies as a result of alleged abuse or neglect; and
 - 2. The alleged perpetrator is a person exercising custodial control or supervision; or
 - (b) A child fatality has occurred as a result of:
 - 1. Placement in ~~ta~~seclusion ~~room~~ pursuant to 922 KAR 1:300~~[1:390]~~; or
 - 2. Physical management applied pursuant to 922 KAR 1:300.
- (7) The cabinet shall notify the following persons, in writing, of a fatality of a child in the custody of the cabinet:
 - (a) Judge of the committing court; and
 - (b) Guardian ad litem for the deceased child.
- (8) The cabinet may make public disclosure of a fatality or near fatality in accordance with:
 - (a) KRS 620.050(5) and (12); and
 - (b) 42 U.S.C. 5106a(b)(2)(B)(x).
- (9) If the alleged perpetrator was not a caretaker, notification of the child fatality or near fatality shall be in accordance with KRS 620.030(1).
- (10) The cabinet shall:
 - (a) Be in compliance with KRS 620.050(12) in cases where the cabinet has had prior involvement; and
 - (b) Provide annual reporting in accordance with 42 U.S.C. 5106a(d)(4)(5)(6)(11).
- (11) If a child fatality or near fatality occurs in a licensed facility, the cabinet shall notify the licensing authority in accordance with 42 U.S.C. 5106a(b)(2)(B)(ix).

Section 6. Reports of Child Abuse, Neglect, Human Trafficking, or Dependency in Cabinet-approved Homes or Licensed Facilities.

(1) Pursuant to KRS 620.030(6), the cabinet shall have the authority to obtain necessary information to complete an investigation in a report of child abuse, neglect, human trafficking, or dependency in a:

- (a) Child-caring facility licensed in accordance with 922 KAR 1:300 or its subcontractor;
- (b) Child-placing agency licensed in accordance with 922 KAR 1:310 or its subcontractor;
- (c) Child-care center licensed in accordance with 922 KAR 2:090;
- (d) Family child-care home certified in accordance with 922 KAR 2:100;
- (e) Child care provider registered in accordance with 922 KAR 2:180; or
- (f) Foster, adoptive, or respite care provider home approved pursuant to 922 KAR 1:350.

(2) If a report of alleged child abuse, neglect, human trafficking, or dependency in a home approved pursuant to 922 KAR 1:310 or 922 KAR 1:350 is accepted, the designated cabinet staff shall:

- (a) Immediately contact the service region administrator or designee; and
- (b) Assign staff to conduct the investigation.

(3) If a report of alleged child abuse or neglect in a licensed child-care center, a certified family child-care home, or a registered child care provider is accepted, cabinet staff shall:

- (a) Notify the cabinet's Division of Child Care to share information and request assistance in locating alternate care if needed; and
- (b) Conduct an investigation.

(4) If a report of alleged child abuse or neglect in a licensed child-caring facility, child-placing agency placement, certified family child-care home, or licensed child-care center is accepted, cabinet staff shall:

- (a) Notify the Office of the Inspector General, Division of Regulated Child Care; and
- (b) Conduct an investigation.

1. If possible, an investigation shall be coordinated and conducted jointly with the Division of Regulated Child Care. However, if not possible, the cabinet shall proceed with an investigation.

2.

- a. An entrance interview with the facility administrator or designee shall be conducted; and
- b. The nature of the report shall be outlined without disclosing the name of the reporting source.

3. If the cabinet substantiates the report of child abuse or neglect and the alleged perpetrator is an employee of the facility, the cabinet shall notify the provider or program director within thirty (30) working days, unless a necessary extension is granted by the designated cabinet staff in a supervisory role.

(5) The cabinet shall share written findings of an investigation with the Division of Child Care for a:

- (a) Licensed child-care center;
- (b) Certified family child-care home; or
- (c) Registered child care provider.

(6) The cabinet shall share written findings of an investigation with the Office of the Inspector General for a:

- (a) Licensed child-care center;
- (b) Certified family child-care home;
- (c) Registered child care provider;
- (d) Licensed child-caring facility; or

(e) Licensed child-placing agency.

(7) As soon as practical after a determination has been made that a child is in imminent danger or that a child needs to be removed, verbal or written notification shall be provided to the Division of Child Care or to the Office of the Inspector General.

Section 7. Interviewing a Child in a School Setting.

(1) Pursuant to KRS 620.030(6) and 620.072(4), the cabinet may, upon receipt of a report of child abuse or neglect, initiate an investigation or assessment at a school, which may include the review and copying of relevant school records pertaining to the child.

(2) If initiating an investigation or assessment at a school, the cabinet shall:

(a) Inform appropriate school personnel of the need to interview a child regarding the report; and

(b) Give necessary information concerning the allegation and investigation only to school personnel with a legitimate interest in the case.

Section 8. Investigation of an Employee of the School System. If a report of child abuse or neglect involving school personnel is accepted, the following shall apply:

(1) An investigation shall be conducted;

(2) If the allegation is made about a school employee in a caretaker role of a child, the cabinet shall, if possible, conduct an interview away from the school grounds, with each of the following persons:

(a) The child;

(b) The parent or legal guardian;

(c) The alleged perpetrator; and

(d) Other collateral source, if any, in accordance with Section 3(~~15~~)(~~14~~) of this administrative regulation;

(3) The findings shall be shared with the custodial parent or guardian and the alleged perpetrator;

(4) The cabinet shall notify the appropriate supervisor of the alleged perpetrator, in writing, of the following:

(a) That an investigation has been conducted;

(b) The results of the investigation; and

(c) That the alleged perpetrator has the right to appeal pursuant to 922 KAR 1:480; and

(5) A person desiring other information shall employ the open records procedure, as described in 922 KAR 1:510.

Section 9. Written Notice of Findings of Investigation. The cabinet shall provide notification to specified government officials in accordance with KRS 620.040(1) or (2) and 42 U.S.C. 5106a(b)(2)(B)(ix).

Section 10. Substantiation Criteria and Submission of Findings.

(1) The cabinet shall use the definitions of "abused or neglected child" in KRS 600.020(1) in determining if an allegation is substantiated.

(2) A finding of an investigation or assessment shall be based upon the:

(a) Information and evidence collected by the cabinet during the report's investigation or assessment; and

(b) Condition that is present, rather than an action taken to remediate an issue or concern pertaining to a child's health, safety, or welfare.

(3) Cabinet staff may find and substantiate abuse or neglect, or make a services needed finding, at any point during an investigation or assessment or prior to case closure and aftercare planning in accordance with Section 12 of this administrative regulation, if preponderance of the evidence exists.

(4)

- (a) At the completion of an investigation or assessment involving a caretaker, the cabinet shall make a finding of:
1. Unsubstantiated child abuse or neglect;
 2. Substantiated child abuse or neglect;
 3. Child fatality or near fatality related to abuse or neglect;
 4. Unable to locate the child;
 5. Services needed for the child or child's family, which may include a dependent child;
 6. No finding; or
 7. Closed, which may include completed service provision.
- (b) At the completion of an investigation involving human trafficking or female genital mutilation of a child by a non-caretaker, the cabinet shall make a finding of:
1. Confirmed;
 2. Not confirmed; or
 3. Unable to locate the child.
- (5) A cabinet finding shall not be a judicial finding.
- (6) The cabinet staff's supervisor or designee shall review and approve the final finding of the investigation or assessment.
- (7) Upon approval of the finding by designated cabinet staff in a supervisory role, the cabinet shall send a notice of finding and notice of the perpetrator's right to appeal in accordance with 922 KAR 1:480, Section 2, to the alleged or substantiated perpetrator by certified mail to the last known address of the perpetrator.
- (8) Upon approval of the finding by designated cabinet staff in a supervisory role, the cabinet shall:
- (a) Send a notice of finding to the child's parent or guardian by certified mail; or
 - (b) Give a notice of finding to the parent or guardian, in person, with the parent or guardian and a witness signature to document receipt of the notice.
- (9) The cabinet's notice of a substantiated finding of child abuse or neglect shall include:
- (a) The factual basis for the finding of child abuse or neglect;
 - (b) The results of the investigation;
 - (c) Information about the perpetrator's right to appeal the substantiated finding in accordance with 922 KAR 1:480; and
 - (d) A statement informing the perpetrator that the perpetrator's name shall be added to the central registry in accordance with 922 KAR 1:470.

Section 11. Appeals.

- (1) The perpetrator of a substantiated finding of child abuse or neglect may request a hearing in accordance with 922 KAR 1:480.
- (2) A person may have additional hearing rights as specified in 922 KAR 1:320.

Section 12. Closure.

- (1)
 - (a) A decision to close a child protective services case shall be based on evidence that the factors resulting in the child abuse, neglect, human trafficking, or dependency have been resolved to the extent that the family is able to:
 1. Protect the child; and
 2. Meet the needs of the child.
 - (b) Prior to a case's closure in accordance with paragraph (a) of this subsection, designated cabinet staff in a supervisory role shall review and agree to the decision to close the child protective services case.
- (2) If the cabinet does not have the authority to obtain court-ordered cooperation from a family, the cabinet shall close the child protective services investigation or assessment.

- (3) Unless court-ordered cooperation from the family cannot be obtained in accordance in subsection (2) of this section, a child protective services case shall not be closed if withdrawal of services places a child at risk of abuse, neglect, or dependency.
- (4) A family shall be:
 - (a) Notified in writing of the decision to close the protective services case; and
 - (b) Advised of the right to a fair hearing in compliance with 922 KAR 1:320, Section 2.
- (5) Aftercare planning shall link a family to community resources for the purpose of continuing preventive measures if the cabinet discontinues services in accordance with this section.
- (6) An aftercare plan shall be developed upon the completion of an investigation or assessment, if an issue or concern identified by the cabinet falls below the level that triggers a protection services case being opened.
- (7)
 - (a) When it is determined that a protective services case is appropriate for closure, the cabinet shall work with the family to develop the aftercare plan.
 - (b) The focus of the aftercare plan shall be to prevent a recurrence of abuse, neglect, or dependency to the child in the home.
- (8) The cabinet may open a child protective services case in accordance with 922 KAR 1:140, 1:400, or 1:430.
- (9) The cabinet may request the assistance of a court of competent jurisdiction to protect the child in accordance with KRS 620.070.

LESA DENNIS, Acting Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 26, 2023

FILED WITH LRC: February 2, 2023 at 2:15 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on April 24, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by April 17, 2023, five (5) 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 attends virtually 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 this proposed administrative regulation until April 30, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes cabinet procedures, congruent with eligibility requirements under 42 U.S.C. 5106a(b), for a child protection investigation or assessment of abuse, neglect, human trafficking, or dependency.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary in order to establish child protective services procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation assists with the effective administration of the statutes by establishing cabinet procedures for a child protection investigation or assessment of abuse, neglect, human trafficking, or dependency, consistent with KRS 620.180(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. KRS 620.180(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 620, which relate to child abuse, neglect, human trafficking, dependency, and female genital mutilation. KRS 620.029(2)(a) requires the cabinet, in consultation with agencies serving victims of human trafficking, to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, and services.

(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:

This amendment elevates and improves the Department for Community Based Services (DCBS) response to human trafficking and moves reports of human trafficking from being considered as exploitation neglect to a separate, specific offense. The proposed administrative regulation clarifies that, for purposes of this administrative regulation, human trafficking includes child sex trafficking or child labor trafficking. This amendment also defines alternative response, a preventive and proactive approach through which the cabinet engages with a family and connects a family to community-based services as an alternative to conducting a child protective services investigation. DCBS intends to begin implementing alternative response over the next year.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary in order to reflect the department's response to human trafficking reports related to child sex trafficking and child labor trafficking. Reports of alleged human trafficking of children continue to increase every year, with 344 reports received in the 2022 reporting period. Of these reports, 332 involved child sex trafficking and 12 involved child labor trafficking. The

department has worked to improve report screening, investigative findings, and trainings related to human trafficking. Increased identification of human trafficking and assessment of victims' and families' needs support the development of a robust service array to meet the needs of these survivors.

(c) How the amendment conforms to the content of the authorizing statutes:

This amendment conforms to the content of the authorizing statutes through its enhancement and clarity of cabinet procedures pertaining to the investigation and assessment of child abuse, neglect, human trafficking, and dependency.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment is necessary for consistency with related Kentucky Revised Statutes related to child protective services reports of human trafficking.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

In State Fiscal Year 2022, the cabinet received 121,673 child protective services reports with nearly 98,518 meeting the screening acceptance criteria. Of those, 7,601 resulted in a substantiated finding of child abuse, neglect, or dependency. Also 1,884 reports resulted in a finding of services needed. DCBS received 344 reports of alleged human trafficking - child sex trafficking or child labor trafficking - in the 2022 reporting period. These reports involved 399 alleged child victims.

(4) Provide an analysis of how the entities identified in question (3) 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 that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Child protective services will investigate or conduct an assessment upon the receipt of a report that alleges the human trafficking of a child pursuant to KRS 620.029, whether the alleged perpetrator is a caretaker or not. This amendment also provides minimal flexibility necessary for the department to implement alternative response for reports not requiring investigation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Regulated entities will not incur a new or additional cost. Costs to the department will be absorbed within current appropriations.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Individuals who suspect that a child is a victim of human trafficking are able to make a report to the cabinet, and the cabinet is authorized to proceed in the case regardless of whether the person believed to have caused the human trafficking is the child's caretaker. The amendment will result in increased identification of human trafficking and assessment of victims' and families' needs to better support trafficking survivors.

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

(a) Initially:

Costs to the department will be absorbed within current appropriations, but no new costs are anticipated.

(b) On a continuing basis:

The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The cabinet's provision of child protective services is funded by the federal Social Services Block Grant, General Funds, and Agency Restricted Funds derived from Medicaid. Child protective and other child welfare services are further enhanced and supported by funding made available through federal grants authorized through Title IV of the Social Security Act, including Child Abuse Prevention and Treatment Act as amended.

(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:

An increase in fees or funding is not necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

42 U.S.C. 5106a(b).

(2) State compliance standards.

KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1).

(3) Minimum or uniform standards contained in the federal mandate.

42 U.S.C. 5106a(b).

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

This administrative regulation imposes stricter requirements than those required by the federal mandate regarding human trafficking, but consistent with state law.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

The requirements relating to human trafficking reports are needed for compliance with state law.

FISCAL NOTE

(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 Cabinet for Health and Family Services, Department for Community Based Services, will be impacted by the amendment to this administrative regulation.

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

42 U.S.C. 5106a(b), KRS 194A.050(1), 605.150(1), 620.029(2)(a), 620.180(1).

(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.

(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?

The amendment to this administrative regulation will not generate any revenue for state or local government.

(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?

The amendment to this administrative regulation will not generate any revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year?

The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(d) How much will it cost to administer this program for subsequent years?

The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body, this program is administered with federal Social Services Block Grant, General Funds, and Agency Restricted Funds derived from Medicaid. Child protective and other child welfare services are further enhanced and supported by funding made available through federal grants authorized through Title IV of the Social Security Act, including Child Abuse Prevention and Treatment Act as amended.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

This administrative regulation does not include cost savings for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

Cost savings are not anticipated.

(c) How much will it cost the regulated entities for the first year?

There are no additional costs associated with this amendment.

(d) How much will it cost the regulated entities for subsequent years?

There are no additional costs associated with this amendment.

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

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] No, this administrative regulation is not anticipated to have a major economic impact to regulated entities.