

JUSTICE AND PUBLIC SAFETY CABINET

Internal Investigations Branch

(Amended at ARRS Committee)

500 KAR 13:020. Internal Investigations Branch.

RELATES TO: KRS 15A.020, 620.030, 620.040

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 by ~~42 U.S.C. § 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 (18) ~~or death.~~ ~~["Exonerated" means the incident occurred, but the accused's actions were justified or proper.]~~

(3) ~~[(2)]~~ "Exonerated" means the incident occurred, but the offender's actions were not improper, not excessive, or were otherwise reasonable under the circumstances.

(4) ~~[(4)]~~ "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.

(5) ~~[(4)]~~ ~~[(3)]~~ "Finding ~~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 (1) of the following categories:

(a) ~~["]~~ Exonerated, as defined in subsection (3) of this section ~~["]~~; ~~[" means the incident occurred, but the offender's actions were not improper, not excessive, or were otherwise reasonable under the circumstances.]~~

(b) ~~["]~~ Not Substantiated, as defined in subsection (10) of this section ~~["]~~; ~~[" means, based on a preponderance of the evidence, there is insufficient evidence to determine if an incident occurred.]~~

(c) ~~["]~~ Pending further investigation, as defined in subsection (12) of this section ~~["]~~; ~~[" 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, as defined in subsection (15) of this section ~~["]~~; or ~~[" 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, as defined in subsection (16) of this section ~~[" means the allegations against the offender are false because the incident did not occur; or the offender was not involved in the incident.]~~

(6) ~~[(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 (16) ~~[(15)].~~

(7) ~~[(6)]~~ ~~[(5)]~~ "Initiated" 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) "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.

~~† (2) † † (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.

(9) ~~† (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.

(10) "Not substantiated" means, based on a preponderance of the evidence, there is insufficient evidence to determine if an incident occurred.

(11) ~~† (2) † † (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.

(12) "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.

(13) ~~† (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; or
- (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.

(14) ~~† (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 the juvenile's ~~† their †~~ family or indicating to a juvenile or the juvenile's ~~† 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.

(15) "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.

(16) "Unfounded" means the allegations against the offender are false because the incident did not occur; or the offender was not involved in the incident. ~~["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 HB-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 ***shall be*** made to have personal contact with the victim within three (3) workdays.

(2) If evidence is obtained ~~that~~ ~~[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 HB-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~~[recommendation 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; and

(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)] ["IIB-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.]~~

(16 Ky.R. 704; eff. 12-15-1989; Am. 16 Ky.R. 2468; eff. 7-9-1990; 18 Ky.R. 184; eff. 9-6-1991; 1950; eff. 2-7-1992; 19 Ky.R. 1892; eff. 4-7-1993; 20 Ky.R. 645; eff. 11-8-1993; 2705; eff. 5-11-1994; 21 Ky.R. 119; eff. 9-12-1994; 2261; eff. 4-20-1995; 22 Ky.R. 1149; 1473; eff. 2-12-1996; 23 Ky.R. 1734; eff. 12-13-1996; 3939; eff. 7-17-1997; 24 Ky.R. 1156; eff. 1-12-1998; 25 Ky.R. 1168; eff. 1-19-1999; 2458; eff. 6-16-1999; 32 Ky.R. 559; 877; eff. 12-2-2005; 33 Ky.R. 531; 1378; 1526; eff. 1-5-2007; 41 Ky.R. 2623; 42 Ky.R. 282; eff. 9-4-2015; 50 Ky.R. 1185, 1729; eff. 7-30-2024.)

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