

500 KAR 13:020. Internal Investigations Branch.

RELATES TO: KRS 15A.020

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) "Exonerated" means the incident occurred, but the accused's actions were justified or proper.

(2) "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 youth, or any entity housing youth placed by or committed to the Department of Juvenile Justice.

(3) "IIB" means Internal Investigations Branch, Office of Legal Services, Justice and Public Safety Cabinet.

(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.

(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.

(7) "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.

(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. The Internal Investigations Branch shall accept reports of special incidents. (1)(a) A toll-free number shall be made available to all staff and youth to report special incidents. A voice mailbox system shall be available for reporting special incidents after normal work hours.

(b) 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 which give sufficient information and allege a special incident shall be accepted.

(3) Referrals from any other source which give sufficient information and allege a special incident shall be accepted.

Section 3. Investigation of Reports and Special Incidents. (1) If IIB receives a report of a 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 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 Department of Juvenile Justice Commissioner or the secretary of the Justice and Public Safety Cabinet. 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 Special Incidents. Following the receipt of the report, the IIB-2 Special Incident Reporting Form shall be completed and the report investigated or referred in accordance with Section 3 of this administrative regulation. IIB investigations shall be conducted according to the time frames established in this section.

(1) If the report indicates the youth is in imminent danger, the investigation shall be initiated within one (1) hour and personal contact made with the victim within twenty-four (24) hours.

(2) If the report does not indicate imminent danger, the investigation shall be initiated within twenty-four (24) hours and personal contact made with the victim within seventy-two (72) hours.

(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.

(b) Any deviation from the time frames shall require supervisory approval and be documented in the investigative file.

(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. If investigating an allegation or report, an IIB investigator shall:

- (1) Complete the IIB-2 form;
- (2) Report any special incidents as required by KRS 620.030 and 620.040;
- (3) Notify the Commissioner of the Department of Juvenile Justice or designee of the report;
- (4) Interview the victim privately, outside the presence of the offender, with no more than two (2) persons present in addition to the victim and IIB investigator;
- (5) Interview the offender;
- (6) Interview appropriate witnesses;
- (7) Review documentation relevant to the incident; and
- (8) 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 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 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 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;

(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 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.)