

TITLE: Expiring Administrative Regulations – 13 KAR 1:030, 13 KAR 2:100

RECOMMENDATION: Staff recommends that the Council allow administrative regulations 13 KAR 1:030 and 13 KAR 2:100 to expire and be repealed.

PRESENTER: Travis Powell, Vice President and General Counsel

BACKGROUND INFORMATION

House Bill (HB) 50, signed into law in the 2017 Regular Session, amended the statutes governing administrative regulations, KRS Chapter 13A, and requires that action be taken on an administrative regulation at least every seven (7) years or the regulation will be repealed. Action can be in the form of certification that the agency either intends to keep the regulation in effect “as is,” or amend the regulation within 18 months. Agencies can also choose not to take action and allow regulations to be repealed after the expiration date.

The first date of expiration outlined in HB 50 was July 1, 2019 for regulations last adopted or amended on or before July 1, 2012, but due to the passage of HB 4 in the 2019 Regular Session, the first date of expiration was extended to March 1, 2020. The issue of regulation expiration was generally discussed with the full Council at the February 22, 2019 and April 25, 2019 meetings.

At its January 24, 2020 meeting, the Council approved the Executive Committee’s recommendation to review and amend within the next 18 months the following two Campus Security Regulations – Public and Private (13 KAR 1:030 & 13 KAR 2:100)

- [13 KAR 1:030](#) - *Campus security, private institutions*; and [13 KAR 2:100](#) - *Campus security, public institutions*, are the Council’s regulations that outline institutional responsibilities relating to campus safety and security legislation in KRS 164.948-.9495, also known as the Michael Minger Act. Both regulations were last updated in November of 2002 and were set to expire on March 1, 2020 without Council action.

- [Senate Bill 130](#), signed into law during in the 2018 Regular Session, amended the Michael Minger Act (KRS 164.948 - .9495) to align the crime reporting requirements with those of the federal Clery Act beginning academic year (2019-2020). The substantive requirements of 13 KAR 1:030 and 13 KAR 2:100 remained in compliance with the new law and therefore did not require immediate modification.
- In order to comply with the statutory change, the institutional annual crime statistic reports required by KRS 164.9485 and Section 7 of these regulations are no longer submitted in the Council's online Minger Reporting System (Form MMA1). This system was designed to meet the requirements of the prior version of the law and is therefore no longer applicable. Instead, beginning with the October 1, 2019 reporting deadline, institutions were directed to report annual crime occurrence statistics to the Council as described in [KRS 164.9485\(3\)](#) in any format desired, as long as the statutorily required elements were included. For those institutions receiving federal Title IV funding, the annual statistics submitted mirror those provided in their annual federal Clery Act report. The 2020 reporting cycle was completed this past October with 100% compliance from both the public and private sectors.
- As state above, on January 24, 2020 Council approved the recommendation that 13 KAR 1:030 and 13 KAR 2:100 be amended in the next 18 months. During that time, Council staff was directed to review these regulations, evaluate the newly implemented annual reporting process, and suggest what changes should be made to conform. In addition, staff will conduct a holistic review of the regulations to see if other changes should be made to better clarify and streamline the requirements for institutional compliance. Recommendations were to be made in the form of proposed amendments to these regulations.

RECOMMENDED ACTION

Since the Council's action on January 24, 2020, CPE staff continued to review these regulations and has completed another annual crime statistic reporting cycle. During that time, neither regulation has been accessed by staff for reference or cited by reporting institutions for guidance. The provisions of KRS 164.948 - .9495 provide sufficient guidance to both institutions and staff on how to comply with the Act and, in particular, how and when to report campus crimes. The 2020 annual reporting cycle was managed exceedingly well and with 100% compliance without a standard form mandated by regulation. The other essential elements of the regulations primarily involve a recitation of the statutory components. The only exception are the portions of

the regulations that clarify that a “threat of fire” for purposes of reporting does not include a fire alarm triggered for a maintenance test or for a fire drill. Staff believes this to be inherently intuitive and does not necessitate regulatory guidance. There were no additional elements of clarification or direction identified for which regulatory guidance would be necessary.

KRS 13A.120(2)(f) states that an administrative body shall not promulgate regulations when a statute sets forth a comprehensive scheme of regulation on a particular matter. As such and after reviewing this matter for over a year and completing another successful annual reporting cycle incorporating the statutory changes made in 2018, **Council staff now recommends that 13 KAR 1:030 and 13 KAR 2:100 be allowed to expire and be repealed.**