

JUSTICE AND PUBLIC SAFETY CABINET
Internal Investigations Branch
(Amended After Comments)

500 KAR 13:020. Internal Investigations Branch.

RELATES TO: KRS 15A.020

STATUTORY AUTHORITY: KRS 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the Secretary to promulgate administrative regulations for the proper administration of the Cabinet and its programs. This administrative regulation establishes the procedures for investigations by the Internal Investigations Branch, Office of Legal Services.

Section 1. Definitions.

- (1) "Disability" is defined in 42 U.S.C.A. § 12102(1).
- (2) "Excessive physical contact" means physical contact used or applied by an alleged offender against a juvenile that results in or creates a substantial risk of serious physical injury as defined by KRS 500.080(17) or death. [~~"Exonerated" means the incident occurred, but the accused's actions were justified or proper.~~]
- (3) ~~+(2)+~~ "Facility" means a group home, day treatment, residential treatment, youth development center, a detention center, any other entity or location for juvenile care operated by or contracted with the Department of Juvenile Justice for the placement of juveniles~~[youth]~~, or any entity housing a juvenile~~[youth]~~ placed by or committed to the Department of Juvenile Justice.
- (4) ~~+(3)+~~ "Findings" means that once an investigation is completed, an incident, whether a serious incident or special incident, will be classified as being resolved under one of the following categories:
 - (a) "Exonerated" means the incident occurred, but the offender's actions were not improper, not excessive, or were otherwise reasonable under the circumstances.
 - (b) "Not Substantiated" means, based on a preponderance of the evidence, there is insufficient evidence to determine if an incident occurred.
 - (c) "Pending further investigation" means a critical witness or offender cannot be located or refuses to cooperate with the initial investigation, or there is other interference with the investigation, beyond the control of IIB, that prevents IIB from making a final determination for its finding.
 - (d) "Substantiated" means an incident occurred, the actions of the offender were not justified, and the incident is proven by either the admission of the offender or by a preponderance of the evidence.
 - (e) "Unfounded" means the allegations against the offender are false because the incident did not occur; or the offender was not involved in the incident.
- (5) ~~+(4)+~~ "Inappropriate physical contact" means physical contact used or applied by an offender against a juvenile that has resulted or could result in physical injury as defined by KRS 500.080(15).
- (6) ~~+(5)+~~ "Internal Investigations Branch" or "IIB" means the investigation unit that is part of the Office of Legal Services within the [~~"IIB" means Internal Investigations Branch, Office of Legal Services,~~] Justice and Public Safety Cabinet.
- (7) ~~+(6)+~~ ~~+(4)+~~ "Initiation" means any action by the Internal Investigations Branch intended to ensure the immediate safety of the victim or to obtain evidence or information relevant to the investigation.
- (8) ~~+(7)+~~ "Juvenile" means a person who is under the custody, control, or supervision of the Department of Juvenile Justice as a result of a court order or interstate supervision.

~~(9) [(8)] [(5) "Not substantiated" means there is insufficient evidence to determine if an incident occurred or if the accused was involved in the incident.]~~

~~[(6)] "Offender" means a person:~~

- ~~(a) Who is employed at, volunteers in, visits, or contracts with a facility; and~~
- ~~(b) Against whom an allegation of a special incident has been made.~~

~~(10) [(2)] [(7)] "Serious incident" means an act or omission committed by an offender that creates an imminent and substantial risk to, or actually causes harm to the health, safety, or welfare of a juvenile, including:~~

- ~~(a) The use of excessive physical contact that results in injury or could have resulted in injury to a juvenile;~~
- ~~(b) Inappropriate physical contact that results in an injury or could have resulted in an injury to a juvenile;~~
- ~~(c) Sexual activity by an offender on, against, involving, or in the presence of a juvenile, including any contact or interaction, that uses, permits, disregards, or encourages the use or exploitation of a juvenile for the sexual gratification of the offender or another person;~~
- ~~(d) Permitting, inducing, assisting, or causing a juvenile to engage in:
 - ~~1. An offense enumerated in KRS 530.064, 530.065, or 530.070; or~~
 - ~~2. Other illegal activity.~~~~

~~(11) [(10)] "Special incident" means an act or omission committed by an offender that creates a risk to, or actually causes harm to the health, safety, or welfare of a juvenile, including:~~

- ~~(a) Failure to provide appropriate supervision, medical care, food, clothing, shelter, or education;~~
- ~~(b) Use of inappropriate consequences, such as exercise, harsh physical labor, or other physical consequences as punishment in violation of accepted practices in accordance with 505 KAR Chapter 1 and DJJ Policies and Procedures;~~
- ~~(c) Harassing a juvenile;~~
- ~~(d) Actual or attempted use by an offender of a juvenile for the offender's or any other person's personal gain or self-interest;~~
- ~~(e) Accepting or soliciting a bribe or other quid pro quo from a juvenile or their family or indicating to a juvenile or their family that the offender will accept a bribe or other quid pro quo;~~
- ~~(f) Use of humiliating, demeaning, profane, racially charged, or sexually explicit language directed at a juvenile or use of any language that discriminates against a juvenile based on a juvenile's status regarding race, color, religion or creed, national origin or ancestry, sex, gender, pregnancy, sexual orientation, ~~[(or)]~~ gender identity, or disability ;~~
- ~~(g) Use by an offender of threats or otherwise communicating or indicating to a juvenile that by, either act or omission, an offender will cause or permit another person to physically harm that juvenile; or~~
- ~~(h) Extending, offering, or agreeing to extend or offer any unearned special privileges to a juvenile in exchange for any money, tangible property, intangible property, services, or any other value paid, delivered, or agreed to be delivered to the offender or any other person by a juvenile. ["Pending further investigation" means a critical witness or offender cannot be located or refuses to cooperate with the initial investigation, or there is other interference with the investigation, beyond the control of HB, that prevents HB from making a final determination for its finding.]~~

~~[(8)] ["Special incident" means an act in which the health or welfare of a youth is harmed or threatened with harm by an offender, including if an offender:]~~

~~[(a)] [Uses inappropriate or excessive force that results in injury;]~~

~~[(b)] [Uses inappropriate or excessive force that could result in an injury;]~~

- ~~[(c)] [Engages in any sexual activity to include any contact or interaction, which uses or allows, permits or encourages the use of a youth for the sexual gratification of the offender or another person;]~~
- ~~[(d)] [Uses inappropriate consequences as punishment such as exercise, harsh physical labor, or other physical consequences outside accepted practices in accordance with 505 KAR Chapters 1 and 2 of the Department for Juvenile Justice Policies and Procedures;]~~
- ~~[(e)] [Allows or encourages a youth to:]~~
- ~~[1.] [Use drugs or alcohol;]~~
- ~~[2.] [Gamble; or]~~
- ~~[3.] [Engage in other illegal activity;]~~
- ~~[(f)] [Does not provide appropriate supervision, medical care, food, clothing, shelter, or education;]~~
- ~~[(g)] [Uses humiliating, demeaning, profane, or racially charged language directed at a youth;]~~
- ~~[(h)] [Uses verbal threats of harm directed at a youth;]~~
- ~~[(i)] [Exhibits a pattern of harassing conduct directed at a youth;]~~
- ~~[(j)] [Uses or attempts to use a youth for personal gain;]~~
- ~~[(k)] [Accepts a bribe from a youth or indicates a bribe would be accepted;]~~
- ~~[(l)] [Enters into any unlawful transaction with a youth as set forth in KRS 530.064, 530.065, or 530.070;]~~
- ~~[(m)] [Enters into a business relationship with a youth; or]~~
- ~~[(n)] [Extends unearned special privileges to a youth in return for something.]~~
- ~~[(9)] ["Substantiated" means that an incident occurred:]~~
- ~~[(a)] [By an admission of the person responsible; or]~~
- ~~[(b)] [By a preponderance of the evidence.]~~
- ~~[(10)] ["Unfounded" means the charges are false or the offender was not involved in the incident.]~~
- ~~[(11)] ["Youth" means a person who is under the custody, control, or supervision of the Department of Juvenile Justice as a result of a court order or interstate supervision.]~~

Section 2. Receiving a Report.

(1) The Internal Investigations Branch shall accept reports alleging facts that may be serious or~~of~~ special incidents.

~~[(1)]~~

(a) A toll-free number shall be made available to report an incident, which shall be answered by IIB during normal business hours, 8:00 a.m. to 4:30 p.m. Eastern Time, Monday to Friday~~[all staff and youth to report special incidents. A voice mailbox system shall be available for reporting special incidents after normal work hours].~~

(b) A voice mailbox system on the toll-free number shall be available for reporting an incident after normal business hours. IIB shall assign an individual on a rotating basis to check the messages after normal business hours. IIB shall take action immediately if the safety of a juvenile is involved. Otherwise, IIB shall take action on the call the next business day. ~~[The investigator shall attempt to elicit from the person reporting the special incident as much information about the incident as possible, including:]~~

- ~~[1.] [The nature and extent of the special incident;]~~
- ~~[2.] [The causes of the special incident;]~~
- ~~[3.] [The location of the victim;]~~
- ~~[4.] [Any witnesses to the special incident;]~~
- ~~[5.] [The present danger to the victim;]~~
- ~~[6.] [The offender; and]~~
- ~~[7.] [The reporting person's identity and relationship to the victim.]~~

(2) Anonymous reports ~~that~~^[which] give sufficient information, **including the name of the alleged offender and victim, date and time of the alleged conduct, name of the facility, and nature of the alleged conduct,**~~[and allege a special incident]~~ shall be accepted.

(3) Referrals from any other source ~~that~~^[which] give sufficient information, **including the name of the alleged offender and victim, date and time of the alleged conduct, name of the facility, and nature of the alleged conduct,**~~[and allege a special incident]~~ shall be accepted.

(4) If IIB needs additional information to determine whether further investigation is warranted, it shall conduct a preliminary inquiry.

Section 3. Investigation of Reports of Serious Incidents and Special Incidents.

(1) If IIB receives a report of a serious incident, IIB shall conduct a preliminary inquiry or open an investigation.~~[special incident as defined by Section 1(8)(a) through (e) of this administrative regulation, IIB shall:]~~

~~[(a)] [Conduct an investigation in accordance with Sections 5 and 6 of this administrative regulation; or]~~

~~[(b)] [Conduct a preliminary inquiry to determine if further investigation is warranted.]~~

(2) If IIB receives a report of a special incident, IIB may conduct a preliminary inquiry, an ~~a full~~ investigation, or forward the complaint to the Department of Juvenile Justice or another appropriate authority for an investigation.~~[as defined by Section 1(8)(f) through (n) of this administrative regulation, IIB may conduct an investigation.]~~

~~[(a)] [Any allegation of an alleged special incident not investigated by IIB shall be referred by IIB management to another appropriate individual or agency for investigation.]~~

~~[(b)] [If an allegation of a special incident is referred to the Department of Juvenile Justice pursuant to paragraph (a) of this subsection, IIB shall review the investigative report and any supporting documentation.]~~

(3) IIB may investigate a report or allegation~~[involving a person who is employed at, volunteers in, visits, or contracts with a facility that does not meet the definition of a special incident]~~ at the request of the commissioner of the Department of Juvenile Justice, the commissioner's designee,~~[Commissioner or]~~ the secretary of the Justice and Public Safety Cabinet, or the secretary's designee.

(4) A report or allegation not investigated by IIB may be referred~~[by IIB management]~~ to another appropriate individual or agency.

Section 4. Time Frames for Investigating Reports of Suspected Serious or Special Incidents.

Following the receipt of the report, IIB shall complete an intake, and either open a preliminary inquiry or investigation or refer the report~~[the IIB-2 Special Incident Reporting Form shall be completed and the report investigate]d[or referred]~~ in accordance with Section 3 of this administrative regulation. IIB preliminary inquiries and investigations shall be conducted according to the time frames established in this section.

(1) If the report indicates ~~a~~^[the] ~~juvenile~~^[youth] is in imminent danger of physical harm or injury, the preliminary inquiry or investigation shall be initiated immediately including ensuring the safety of the alleged victim and any other juvenile with whom the offender may have contact and the retention of evidence. Personal contact shall be made with the victim within twenty-four (24) hours, if possible. If the report indicates that the victim is no longer in a facility, the investigation shall be initiated within forty-eight (48) hours and every effort made to have personal contact with the victim within three (3) workdays.

(2) If evidence is obtained which warrants further investigation, an ~~a full~~ investigation shall be initiated ~~[within one (1) hour and personal contact made with the victim within twenty-four (24) hours].~~

(3) ~~{(2)}~~ If the report does not indicate imminent danger of physical harm or injury, the preliminary inquiry or investigation shall be initiated within twenty-four (24) hours and personal contact made with the victim within seventy-two (72) hours.

(4) Unsuccessful efforts to make personal contact shall be documented in the investigative file.

~~{(a)} [Issues to be considered in determining how soon personal contact is made shall include:]~~

~~{1.} [The nature of the allegation;]~~

~~{2.} [How recently the alleged incident occurred; and]~~

~~{3.} [The measures taken by the facility to ensure the safety of the youth.]~~

(5) ~~{(b)}~~ Any deviation from the time frames shall require supervisory approval and be documented in the investigative file.

(6) ~~{(3)}~~ ~~[If the report indicates that the victim is no longer in a facility, the investigation shall be initiated within forty-eight (48) hours and every effort made to have personal contact with the victim within three (3) workdays. Unsuccessful efforts to make personal contact shall be documented in the investigative file.]~~

~~{(4)}~~ The time ~~[frames]~~ shall begin when the report is received by IIB staff.

Section 5. ~~[Initial]~~ Investigation. The investigation of an allegation or report shall include the following: ~~[If investigating an allegation or report, an IIB investigator shall:]~~

(1) A completed intake ~~[Complete the IB-2 form];~~

(2) Report of any special incidents as required by KRS 620.030 and 620.040;

(3) ~~[Notify]~~ The Commissioner of the Department of Juvenile Justice or designee shall be notified of the report;

(4) Interviews with the following:

(a) ~~[Interview]~~ The victim, who shall be interviewed privately, outside the presence of the offender, with no more than two (2) persons present in addition to the victim and IIB investigator;

(b) ~~{(5)}~~ ~~[Interview]~~ The alleged offender; and

(c) ~~{(6)}~~ ~~[Interview]~~ Appropriate witnesses;

(5) ~~{(7)}~~ A review of documentation relevant to the incident; and

(6) ~~{(8)}~~ Obtaining and preserving appropriate evidence. ~~[Take possession of and preserve appropriate evidence.]~~

Section 6. Determining the Validity of the Report. ~~[After the initial investigation]~~ The investigator shall:

(1) Complete a written report within thirty (30) days of receipt of the allegation, unless there are extenuating circumstances that ~~[which]~~ are documented, such as law enforcement action, court proceedings, or investigator workload issues. The report shall contain:

(a) The information gathered during the investigation; and

(b) A finding regarding the allegation as exonerated, pending further investigation, substantiated, not substantiated, or unfounded ~~[recommmendation regarding the validity of the allegation as substantiated, unfounded, exonerated, not substantiated, or pending further investigation];~~

(2) Submit the report through supervisory channels within IIB and the Office of Legal Services ~~[legal counsel]~~ for the Justice and Public Safety Cabinet for review and approval;

(3) Forward all completed investigations to the Commissioner of the Department of Juvenile Justice or the commissioner's designee;

(4) Forward all completed investigations of substantiated special incidents that may involve abuse or neglect of a child, in accordance with KRS 620.030 to the:

(a) Cabinet for Health and Family Services; and

(b) Local commonwealth or county attorney, law enforcement, or the Kentucky State Police with the exception of all documents and evidence that are protected under Garrity v. New Jersey, 385 U.S. 493 (1967).

~~[Section 7.] [Incorporation by Reference.]~~

~~[(1)] [~~"HB-2, Special Incident Reporting Form", 5/15, is incorporated by reference.~~]~~

~~[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

KERRY HARVEY, Secretary

APPROVED BY AGENCY: January 11, 2024

FILED WITH LRC: January 11, 2024 at 11:50 a.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Nathan Goens

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This regulation establishes the procedures for prompt and thorough investigations by the Internal Investigations Branch of alleged serious or special incidents in entities operated by or contracted with the Department of Juvenile Justice (DJJ) for the placement of juveniles, or any entity housing juveniles placed by or committed to the Department of Juvenile Justice.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to ensure protection of juveniles committed to DJJ.

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

KRS 15A.160 authorizes the secretary 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:

This administrative regulation establishes the procedures for investigations.

(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 adds definitions for excessive physical contact, findings, inappropriate physical contact, and serious incident. Youth is changed to juvenile throughout. The phone reporting system is rewritten for clarity and to update practices in section 2. Section 3 is rewritten to address the new serious incidents as well as the prior special incidents. For a serious incident, IIB shall conduct a preliminary inquiry or open an investigation. For a special incident, IIB may conduct a preliminary inquiry, a full investigation, or forward the complaint to the Department of Juvenile Justice or another appropriate authority for an investigation. A designee of the DJJ commissioner or the secretary may request an investigation. The amendment establishes a new preliminary inquiry process and changes the initial investigation to the investigation. The times for initial contact with a victim are changed. Unsuccessful efforts to make personal contact shall be documented in the investigative file. A finding regarding the allegation as exonerated, pending further investigation, substantiated, not substantiated, or unfounded must be made. The form incorporated by reference is deleted.

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

The amendment is needed to update investigation practices.

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

The amendment conforms with the authorizing statutes because KRS 15A.160 authorizes the secretary to promulgate administrative regulations for the proper administration of the cabinet and its programs.

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

This amendment will assist

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

This administrative regulation will affect all entities operated by or contracted with the Department of Juvenile Justice for the placement of juveniles, or any entity housing juveniles placed by or committed to the Department of Juvenile Justice.

(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:

The Internal Investigations Branch will have to comply with the new investigation requirements. The entities operated by or contracted with the Department of Juvenile Justice for the placement of juveniles, or any entity housing juveniles placed by or committed to the Department of Juvenile Justice will not have to take any additional actions.

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

Additional costs are not anticipated.

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

Entities operated by or contracted with the Department of Juvenile Justice for the placement of youth, or any entity housing juveniles placed by or committed to the Department of Juvenile Justice will be better able to deal with employee conduct and better able to protect juveniles.

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

(a) Initially:

The amendment is not expected to generate additional costs.

(b) On a continuing basis:

The amendment is not expected to generate additional costs.

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

Funds budgeted to the Justice and Public Safety Cabinet 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:

The amendment will not require an increase in fees or funding for implementation.

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

Fees are not directly or indirectly established by this administrative regulation.

(9) TIERING: Is tiering applied?

Tiering is not appropriate in this instance because the regulation and its impact will not disproportionately impact any particular 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?

The Department of Juvenile Justice and the Internal Investigations Branch, both within the Justice and Public Safety Cabinet, and the Department of Community Based Services, within the Cabinet for Health and Family Services

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

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(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 generate 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 generate revenue.

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

The amendment is not expected to generate additional costs.

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

The amendment is not expected to generate additional 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?

Cost savings are not expected.

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

Cost savings are not expected.

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

The amendment is not expected to generate additional costs.

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

The amendment is not expected to generate additional 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)]. This administrative regulation will not have a major economic impact.