

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(Amendment)

501 KAR 3:140. Prisoner rights.

RELATES TO: KRS 441.045, 441.047, 441.055

STATUTORY AUTHORITY: KRS 196.035, 197.020, 441.055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 requires the secretary to promulgate administrative regulations necessary or suitable for the proper administration of the functions of the cabinet or any division in the cabinet. KRS 441.055(1) requires the Department of Corrections to promulgate administrative regulations establishing minimum standards for jails that house state prisoners. This administrative regulation establishes procedures to ensure the protection of rights of prisoners in full-service jails.

Section 1. Policy and Procedure.

(1) Each jail shall have a written statement of prisoner rights that shall address:

- (a) Access to court;
- (b) Access to attorney;
- (c) Mail;
- (d) Telephone;
- (e) Grievance procedure;
- (f) Search and seizure;
- (g) Disciplinary procedure;
- (h) Racial segregation;
- (i) Medical care;
- (j) Mental health care, if available; and
- (k) Religion.

(2) The statement of prisoner rights shall be made available to all inmates being assigned to general housing units. The prisoner rights may be posted in a conspicuous place, provided in hardcopy format, or provided through closed circuit television.

(3) The jailer, jail administrator, or jail personnel shall not prohibit a prisoner's right of access to the judicial process.

(4) The jailer, jail administrator, or jail personnel shall ensure the right of a prisoner to have confidential access to his attorney or authorized representative. Confidential prisoner access to the prisoner's attorney through unmonitored phone lines in non-contact visitation areas shall be permitted.

(a) To the extent available in the jail and reasonable for use by an attorney, "confidential access" shall include a meeting with counsel in a private room in the jail. The room may be used for purposes other than attorney-client visits, but shall meet the conditions established in this paragraph:

- 1. Jail employees and other prisoners shall not enter the room during the attorney-client meeting, unless an emergency or the security of the jail requires.
- 2. The room should be located so that conversations in ordinary tones with the door closed cannot be overheard by others outside the room.
- 3. If the room is located so that jail personnel could not hear a call for aid from the room with the door closed, then the room shall contain some other means to summon aid.
- 4. The room shall contain a desk or table and seating for an attorney, an assistant, and a prisoner.
- 5. The room shall have a means to access electricity suitable for plugging in a laptop or portable television, if the jail allows these items to be brought into the jail by an

attorney, for the purpose of viewing discovery or other litigation materials. The jail may provide a laptop, portable television, or other means for viewing discovery.

6. The attorney shall be permitted access to a telephone, unless an emergency or the security of the jail requires otherwise. The jail may provide a phone in the meeting room or in another location within the jail.

(b) Prisoners shall not be given access to cellular phones under any circumstances.

(c) Prisoners shall not be given access to a laptop, except to the extent required to review litigation materials in the immediate presence of an attorney or authorized representative, if the jail allows a laptop to be brought in for this purpose.

(d) The jail shall address in its policy and procedures manual the handling of legal mail sent or received by a prisoner. The policy shall include provisions concerning the constitutional limits on reading prisoner legal mail and opening and inspecting legal mail in the presence of the inmate.

(e) The jail shall address in its policy and procedures manual reasonable access for a prisoner to a telephone to make collect calls to counsel. The policy shall include provisions for any required actions by the prisoner or attorney to allow the telephone system to prevent recording of the attorney-client call.

(5) The jailer or jail administrator shall have a written policy and procedure that defines the jail's visitation rules, which shall include the requirements established in this subsection.

(a) There shall be a schedule identifying no fewer than two (2) visiting days each week, one (1) of which shall be during the weekend.

(b) At least one (1) visit per week per prisoner shall be allowed except if a prisoner is assessed a disciplinary penalty for an infraction of rules governing visitation or the prisoner's current institutional behavior presents an imminent danger or threat of danger to staff or other prisoners.

(c) A visit shall not be less than fifteen (15) minutes.

(d) Two (2) or more persons permitted to visit at the same time shall count as a single visit.

(e) Children, if accompanied by an adult, shall be permitted to visit a prisoner.

(6) Attorneys, clergy, and health care staff shall be permitted to visit a prisoner at reasonable hours, other than during regularly scheduled visiting hours and shall not count as an allotted visit.

(7) Each visitor shall register before admission and shall be denied admission for refusal to register, refusal to consent to search, or for a violation of the visitation rules established pursuant to subsection (5) of this section or established in subsection (6) of this section.

(8) A prisoner shall not be restricted in regard to whom he may have as a visitor unless the jailer or jail administrator determines to exclude the visitor on the basis of one (1) or more of the following conditions:

(a) The visitor:

1. Represents a clear and present danger to security;
2. Has a past history of disruptive conduct at the jail;
3. Is under the influence of alcohol or drugs;
4. Refuses to submit to a search; or
5. Refuses to show proper identification; or

(b) The prisoner refuses the visit.

(9) Except for visitors pursuant to subsection (6) of this section, the jail personnel may monitor and record visitor and prisoner conversation for security reasons. Notification shall be posted in a conspicuous location in the visiting areas.

Section 2. Mail.

(1) The jailer or jail administrator shall have written policy and procedure for receiving and sending mail that:

(a) Protects prisoners' personal rights; and

(b) Provides for security practices consistent with the operation of the jail.

(2) A prisoner shall be allowed to correspond with anyone if the correspondence does not violate state or federal law. Caution shall be taken to protect prisoner rights in accordance with court decisions regarding correspondence. A jailer or jail administrator may enact a policy prohibiting the sending or receipt of prisoner-to-prisoner mail. The policy shall permit the jailer or jail administrator discretion to grant the privilege.

(3) Incoming mail may be opened and inspected for contraband prior to delivery. Mail received from the court, an attorney of record, or a public official may be opened and inspected only in the presence of the prisoner. After being opened and inspected in the presence of the prisoner, mail received from the court, an attorney of record, or a public official may be provided to the prisoner via an electronic copy through a secure, personal account.

(4) Measures to prevent receipt of prisoner mail containing intoxicants, including fabricated legal mail shall be permitted.

Section 3. Telephone.

(1) A newly admitted prisoner shall be permitted a reasonable number of local or collect long distance telephone calls to an attorney of the prisoner's choice, or to a family member, as soon as practical, generally within one (1) hour after arrival, until one (1) call has been completed.

(2) The jailer, jail administrator, or jail personnel shall maintain a log of telephone calls made by a prisoner during the admission procedure unless those calls are made on a telephone in the housing area. The log shall document the date, time, and party contacted.

(3) Any prisoner admitted to a facility for a temporary stay of forty-eight (48) hours or less before proceeding or returning to another destination shall be considered in transit and therefore not entitled to a phone call.

(4) Written policy and procedure shall permit each prisoner to complete at least one (1) telephone call each week. The expense incurred for a call shall be borne by the prisoner or the party called.

(5) A minimum of five (5) minutes shall be allotted for each phone call.

(6) If calls are monitored, the prisoner shall be notified.

(7) Telephone privileges may be suspended for a designated period of time if telephone rules are violated.

Section 4. Religion.

(1) A prisoner shall be granted the right to practice his religion within limits necessary to maintain institution order and security.

(2) Each prisoner shall be afforded an opportunity to participate in religious services and receive religious counseling within the jail.

(3) A prisoner shall not be required to attend or participate in religious services or discussions.

Section 5. Access to Programs. The jailer, jail administrator, or jail personnel shall ensure each prisoner equal access to programs and services, if the security and order of the jail will not be jeopardized.

Section 6. Grievance Procedure. The jailer or jail administrator shall have a written prisoner grievance procedure. The procedures shall include provisions for:

(1) A response to each written grievance within ten (10) days;

(2) Equal access for each prisoner;

(3) A guarantee against reprisal; and

(4) Resolution of legitimate complaints.

Section 7. Disciplinary Rights. Each jail shall have a written policy and procedure for maintaining discipline, consistent with constitutional requirements for due process.

Section 8. Medical. Each prisoner shall be afforded access to necessary medical care. (9 Ky.R. 648; Am. 929; eff. 3-2-1983; 13 Ky.R. 694; eff. 11-11-1986; 22 Ky.R. 1355; 1598; eff. 3-7-1996; 26 Ky.R. 166; 27 Ky.R. 86; eff. 7-17-2000; 29 Ky.R. 2762; 30 Ky.R. 282; eff. 8-13-2003; 31 Ky.R. 1564; 1798; eff. 5-26-2005; 34 Ky.R. 1190; 1967; eff. 3-7-2008; 34 Ky.R. 2476; 35 Ky.R. 279; eff. 9-5-2008; 37 Ky.R. 2942; 38 Ky.R. 571; 749; eff. 11-4-2011; 42 Ky.R. 1953; 2345; eff. 3-4-2016; 50 Ky.R. 1960; eff. 9-3-32024.)

The Jail Standards Review Commission established pursuant to KRS 441.055(1)(b) has approved the standards in this administrative regulation at its meeting on January 8, 2024, prior to its filing with the Legislative Research Commission in compliance with KRS 13A.120(3), 13A.220(6)(a), and 441.055(2).

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: February 6, 2024

FILED WITH LRC: February 15, 2024 at 8:50 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 23, 2024, 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 April 30, 2024. 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 V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, Justice.RegContact@ky.gov, telephone number (502) 564-3279, facsimile number (502) 564-6686.