501 KAR 16:001. Definitions for 501 KAR Chapter 16.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270
STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.220, 431.240, 431.250
NECESSITY, FUNCTION, AND CONFORMITY: 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. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the definitions used in 501 KAR Chapter 16.

Section 1. Definitions. (1) "Cabinet" is defined in KRS 196.010(1) and 197.010(1).
(2) "Clergy witness" means the member of clergy designated in writing by the condemned person to witness the execution pursuant to KRS 431.250.
(3) "Commissioner" means:
(a) Commissioner as defined in KRS 196.010(2); or
(b) The commissioner’s designee.
(4) "Condemned person" is defined in KRS 431.213(1).
(5) "Department" is defined in KRS 196.010(3) and 197.010(3).
(6) "Designated medical professional" means the physician designated by the department to monitor the clinical activities, assessments and examinations involving the condemned person during the fourteen (14) days prior to execution.
(7) "Designated victim’s family" means the three (3) members of the victim’s family designated by the commissioner to witness the execution pursuant to KRS 431.250.
(8) "Electrocution" means the method of execution described in KRS 431.220(1)(b).
(9) "Electrocution equipment" means the device at the penitentiary that was specifically manufactured to cause death by electrocution.
(10) "Execution building" means the dedicated structure at the Kentucky State Penitentiary containing the execution chamber.
(11) "Execution chamber" means the room or area of the Kentucky State Penitentiary designated by the Warden to conduct an execution.
(12) "Execution order" means:
(a) A mandate from the Supreme Court of Kentucky; or
(b) An Executive Order for execution signed by the Governor that:
1. Is entered in the Executive Journal maintained by the Secretary of State; and
2. May be commonly known as a death warrant.
(13) "Execution team" means the persons appointed by the Warden to carry out the execution of the condemned person and may include the IV team if execution is by lethal injection.
(14) "Headgear" means the leather device used to hold the electrode and sponge to the condemned person’s head.
(15) "IV team" means the persons on the execution team who site and insert intravenous, or IV, lines in the condemned person.
(16) "Lethal injection" means the method of execution described in KRS 431.220(1)(a).
(17) "Media representative" means one (1) of the nine (9) representatives of the news media as identified in KRS 431.250 and selected in accordance with 501 KAR 16:300.
(18) "Minister of record" means the spiritual advisor designated by the condemned person in writing to visit him after the execution order is received.
(19) "Penitentiary" means the Kentucky State Penitentiary.
(20) "Personal visitor" means a visitor who is listed on the condemned person’s visitation list or other visitor who is not the:
(a) Media;
(b) Minister of record; or
(c) Clergy who is providing religious services to the condemned person.

(21) "Security risk" means as determined in the warden’s discretion a potential threat to:
(a) The security of:
   1. The institution;
   2. An inmate;
   3. A department employee; or
   4. Any other person; or
(b) The order of the institution.

(22) "Special notes" mean specifically designated entries made in the electronic medical record that contain information concerning the condemned person from the period of time stated in 501 KAR 16:310, Section 1(1).

(23) "Testing device" means the device that was specifically manufactured to simulate an execution to test the functioning of the electrocution equipment.

(24) "Victim’s family" means the individuals who are eligible for designation by the commissioner to witness the execution in accordance with KRS 431.250.

(25) "Volunteer" means a death sentenced inmate who requests to be executed before he has completed the available legal challenges to his conviction or sentence.

(26) "Warden" means the Warden of the Kentucky State Penitentiary or the warden’s designee. (36 Ky.R. 1556; Am. 2085-M; 2037-A; eff. 5-7-2010.)


NECESSITY, FUNCTION, AND CONFORMITY: 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. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes preliminary and post execution procedures concerning the condemned person.

Section 1. Initial Steps After Receipt of Execution Order. (1) After the warden receives the execution order, the warden shall:
(a) Read the execution order to the condemned person; and
(b) If the condemned person received his death sentence prior to March 31, 1998, ask the condemned person to designate in writing his choice of the method of execution pursuant to KRS 431.220(1).
(2) For any designation required to be made in writing in this administrative regulation, if the condemned person cannot see, read, or write sufficiently to complete his designation, then a staff person at the penitentiary shall:
(a) Ask the condemned person to state his designation;
(b) Write the designation stated by the condemned person;
(c) Read the designation as written to the condemned person; and
(d) Ask the condemned person to sign or make his mark on the document.
(3) If the condemned person requests information about the handling of the body after execution, the warden shall inform him of the requirements of KRS 72.025(5) for a post-mortem examination of the body and that the body is transferred to the Office of the State Medical Examiner for the post-mortem examination before being returned to the coroner.
(4) The time for the execution set by the warden pursuant to KRS 431.240(1) shall be prevailing local time for the Kentucky State Penitentiary.

Section 2. Condemned Person’s Designation of Witnesses. (1) The warden shall ask the condemned person to designate in writing his clergy witness and the three (3) other individuals who may witness the execution pursuant to KRS 431.250.
(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply immediately when the warden reads the execution order.
(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the condemned person.

Section 3. Condemned Person’s Designation Concerning Property, Funeral, and Disposition of Body. (1) The warden shall ask the condemned person to designate in writing the person who may:
(a) Collect the condemned person’s personal property after his death;
(b) Take charge of the condemned person’s body; and
(c) Make necessary funeral arrangements.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply at least forty-eight (48) hours prior to the time scheduled for the execution.

(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the condemned person.

Section 4. Visitation Designation. (1) After an execution order has been issued, the warden shall ask the condemned person to designate in writing his minister of record.

(2) The condemned person shall comply with subsection (1) of this section at least ten (10) days before the date scheduled for the execution. If the timing of the receipt of the execution order does not allow for ten (10) days, then the condemned person shall comply immediately when the warden reads the execution order.

(3) The warden may allow the condemned person additional time to comply with subsection (1) of this section or to change a previous designation, if a request is made by the condemned person.

Section 5. Limitations on Condemned Person’s Clothing, State-issued Items, and Personal Property. (1) Notwithstanding 501 KAR 6:020, CPP 17.1, CPP 14.2, 501 KAR 6:040, KSP 17-01-01, 17-01-03 and 17-01-04, the warden may limit the condemned person’s clothing, state-issued items, and personal property to the following:

(a) One (1) mattress;
(b) Two (2) sheets;
(c) One (1) pillow;
(d) One (1) pillow case;
(e) One (1) pair of scrub-type pants;
(f) One (1) scrub-type shirt;
(g) One (1) pair of underwear;
(h) One (1) pair of socks;
(i) One (1) toothbrush;
(j) One (1) tube of toothpaste;
(k) One (1) bar of soap;
(l) One (1) bath towel; and
(m) One (1) wash cloth.

(2) If the warden limits clothing and linen in the manner described in subsection (1) of this section:

(a) 1. Clothing shall be exchanged for clean every other day; and
2. Linen shall be exchanged weekly; or

(b) Clothing and linen shall be exchanged on the same schedule used in other restricted housing units if the warden determines that better suits the needs of the penitentiary.

Section 6. Limitations on Condemned Person’s Clothing, State-issued Items, and Personal Property for Females. (1) Notwithstanding 501 KAR 6:020, CPP 17.1, CPP 14.2, 501 KAR 6:040, KSP 17-01-01, 17-01-03 and 17-01-04, the warden may limit the condemned person’s clothing, state-issued items, and personal property for a female to the items in Section 5 of this administrative regulation and the following:
(a) One (1) bra;
(b) Sanitary napkins; and
(c) Tampons.
(2) The bra shall be white and if it contains stays or underwire, they shall be plastic.
(3) If the warden limits clothing in the manner described in Section 5(1) of this administrative regulation, the bra shall be exchanged for clean at least:
   (a) Every other day; or
   (b) On the same schedule for clothing exchange used in other restricted housing units if the warden determines that better suits the needs of the penitentiary.
(4) The supply of sanitary napkins and tampons shall be in a sufficient quantity to allow the individual to maintain an acceptable level of personal hygiene.

Section 7. Transfer of Female Condemned Person. If the condemned person is female, she shall be transferred to the penitentiary for execution. The date of the transfer shall be determined by the warden.

Section 8. Securing Condemned Person’s Personal Property Prior to Execution. (1) The warden shall inventory and secure any personal property of the condemned person prior to the execution.
   (2) The warden shall set the time for the removal of all personal property.

Section 9. Post-execution Steps. (1) The return on the judgment shall be made in accordance with KRS 431.260 within seven (7) days of the execution.
   (2) If the condemned person does not make other arrangements, the department shall make arrangements for the delivery or burial of the body pursuant to KRS 431.270.
   (3) Within three (3) days of the execution, the penitentiary shall call the person designated by the condemned person to pick up his personal property. If the person cannot be reached by phone, notice may be mailed to the person. (36 Ky.R. 1558; 2087-M; 2038-A; eff. 5-7-2010; 39 Ky.R. 603; eff. 2-1-2013; 44 Ky.R. 1884, 2337, 2494; eff. 7-6-2018.)
501 KAR 16:300. Execution procedures concerning attorneys representing the condemned, witnesses, visitors, and demonstrators.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

NECESSITY, FUNCTION, AND CONFORMITY: 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. KRS 431.220 establishes requirements for the execution of the death penalty. KRS 431.250 establishes persons who may attend the execution. This administrative regulation establishes preliminary and post execution procedures concerning witnesses, visitors, and demonstrators.

Section 1. Designation of Victim’s Family to Witness Execution. (1) The commissioner shall mail a letter to any of the victim’s family described in KRS 431.250 for whom the commissioner has received an address.

(2) The letter sent to the victim’s family shall:
(a) State the scheduled execution date; and
(b) Request the victim’s family member contact the commissioner to notify him in writing if he wants to be considered for designation as a witness to the execution.

(3) The commissioner may seek an address for the victim’s family by:
(a) Review of the condemned person’s file; or
(b) Request made to the Commonwealth’s Attorney who maintains information concerning the victims of the crime committed by the condemned person.

(4) The commissioner shall designate pursuant to KRS 431.250 the three (3) members of the victim’s family who may witness the execution. If the commissioner receives more than three (3) requests from members of the victim’s family to witness the execution, the commissioner shall:
(a) Give first preference to a victim’s spouse;
(b) Give second preference to a victim’s adult child; and
(c) Hold a drawing to select a witness if the requests exceed three (3) after consideration of the preferences or if the requests within a preference exceed three (3).

(5) A letter stating the commissioner’s designation shall be mailed to each member of the victim’s family who is designated to witness the execution.

Section 2. Additional Notifications Concerning Execution. (1) The department shall mail a letter that states:
(a) The time that the person shall arrive to witness the execution; and
(b) The location where the person shall go.

(2) The letter shall be mailed to the:
(a) Designated victim’s family;
(b) Condemned person’s clergy witness and his other three (3) designated witnesses;
(c) Media representatives selected pursuant to Section 3 of this administrative regulation;
(d) Coroner of the county where the execution is to be conducted; and
(e) Sheriff of the county where the condemned person was convicted.

Section 3. Media Representative Procedures. (1) The department shall send notice to the three (3) news organizations specifically identified in KRS 431.250 as being allowed to have
one (1) representative. The notice shall request the identity of the representative who the news organization will designate to attend and witness the execution. The three (3) news organizations shall send the names of the representatives in writing at least fourteen (14) days prior to the execution, unless notice from the department indicates a different time to send the names of the representatives. The notice may request additional information about the representative as needed for security or management.

(2) The Kentucky Press Association may select by lottery three (3) representatives for the newspapers within the state as authorized by KRS 431.250. The Kentucky Press Association shall send the names of the representatives in writing at least fourteen (14) days prior to the execution, unless notice from the department indicates a different time to send the names of the representatives. The department may request additional information about the representatives as needed for security or management.

(3) Selection of the three (3) representatives for broadcast media identified in KRS 431.250 shall be made in the following manner:
(a) The Central Office Public Information Officer shall send a press release advising broadcast media that they may nominate a representative of their organization to attend and serve as an official media witness to the execution. The nomination shall be sent to the commissioner’s office in writing at least fourteen (14) days prior to the execution unless notice from the department indicates a different time to send the names for nomination.
(b) A drawing shall be held to select the three (3) representatives for broadcast media in the office of the commissioner.

(4) After media representatives to the execution are separated from other media in preparation for transfer to the witness room, media representatives shall not be permitted to use:
(a) Any item at the execution other than a pen or pencil and paper which shall be provided by the department; and
(b) Audio or video recording devices.

Section 4. Visitors. (1) Notwithstanding 501 KAR 6:020, CPP 16.1 and 501 KAR 6:040, KSP 16-01-01, visits to the condemned person after receipt of the execution order shall be governed by this administrative regulation.

(2) The visitor shall call the Kentucky State Penitentiary in advance of the requested visit to schedule the visit.

(3) The warden shall designate the location of the visit.

(4) For any visit allowed in this administrative regulation on the day of execution, the condemned person shall not have more than one (1) visitor at a time.

(5) The condemned person may refuse any visitor.

(6) The warden may approve a request from the condemned person for a visitor that is not on the visitation list.

(7) A pat down search may be performed on all visitors before and after the visit.

(8) Media visitors.
(a) Prior to the day of the execution, a member of the media:
1. Shall not bring any item into the penitentiary, unless prior approval is given by the warden;
2. Shall make any request to bring items into the penitentiary when calling to request an appointment to visit; and
3. May request daily visits on weekdays.
(b) On the day of the execution:
1. The department may establish a media:
a. Staging area where media shall be directed to gather before entering into the peniten-
b. Assembly room where scheduled press briefings may be held prior to the execution. Reporters may submit written questions at each press briefing for response at a subsequent briefing, except for the final briefing; and

2. Media shall not be allowed visits.

(c) Seven (7) days prior to the execution, the department communication director may issue a press advisory stating the date and approximate time of the pending execution.

9) Clergy visitors and minister of record visits.

(a) A member of the clergy or the minister of record may request to bring religious items into the penitentiary by making the request to the penitentiary chaplain. The chaplain shall notify the warden of the request. The warden shall:

1. Give due consideration to any request to bring religious items into the penitentiary; and
2. Not deny a religious item needed for an end-of-life ceremony unless it poses a significant operational problem or security risk.

(b) Prior to the day of execution, a member of the clergy or the minister of record may request daily visits.

(c) On the day of the execution:

1. Clergy visits shall not be allowed, except for the minister of record;
2. The minister of record shall call for an appointment for the visit prior to the day of execution;
3. The minister of record may visit for thirty (30) minutes up to two (2) hours before the execution;
4. The visit shall not be a contact visit, unless a religious ceremony, sacrament, or rite accepted by the religion being practiced by the condemned person requires contact to be accomplished; and
5. If a contact visit is necessary pursuant to subparagraph 4 of this paragraph, then the need for a contact visit shall be stated in the call for the appointment.

10) Personal visitors.

(a) Prior to the day of execution:

1. A personal visitor who is listed on the condemned person’s visitation list may request daily visits; and
2. Personal visitors shall be limited to four (4) at a time.

(b) A personal visitor shall not bring any item into the penitentiary.

(c) On the day of execution, a personal visitor shall not be allowed a visit.

11) Attorneys defending the condemned person and staff employed by the office of an attorney defending the condemned person.

(a) An attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person may bring into the penitentiary:

1. Pens;
2. Pads of paper without metal; and
3. Legal documents for a visit with the condemned person. The legal documents and other items shall be searched, but shall not be read by staff performing the search.

(b) Prior to the day of execution, an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person:

1. Shall be allowed a visit daily between 7:30 a.m. and 2:30 p.m.; and
2. May request additional visits.

(c) On the day of execution:

1. An attorney defending the condemned person:
a. Shall be allowed a visit between 7:30 a.m. and 2:30 p.m.;
b. May request additional visits until three (3) hours prior to the execution; and

c. Visits shall be noncontact, unless there is a need for the condemned person to sign a document. If a document needs to be signed, the attorney shall be allowed to obtain the signature of the condemned person in a location designated by the warden; and

2. One (1) attorney representing the condemned person may request phone contact with the condemned person at or near two (2) hours prior to the execution. The call shall be allowed when a break in the execution preparations can be taken without delaying the execution at or near two (2) hours prior to the execution.

3. One (1) attorney representing the condemned person shall be allowed to have phone contact with the condemned person at or near one (1) hour prior to the execution, if requested. The call shall be allowed when a break in the execution preparations can be taken without delaying the execution at or near one (1) hour prior to the execution.

(d) The warden shall notify the condemned person of all requests from an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person for a phone call from the condemned person.

Section 5. (1) An attorney representing the condemned person shall be allowed a space designated by the warden on the day of the execution at the Kentucky State Penitentiary. The space shall include access to a phone and restroom. The attorney shall be escorted to food and drink if needed.

(2) One (1) attorney representing the condemned person shall be allowed to have phone contact with the condemned person, if requested, during a temporary stay that delays the start of the execution.

Section 6. Security and Management Issues. (1) Witnesses may be staged at the discretion of the warden.

(2) The warden may deny entrance to the Kentucky State Penitentiary to any person, including a witness, media representative, or visitor, who is determined to be a security risk or who becomes disruptive while at the penitentiary.

(3) The warden may limit the:

(a) Items brought onto the grounds of the penitentiary;

(b) Areas where persons may enter or remain at the penitentiary; and

(c) Time allowed in an area or on the grounds of the penitentiary.

(4) The warden may in his discretion make an exception to the limitations on visitors in Section 4 of this administrative regulation.

Section 7. Demonstrator Procedures. (1) The warden may designate an area for demonstrators.

(2) A press advisory shall be issued to identify the locations for demonstrators and the time allowed for demonstrations.

Section 8. Notice of Stay. (1) Prior to the day of execution, an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person shall give notice of a stay of execution by providing a copy of the stay to the warden.

(2) On the day of execution, an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person shall give notice of a stay of execution by calling the penitentiary at its main number unless a different phone number is designated by the warden.

(3) If the warden designates a different number, he shall give notice of the designated
phone number to the individual at the phone number provided by an attorney defending the condemned person.

(4) An attorney defending the condemned person shall designate an individual to whom the notice in subsection (3) of this section shall be provided by calling the penitentiary and providing the information to the warden’s secretary at least three (3) days prior to the day of execution.

Section 9. Obtaining Medical Records. (1) If an attorney defending the condemned person or staff employed by the office of an attorney defending the condemned person provides an appropriate authorization signed by the condemned person to release medical and mental health records to them, the warden shall make the record available for inspection within twenty-four (24) hours.

(2) After an execution order is signed, a request for inspection or copies of the condemned person’s medical or mental health records shall be made in writing to the warden. (36 Ky.R. 1560; 2089-M; 2039-A; eff. 5-7-2010; 44 Ky.R. 1887, 2339, 2496; eff. 7-6-2018.)
Section 1. Pre-execution Medical Actions after Receipt of Execution Order. (1) For the fourteen (14) days prior to an execution, or for the remaining days if an execution order is received less than fourteen (14) days prior to an execution:
   (a) All medical documentation shall be made in special notes in the condemned person’s medical record.
   (b) The department shall arrange for nurse visits for the condemned person during each shift daily. The contacts and observations from these nurse visits shall be recorded in the special notes of the medical record referenced in paragraph (a) of this subsection. The nurse notes shall state the presence or absence of signs of physical or emotional distress observed.
   (c) A licensed psychologist shall:
      1. Personally observe and evaluate the condemned person five (5) days per week on Monday through Friday;
      2. Document his observations and evaluations in the condemned person’s medical record immediately after personal contact with the condemned person;
      3. Review the department medical records for the condemned person for:
         a. A diagnosis of an intellectual disability as:
            (i) Indicated by the criteria in the Diagnostic and Statistical Manual (DSM); or
            (ii) Defined by the American Association on Intellectual and Developmental Disabilities (AAIDD); or
         b. An IQ test score of seventy-five (75) or lower; and
      4. If any record is located that meets the criteria in subparagraph 3 of this paragraph, the psychologist shall notify the warden.
   (d) The designated medical professional shall review and sign the nursing documentation referenced in paragraph (b) of this subsection daily.
   (e) A psychiatrist shall review the nursing documentation referenced in paragraph (b) of this subsection and any other mental health or medical documentation weekly.
(2) For the seven (7) days prior to an execution, or for the remaining days if an execution 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 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 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) If the warden receives information from medical or mental health staff that the condemned person exhibits signs or symptoms indicating that he may be insane as defined in KRS 431.213(2), 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 a psychiatric evaluation if he determines one is needed.
(4) If a department psychiatric evaluation determines that the condemned person may be insane as defined in KRS 431.213(2), the department shall:
(a) Give 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 appears to be insane; and
(b) Suspend the execution pursuant to KRS 431.240(2) to allow procedures consistent with KRS 431.2135.

Section 4. Serious Intellectual Disability. If the warden is notified by the psychologist described in Section 1(1)(c) of this administrative regulation concerning a diagnosis of an intellectual disability or an IQ test score of seventy-five (75) or less for the condemned person, the:
(1) Warden shall notify the commissioner; and
(2) Commissioner shall notify in writing the Attorney General or his designee, the condemned person’s counsel, and the condemned person of the record located. The notice shall state that a court order is required for the execution to be suspended.
Section 5. Execution Substances. The warden shall:

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

(2) Direct medical staff to review the medications of the condemned person for a potential adverse reaction to the substances. (36 Ky.R. 1563; 2092-M; 2041-A; eff. 5-7-2010; 39 Ky.R. 606; eff. 2-1-2013; 44 Ky.R. 1891, 2343, 2498; eff. 7-6-2018.)

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270

NECESSITY, FUNCTION, AND CONFORMITY: 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. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the qualifications for the execution team.

Section 1 Selection of Execution Team. (1) The warden of the Kentucky State Penitentiary shall be a member of the execution team by virtue of his official position.
(2) The warden shall designate a deputy Warden to be a member of the execution team.
(3) All other members of the execution team shall not be required to serve as members of the execution team without their consent.
(4) An execution team member shall read and understand the execution procedures. A review of the execution procedures shall be conducted by the warden annually.

Section 2. IV Team Qualifications. (1) At least two (2) members of the execution team shall be designated as the IV team for an execution by lethal injection. An IV team shall not be part of the execution team for an execution by electrocution.
(2) A member of the IV team shall be a:
(a) Phlebotomist;
(b) Emergency Medical Technician;
(c) Paramedic; or
(d) Military Corpsman.
(3) A member of the IV team shall:
(a) Have at least one (1) year of professional experience in his specialty or profession;
(b) Remain certified in his specialty or profession; and
(c) Fulfill all continuing education requirements in his specialty or profession.
(4) Prior to participating in an execution, a member of the IV team shall have participated in at least two (2) execution practices receiving step-by-step instructions from an existing IV team member.
(5) The warden shall review annually the training and current certification, as appropriate, of each IV team member to ensure compliance with the required qualifications and training.

Section 3. Execution Practice. (1) Each practice shall include a complete walk through of an execution.
(2) For execution by lethal injection:
(a) The execution team shall practice the lethal injection execution process at least ten (10) times during the course of one (1) calendar year; and
(b) Each practice shall include the siting of two (2) IVs into a person who serves voluntarily.
(3) For execution by electrocution:
(a) The execution team shall practice the electrocution process at least two (2) times during the course of one (1) calendar year; and
(b) During each practice of execution by electrocution, the execution team shall:
1. Visually inspect the:
   a. Headgear and electrode;
b. Strap and electrode for the leg;
c. Leather straps on the chair; and
d. Cables to the electrocution equipment; and
2. Use a testing device placed in the chair and connected to the cables of the electrocution equipment to simulate an electrocution.
(4) The warden shall maintain a record of all execution team training documenting the:
(a) Date of practice;
(b) Type of execution practiced; and
(c) Names of the participants. (36 Ky.R. 1565; 2094-M; 2042-A; eff. 5-7-2010.)
Section 1. Procurement, Storage, and Accountability of Execution Substances. (1) Upon receipt of an execution order, the warden shall check the supply of substances and their expiration dates. If a substance is needed, the warden shall place an order to obtain the necessary substance for the lethal injection protocol listed in Section 3 of this administrative regulation.

(2) The substance shall be stored according to any manufacturer’s instructions and placed in a secured area of the penitentiary in a locked container. The warden shall maintain control of the keys to the secured areas and container.

(3) A log shall be maintained in the storage container which shall record:
   (a) New supply of a substance received and added to inventory;
   (b) Substance removed for use;
   (c) Disposal of substance due to expiration; and
   (d) Any other reason that a substance is removed or deducted from inventory.

Section 2. Preliminary Steps. (1) The condemned person shall be executed by using the Protocol in Section 3 of this administrative regulation.

(2) The penitentiary shall have a minimum of three (3) phones that may be used simultaneously available for communication with the courts and counsel on the day of execution. The warden shall determine if necessary phones are operational prior to the execution.

(3) If the condemned person is to be executed by lethal injection:
   (a) If male, his chest shall be shaved by a designated member of the execution team for heart monitor leads on the day of execution; and
   (b) The IV team shall complete an examination of the condemned person’s veins within twenty-four (24) hours prior to the execution to determine possible locations of the IV sites.

(4) On the day of execution the warden shall provide to the IV team a sufficient amount of one of the substances listed in Section 3(1) of this administrative regulation to prepare primary and backup syringes for the substance to be used.

(5) At the execution building, the substance and saline shall be drawn into the primary and backup syringes by one (1) member of the IV team designated by the warden in accordance with Section 3 of this administrative regulation. The other member of the IV team shall observe preparation of the substance and verify that the instructions and procedures have been carried out correctly.

(6) Any syringe that is loaded with a substance that is not used during the execution shall be destroyed and documented in the log maintained in accordance with Section 1(3) of this administrative regulation.

(7) Any unused substance that was not prepared for the execution shall be:
   (a) Returned to the warden;
   (b) Locked in the storage container; and
   (c) Documented in the log maintained in accordance with Section 1(3) of this administrative regulation.
(8) A member of the IV team shall determine the appropriate size needle based on the examination of the condemned person's veins within the five (5) hours prior to the execution.

(9) The warden shall order the condemned person escorted to the execution chamber and strapped to the gurney.

(10) The IV team shall run the IV lines to the condemned person by selecting a site and inserting the following:

(a) One (1) primary intravenous (IV) catheter; and
(b) One (1) backup IV catheter.

(11) Location of the IV catheters.

(a) The location of the IV catheters on the body of the condemned person shall be determined by the IV team members. The insertion site of preference shall be the following order:

1. Arms;
2. Hands;
3. Ankles; or
4. Feet.

(b) The neck shall not be used for an IV catheter.

(12) To best ensure that a catheter is inserted properly into a vein, the IV team members shall look for the presence of blood in the hub of the catheter.

(13) If the IV team cannot secure two (2) IV catheters within a reasonable time, not to exceed two (2) hours, the Commissioner shall notify the Governor's Office that the execution has been suspended until a new execution order is received.

(14) The team shall start a saline flow as it establishes a catheter with IV tubing. A member of the execution team shall observe the IV to ensure that the flow is uninterrupted.

(15) The execution team shall:

(a) Securely connect the electrodes of the cardiac monitor to the condemned person; and
(b) Ensure the equipment is functioning.

(16) Counsel assigned by the cabinet and counsel assigned by the office of the Attorney General shall be asked whether any stays, orders, pardons, or commutations of sentence have been received.

(17) The viewing curtain shall be opened.

(18) The warden shall announce the execution to the witnesses.

(19) The warden shall ask the condemned person if he wants to make a final statement and provide a brief opportunity of not less than two (2) minutes for him to do so. The warden may impose reasonable restrictions on the content and length of the statement. The warden may also terminate a statement that he or she believes is intentionally offensive to the witnesses. The witnesses shall be allowed to hear the condemned person's statement.

(20) The warden shall order the execution to proceed.

Section 3. Protocol. (1) One (1) of the following substances under whatever name it may be known or sold by, including generic, trade, brand, or other name, may be used:

(a) Pentobarbital; or
(b) Thiopental sodium.

(2) For the substance being used for the execution, the following syringes shall be prepared for both the primary and backup IVs:

(a) For pentobarbital:

1. Sufficient syringes shall be prepared for a total of five (5) grams of pentobarbital;
2. The five (5) grams may consist of two (2) syringes prepared with two and five-tenths (2.5) grams of pentobarbital for a total of five (5) grams/100 milliliters of solution; and
3. A separate syringe shall be prepared with saline to flush the line; or
   (b) For thiopental sodium:
      1. Sufficient syringes shall be prepared for a total of five (5) grams of thiopental sodium;
      2. The five (5) grams may consist of four (4) syringes prepared with 1.25 grams/50 milliliters; and
      3. A separate syringe shall be prepared with saline to flush the line.
   (3) The flow of saline through the IV to be used shall be discontinued.
   (4) The five (5) grams of the selected substance and saline shall be administered.
   (5) A stopwatch shall be started after the injection of the final syringe.
   (6) During the injection the warden and deputy warden shall watch the primary IV for failure, leakage, the catheter coming out of a vein, or any other problem. If the IV fails or leaks, the catheter comes out of the vein, or any other significant problem arises, the execution team shall be instructed to switch to the backup IV.
   (7) A designated execution team member shall:
      (a) Observe the heart monitor; and
      (b) Advise the coroner and physician when electrical activity of the heart has ceased as indicated by a flat line on the heart monitor.
   (8) The viewing curtain shall be drawn before the:
      (a) Coroner enters the chamber to declare death; and
      (b) Physician enters the chamber to certify the cause of death.
   (9) If the heart monitor does not show a cessation of electrical activity of the heart after twenty (20) minutes of all injections through the primary IV, then the Warden shall order the injection of the substance and saline contained in the backup syringes be administered through the backup IV in accordance with this section.
   (10) If death does not occur within a sufficient time after all injections through the backup IV, the Commissioner shall notify the Governor’s Office that the execution has been suspended until a new execution order is received. The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in Section 5(1) of this administrative regulation.

Section 4. Post Lethal Injection Steps. (1) If the Coroner declares death, the warden shall announce the completion of the execution to the witnesses. The viewing curtain shall be open during the warden’s announcement.
   (2) The witnesses shall be escorted out of the witness room.

Section 5. Stabilization Procedure. (1) Before an execution commences:
   (a) The warden shall arrange for an ambulance and staff to be present on penitentiary property during the execution; and
   (b) A medical crash cart and defibrillator shall be located in the execution building in close proximity to the execution chamber.
   (2) If at any time during the execution process the Governor grants a pardon or commutes the sentence of the condemned person or if a court of competent jurisdiction issues a stay after an execution has commenced:
      (a) The execution team shall stop the execution; and
      (b) The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in subsection (1) of this section.

Section 6. Volunteer. (1) If a condemned person, who is a volunteer, tells department staff that he does not wish to continue with the execution process, the staff shall tell the warden.
(2) If the execution is in process:
   (a) The execution team shall stop the execution; and
   (b) If any of the substances have been injected, the medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in Section 5(1) of this administrative regulation.

(3) The warden shall allow the condemned person to contact his attorney.

(4) The warden shall notify the commissioner.

(5) The commissioner shall notify the Governor’s Office or court issuing the mandate. (36 Ky.R. 1566; 2096-M; 2042-A; eff. 5-7-2010; 39 Ky.R. 609; 1204; eff. 2-1-2013; 44 Ky.R. 1893, 2345, 2499; eff. 7-6-2018.)

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213-431.270
NECESSITY, FUNCTION, AND CONFORMITY: 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. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the protocol for execution by electrocution.

Section 1. Preliminary Steps. (1) The penitentiary shall have a minimum of three (3) phones that may be used simultaneously available for communication with the courts and counsel on the day of execution. The warden shall determine if necessary phones are operational prior to the execution.

(2) The electrocution equipment shall be designed to deliver approximately five (5) to ten (10) amps depending upon the condemned person’s physique at the designed voltage.

(3) The electrocution equipment shall be checked and tested in accordance with 501 KAR 16:320, Section 3(3), within forty-eight (48) hours of the time scheduled for an execution by electrocution.

(4) A sodium chloride solution shall be made by a member of the execution team within five (5) hours prior to the time scheduled for an execution by electrocution by the following:

(a) Approximately five (5) gallons of water at room temperature shall be placed in a container;

(b) Up to 128 ounces of iodized table salt shall be slowly added to the water while continuously mixing until the water will not visibly absorb salt. Sufficient absorption is observed when the salt will not dissolve in the water and visibly collects at the bottom of the container.

(5) Natural sea sponges for the head and leg electrodes shall be prepared by soaking them in the sodium chloride solution until they are saturated.

(6) If the penitentiary does not have power when the execution is scheduled to commence, the generator for the execution building shall be started.

(7) The condemned person’s head and one (1) leg shall be shaved on the day of execution.

(8) The warden shall order the condemned person escorted to the execution chamber and strapped in the chair.

(9) The warden shall order the viewing curtain opened.

(10) The warden shall announce the execution to the witnesses.

(11) The warden shall ask the condemned person if he wants to make a final statement. If a statement is made by the condemned person, it shall be limited to two (2) minutes. The witnesses shall be allowed to hear the condemned person’s statement.

(12) The warden shall announce the final preparations for the execution to the witnesses.

(13) The viewing curtain shall be closed.

(14) The execution team members shall:

(a) Attach the chin strap to the condemned person;

(b) Attach the head gear to the condemned person;

(c) Attach the leg band to the condemned person;

(d) Adjust the back board;

(e) Attach the cables from the electrocution equipment to the head and leg electrodes with the nuts sufficiently tightened to ensure a firm connection;

(f) Wipe any salt water released from the sponges from condemned person’s head and leg;
and
(g) Secure the condemned person’s leather face covering.
(15) The warden shall make a visual check of connections and straps.
(16) The execution team shall exit the execution chamber.
(17) The viewing curtain shall be opened.
(18) The warden shall:
(a) Announce the execution of the condemned person to the witnesses; and
(b) Pull the face covering over the condemned person’s face.
(19) All persons except the condemned person shall exit the execution chamber.
(20) Counsel assigned by the cabinet, and counsel assigned by the Attorney General shall be asked whether any stays, orders, pardons, or commutations of sentence have been received.

Section 2. Execution. (1) The warden shall order the execution to proceed.
(2) The execution equipment shall be activated for a two (2) minute cycle. The cycle shall consist of:
(a) Approximately 2,400 volts for a period of fifteen (15) seconds; and
(b) Approximately 240 volts for the remainder of the two (2) minute cycle.
(3) If the warden sees evidence of a malfunction, he shall press the stop button on the electrocution equipment to end the cycle.
(4) At the end of the two (2) minute cycle:
(a) The viewing curtain shall be closed; and
(b) The warden shall observe the condemned person for signs of life for five minutes, which at a minimum shall include pulse and respiration.
(5) If the warden observes signs of life during the five (5) minute observation period:
(a) The viewing curtain shall be opened; and
(b) The warden shall order the execution cycle stated in subsection (2) of this section be repeated.
(6) If the warden observes signs of life again, the execution shall be stopped. The commissioner shall contact the Governor’s Office and request that the execution be suspended.
(7) If the warden does not observe signs of life:
(a) The coroner shall check the condemned person to declare death, which at a minimum, shall include pulse and pupils; and
(b) The physician shall certify the cause of death.

Section 3. Post Execution Steps. (1) The warden shall announce the completion of the execution to the witnesses. The viewing curtain shall be open during the warden’s announcement.
(2) The witnesses shall be escorted out of the witness room.

Section 4. Stabilization Procedure. (1) Before an execution commences:
(a) The warden shall arrange for an ambulance and staff to be present on penitentiary property during the execution; and
(b) A medical crash cart and defibrillator shall be located in the execution building in close proximity to the execution chamber.
(2) If at any time during the execution process the Governor grants a pardon or commutes the sentence of the condemned person or if a court of competent jurisdiction issues a stay after an execution has commenced:
(a) The execution team shall stop the execution; and
(b) The medical staff on site shall attempt to stabilize the condemned person with the
equipment and personnel listed in subsection (1) of this section.

Section 5. Volunteer. (1) If a condemned person, who is a volunteer, tells department staff that he does not wish to continue with the execution process, the staff shall tell the warden.
   (2) If the execution is in process:
      (a) The execution team shall stop the execution; and
      (b) The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in Section 4(1) of this administrative regulation.
   (3) The warden shall allow the condemned person to contact his attorney.
   (4) The warden shall notify the commissioner.
   (5) The commissioner shall contact the Governor’s Office and request that the execution be suspended. (36 Ky.R. 1569; 2099-M; 2044-A; eff. 5-7-2010; 44 Ky.R.1897, 2349; eff. 7-6-2018.)