LEGAL AUTHORITY:

* [45 CFR 205.10](http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi)
* [KRS Chapter 13B](http://www.lrc.state.ky.us/KRS/013B00/CHAPTER.HTM)
* [922 KAR 1:320 Service Appeals](http://www.lrc.state.ky.us/kar/922/001/320.htm)
* [922 KAR 1:330 Child Protective Services](http://www.lrc.ky.gov/kar/922/001/330.htm)
* [922 KAR 1:430 Child protective services in-home case planning and service delivery](http://www.lrc.state.ky.us/kar/922/001/430.htm)
* [922 KAR 1:480 Appeal of child abuse and neglect investigative findings](http://www.lrc.state.ky.us/kar/922/001/480.htm)

An individual found by the Cabinet to have abused or neglected a child may appeal the Cabinet’s finding through an administrative hearing in accordance with 922 KAR 1:480.  Such hearings are commonly referred to as “CAPTA appeals,” as the Child Abuse Prevention and Treatment Act (CAPTA) require such processes for states to maintain eligibility for funding under the act.

Typically, when a CAPTA appeal is filed, the SSW follows procedures in [SOP 30.2 CAPTA Appeals](https://manuals.sp.chfs.ky.gov/chapter30/32/Pages/302CAPTAAppeals.aspx). However, the following counties have agreed to participate in a pilot project which explores alternatives to having legal representation present at every hearing:

|  |  |
| --- | --- |
| * Cumberland;
* Clinton;
* Wayne;
* McCreary;
* Whitley;
* Bell;
* Harlan;
* Knox;
* Taylor;
* Green;
* Adair;
* Russell;
* Casey;
* Pulaski;
* Laurel;
* Rockcastle;
* Jackson;
 | * Clay;
* Bracken;
* Robertson;
* Mason;
* Lewis;
* Fleming;
* Montgomery;
* Bath;
* Menifee;
* Rowan;
* Carter;
* Greenup;
* Boyd;
* Elliott;
* Morgan;
* Lawrence.
 |

Beginning August 3, 2015, the counties listed above will follow this protocol. Staff should continue to follow the procedures in SOP 30.2, regarding general information about CAPTA appeals (listed below); however, during the pilot project, the Office of Legal Services (OLS) will **not be** involved during CAPTA cases unless:

* It is a case that involves sexual abuse; or
* There is counsel representing the appellant.

This means that unless one of the above scenarios apply, the SSW will not have legal counsel present at the hearing. In these cases, the SSW follows the provided **CAPTA Script** for preparing for and attending the hearing.

If there are complications regarding specific cases and the SSW needs further assistance than the CAPTA Script can provide, they may consult with their regional attorney for assistance.

Regional attorneys for Cumberland Service Region:

* Kelli Fisher
(606) 677-4178
* Stephen Spurlock
(606) 330-2014, ext. 135

Regional Attorney for Northeastern Service Region:

* Natasha Gussler Kinnan
(606) 920-2042

 **SOP 3.02 CAPTA Hearings**

**The SSW:**

1. Provides to any individual found to have abused or neglected a child a **DPP-155 Request for Appeal of Child Abuse or Neglect Investigative Finding** at the time the notice of substantiated findings is provided to the perpetrator as described in SOP 2.13 Case Disposition-Determination Whether to Open a Case;
2. Notifies the alleged victims' parents that the substantiation has been overturned if the substantiation is overturned by agreement or by judgment;
3. Changes an investigative finding in accordance with the civil court’s findings regarding abuse or neglect, if an appellant is denied an administrative hearing due to involvement in a civil court having competent jurisdiction;
4. Files a copy of the final CAPTA order in the case record;
5. Does not make any changes to the case record or to the assessment.

**Practice Guidance**

* A request for appeal is provided in writing by the individual appealing the decision and includes:
	+ A description of the nature of the investigation;
	+ The reason the appellant disputes the Cabinet’s substantiated findings;
	+ The name of each known Cabinet staff person involved with the investigation;
	+ A copy of the notice of substantiated finding of child abuse or neglect if available.
* The client may request assistance of the Cabinet if the individual is unable to complete the appeal form without assistance.
* The written appeal is submitted no later than thirty (30) calendar days from the date of:
	+ The notice of substantiated finding of child abuse or neglect is mailed; or
	+ Delivery of the notice if not mailed.
* Final administrative action by the Secretary of the Cabinet for Health and Family Services or designee is taken, unless waived by the appellant, within ninety (90) days from the date of the request for an administrative hearing as required by 45 C.F.R. 205.10.

* The following matters are not appealable through a CAPTA administrative hearing:
	+ A matter which a civil court having competent jurisdiction:
		- Has heard evidence and made a final judicial determination that abuse or neglect of a child did or did not occur; or
		- Is currently engaged in legal proceedings regarding the same issue being appealed;
	+ A matter in which an appellant has been criminally charged and convicted of an action that is the basis of the cabinet’s finding of abuse or neglect of a child;
	+ A final administrative decision made by the Cabinet or Cabinet’s designee as a result of a previous appeal on the same issue;
	+ An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;
	+ Failure to submit a written request for appeal within the required thirty (30) calendar days from the date the notice of the substantiated finding of abuse   or neglect is mailed or of the delivery notice if not mailed;
	+ An investigation that results in an unsubstantiated finding of abuse or neglect of a child.