



1 JUSTICE AND PUBLIC SAFETY CABINET

2 DEPARTMENT OF CORRECTIONS

3 (Amendment)

4 501 KAR 16:310. Pre-execution medical actions.

5 RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270, 532.135, 532.140

6 STATUTORY AUTHORITY: KRS 196.035, 197.020, 314.011, 431.218, 431.220,
7 431.224, 431.240, 431.250, 431.260, 431.270

8 CERTIFICATION STATEMENT:

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

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

16 (1) Beginning fourteen (14) days prior to an execution, or for the remaining days if an
17 execution order is received fewer than fourteen (14) days prior to an execution, the condemned
18 person shall receive the following:

19 (a) A physical examination completed by a doctor or advanced practice registered nurse;

20 (b) A visit from a nurse at least once per shift;

1 (c) An evaluation from a licensed psychologist five (5) days per week on Monday through
2 Friday; and

3 (d) A psychiatric interview and evaluation to assess for signs of insanity conducted by a
4 licensed psychiatrist or a licensed advanced practice registered nurse (APRN) certified in a
5 psychiatric mental health population focus. The evaluation report shall be placed in the condemned
6 person's medical record and sent to the warden.

7 (2) All medical professionals referenced in subsection (1) shall:

8 (a) Personally observe and evaluate the condemned person's medical condition; and

9 (b) Document his or her observations and evaluations in the condemned person's medical
10 record immediately after personal contact with the condemned person.

11 (3) The designated medical professional shall review and sign the nursing documentation
12 daily.

13 (4) A psychiatrist shall review the nursing documentation and any other mental health or
14 medical documentation weekly.

15 (5) All Kentucky State Penitentiary medical and mental health staff shall be instructed to
16 immediately notify the warden and the designated medical professionals of any change in the
17 condemned person's medical or psychiatric condition.

18 ~~[For the fourteen (14) days prior to an execution, or for the remaining days if an execution~~
19 ~~order is received less than fourteen (14) days prior to an execution:~~

20 ~~(a) All medical documentation shall be made in special notes in the condemned person's~~
21 ~~medical record.~~

22 ~~(b) The department shall arrange for nurse visits for the condemned person during each~~
23 ~~shift daily. The contacts and observations from these nurse visits shall be recorded in the special~~

1	notes of the medical record referenced in paragraph (a) of this subsection. The nurse notes shall
2	state the presence or absence of signs of physical or emotional distress observed.
3	(e) A licensed psychologist shall:
4	1. Personally observe and evaluate the condemned person five (5) days per week on
5	Monday through Friday;
6	2. Document his or her observations and evaluations in the condemned person's medical
7	record immediately after personal contact with the condemned person;
8	3. Review the department medical records for the condemned person for:
9	a. A diagnosis of an intellectual disability as:
10	(i) Indicated by the criteria in the Diagnostic and Statistical Manual (DSM);
11	(ii) Defined by the American Association on Intellectual and Developmental Disabilities
12	(AAIDD); or
13	(iii) Indicated by other similar prevailing medical standards and clinical guidelines; or
14	b. An IQ test score of seventy-five (75) or lower after adjustment for the applicable standard
15	error of measurement; and
16	4. Notify the warden if any record is located that meets the criteria in subparagraph 3 of
17	this paragraph:
18	(d) The designated medical professional shall review and sign the nursing documentation
19	referenced in paragraph (b) of this subsection daily.
20	(e) A psychiatrist shall review the nursing documentation referenced in paragraph (b) of
21	this subsection and any other mental health or medical documentation weekly.
22	(2) For the seven (7) days prior to an execution, or for the remaining days if an execution
23	order is received less than seven (7) days prior to an execution:

~~(a) A doctor or advanced practice registered nurse shall:~~

~~1. Complete a physical examination; and~~

~~2. Place the documentation of the physical in the condemned person's medical record upon completion of the documentation.~~

~~(b) A psychiatric interview and evaluation to assess for signs of insanity shall be:~~

~~1. Completed by a licensed psychiatrist or a licensed advanced practice registered nurse~~

~~(APRN) certified in a psychiatric mental health population focus;~~

~~2. Placed in the condemned person's medical record; and~~

~~3. Sent to the warden.~~

~~(3) The designated medical professional shall:~~

~~(a) Personally observe and evaluate the condemned person's medical condition at least twice on nonconsecutive days; and~~

~~(b) Document his or her observations and evaluations in the special notes of the condemned person's medical record immediately after personal contact with the condemned person.~~

~~(4) All Kentucky State Penitentiary medical and mental health staff shall be instructed to immediately notify the warden and the designated 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:

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

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

6 Section 4. [~~Serious~~]-Intellectual Disability.

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

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

10 (b) Education records;

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

12 (d) medical records; and

13 (e) mental health records.

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

17 (3) The records shall be reviewed for:

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

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

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

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

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

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

3 (5) If the warden is notified by the psychologist described in subsection (4) of this section
4 [Section 1(1)(c) of this administrative regulation] concerning a record indicating [a diagnosis of] an
5 intellectual disability or an IQ test score of seventy-five (75) or less for the condemned person
6 after adjustment for the applicable standard error of measurement:

7 (a) [(1)] The warden shall notify the Commissioner;

8 (b) [(2)] The Commissioner shall notify in writing the Attorney General or his designee, the
9 condemned person's counsel, and the condemned person of the record located; and

10 (c) [(3)] The Commissioner shall suspend the execution pursuant to KRS 532.140 to allow
11 procedures consistent with KRS 532.135.

12 (6) If there has been a final adjudication by a court of law regarding whether the condemned
13 person suffers from an intellectual disability and there has been no intervening change in relevant
14 law or clinical guidelines regarding intellectual disability, the review required by this section shall
15 not occur.

16 (7) The Justice and Public Safety Cabinet Office of Legal Services shall determine:

17 (a) Whether there has been a final adjudication by a court of law regarding whether the
18 condemned person suffers from an intellectual disability; and

19 (b) Whether there has been an intervening change in relevant law or clinical guidelines
20 regarding intellectual disability.

21 Section 5. Submission of records by the condemned person and an interested third party.

22 (1) No later than seven (7) days before a scheduled execution, the condemned person and
23 an interested third party may submit records indicating the possibility of an intellectual disability

1 or an IQ test score of seventy-five (75) or lower after adjustment for the applicable standard error
2 of measurement for the condemned person.

3 (2) The condemned person may submit records to the warden through institutional mail
4 who shall then ensure the submitted records are included for review as set forth in Section 4 of this
5 administrative regulation.

6 (3) An interested third party may submit records to the department by mailing the records
7 to doc.deathrowdisability@ky.gov or Warden, Kentucky State Penitentiary, 266 Water Street,
8 Eddyville, KY 42038.

9 (4) By submitting the records, the interested third party is certifying that the records are
10 true and accurate to the best of their knowledge or belief.

11 Section 6. Execution Substances.

12 (1) The warden shall:

13 (a) Notify medical staff and the ambulance service of the substances that may be used for
14 the execution so that planning can be done in case of suspension of the execution after the drugs
15 have been administered; and

16 (b) Direct medical staff to review the medications of the condemned person for a potential
17 adverse reaction to the substances and notify the warden if a known potential adverse reaction is
18 identified.

19 (2) If the warden is notified that a known potential adverse reaction has been identified, the
20 warden shall notify the commissioner and the ambulance service.

21 (3) If the commissioner is notified that a known potential adverse reaction has been
22 identified, the commissioner shall notify the Attorney General or designee, the condemned

- 1 person's counsel, the condemned person, and the Governor's Office in writing of the potential
- 2 adverse reaction.

501 KAR 16:310

7/14/25
Date

Cookie Crews
Cookie Crews, Commissioner
Department of Corrections

PUBLIC HEARING AND PUBLIC 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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

501 KAR 16:310

Contact Person: Nathan Goens, Phone, (502) 564-8216, Email: Justice.RegContact@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes medical actions to be performed after receipt of the execution order and prior to the execution of a condemned inmate.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure the Department of Corrections execution protocol compliance with constitutional and statutory requirements.

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists the Department of Corrections execution protocol to be compliant with statutory and constitutional requirements.

(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 to this administrative regulation will expand the types of records that are reviewed prior to an execution, allow the condemned person and interested third parties to submit records indicating an intellectual disability, and require a suspension of an execution in the event the Department of Corrections discovers a diagnosis or specific signs of an intellectual disability during the pre-execution medical actions.

(b) The necessity of the amendment to this administrative regulation: The amendment to the administrative regulation is necessary because of constitutional requirements related to the execution of condemned inmates developed by recent Supreme Court of the United States and Supreme Court of Kentucky case law as well as to comply with an order entered by the Franklin Circuit Court.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to the regulation conforms with the authorizing statutes because 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, and the Department of Corrections is a division of the Justice and Public Safety Cabinet.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the Justice and Public Safety Cabinet, Department of Corrections effectively administer the death penalty as established by KRS 431.220 and ensures that it is administered in a way that complies with constitutional requirements.

(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 condemned inmates, their attorneys, interested third parties, judges with sentences of death in their

circuits, and employees of the Governor's Office, the Attorney General's Office, the Department of Public Advocacy, and the Department of Corrections involved with criminal sentences of death.

(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 Department of Corrections will be responsible for ensuring pre-execution medical actions are completed and the Warden of the Kentucky State Penitentiary is notified in the event a record of a diagnosis or specific signs of a serious intellectual disability is discovered during the pre-execution medical actions. The Commissioner of the Department of Corrections will be responsible for suspending the execution upon notification of the discovery of a diagnosis or specific signs of an intellectual disability. Interested third parties as well as the condemned will have the opportunity to submit records for review prior to an execution. The condemned person or the condemned person's counsel as well as the Governor's Office, the Attorney General's Office, and judges will be responsible for taking the appropriate steps to litigate whether such an intellectual disability exists.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The regulation does not include any requirements of the entities affected that would exact a cost beyond the time required to be compliant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Each of the parties named in question (3) will benefit by ensuring that no intellectually disabled individual will be executed.

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

(a) Initially: The Department's medical services are under contract at a rate of \$17.36 per inmate per day but there will be no extra costs created by this amendment.

(b) On a continuing basis: Medical costs typically rise between 5% and 7% annually, but this is not a result of the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Appropriations of General Funds to the Department of Corrections will fund the implementation and enforcement of this administrative regulation.

(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: This administrative regulation amendment will not require an increase in fees or funding for implementation. An increase in funding may be necessary for annual increases in medical costs and staffing costs, but no new costs are expected to result from the implementation of the administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees are directly or indirectly established by this administrative regulation.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not appropriate in this instance because the regulation and its impact will not disproportionately impact any particular class regulated entity.

FISCAL IMPACT STATEMENT

501 KAR 16:310

Contact Person: Nathan Goens, Phone: (502) 564-8216, Email: Justice.RegContact@ky.gov

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation: 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. The death penalty is established by KRS 431.220.

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act: 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. The death penalty is established by KRS 431.220.

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions: This administrative regulation is being promulgated by the Department of Corrections. This administrative regulation will affect judges with sentences of death in their circuits and employees of the Governor's Office, the Attorney General's Office, the Department of Public Advocacy, and the Department of Corrections involved with criminal sentences of death.

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:

For the first year: The Department of Correction's medical cost per inmate per day is currently \$17.36. This administrative regulation should not cause any additional expenditures by the Department or any other entities identified in (3)(a) in the first year.

For subsequent years: The Department of Correction's medical cost per inmate per day is currently \$17.36. This administrative regulation should not cause any additional expenditures by the Department or any other entities identified in (3)(a) in subsequent years.

2. Revenues:

For the first year: This administrative regulation will not generate revenue.

For subsequent years: This administrative regulation will not generate revenue.

3. Cost Savings:

For the first year: This administrative regulation will not generate cost savings.

For subsequent years: This administrative regulation will not generate cost savings.

(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts): This administrative regulation will affect judges with sentences of death in their circuits and employees of the Commonwealth Attorney's offices involved with criminal sentences of death.

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:

For the first year: This administrative regulation should not cause any additional expenditures in the first year.

For subsequent years: This administrative regulation should not cause any additional expenditures in subsequent years.

2. Revenues:

For the first year: This administrative regulation will not generate revenue in the first year.

For subsequent years: This administrative regulation will not generate revenue in subsequent years.

3. Cost Savings:

For the first year: This administrative regulation will not generate cost savings in the first year.

For subsequent years: This administrative regulation will not generate cost savings in subsequent years.

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a): This administrative regulation will affect the condemned persons and interested third parties.

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:

For the first year: This administrative regulation should not cause any additional expenditures in the first year.

For subsequent years: This administrative regulation should not cause any additional expenditures in subsequent years.

2. Revenues:

For the first year: This administrative regulation will not generate revenue in the first year.

For subsequent years: This administrative regulation will not generate revenue in subsequent years.

3. Cost Savings:

For the first year: This administrative regulation will not generate cost savings in the first year.

For subsequent years: This administrative regulation will not generate cost savings in subsequent years.

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a):

(a) Fiscal impact of this administrative regulation: There will not be a fiscal impact as a result of this amendment to the administrative regulation.

(b) Methodology and resources used to reach this conclusion: Because there are no expected increases in expenditures resulting from the administrative regulation, it follows that there will be no fiscal impact.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a "major economic impact", as defined by KRS 13A.010(13): There will not be a "major economic impact" as a result of this amendment to the administrative regulation.

(b) The methodology and resources used to reach this conclusion: Because there are no expected increases in expenditures resulting from the administrative regulation, it follows that there will be no "major economic impact".