

JUSTICE AND PUBLIC SAFETY CABINET

Department of Juvenile Justice (New Administrative Regulation)

505 KAR 1:400. Behavior management and progressive discipline.

RELATES TO: KRS 15A.065, 15A.0652, 15A.067, 200.080-200.120, Chapters 600-645

STATUTORY AUTHORITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 605.150, 635.095, 635.100(7), 640.120, 645.250

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.065(1), 15A.0652, 15A.067, 15A.160, 15A.210, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs. This administrative regulation establishes the procedures for the use of incentives and progressive discipline for juveniles in department facilities.

Section 1. General Provisions.

(1) A juvenile shall be made aware of the rules of the facility and the discipline imposed for violating these rules upon admission or as part of the orientation process. The rules and progressive discipline shall also be included in the handbook and conspicuously posted in the facility. Material shall either be written or interpreted to ensure understanding by the juvenile. Foreign language interpretation shall be provided for the juvenile if a language barrier exists.

(2) Discipline shall not:

- (a) Be used as a means to demonstrate a staff member's authority over a juvenile;
- (b) Be physically abusive, verbally abusive, or used to dehumanize or humiliate a juvenile;
- (c) Include the withholding of meals, snacks, educational access, required recreation; or
- (d) Include the use of restraints.

Section 2. Incentives.

(1) A juvenile in the custody of the department who demonstrates compliance with the rules shall earn appropriate and available incentives. For incentives, staff shall set goals for juveniles to meet individually or as a group to qualify for an incentive. Eligible juveniles shall be informed of the goal required for the incentive by providing the information in writing, posting it, or being informed orally.

(2) Incentives may include:

- (a) Extra recreation time;
- (b) Special events participation;
- (c) Later bedtime;
- (d) Extra movie;
- (e) Additional television time;
- (f) Group recreation;
- (g) Additional telephone time;
- (h) Computer time;
- (i) Additional time on a favorite project;
- (j) Special visits with siblings and significant others;
- (k) Wearing personal clothing at a designated time, but not in detention centers;
- (l) Special snacks;
- (m) Ability to purchase items from the canteen; and
- (n) Other rewards that are suitable for the juvenile's level or facility.

(3) For youth development centers and group homes, incentives may include field trips or additional community contacts if appropriate. These incentives shall be consistent with the treatment level expectations in 505 KAR 1:370, and require recommendation from the treatment team, approval from the superintendent or designee, and facilities regional administrator.

Section 3. Minor Rule Violations.

(1) Consequences for a minor rule violation shall be an immediate response to a juvenile's behavior and not require a disciplinary review. Discipline shall be reasonably time-limited.

(2) A minor rule violation shall include the following:

- (a) Minor destruction of property (including tampering with property);
- (b) Bullying;
- (c) Disorderly conduct;
- (d) Horseplaying;
- (e) Racism, prejudice, or sexist comment of any kind;
- (f) Showing, writing, or demonstrating gang signs or affiliations in any fashion;
- (g) Unauthorized trading, lending, or borrowing between juveniles;
- (h) Tattooing oneself or others;
- (i) Inappropriate sexual behavior (to include gestures, comments, or sexually acting out); and
- (j) Other similarly minor violations of other rules posted at or provided to a juvenile at a facility.

(3) Discipline for a minor rule violation may include:

- (a) Removal of a privilege;
- (b) Loss of an activity;
- (c) Early bedtime;
- (d) Removal from the group;
- (e) Placement on a behavior contract;
- (f) Written treatment assignments; and
- (g) Use of staff directed time out.

Section 4. Major Rule Violations for Detention, Youth Development Centers, and Group Homes.

(1) If a juvenile engages in behavior that is a major rule violation, the juvenile shall be issued a penalty slip or disciplinary review notice within twenty-four (24) hours of the violation or once staff becomes aware of the violation.

(2) A major rule violation shall include the following:

- (a) Escape;
- (b) Attempted escape, plotting, or assisting in escape;
- (c) Physical or sexual assault;
- (d) Major property damage;
- (e) Possession of contraband;
- (f) Physical restraint;
- (g) Riot or inciting a riot;
- (h) Theft;
- (i) Unauthorized use of drugs, alcohol, intoxicants, or unauthorized use of medication;
- (j) Chronic program disruption; and
- (k) Commission of any crime under Kentucky law.

Section 5. Loss of Privileges. A juvenile may lose privileges by failing to comply with department and facility rules. Privileges may include:

- (1) Television time;

- (2) Group recreation;
- (3) Telephone time;
- (4) Computer time;
- (5) Gaming system time;
- (6) Music listening time;
- (7) Room time;
- (8) Group movie night;
- (9) Games; and
- (10) Other privileges suitable for the juvenile's level or facility.

Section 6. Time-out. If a juvenile is placed in a staff directed time out:

- (1) The time out shall not exceed sixty (60) minutes;
- (2) The door shall not be shut;
- (3) The juvenile shall participate in determining the end of the timeout; and
- (4) Upon completion of the time out period, the juvenile shall discuss the situation with a staff member.

Section 7. Intensive Room Supervision.

- (1) Intensive room supervision shall only be used:
 - (a) For a juvenile who is showing or expressing a behavior that is a safety or security threat to the program;
 - (b) As a less restrictive attempt to avoid a locked isolation placement; or
 - (c) As a step-down from an isolation placement.
- (2) Intensive room supervision shall not last longer than four (4) hours without authorization of the superintendent or administrative duty officer, and shall not exceed twenty-four (24) hours.
- (3) Release criteria shall include whether the juvenile:
 - (a) Has regained control of their behavior; and
 - (b) Is no longer a threat to the security, safety, or orderly management of the facility.
- (4) Intensive room supervision shall not apply to a group home or day treatment program.

Section 8. Room Restriction.

- (1) Room restriction shall not exceed twelve (12) hours, without authorization of the superintendent or ADO, and shall not exceed twenty-four (24) hours.
- (2) Release criteria shall include whether the juvenile:
 - (a) Has regained control of their behavior;
 - (b) Is acting according to the terms of the plan for release; and
 - (c) Is no longer a threat to the security, safety, or orderly management of the facility.
- (3) If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released from room restriction.
- (4) In a juvenile detention center and Level 4 YDC, the door shall be shut, but not locked for room restriction. In a group home or other YDC, the door shall be open.

Section 9. Room Confinement.

- (1) Room confinement shall only be used in a Level 4 YDC or juvenile detention center for de-escalation and as a less restrictive placement for a juvenile who is showing or expressing a behavior that could warrant an isolation placement.
- (2) It shall only be used during operational hours when a counselor is present.
- (3) During room confinement, the door shall be shut and locked.
- (4) Room confinement shall not last longer than four (4) hours and the juvenile shall not be placed on room confinement more than one (1) time in a twenty-four (24) hour period.
- (5) At initial placement and within two (2) hours of placement on room confinement, a professional review shall be conducted by a juvenile counselor or the treatment director with the juvenile to counsel the juvenile and plan for release to the general population.

- (6) When a juvenile is placed in room confinement, a plan for release of the juvenile from room confinement shall be made. The plan shall:
 - (a) State the behavioral expectations required for release from room confinement;
 - (b) Be explained to the juvenile by staff; and
 - (c) Be signed by the juvenile. If a juvenile refuses to sign, the plan shall be explained orally by a non-involved staff member and witnessed by a third party.
- (7) Release criteria shall include whether the juvenile:
 - (a) Has regained control of their behavior;
 - (b) Is acting according to the terms of the plan for release; and
 - (c) Is no longer a threat to the security, safety, or orderly management of the facility.
- (8) If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released from room confinement.
- (9) Room confinement shall only apply to a Level 4 youth development center and a juvenile detention center.

Section 10. Unit Restriction.

- (1) Unit restriction shall not exceed forty-eight (48) hours without a disciplinary review being conducted by the treatment team.
- (2) The door shall not be locked.
- (3) When a juvenile is placed in unit restriction, a plan for release of the juvenile from unit restriction shall be made. The plan shall:
 - (a) State the behavioral expectations required for release from unit restriction;
 - (b) Be explained to the juvenile by staff; and
 - (c) Be signed by the juvenile. If a juvenile refuses to sign, the plan shall be explained orally by a non-involved staff member and witnessed by a third party.
- (4) Release criteria shall include whether the juvenile:
 - (a) Has regained control of their behavior;
 - (b) Is acting according to the terms of the plan for release; and
 - (c) Is no longer a threat to the security, safety, or orderly management of the facility.
- (5) If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released from unit restriction.

Section 11. Unit Confinement.

- (1) Unit confinement shall not exceed five (5) days without a disciplinary review being conducted by the treatment team.
- (2) The unit door shall be locked.
- (3) If a juvenile is placed in unit confinement, a plan for release of the juvenile from unit confinement shall be made. The plan shall:
 - (a) State the behavioral expectations required for release from unit confinement;
 - (b) Be explained to the juvenile by staff; and
 - (c) Be signed by the juvenile. If a juvenile refuses to sign, the plan shall be explained orally by a non-involved staff member and witnessed by a third party.
- (4) Release criteria shall include whether the juvenile:
 - (a) Has regained control of their behavior;
 - (b) Is acting according to the terms of the plan for release; and
 - (c) Is no longer a threat to the security, safety, or orderly management of the facility.
- (5) If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released from unit confinement.

Section 12. Facility Restriction.

- (1) Facility restriction shall not exceed forty-eight (48) hours without a disciplinary review being conducted by the treatment team.

- (2) If a juvenile is placed in facility restriction, a plan for release of the juvenile from facility restriction shall be made. The plan shall:
 - (a) State the behavioral expectations required for release from facility restriction;
 - (b) Be explained to the juvenile by staff; and
 - (c) Be signed by the juvenile. If a juvenile refuses to sign, the plan shall be explained orally by a non-involved staff member and witnessed by a third party.
- (3) Release criteria shall include whether the juvenile:
 - (a) Has regained control of their behavior;
 - (b) Is acting according to the terms of the plan for release; and
 - (c) Is no longer a threat to the security, safety, or orderly management of the facility.
- (4) If the juvenile is under reasonable control and demonstrating behavior according to the terms of the plan for release, the juvenile shall be released from facility restriction.

Section 13. Isolation may only be used in juvenile detention centers and YDCs and shall require approval from the superintendent, shift supervisor, or other designee prior to use. If prior authorization cannot be obtained without jeopardizing safety and security, authorization shall be obtained immediately following the safe securing of the juvenile. Facilities shall follow proper time limits if using isolation as discipline as established in 505 KAR 1:410.

Section 14. Safety and Security Responses. Approved safety and security responses shall not be used as punishment and shall only be imposed if there is a threat to the overall safety and orderly operation of the facility. Approved safety and security responses may include room, unit or facility lockdown. The lockdown shall last until the security threat has passed. Unit lockdown and facility lockdown shall only apply to juvenile detention centers and Level 4 YDCs.

Section 15. Dangerous or Chronic Behavior.

- (1) For YDCs and group homes, the treatment team shall develop an individual program plan for a juvenile with assaultive behavior, chronic program disruption, or who presents a danger to themselves or others.
- (2) The superintendent or shift supervisor may order immediate separation of a juvenile from the general population to allow for individualized attention for the behaviors in subsection (1) of this section. The treatment director shall be consulted immediately.
- (3) Separation from the general population beyond twenty-four (24) hours shall require approval by the superintendent and the treatment director. The chief of mental health services and regional psychologist shall be consulted.
- (4) This action shall be reviewed by the treatment team within seventy-two (72) hours.
- (5) A juvenile shall be returned to their original status once the expectations stated in the IPP are met.

Section 16. Investigation.

- (1) An investigation shall be conducted for all alleged major rule violations that occur at a juvenile detention center, youth development center, or group home.
- (2) A juvenile who violates a major rule at a detention center shall be given a copy of the disciplinary review notice and incident report. A juvenile who violates a major rule at a YDC or group home shall receive a penalty slip with the alleged violation and any immediate actions taken by staff to control and de-escalate the situation.

Section 17. Disciplinary Review.

- (1) A disciplinary review for a major rule violation shall be conducted in a:
 - (a) YDC and GH, by the treatment team within seven (7) business days after the penalty slip is issued; and

- (b) Detention center, by the disciplinary review committee within twenty-four (24) to seventy-two (72) hours from the infraction.
- (2) Postponement of the review may occur if there is justifiable cause.
- (3) The juvenile shall be given written notice of the disciplinary review twenty-four (24) hours prior to the disciplinary review, unless the juvenile:
 - (a) Signs a waiver to allow the review to take place sooner; or
 - (b) Has waived the right to a review.
- (4) The juvenile shall be present during the disciplinary review unless the juvenile's behavior justifies exclusion or the juvenile waived the right to be present. The juvenile may be excluded during testimony of any juvenile whose statement is given in confidence.
- (5) A staff member may represent the juvenile at the disciplinary review if the juvenile requests the representation or if the juvenile is incapable of self-representation.
- (6) The juvenile may make a statement, present evidence, or request witnesses on the juvenile's behalf.
- (7) The disciplinary review determination shall be based solely on all of the information obtained during the disciplinary review process including staff reports; the statements of the juvenile charged with the violation; evidence derived from witnesses, records, or other sources; and any impact that a disability may have on the juvenile's behavior.
- (8) At the disciplinary review, the violation may be removed from the juvenile's file if it is determined that the violation did not occur. Discipline may be imposed against the juvenile in compliance with this administrative regulation, if it is determined that the violation occurred.

Section 18. Violation Decision.

- (1) The discipline to be imposed shall be determined during the disciplinary review.
- (2) The treatment team or disciplinary review committee shall determine the appropriate progressive discipline to be imposed based on the frequency, length, and gravity of the violation, the juvenile's acceptance of responsibility and attempts to correct the behavior, current or previous behavioral health concerns, and other recent violations. Gravity shall be considered the most significant category as it relates to the protection of the juvenile, staff, and facility. Priority shall be given to facility and juvenile safety. All discipline shall be logical, proportional, timely, and consistent with the juvenile's individual treatment plan.
- (3) Except for detention centers, a juvenile who does not complete required discipline shall advance through the level system in 505 KAR 1:370, but shall not be eligible for development or demonstration level privileges until discipline is complete.
- (4) The treatment team or disciplinary review committee shall be responsible for making all treatment decisions regarding a juvenile in response to the major rule violation, changes in the ITP, or recommendation for transfer.

Section 19. Disciplinary Review Appeal.

- (1) A juvenile may appeal a disciplinary review decision within fourteen (14) days of receipt of the treatment team's or disciplinary review committee's decision. The appeal shall be in writing to the superintendent. The superintendent shall make a decision on the appeal within thirty (30) days of receipt.
- (2) If the superintendent reverses the treatment team's or disciplinary review committee's decision and finds that the juvenile is not responsible for any or all of the alleged rule infractions, the assigned consequences shall be ordered lifted or adjusted accordingly. The incident or disciplinary report shall be removed from the juvenile's individual client record.

VICKI REED, Commissioner

APPROVED BY AGENCY: May 15, 2023

FILED WITH LRC: May 15, 2023 at 3:59 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. 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 was received by that date, the hearing may be cancelled. 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 August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person

CONTACT PERSON: Amy Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the procedures for the use of incentives and progressive discipline for juveniles in department facilities.

(b) The necessity of this administrative regulation:

This administrative regulation meets statutory authorization or requirements in KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 for administrative regulations.

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

KRS 15A.065(1), 15A.0652, 15A.160, 605.150, 635.095, and 640.120 authorize the Justice and Public Safety Cabinet and the Department of Juvenile Justice to promulgate administrative regulations for the proper administration of the cabinet and its programs.

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

The regulation provides direction and information to department staff and juveniles concerning the procedures that govern operations of facilities with juveniles in the custody of the department for behavior management and progressive discipline.

(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 is a new administrative regulation.

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

Not applicable

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

Not applicable

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

Not applicable

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

This affects approximately 632 DJJ employees, 348 juveniles, and their families.

(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:

Staff will be trained on proper search techniques. Juveniles and visitors will be informed that they will be subject to searches.

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

An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

The administrative regulation will assist in the effective and orderly management of the department and its facilities.

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

(a) Initially:

An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

(b) On a continuing basis:

An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

DJJ budgeted funds for the biennium.

(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 funding is not anticipated.

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

This administrative regulation does establish any fee.

(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

(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?

Department of Juvenile Justice.

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

KRS 15A.065, 15A.0652, 15A.160, 15A.305, 200.080-200.120, 605.150, 635.095, 640.120, 645.250, Chapters 600-645.

(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?

This administrative regulation will not create any revenue.

(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?

This administrative regulation will not create any revenue.

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

An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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 is not anticipated to generate any cost savings.

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

This administrative regulation is not anticipated to generate any cost savings.

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

An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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

An exact cost of compliance is unknown, but it is not anticipated that this administrative regulation will increase current costs.

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)] A major economic impact to the agency is not anticipated.