

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 16:310. Pre-execution medical actions.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270, 532.135, 532.140
STATUTORY AUTHORITY: KRS 196.035, 197.020, 314.011, 431.218, 431.220,
431.224, 431.240, 431.250, 431.260, 431.270

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes medical actions to be performed after receipt of the execution order and prior to the execution.

Section 1. Pre-execution Medical Actions after Receipt of Execution Order.

- (1) Beginning fourteen (14) days prior to an execution, or for the remaining days if an execution order is received fewer than fourteen (14) days prior to an execution, the condemned person shall receive the following:
 - (a) A physical examination completed by a doctor or advanced practice registered nurse;
 - (b) A visit from a nurse at least once per shift;
 - (c) An evaluation from a licensed psychologist five (5) days per week on Monday through Friday; and
 - (d) A psychiatric interview and evaluation to assess for signs of insanity conducted by a licensed psychiatrist or a licensed advanced practice registered nurse (APRN) certified in a psychiatric mental health population focus. The evaluation report shall be placed in the condemned person's medical record and sent to the warden.
- (2) All medical professionals referenced in subsection (1) shall:
 - (a) Personally observe and evaluate the condemned person's medical condition; and
 - (b) Document his or her observations and evaluations in the condemned person's medical record immediately after personal contact with the condemned person.
- (3) The designated medical professional shall review and sign the nursing documentation daily.
- (4) A psychiatrist shall review the nursing documentation and any other mental health or medical documentation weekly.
- (5) All Kentucky State Penitentiary medical and mental health staff shall be instructed to immediately notify the warden and the designated medical professionals of any change in the condemned person's medical or psychiatric condition.

Section 2. Pregnancy Testing for Female Condemned Persons.

- (1) If the condemned person is female, a pregnancy test shall be administered.
- (2) A pregnancy test shall be administered at least seven (7) days prior to the scheduled date of execution, unless the execution order is received less than seven (7) days prior to the scheduled date of execution.
- (3) If the execution order is received less than seven (7) days prior to the scheduled date of execution, a pregnancy test shall be administered as soon as practicable.
- (4) If a pregnancy test is positive, then the department shall:
 - (a) Give written notice to the Attorney General or his designee, the condemned person's counsel, the condemned person, and the Governor's Office or court issuing the mandate that the condemned person is pregnant; and

(b) Suspend the execution pursuant to KRS 431.240(2).

Section 3. Insanity Issues.

(1) Subsequent to the examination required by Section 1(1)(d) of this regulation, if the warden receives information from medical or mental health staff that the condemned person exhibits signs or symptoms indicating that he or she may be insane as demonstrated by an inability to rationally understand why the state wants to execute him or her, the warden shall inform the designated medical professional.

(2) If the designated medical professional receives information from the warden or department medical or mental health staff, he shall determine:

(a) The source of the information; and

(b) If the information is not from the department psychiatrist, whether it is sufficient to indicate that an additional psychiatric evaluation needs to be performed on the condemned person.

(3) The designated medical professional shall order another psychiatric evaluation if he determines one is needed.

(4) If a department psychiatric evaluation determines that the condemned person may be insane as demonstrated by an inability to rationally understand why the state wants to execute him or her, the department shall:

(a) Give written notice to the Attorney General or his designee, the condemned person's counsel, the condemned person, and the Governor's Office or court issuing the mandate that the condemned person appears to be insane; and

(b) Suspend the execution pursuant to KRS 431.240(2) to allow procedures consistent with KRS 431.2135.

Section 4. Intellectual Disability.

(1) A licensed psychologist shall review the following records for the condemned person already in the possession of the department:

(a) Inmate record as set forth 501 KAR 6:540;

(b) Education records;

(c) Records related to Americans with Disability Act accommodations;

(d) Medical records; and

(e) Mental health records.

(2) The psychologist shall also review any records submitted by the condemned person and interested third parties, including the condemned person's attorney, pursuant to Section 5 of this regulation.

(3) The records shall be reviewed for:

(a) Documentation indicating an intellectual disability as indicated by:

1. The criteria in the Diagnostic and Statistical Manual (DSM);

2. The American Association on Intellectual and Developmental Disabilities (AAIDD); or

3. Other similar prevailing medical standards and clinical guidelines; or

(b) An IQ test score of seventy-five (75) or lower after adjustment for the applicable standard error of measurement.

(4) If the psychologist finds documentation that meets the criteria in subsection (3) of this section, he or she shall immediately notify the warden.

(5) If the warden is notified by the psychologist described in subsection (4) of this section concerning a record indicating an intellectual disability or an IQ test score of seventy-five (75) or less for the condemned person after adjustment for the applicable standard error of measurement:

(a) The warden shall notify the Commissioner;

(b) The Commissioner shall notify in writing the Attorney General or his designee, the condemned person's counsel, and the condemned person of the record located; and

- (c) The Commissioner shall suspend the execution pursuant to KRS 532.140 to allow procedures consistent with KRS 532.135.
- (6) If there has been a final adjudication by a court of law regarding whether the condemned person suffers from an intellectual disability and there has been no intervening change in relevant law or clinical guidelines regarding intellectual disability, the review required by this section shall not occur.
- (7) The Justice and Public Safety Cabinet Office of Legal Services shall determine:
- (a) Whether there has been a final adjudication by a court of law regarding whether the condemned person suffers from an intellectual disability; and
 - (b) Whether there has been an intervening change in relevant law or clinical guidelines regarding intellectual disability.

Section 5. Submission of Records by the Condemned Person and an Interested Third Party.

- (1) No later than seven (7) days before a scheduled execution, the condemned person and an interested third party may submit records indicating the possibility of an intellectual disability or an IQ test score of seventy-five (75) or lower after adjustment for the applicable standard error of measurement for the condemned person.
- (2) The condemned person may submit records to the warden through institutional mail who shall then ensure the submitted records are included for review as set forth in Section 4 of this administrative regulation.
- (3) An interested third party may submit records to the department by mailing the records to doc.deathrowdisability@ky.gov or Warden, Kentucky State Penitentiary, 266 Water Street, Eddyville, Kentucky 42038.
- (4) By submitting the records, the interested third party is certifying that the records are true and accurate to the best of their knowledge or belief.

Section 6. Execution Substances.

- (1) The warden shall:
- (a) Notify medical staff and the ambulance service of the substances that may be used for the execution so that planning can be done in case of suspension of the execution after the drugs have been administered; and
 - (b) Direct medical staff to review the medications of the condemned person for a potential adverse reaction to the substances and notify the warden if a known potential adverse reaction is identified.
- (2) If the warden is notified that a known potential adverse reaction has been identified, the warden shall notify the commissioner and the ambulance service.
- (3) If the commissioner is notified that a known potential adverse reaction has been identified, the commissioner shall notify the Attorney General or designee, the condemned person's counsel, the condemned person, and the Governor's Office in writing of the potential adverse reaction.
- (501 KAR 016:310. 36 Ky.R. 1563; 2092-M; 2041-A; eff. 5-7-2010; 39 Ky.R. 606; eff. 2-1-2013; 44 Ky.R. 1891, 2343, 2498; eff. 7-6-2018; 49 Ky.R. 2363; 50 Ky.R. 832; 1271; eff. 3-5-2024; 52 Ky.R. 309; eff. 4-7-2026.)

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: July 14, 2025

FILED WITH LRC: July 14, 2025 at 1:39 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2025, 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

is 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 until September 30, 2025. 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: Nathan Goens, Attorney, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.