

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of the June Meeting

June 13, 2023

Call to Order and Roll Call

The June meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, June 13, 2023, at 1:00 PM, in Room 149 of the Capitol Annex. Senator Stephen West, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Stephen West, Co-Chair; Senators Julie Raque Adams and Damon Thayer; Representatives Randy Bridges, Deanna Frazier Gordon, and Daniel Grossberg.

Guests: Graham Gray and Farrah Petter, Auditor of Public Accounts; Matt Stephens, Department for Local Government; Christi LeMay and Karoline Munson, Board of Optometric Examiners; Jeffrey Prather, Board of Nursing; Dave Dreves, Jenny Gilbert, Ben Robinson, and Rich Storm, Department of Fish and Wildlife Resources; Michael Kennedy, Department for Environmental Protection; Amy Barker, Dena Burton, and William Codell, Department of Juvenile Justice; Timothy Arnold, Post-Trial Division; Bruce Roberts, Marc Rudder, and John Wood, Fire Commission; Lilly Coiner, Drew Conners, Jamie Eads, and Jennifer Wolsing, Horse Racing Commission; Kara Daniel and Adam Mather, Office of Inspector General; Laura Begin, Chelsea Harrod, and Veronica Sears, Department for Community Based Services.

LRC Staff: Stacy Auterson, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Ritchie.

Administrative Regulations Reviewed by this Subcommittee:

GENERAL GOVERNMENT CABINET: Auditor of Public Accounts: Audits

045 KAR 001:040. Audits of county fee officials. Graham Gray, general counsel, and Farrah Petter, assistant state auditor, represented the auditor.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 and 3 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Department for Local Government:
County Attorney

109 KAR 017:010. County Attorney Annual Settlement. Matt Stephens, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Optometric Examiners

201 KAR 005:055. Telehealth. Christi LeMay, executive director, and Karoline Munson, board member, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Nursing

201 KAR 020:478. Dialysis technician scope of practice, discipline, and miscellaneous requirements. Jeffrey Prather, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Fish

301 KAR 001:001. Definitions for 301 KAR Chapter 1. Jenny Gilbert, legislative liaison, and Rich Storm, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Game

301 KAR 002:222. Waterfowl hunting requirements on public lands.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Asbestos

401 KAR 058:040. Requirements for asbestos abatement entities. Michael Kennedy, director, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 8, 10, 11, 13, and 14 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Juvenile Justice: Child Welfare

505 KAR 001:120. Department of Juvenile Justice Policies and Procedures Manual: Health and Safety Services. Amy Barker, assistant general counsel, and William Codell, attorney, represented the department.

In response to questions by Co-Chair West, Ms. Barker stated that these revisions were based on legislative changes and established provisions for nonlethal control of juvenile offenders and for suicide prevention. Initially, these changes were developed in response to recent riots. After the 2023 Regular Session of the General Assembly generated legislative changes, those were added to the amendments.

In response to a question by Representative Bridges, Mr. Codell stated that the department currently had policies to separate male and female juvenile offenders. There were no current provisions for other gender-related categories.

A motion was made and seconded to approve the following amendments: (1) to amend DJJPP 400 to: (a) delete definitions relating to restraints and control methods as those provisions have been replaced by 505 KAR 1:210 & E; and (b) add definitions for “Licensed Behavioral Health Professional” and “line of sight”; (2) to amend DJJPP 405.1 to: (a) add referral for immediate medical evaluation as an option for the initial behavioral health screening; and (b) clarify that residents with acute conditions shall be kept “under continuous observation” until hospitalized or directed otherwise; (3) to amend DJJPP 405.4 to: (a) replace references to “juveniles” with “youth” in conformity with the other policies;

and (b) clarify procedures for immediate mental health evaluations, staff responsibilities, and documentation and notification requirements; (4) to delete DJJPP 406 as those provisions have been re-placed by 505 KAR 1:210 & E; and (5) to amend Section 1 and DJJPP 400, 405.1, and 405.4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

505 KAR 001:140. Department of Juvenile Justice Policies and Procedures Manual: Detention Services. Timothy Arnold, director, Post-trial Division, Department of Public Advocacy, appeared in opposition to this administrative regulation.

In response to questions by Co-Chair West, Mr. Arnold stated that the Department of Public Advocacy (DPA) was opposed to this administrative regulation because it did not provide for a regional system of justice, as statutorily required. Services were usually provided to juveniles based on geographic location, which became a problem if the youth were dispersed statewide. There had been problems with officials being unable to get juveniles to trial due to distance, and some youth had to appear in court virtually. If released, a juvenile might be very far from home. The current policy was nonregional and did not establish any plan for future regionalization. If the institutions did regionalize, the institutions would be in violation of this administrative regulation.

In response to questions by Co-Chair West, Ms. Barker stated that language related to a separate female-only facility was removed. Reorganizing these institutions by region required time for transition. Some regions were insufficiently staffed. The department had to consider the risk level when deciding where to place a juvenile offender. Juvenile offenders were placed based on sex (male or female) and risk level (high or low). Security was the first priority. This administrative regulation represented a phase toward regionalization. Mr. Codell stated that it was necessary for the department to maintain some discretion regarding placing juvenile offenders. Sometimes courts ordered juvenile offenders to be separated one from another in joint criminal situations. A very assaultive youth needed to be put into a higher security facility. There were seven regions; however, because of a separate facility for females and high and low-security units, there were essentially three regions. Jefferson County was expected to open its facility soon, which would probably represent a region unto itself.

Representative Frazier Gordon stated that transportation costs impacted local government staff and budgets.

In response to a question by Co-Chair West, Mr. Arnold stated that this administrative regulation did not reference regionalization in any way and was not regional in practice. This was a very inefficient system. Mr. Codell stated that the system was currently regional with some deviation necessitated by court decisions and security concerns.

In response to a question by Representative Grossberg, Mr. Codell stated that the department's long-term goal was to clarify regionalization provisions sometime after the Jefferson County facility opened and after general transitioning.

In response to a question by Senator Raque Adams, Mr. Codell stated that capacity was a concern pertaining to the department's ability to fully implement regionalization. Staffing in particular was an obstacle because it was difficult to meet staffing ratios in some areas. Staff recruitment and retention was a priority.

Co-Chair West stated that DPA's concerns seemed to be valid; however, a finding of deficiency did not seem prudent because the department was still in a transition period. The Interim Joint Committee on Judiciary should consider this topic. Representative Grossberg stated agreement with taking this matter up at the Interim Joint Committee on Judiciary and stated that he hoped there would not be procrastination with transitioning to regionalization.

A motion was made and seconded to approve the following amendments: (1) to amend DJJPP 700 to: (a) delete definitions relating to restraints and control methods as those provisions have been replaced by 505 KAR 1:210 & E; and (b) add definitions for "dangerous instrument" and "Licensed Behavioral Health Professional"; (2) to amend DJJPP 700.1 to: (a) delete requirement of having at least one female only facility; and (b) remove references to male youth in the procedures for high and low-security detention facilities; (3) to delete DJJPP 711 as those provisions have been replaced by 505 KAR 1:220 & E; (4) to delete DJJPP 713 as those provisions have been replaced by 505 KAR 1:210 & E; (5) to amend DJJPP 717 to replace the protocol for suicidal youth and isolation with a reference to DJJPP 405.4; and (6) to amend Section 1 and DJJPP 700, 712, and 717 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Fire Commission:
Commission on Fire Protection Personnel Standards and Education

739 KAR 002:060. Certification and qualifications of fire and emergency services instructors. Bruce Roberts, deputy executive director; Marc Rudder, director of training; and John Wood, general counsel, represented the commission.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission:
Incentive and Development Funds

810 KAR 007:040. Kentucky Standardbred Development Fund and Kentucky Standardbred Breeders' Incentive Fund. Drew Conners, director, and Jennifer Wolsing, general counsel, represented the commission.

In response to a question by Senator Thayer, Mr. Conners stated that, similar to the thoroughbred program, if the initial nomination deadline was missed, this administrative regulation provided another opportunity to be part of this program. Senator Thayer stated that Kentucky's third harness track just opened in Corbin.

In response to a question by Co-Chair West, Mr. Conners stated that this change might increase purses some; however, the impetus was primarily to increase opportunities to participate in this program.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 20, 23, and incorporated material to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 23 to add incorporated material. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector
General: State Health Plan

900 KAR 005:020E. State Health Plan for facilities and services. Kara Daniel, deputy inspector general, and Adam Mather, inspector general, represented the office.

Certificate of Need

900 KAR 006:075E. Certificate of need nonsubstantive review.

Essential Personal Care Visitor Program

900 KAR 014:010E. Essential personal care visitor programs; visitation guidelines.

In response to questions by Co-Chair West, Mr. Mather stated that this amendment expanded the spectrum of facilities to which this administrative regulation applied. Initially, these provisions were promulgated pursuant to the coronavirus (COVID-19) pandemic, and now these provisions would also apply to other communicable diseases.

Controlled Substances

902 KAR 055:015E. Schedules of controlled substances.

Department for Community Based Services: Child Welfare

922 KAR 001:100. Public agency adoptions. Laura Begin, regulation coordinator; Chelsea Harrod, social service specialist; and Veronica Sears, branch manager, Adoption Services Branch, represented the department.

922 KAR 001:330. Child protective services.

The following administrative regulations were deferred or removed from the June 13, 2023, subcommittee agenda:

PERSONNEL CABINET: Personnel Cabinet; Classified

101 KAR 002:034. Classified compensation administrative regulations.

101 KAR 002:095. Classified service general requirements.

101 KAR 002:181. Repeal of 101 KAR 002:180.

Unclassified

101 KAR 003:045. Compensation plan and pay incentives for unclassified service.

BOARDS AND COMMISSIONS: Board of Licensure for Long-Term Care Administrators

201 KAR 006:060. Fees.

Board of Chiropractic Examiners

201 KAR 021:025. Board; officers, duties, and compensation.

201 KAR 021:041. Licensing; standards, fees.

201 KAR 021:042. Standards, applications and approval of continuing education.

201 KAR 021:075. Peer review committee procedures and fees.

201 KAR 021:095. Licensure, registration, and standards of persons performing peer review.

201 KAR 021:105. Telehealth chiropractic services.

Board of Social Work

201 KAR 023:016. Temporary permission to practice.

JUSTICE AND PUBLIC SAFETY CABINET: Internal Investigation Branch:
Special Law Enforcement Officers

500 KAR 002:020. Filing and processing SLEO commissions.

Department of Corrections: Office of the Secretary

501 KAR 006:150. Eastern Kentucky Correctional Complex policies and
procedures.

PUBLIC PROTECTION CABINET: Kentucky Horse Racing Commission: Flat
and Steeplechase Racing

810 KAR 004:010E. Horses.

Medication Guidelines

810 KAR 008:020. Drug, medication, and substance classification schedule.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector
General: State Health Plan

900 KAR 005:020. State Health Plan for facilities and services.

Certificate of Need

900 KAR 006:075. Certificate of need nonsubstantive review.

Department for Medicaid Services: Medicaid Services

*907 KAR 001:038E. Hearing Program coverage and requirements.

*907 KAR 001:126E. Dental services' coverage provisions and requirements.

*907 KAR 001:632E. Vision program coverage provisions and requirements.

*Pursuant to KRS 13A.030(2)(a), these administrative regulations were found
deficient at the May 9, 2023 ARRS meeting.

Payment and Services

907 KAR 003:190. Reimbursement for treatment related to clinical trials.

The subcommittee adjourned at 1:45 p.m. The next meeting of this subcommittee was tentatively scheduled for July 13, 2023, at 1 p.m.