

Sexual Violence Law in Kentucky

A Handbook of Criminal, Civil, and Administrative Laws

4th Edition

Fall 2018

Updated by

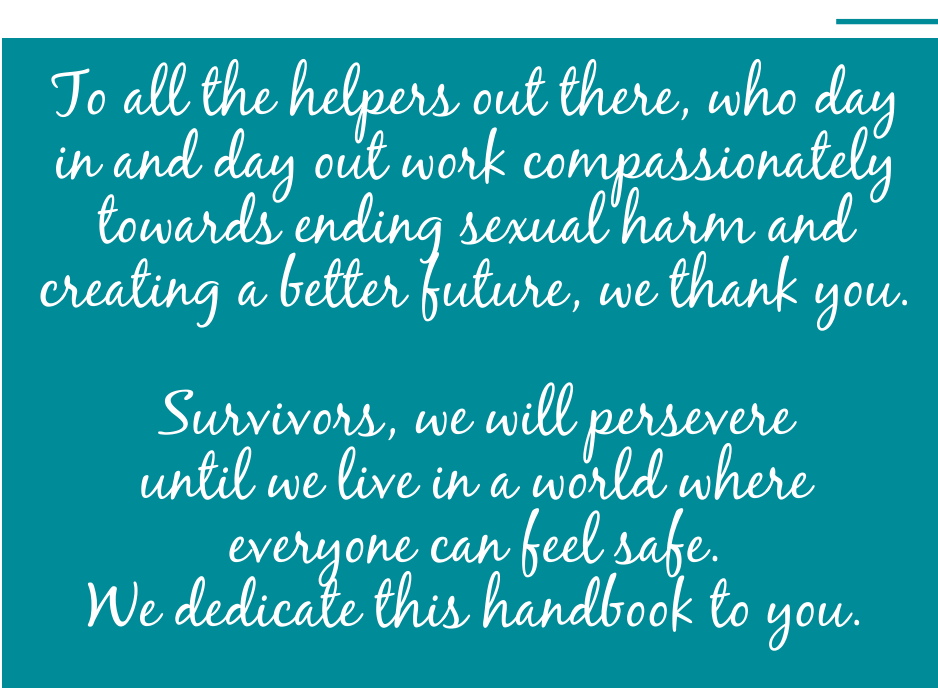
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Presented by

Kentucky Association of Sexual Assault Programs

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*To all the helpers out there, who day
in and day out work compassionately
towards ending sexual harm and
creating a better future, we thank you.*

*Survivors, we will persevere
until we live in a world where
everyone can feel safe.
We dedicate this handbook to you.*

INTRODUCTION

Sexual Violence Law in Kentucky: A Handbook of Criminal, Civil, and Administrative Laws, Fourth Edition is designed as a reference tool for advocates and attorneys who work with individuals who were sexually harassed, abused, or assaulted. By assembling a comprehensive review of relevant laws, we hope to provide greater access to valuable information regarding legal remedies available to victims. To that end, the material is organized topically into seven (7) parts.

PART I.	VICTIMS' RIGHTS & PROTECTIONS IN LEGAL SETTINGS
PART II.	VICTIMS' SERVICES AND SERVICE PROVIDERS
PART III.	COMMITTEES, MEETINGS, AND RECORDS
PART IV.	MANDATORY REPORTING, INFORMATION, & SCHOOL REQUIREMENTS
PART V.	CRIMINAL LAW
PART VI.	CIVIL LAW
PART VII.	SUPPLEMENTAL INFORMATION AND CHARTS

Due to the enormity of the topic, this handbook focuses on Kentucky law, including Kentucky Revised Statutes (KRS), Kentucky Administrative Regulations (KAR), and Kentucky Rules of Evidence (KRE). Unfortunately, it is not possible to provide a comprehensive review of relevant cases and federal law in these pages. Part VII - Supplemental Information provides helpful handouts. For information about federal law, contact KASAP.

- Laws are updated annually so please access the Legislative Research Commission, online at www.lrc.ky.gov/Law.htm for the most up-to-date information. You may also contact KASAP for updates.

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Sexual Violence Law in Kentucky: A Handbook of Criminal, Civil, and Administrative Laws, Fourth Edition, was updated by the Kentucky Association of Sexual Assault Programs by Jenna McNeal Cassady and Laela Kashan. We would also like to acknowledge those who developed the previous editions and laid the groundwork for us to complete an update. Thank you to the over 20 previous contributors!

What Is The Kentucky Association of Sexual Assault Programs?

We are the coalition of Kentucky's 13 regional programs that provide support, education, and counseling to individuals (and their families) who have been sexually harassed, abused, or assaulted. We are known as "KASAP" for short.

As a coalition, we do not provide direct services for clients but rather, we provide assistance to our regional programs and partners, advocate for improvements in public policy, foster coalition building in Kentucky, and promote prevention and public awareness.

Mission

To speak with a unified voice against sexual victimization.

Values

We are committed to serving all survivors and working toward the prevention of sexual violence. KASAP and its regional programs do not discriminate against anyone on the basis of disability, sexual orientation, gender, sex, religion, race, color, national origin, immigration status, incarceration, age, socioeconomic status, level of education, language proficiency, veteran status, political affiliations, beliefs, or type of sexual victimization. Whether the violence occurred recently, years ago, or is still happening, we are here to help. All are welcome.

We acknowledge that sexual harm does not happen in a vacuum; it impacts different groups in different ways. We also recognize that each individual survivor and community member come to our programs with diverse backgrounds and multi-layered identities that affect their access to medical and sexual assault services, experience with the legal system, needs, and feelings of safety. We are committed to meeting people where they are and working to ensure that our services are inclusive and responsive to the real needs of survivors.



A map of our regional programs
can be found in Chapter 7.

For additional information, questions, or feedback, please contact:

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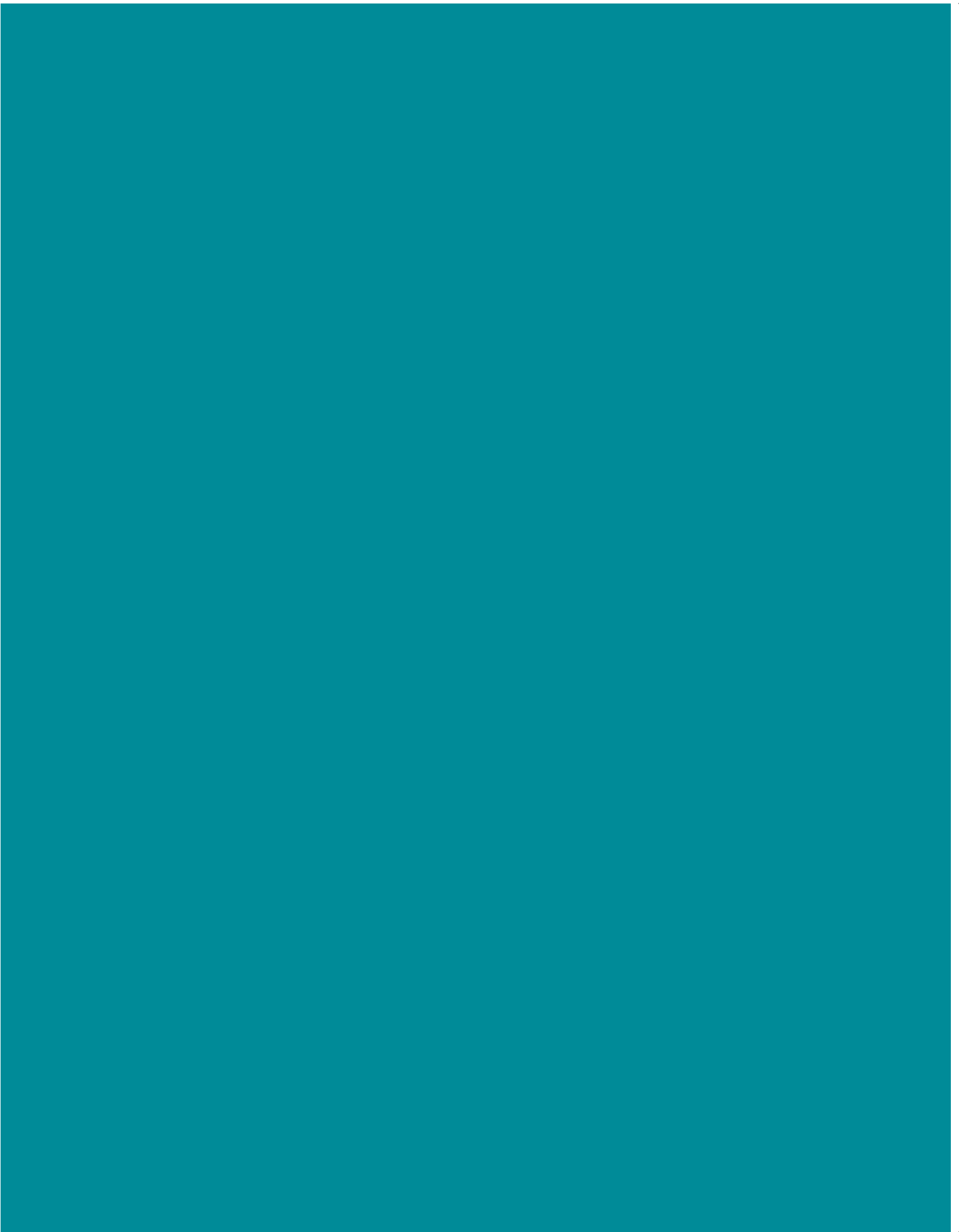
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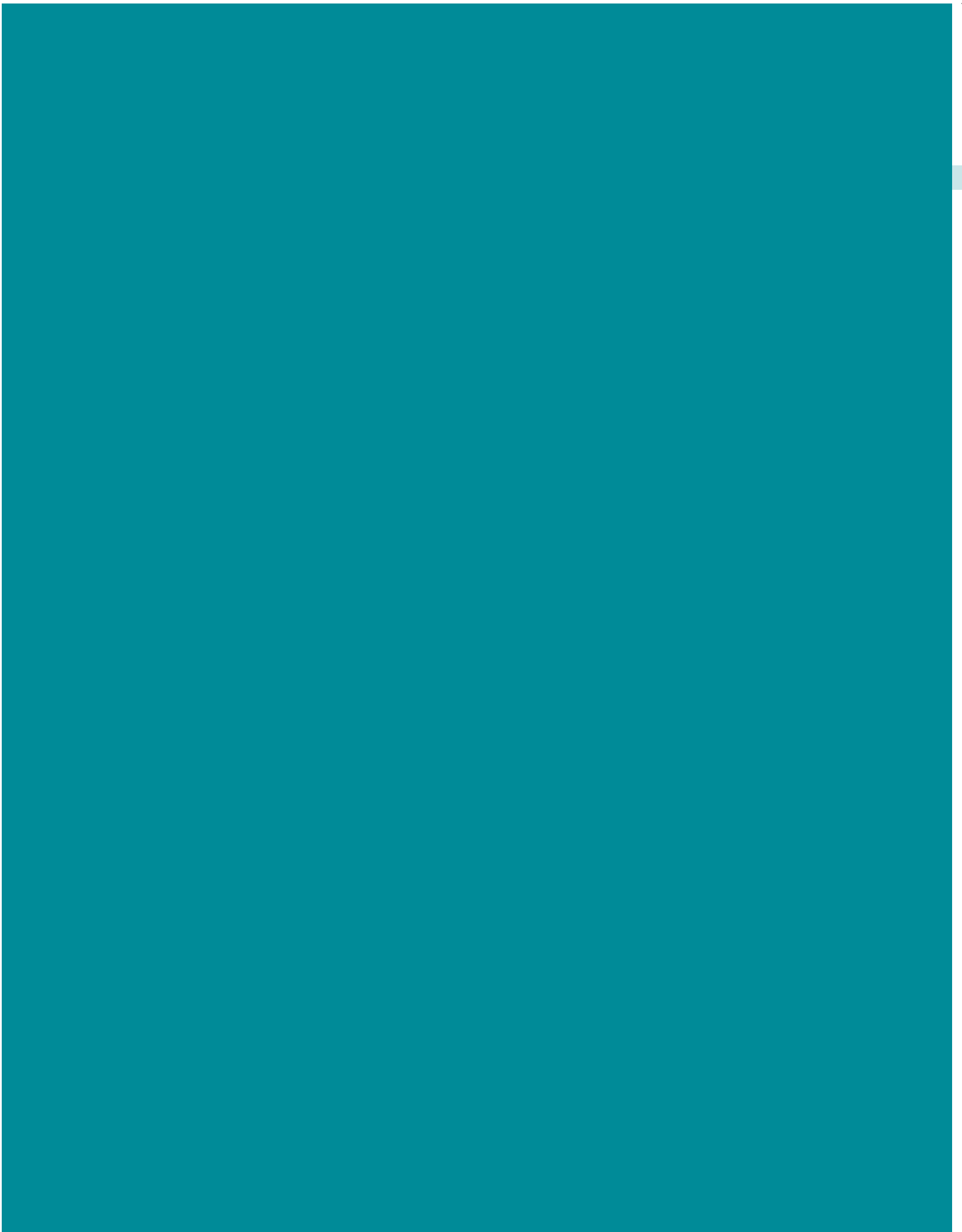
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CHAPTER 1 VICTIM RIGHTS & LEGAL PROTECTIONS

A. CRIME VICTIM BILL OF RIGHTS

NOTE ON STATUS OF KY'S CRIME VICTIM BILL OF RIGHTS

The current version is dependent upon whether "Marsy's Law" passes by voters in November 2018. If passed, it will change these statutes and add victim rights to Kentucky's state constitution.

You can also find information regarding Kentucky victim rights at The Office of the Attorney General's website www.ag.ky.gov, including their 2018 brochure <https://ag.ky.gov/publications/AG%20Publications/Victims-Rights-brochure.pdf>.

KRS 421.500 Definitions for KRS 421.500 to 421.575 -- Applicability -- Required notifications -- Duties of public officers and agencies.

- (1) As used in KRS 421.500 to 421.575, "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime classified as stalking, unlawful imprisonment, use of a minor in a sexual performance, unlawful transaction with a minor in the first degree, terroristic threatening, menacing, harassing communications, intimidating a witness, criminal homicide, robbery, rape, assault, sodomy, kidnapping, burglary in the first or second degree, sexual abuse, wanton endangerment, criminal abuse, human trafficking, or incest. If the victim is a minor or legally incapacitated, "victim" means a parent, guardian, custodian or court-appointed special advocate.
- (a) If the victim is deceased and the relation is not the defendant, the following relations shall be designated as "victim" for the purpose of exercising those rights contained in KRS 421.500 to 421.575:
1. The spouse;
 2. An adult child if subparagraph 1. of this paragraph does not apply;
 3. A parent if subparagraphs 1. and 2. of this paragraph do not apply;
 4. A sibling if subparagraphs 1. to 3. of this paragraph do not apply; and
 5. A grandparent if subparagraphs 1. to 4. of this paragraph do not apply.
- (b) If the victim is deceased and the relation is not the defendant, the following relations shall be designated as "victims" for the purpose of presenting victim impact testimony under KRS 532.055(2)(a)7.:
1. A spouse;
 2. An adult child;
 3. A parent;
 4. A sibling; and
 5. A grandparent.
- (2) If any court believes that the health, safety, or welfare of a victim who is a minor or is legally incapacitated would not otherwise adequately be protected, the court may appoint a special advocate to represent the interest of the victim and to exercise those rights provided for by KRS 421.500 to 421.575. Communication between the victim and the special advocate shall be privileged.
- (3) Law enforcement personnel shall ensure that victims receive information on available protective, emergency, social, and medical services upon initial contact with the victim and are given information on the following as soon as possible:

- (a) Availability of crime victim compensation where applicable;
 - (b) Community based treatment programs;
 - (c) The criminal justice process as it involves the participation of the victim or witness;
 - (d) The arrest of the accused; and
 - (e) How to register to be notified when a person has been released from prison, jail, a juvenile detention facility, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A.
- (4) Law enforcement officers and attorneys for the Commonwealth shall provide information to victims and witnesses on how they may be protected from intimidation, harassment, and retaliation as defined in KRS 524.040 or 524.055.
- (5) Attorneys for the Commonwealth shall make a reasonable effort to insure that:
- (a) All victims and witnesses who are required to attend criminal justice proceedings are notified promptly of any scheduling changes that affect their appearances;
 - (b) If victims so desire and if they provide the attorney for the Commonwealth with a current address and telephone number, they shall receive prompt notification, if possible, of judicial proceedings relating to their case, including, but not limited to, the defendant's release on bond and any special conditions of release; of the charges against the defendant, the defendant's pleading to the charges, and the date set for the trial; of notification of changes in the custody of the defendant and changes in trial dates; of the verdict, the victim's right to make an impact statement for consideration by the court at the time of sentencing of the defendant, the date of sentencing, the victim's right to receive notice of any parole board hearing held for the defendant, and that the office of Attorney General will notify the victim if an appeal of the conviction is pursued by the defendant; and of a scheduled hearing for shock probation or for bail pending appeal and any orders resulting from that hearing; and
 - (c) The victim knows how to register to be notified when a person has been released from a prison, jail, a juvenile detention facility, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A;
 - (d) The victim receives information on available:
 1. Protective, emergency, social, and medical services;
 2. Crime victim compensation, where applicable;
 3. Restitution, where applicable;
 4. Assistance from a victim advocate; and
 5. Community-based treatment programs; and
 - (e) The victim of crime may, pursuant to KRS 15.247, receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts.
- (6) The victim shall be consulted by the attorney for the Commonwealth on the disposition of the case including dismissal, release of the defendant pending judicial proceedings, any conditions of release, a negotiated plea, and entry into a pretrial diversion program.
- (7) In prosecution for offenses listed in this section for the purpose of defining "victim," law enforcement agencies and attorneys for the Commonwealth shall promptly return a victim's property held for evidentiary purposes unless there is a compelling reason for retaining it. Photographs of such property shall be received by the court as competent evidence in accordance with the provisions of KRS 422.350.
- (8) A victim or witness who so requests shall be assisted by law enforcement agencies and attorneys for the Commonwealth in informing employers that the need for victim or witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work.

- (9) The Attorney General, where possible, shall provide technical assistance to law enforcement agencies and attorneys for the Commonwealth if such assistance is requested for establishing a victim assistance program.
- (10) If a defendant seeks appellate review of a conviction and the Commonwealth is represented by the Attorney General, the Attorney General shall make a reasonable effort to notify victims promptly of the appeal, the status of the case, and the decision of the appellate court.

KRS 421.510 Speedy trial where child victim is involved.

- (1) Where the victim is less than sixteen (16) years old and the crime is a sexual offense including violations of KRS 510.040 to 510.150, 530.020, 530.064(1)(a), 530.070, 531.310, 531.320, and 531.370, a speedy trial may be scheduled as provided in subsection (2) of this section.
- (2) The court, upon motion by the attorney for the Commonwealth for a speedy trial, shall set a hearing date on the motion within ten (10) days of the date of the motion. If the motion is granted, the trial shall be scheduled within ninety (90) days from the hearing date.
- (3) In ruling on any motion or other request for a delay or continuance of the proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness

KRS 421.520 Victim impact statement.

- (1) The attorney for the Commonwealth shall notify the victim that, upon conviction of the defendant, the victim has the right to submit a written victim impact statement to the probation officer responsible for preparing the presentence investigation report for inclusion in the report or to the court should such a report be waived by the defendant.
- (2) The impact statement may contain, but need not be limited to, a description of the nature and extent of any physical, psychological or financial harm suffered by the victim, the victim's need for restitution and whether the victim has applied for or received compensation for financial loss, and the victim's recommendation for an appropriate sentence.
- (3) The victim impact statement shall be considered by the court prior to any decision on the sentencing or release, including shock probation, of the defendant.

KRS 421.530 Submission of victim impact statement to parole board -- Duties of parole board.

- (1) If a defendant is sentenced to a period of incarceration and his release is subject to the authority of the parole board, the victim may submit a written impact statement to the parole board that it shall consider when making a decision on the release of the defendant.
- (2) The impact statement may contain, but need not be limited to, a description of the long-term consequences of the crime, including but not necessarily limited to, the physical, psychological and financial harm suffered by the victim, and whether the victim has applied for or received compensation for financial loss.

KRS 421.540 Effect of failure to provide required notification.

The failure to provide a right, notice or privilege to a victim or witness under KRS 421.510 to 421.550 or 15.245 shall not be grounds for the defendant to seek to have the conviction or sentence set aside.

KRS 421.550 No cause of action created -- Immunity of jailers or chief administrator acting in good faith -- Indemnification -- Defense by Attorney General.

- (1) Nothing in KRS 421.510 to 421.540, or KRS 15.245, 196.280, or 421.500 creates a cause of action for money damages against the state, a county, a municipality, or any of their agencies, public officials, or employees.
- (2) The jailer or chief administrator of a juvenile detention facility, regional jail, or county jail, or any of their respective designees who acts in good faith in making available the release

information required by KRS 196.280, or in good faith fails or is unable to provide the release information required by KRS 196.280, shall be immune from any criminal liability.

- (3) The jailer or chief administrator of a juvenile detention facility, regional jail, or county jail, or any of their respective designees, who acts in good faith in making available the release information required by KRS 196.280, or in good faith fails or is unable to provide the release information required by KRS 196.280, and who is sued for any act or omission in relation to KRS 196.280, and who has a judgment rendered against him and who personally suffers actual financial loss, unreimbursed from any source, by the enforcement and satisfaction of the judgment, including any costs or attorney's fees awarded pursuant thereto, shall be indemnified by the Commonwealth from funds appropriated to the Finance and Administration Cabinet for the payment of judgments, to the extent of his actual financial loss. The indemnification shall not be construed to abrogate or limit any privilege, immunity, or matter of defense otherwise available to the person claiming indemnification and shall not constitute a waiver of any privilege, immunity, or matter of defense, including the sovereign immunity of the Commonwealth.
- (4) The Attorney General shall defend the jailer, chief administrator, or designee upon request, in any suit related to the provision of information under KRS 196.280.

KRS 421.570 Training requirement for victim advocates -- Prohibition against practicing law

- (1) For the purposes of this section and KRS 421.575, "victim advocate" means an individual at least eighteen (18) years of age and of good moral character, who is employed by, or serves as a volunteer for, a public or private agency, organization, or official to counsel and assist crime victims as defined in KRS 421.500, and includes a victim advocate employed by a Commonwealth's attorney pursuant to KRS 15.760 and a victim advocate employed by a county attorney pursuant to KRS 69.350.
- (2) Each victim advocate shall complete training which shall include information concerning the difference between advocacy and the practice of law, and the appropriate intervention with crime victims, including victims of domestic violence, child physical and sexual abuse, human trafficking and rape.
- (3) A victim advocate shall not engage in the practice of law as defined in KRS 524.130.

KRS 421.575 Role of victim advocates in court proceedings.

In all court proceedings, a victim advocate, upon the request of the victim, shall be allowed to accompany the victim during the proceeding to provide moral and emotional support. The victim advocate shall be allowed to confer orally and in writing with the victim in a reasonable manner. However, the victim advocate shall not provide legal advice or legal counsel to the crime victim in violation of KRS 421.570 and 524.130.

KRS 421.576 Kentucky Crime Victim Bill of Rights as short title for KRS 421.500 to 421.575 -- Application - Construction.

- (1) In order to establish the minimum conduct of criminal justice professionals with respect to crime victims and to communicate the intent of the General Assembly that victims of crime play an integral role in the criminal justice process, KRS 421.500 to 421.575 is hereby named the Kentucky Crime Victim Bill of Rights.
- (2) The rights established by KRS 421.500 to 421.575 shall apply in all felony and misdemeanor proceedings in a District or Circuit Court of the Commonwealth.
- (3) Nothing in KRS 421.500 to 421.575 shall provide grounds for the victim to challenge a charging decision or a conviction, to obtain a stay of trial, or to compel a new trial. Law enforcement agencies, county attorneys, and Commonwealth's attorneys and courts shall make every reasonable effort to ensure that victims of crime receive the benefits of the rights set out in KRS 421.500 to 421.575.

B. PROTECTIONS FOR SPECIFIC CIRCUMSTANCES

1. *Housing: Lease Protections and Address Confidentiality*

KRS 383.300 Protections for person with rental or lease agreement who is protected by domestic violence order or interpersonal protective order.

- (1) (a) This section shall apply only to leases or rental agreements created or renewed on or after June 29, 2017.
- (b) A person who is both a named individual and a protected tenant shall not be eligible for the protections under this section.
- (2) As used in this section:
 - (a) "Named individual" means a person identified in the protective orders listed in paragraph (b) of this subsection as restrained from contact with the protected tenant; and
 - (b) 1. "Protected tenant" means a residential rental or leased housing tenant, applicant for tenancy, or a tenant with a minor household member, who is protected by a valid:
 - a. Domestic violence order issued pursuant to KRS 403.740 which restrains the adverse party from any unauthorized contact; or
 - b. Interpersonal protective order issued pursuant to KRS 456.060 which restrains the adverse party from any unauthorized contact.
 2. For purposes of subsections (3) and (4) of this section, "protected tenant" also means a residential rental or leased housing tenant, applicant for tenancy, or a tenant with a minor household member who is protected by a valid:
 - a. Emergency protective order issued pursuant to KRS 403.730;
 - b. Temporary interpersonal protective order issued pursuant to KRS 456.040; or
 - c. Pretrial release no contact order issued pursuant to KRS 431.064.
- (3) (a) A landlord shall not terminate, fail to renew, refuse to enter into, or otherwise retaliate in the renting or leasing of a residence because of the person's status as a protected tenant.
- (b) It shall be a defense to an action for possession of a rented or leased residential property if the court determines that:
 1. The tenant is a protected tenant; and
 2. The notice to vacate is substantially based on acts which violated the tenant's protective order or led to the issuance of a protective order listed in subsection (2) of this section, including an action for possession based on complaints of noise, disturbances, or repeated presence of peace officers.
- (4) (a) 1. After informing the landlord of an intention to install a new lock, a protected tenant, at his or her expense, may install a new lock to his or her dwelling by:
 - a. Rekeying the lock if the lock is in good working condition; or
 - b. Replacing the entire locking mechanism with a locking mechanism of equal or better quality than the lock being replaced.
2. The tenant shall provide a key to the new lock to the landlord upon request.
- (b) Regardless of any provision in the lease or rental agreement, the landlord may refuse to provide a key to the new lock to a named individual, even if the named individual is a party to the lease or rental agreement.
- (c) A named individual who has been excluded from leased or rented property under this section remains liable for rent.
- (5) (a) For a protected tenant who obtains a valid protective order listed in subsection (2)(b)1. of this section after entering into a lease or rental agreement, the lease or rental agreement may be terminated by providing the landlord with:
 1. Written notice of termination to be effective on a date stated in the notice that is at least thirty (30) days after the landlord's receipt of the notice; and
 2. A copy of the valid protective order.

- (b) For a protected tenant who obtains a valid protective order listed in subsection (2)(b)1. of this section before entering into a lease or rental agreement, the lease or rental agreement may be terminated by:
 1. Providing the landlord with written notice of termination to be effective on a date stated in the notice that is at least thirty (30) days after the landlord's receipt of the notice;
 2. Attaching a copy of the valid protective order; and
 3. Demonstrating a safety concern to the landlord that arises after execution of the lease.
- (c) Upon termination of a lease or rental agreement under this section, the released protected tenant shall:
 1. Be liable for the rent due under the lease or rental agreement prorated to the effective date of the termination and payable at the time that would have been required by the terms of the lease or rental agreement;
 2. Not receive a negative credit entry, a negative character reference, or be liable for any other rent or fees due solely to the early termination of the tenancy; and
 3. Not be subject to any damages or penalties if a lease or rental agreement is terminated under this subsection fourteen (14) or more days prior to occupancy.
- (d) Regardless of whether the named individual is a party to a lease or rental agreement terminated under this subsection, the named individual:
 1. Is deemed to have interfered with the terminated lease or rental agreement between the landlord and tenant; and
 2. Shall be civilly liable for all economic losses incurred by the landlord for the early lease termination, including unpaid rent, early lease termination fees, commissions and advertising costs incurred in reletting the premises, costs to repair damages to the premises, or any reductions in rent previously granted to the protected tenant.
- (6) Regardless of conflicting provisions in a named individual's rental agreement or lease, if a named individual and a protected tenant are cotenants, a landlord may:
 - (a) Refuse access to the property by a named individual unless the named individual is specifically permitted access by court order; and
 - (b) Pursue all available legal remedies against the named individual, including:
 1. Termination of the named individual's rental agreement or lease;
 2. Eviction of the named individual, whether or not a lease or rental agreement between the landlord and the named individual exists; and
 3. Action for damages against the named individual for any unpaid rent owed by the named individual or any damages resulting from a violation of a valid protective order listed in subsection (2)(b)1. of this section.
- (7) Notwithstanding the release of a protected tenant or an exclusion of a named individual from a lease or rental agreement under this section, if there are any remaining tenants residing in the dwelling unit, the tenancy shall continue for those tenants.
- (8) A landlord is immune from civil liability if the landlord in good faith acts in accordance with this section.

KRS 383.302 Prohibited inclusion in rental or lease agreement of authority to terminate on the basis of tenant's request for assistance in emergencies.

- (1) A landlord shall not include in a residential rental agreement or lease for housing a provision authorizing the landlord to terminate the agreement or to impose a penalty on a tenant for requests made by the tenant for assistance from peace officers or other assistance in response to emergencies.
- (2) A residential rental agreement or lease provision prohibited by subsection (1) of this section is unenforceable. If a landlord enforces a rental agreement or lease containing provisions known by the landlord to be prohibited by this section, the tenant may recover actual damages sustained by the tenant, reasonable attorney's fees, and all other costs incurred in bringing the

- action, and punitive damages of not more than two (2) months of periodic rent.
- (3) This section shall apply only to leases or rental agreements created or renewed on or after June 29, 2017.

KRS 14.300 Definitions for KRS 14.300 to 14.318.

As used in KRS 14.300 to 14.318 unless the context otherwise requires:

- (1) "Address" means a residential street address, school address, or work address of an individual, as specified on the application of an individual to be a program participant under this section;
- (2) "Applicant" means a person applying for certification in the address confidentiality program under KRS 14.300 to 14.318;
- (3) "Criminal offense against a victim who is a minor" has the same meaning as in KRS 17.500;
- (4) "Domestic violence and abuse" has the same meaning as in KRS 403.720;
- (5) "Program participant" means a person certified as a program participant under KRS 14.300 to 14.318;
- (6) "Sex crime" means an offense or an attempt to commit an offense defined in:
 - (a) KRS Chapter 510;
 - (b) KRS 530.020;
 - (c) KRS 530.064(1)(a);
 - (d) KRS 531.310; (e) KRS 531.320; or
 - (f) Any criminal attempt to commit an offense specified in this subsection, regardless of the penalty for the attempt;
- (7) "Specified offense" means:
 - (a) Domestic violence and abuse;
 - (b) Stalking;
 - (c) A sex crime;
 - (d) A criminal offense against a victim who is a minor;
 - (e) A similar federal offense; or
 - (f) A similar offense from another state or territory; and
- (8) "Stalking" means conduct prohibited under KRS 508.140 and 508.150.

KRS 14.302 Crime victims' address protection program -- Program open to victims of domestic violence and abuse, stalking, and felony sex offenses -- Criminal history background check and fingerprinting of Department of State employees administering program.

- (1) On or after July 1, 2013, the Secretary of State shall create a crime victim address protection program.
- (2) The crime victim address protection program shall be open to victims of a specified offense who are United States citizens and residents of Kentucky, without any cost to the program participant.
- (3) The Secretary of State shall require that each person employed in the Office of the Secretary of State directly responsible for the administration of the crime victim address protection program submit his or her fingerprints to the Department of State. The Department of State shall exchange fingerprint data with the Kentucky State Police and the Federal Bureau of Investigation in order to conduct a criminal history background check of each employee directly responsible for the administration of the program.

KRS 14.304 Permit crime victims to use for voting purposes an address provided by the Secretary of State rather than person's actual physical address -- Request to participate in program to include sworn statement of endangerment -- Two year certification period for program participants -- Administrative regulation to govern renewal of certification -- Penalty for providing false information -- Addresses exempt from disclosure under Open Records Law.

- (1) Upon the creation of the crime victim address protection program, an applicant, a parent or guardian acting on behalf of a minor, a guardian acting on behalf of a person who is declared incompetent, or a designee of an applicant or a parent or guardian of a minor or a guardian of a person declared incompetent who cannot for any reason apply themselves, may apply to the Secretary of State to have an address designated by the Secretary of State serve for voting purposes as the address of the applicant, the minor, or the incompetent person. The Secretary of State shall approve an application if it is filed in the manner and on the form prescribed by the Secretary of State by administrative regulation and if it contains:
 - (a) A sworn statement by the applicant that:
 1. The applicant or the minor or the incompetent person on whose behalf the application is made is a victim of a specified offense in an ongoing criminal case or in a criminal case that resulted in a conviction by a judge or jury or by a defendant's guilty plea; or
 2. The applicant or the minor or the incompetent person on whose behalf the application is made has been granted an order of protection as defined in KRS 403.720 and 456.010 by a court of competent jurisdiction within the Commonwealth of Kentucky and the order is in effect at the time of application;
 - (b) A sworn statement by the applicant that disclosure of the address of the applicant would endanger the safety of the applicant or the safety of the children of the applicant, or the minor or incompetent person on whose behalf the application is made.
 - (c) The mailing address and the phone number or numbers where the applicant can be contacted by the Secretary of State;
 - (d) The new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of a specified offense; and
 - (e) The signature of the applicant and of a representative of any office designated under KRS 14.310 as a referring agency who assisted in the preparation of the application, and the date on which the applicant signed the application.
- (2) Applications shall be filed with the Office of the Secretary of State.
- (3) Upon the filing of a properly completed application, the Secretary of State shall certify the applicant as a program participant if the applicant is not required to register as a sex offender or is not otherwise prohibited from participating in the program.
- (4) Applicants shall be certified for two (2) years following the date of filing unless the certification is withdrawn or invalidated before that date. The Secretary of State shall promulgate an administrative regulation to establish a renewal procedure.
- (5) A person who falsely attests in an application that disclosure of the address of the applicant would endanger the safety of the applicant or the safety of the children of the applicant, or the minor or incompetent person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application may be found guilty of a violation of KRS 523.030.
- (6) The addresses of individuals applying for entrance into the crime victim address confidentiality program and the addresses of those certified as program participants shall be exempt from disclosure under the Kentucky Open Records Act, KRS 61.870 to KRS 61.884.
- (7) A program participant shall notify the Office of the Secretary of State of a change of address within seven (7) days of the change of address.

KRS 14.306 Grounds for cancellation of a program participant's certification -- Notice of cancellation -- Appeal -- Voluntary withdrawal from program -- Procedure to ensure that request for withdrawal is legitimate -- Administrative regulations.

- (1) The Secretary of State may cancel certification of a program participant if within fourteen (14) days:
 - (a) From the date of the program participant changing his or her name, the program participant fails to notify the Secretary of State that he or she has obtained a name change; however, the program participant may reapply under his or her new name; or
 - (b) From the date of changing his or her address, the program participant fails to notify the Secretary of State of the change of address.
- (2) The Secretary of State shall cancel certification of a program participant who applies using false information.
- (3) The Secretary of State shall send notice of certification cancellation to the program participant. The notice of certification cancellation shall set out the reasons for cancellation. The program participant has the right to appeal the decision within thirty (30) days under procedures established by the Office of the Secretary of State by administrative regulation.
- (4) The Secretary of State shall cancel certification of a program participant who is required to register as a sex offender.
- (5) A program participant may withdraw from the program by providing the Secretary of State with notice of his or her intention to withdraw from the program. The Secretary of State shall promulgate by administrative regulations a secure procedure by which to ensure that the program participant's request for withdrawal is legitimate.

KRS 14.308 Confidentiality of program participant's records -- Exceptions authorizing disclosure. The Secretary of the State shall not make available for inspection or copying any records in a file of a program participant, other than the address designated by the Secretary of State, except under the following circumstances:

- (1) If directed by a court order signed by a judge or justice of a court of competent jurisdiction within the Commonwealth of Kentucky; or
- (2) Upon written request by the chief law enforcement officer of a city or county, or the commander of a Department of Kentucky State Police post or branch, if related to an ongoing official investigation. Requests shall include the reason the information is needed by the law enforcement agency.

30 KAR 6:010 Kentucky address confidentiality program.

Section 1. Definitions.

- (1) "Address" is defined by KRS 14.300(1).
- (2) "Applicant" is defined by KRS 14.300(2).
- (3) "Filer" means a person who is:
 - (a) A:
 1. Parent or guardian acting on behalf of a minor;
 2. Guardian acting on behalf of a person who is declared incompetent; or
 3. Designee of an applicant or a parent or guardian of a minor or a guardian of a person declared incompetent who cannot apply independently; and
 - (b) Applying to the Secretary of State to have an address designated by the Secretary of State serve for voting purposes as the address of the minor, incompetent person, or applicant.
- (4) "Program Participant" is defined by KRS 14.300(5).

Section 2. Requirements for Application for Certification to Participate in the Address Confidentiality Program.

- (1) Application for certification to participate in the address confidentiality program shall be made to the Secretary of State by submitting a completed Application for Certification to Participate in Address Confidentiality Program.
- (2) The Application for Certification to Participate in Address Confidentiality shall be:
 - (a) Notarized; and
 - (b) In English.

Section 3. Certification in the Address Confidentiality Program.

- (1) The Secretary of State shall approve an Application for Certification to Participate in Address Confidentiality Program and certify the applicant as a program participant if the applicant and the Application for Certification to Participate in Address Confidentiality Program meet the requirements established in KRS 14.302 and 14.304 and this administrative regulation.
- (2) The Secretary of State shall notify the applicant or filer whether the Application for Certification to Participate in Address Confidentiality Program was denied or the applicant was certified as a program participant.
 - (a) If an Application for Certification to Participate in Address Confidentiality Program is denied, the Secretary of State shall inform the applicant or filer of the reason for the denial.
 - (b) If an applicant is certified as a program participant, the Secretary of State shall:
 1. Assign to the program participant a participant number and designated address to be used for voting purposes; and
 2. Issue to the program participant an Address Confidentiality Program Participant Card reflecting the participant number, designated address to be used for voting purposes, and date on which certification expires.
- (3) If an applicant is certified as a program participant, participation in the address confidentiality program shall be effective as of the date of the notification of certification.

Section 4. Change of Program Participant's Name or Address.

- (1) A program participant or a filer shall notify the Secretary of State of a change in the program participant's name or address by submitting to the Office of the Secretary of State a completed Address Confidentiality Program Participant Name or Address Change form.
- (2) The Address Confidentiality Program Participant Name or Address Change form shall:
 - (a) Be in writing;
 - (b) Be in English;
 - (c) Be signed by the program participant or a filer;
 - (d) Include both the program participant's new information and information as certified; and
 - (e) Be considered filed on the day the Address Confidentiality Program Name or Address Change form is date-stamped received by the Office of the Secretary of State.

Section 5. Withdrawal from Participation in the Address Confidentiality Program.

- (1) A program participant or filer wishing to withdraw from participation in the address confidentiality program shall submit to the Secretary of State a Withdrawal from Participation in Address Confidentiality Program form.
- (2) The Withdrawal from Participation in Address Confidentiality Program form shall be:
 - (a) In writing;
 - (b) In English;
 - (c) Signed by the program participant or a filer;
 - (d) Notarized or signed by a representative of any office designated pursuant to KRS 14.310 as a referring agency who assisted in the completion of the Withdrawal from Participation in Address Confidentiality Program form; and
 - (e) Submitted to the Secretary of State by mail or in person.

Section 6. Confirmation by the Secretary of State of a Withdrawal from Participation in the Address Confidentiality Program.

- (1) Upon receiving a Withdrawal from Participation in Address Confidentiality Program form, the Secretary of State shall mail to the program participant or filer a written confirmation of withdrawal.
- (2) The written confirmation shall notify the program participant or filer:
 - (a) Of the date on which a Withdrawal from Participation in Address Confidentiality Program form was date stamped received by the Office of the Secretary of State; and
 - (b) That program participation shall be terminated ten (10) days following the date of the written confirmation of withdrawal, unless the program participant or a filer notifies the Secretary of State on or before that date that the withdrawal request was not legitimate because it was not voluntarily submitted by the program participant or a filer.

Section 7. Application for Renewal of Certification in the Address Confidentiality Program.

- (1) A program participant or filer wishing to renew certification in the address confidentiality program shall submit to the Secretary of State at least five (5) business days prior to the date on which the program participant's certification expires an Application for Certification to Participate in Address Confidentiality Program pursuant to Section 2 of this administrative regulation.
- (2) The Application for Certification to Participate in Address Confidentiality Program shall be considered timely submitted for purposes of renewal if it is date-stamped received by the Office of the Secretary of State at least five (5) business days prior to the date on which the program participant's certification expires.

Section 8. Review by the Secretary of State of a Renewal Application for Certification to Participate in Address Confidentiality Program.

- (1) The Secretary of State shall approve a renewal Application for Certification to Participate in Address Confidentiality Program if the applicant and Application for Certification to Participate in Address Confidentiality Program meet the requirements established in KRS 14.302 and 14.304 and this administrative regulation.
- (2) The Secretary of State shall notify the program participant or filer whether the renewal Application for Certification to Participate in Address Confidentiality Program was denied or the program participant's certification was renewed within five (5) business days after it is date-stamped received by the Secretary of State.
 - (a) If a renewal Application for Certification to Participate in Address Confidentiality Program is denied, the Secretary of State shall inform the program participant or filer of the reason for denial.
 - (b) If a program participant's certification is renewed, the Secretary of State shall issue to the program participant a new Address Confidentiality Program Participant Card pursuant to Section 3(2)(b)2 of this administrative regulation, and the renewal shall be effective as of the date of the notification of renewal.

Section 9. Appeal from Cancellation of Certification in Address Confidentiality Program.

- (1) A program participant or filer wishing to appeal from a cancellation of certification in the address confidentiality program shall submit to the State Board of Elections an Appeal from Cancellation of Certification in Address Confidentiality Program form.
- (2) The Appeal from Cancellation of Certification in Address Confidentiality Program shall be considered timely submitted if it is date-stamped received by the State Board of Elections within thirty (30) days of the date of the notice of certification cancellation.
- (3) The Appeal from Cancellation of Certification in Address Confidentiality Program shall:
 - (a) Be in writing;
 - (b) Be in English;
 - (c) Be signed by the program participant or filer; and
 - (d) Include information as to why certification in the address confidentiality program should

not be cancelled.

- (4) If an Appeal from Cancellation of Certification in Address Confidentiality Program is not timely submitted, cancellation of certification in the address confidentiality program shall be effective upon the expiration of thirty (30) days after the date of the notice of certification cancellation.

Section 10. Review by the Executive Director of the State Board of Elections of an Appeal from Cancellation of Certification in Address Confidentiality Program.

- (1) The executive director of the State Board of Elections shall approve or deny an Appeal from Cancellation of Certification in Address Confidentiality Program within five (5) business days after it is date stamped received by the State Board of Elections.
 - (a) The executive director of the State Board of Elections shall approve an Appeal from Cancellation of Certification in Address Confidentiality Program if the executive director determines that grounds for cancellation pursuant to KRS 14.306 do not exist.
 - (b) The executive director of the State Board of Elections shall deny an Appeal from Cancellation of Certification in Address Confidentiality Program if the executive director determines that grounds for cancellation pursuant to KRS 14.306 exist.
- (2) The executive director of the State Board of Elections shall provide to the program participant or filer written notice of the decision regarding an Appeal from Cancellation of Certification in Address Confidentiality Program.
- (3) If an Appeal from Cancellation of Certification in Address Confidentiality Program is timely submitted and denied pursuant to this section, cancellation of certification in the address confidentiality program shall be effective on the date on which the notice of denial is mailed.
- (4) The decision of the executive director of the State Board of Elections shall conclude the appeal procedures pursuant to KRS Chapter 14 and this administrative regulation.

Section 11. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Application for Certification to Participate in Address Confidentiality Program", June 2014;
 - (b) "Address Confidentiality Program Participant Card", March 2014;
 - (c) "Address Confidentiality Program Participant Name or Address Change", June 2014;
 - (d) "Withdrawal from Participation in Address Confidentiality Program", June 2014; and
 - (e) "Appeal from Cancellation of Certification in Address Confidentiality Program", March 2014.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or may be obtained at <http://www.sos.ky.gov>.

2. Children

KRS 26A.140 Accommodation of special needs of children.

- (1) Courts shall implement measures to accommodate the special needs of children which are not unduly burdensome to the rights of the defendant, including, but not limited to:
 - (a) Trained guardians ad litem or special advocates, if available, shall be appointed for all child victims and shall serve in Circuit and District Courts to offer consistency and support to the child and to represent the child's interests where needed.
 - (b) During trials involving child victims or child witnesses, the environment of the courtroom shall be modified to accommodate children through the use of small chairs, frequent breaks, and the use of age appropriate language.
 - (c) Children expected to testify shall be prepared for the courtroom experience by the Commonwealth's or county attorney handling the case with the assistance of the guardian ad litem or special advocate.

- (d) In appropriate cases, procedures shall be used to shield children from visual contact with alleged perpetrator.
- (2) The Supreme Court is encouraged to issue rules for the conduct of criminal and civil trials involving child abuse in which a child victim or child witness may testify at the trial.

KRS 421.350 Testimony of child allegedly victim of illegal sexual activity.

- (1) This section applies only to a proceeding in the prosecution of an offense, including but not limited to an offense under KRS 510.040 to 510.155, 529.030 to 529.070, 529.100, 529.110, 530.020, 530.060, 530.064(1)(a), 531.310, 531.320, 531.370, or any specified in KRS 439.3401 and all dependency proceedings pursuant to KRS Chapter 620, when the act is alleged to have been committed against a child twelve (12) years of age or younger, and applies to the statements or testimony of that child or another child who is twelve (12) years of age or younger who witnesses one of the offenses included in this subsection.
- (2) The court may, on the motion of the attorney for any party and upon a finding of compelling need, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding. Only the attorneys for the defendant and for the state, persons necessary to operate the equipment, and any person whose presence the court finds would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.
- (3) The court may, on the motion of the attorney for any party and upon a finding of compelling need, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding. Only those persons permitted to be present at the taking of testimony under subsection (3) of this section may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by subsection (3) of this section. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant. The court shall also ensure that:
- (a) The recording is both visual and oral and is recorded on film or videotape or by other electronic means;
 - (b) The recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;
 - (c) Each voice on the recording is identified; and
 - (d) Each party is afforded an opportunity to view the recording before it is shown in the courtroom.
- (4) If the court orders the testimony of a child to be taken under subsection (2) or (3) of this section, the child may not be required to testify in court at the proceeding for which the testimony was taken, but shall be subject to being recalled during the course of the trial to give additional testimony under the same circumstances as with any other recalled witness, provided that the additional testimony is given utilizing the provisions of subsection (2) or (3) of this section.
- (5) For the purpose of subsections (2) and (3) of this section, "compelling need" is defined as the substantial probability that the child would be unable to reasonably communicate because of serious emotional distress produced by the defendant's presence.

KRE 804A Hearsay exceptions: testimony by child victim declarant not reasonably obtainable.

- (a) An out-of-court statement made by a child with a physical, mental, emotional, or developmental age of twelve (12) years or less at the time of trial or hearing describing any sexual act performed by, with, or on the child or describing any act of physical violence directed against the child is not excluded as hearsay under KRE 802 if all of the following apply:
- (1) The court finds that the totality of the circumstances surrounding the making of the statement provides particularized guarantees of trustworthiness. In making its determination of the reliability of the statement, the court shall consider all of the circumstances surrounding the making of the statement, including but not limited to spontaneity, the internal consistency of the statement, the mental state of the child, the child's motive or lack of motive to fabricate, the child's use of terminology unexpected of a child of similar age, the means by which the statement was elicited, and the lapse of time between the act and the statement;
 - (2) Either:
 - (A) The child testifies but his or her testimony does not include information contained in the out-of-court statement; or
 - (B) The child's testimony is not reasonably obtainable by the proponent of the statement and there is corroborative evidence of the act that is the subject of the statement;
 - (3) The primary purpose of the child's statement was not to create an out-of-court substitute for trial testimony; and
 - (4) At least ten (10) days before the trial or hearing, a proponent of the statement has notified all other parties in writing of the content of the statement, the time and place at which the statement was made, the identity of the witness who is to testify about the statement, and the circumstances surrounding the statement that are claimed to indicate its trustworthiness.
- (b) (1) The child's testimony is "not reasonably obtainable by the proponent of the statement" under subsection (a)(2)(B) of this rule if one (1) or more of the following apply:
- (A) The child claims a lack of memory of the subject matter of the statement;
 - (B) The court finds:
 - (i) The child is absent from the trial or hearing;
 - (ii) The proponent of the statement has been unable to procure the child's attendance or testimony by process or other reasonable means despite a good-faith effort to do so; and
 - (iii) It is probable that the proponent would be unable to procure the child's testimony or attendance if the trial or hearing were delayed for a reasonable time; or
 - (C) The court finds:
 - (i) The child is unable to testify at the trial or hearing because of:
 - a. Death;
 - b. Physical or mental illness; or
 - c. Infirmary, including the child's inability to communicate about the offense because of fear or a similar reason; and
 - (ii) The illness or infirmity would not improve sufficiently to permit the child to testify if the trial or hearing were delayed for a reasonable time.
 - (2) The proponent of the statement has not established that the child's testimony or attendance is not reasonably obtainable if the child's claim of lack of memory, absence, or inability is due to the procurement or wrongdoing of the proponent of the statement for the purpose of preventing the child from attending or testifying.
- (c) The court shall make the findings required by this rule on the basis of a hearing conducted outside the presence of the jury and shall make findings of fact, on the record, as to the bases for its ruling.

(d) If any provision of this rule should conflict with Article VIII of these rules, this rule shall prevail.

3. Polygraph - Prohibitions Against Testing Sex Crimes Victims

KRS 16.062 Prohibition against requesting or requiring victim of alleged sexual offense to submit to polygraph or other examination -- Other prohibitions.

No officer of the Kentucky State Police shall:

- (1) As a condition of proceeding with an investigation or prosecution of a case, request or require a victim of an alleged sexual offense to submit to a polygraph examination or any other device designed for the purpose of determining whether a person is telling the truth; or
- (2) Charge or threaten to charge the victim of an alleged sexual offense with prosecution for a criminal offense for refusing to submit to a polygraph examination or other device designed for the purpose of determining whether a person is telling the truth.

KRS 69.008 Commonwealth's and county attorneys prohibited from requesting or requiring victim of alleged sexual offense to submit to polygraph or other examination -- Other prohibitions.

No Commonwealth's or county attorney shall:

- (1) As a condition of proceeding with an investigation or prosecution of a case, request or require a victim of an alleged sexual offense to submit to a polygraph examination or any other device designed for the purpose of determining whether a person is telling the truth; or
- (2) Charge or threaten to charge the victim of an alleged sexual offense with prosecution for a criminal offense for refusing to submit to a polygraph examination or other device designed for the purpose of determining whether a person is telling the truth.

KRS 70.065 Sheriff, deputy sheriff, constable, and county police officer prohibited from requesting or requiring victim of alleged sexual offense to submit to polygraph or other examination -- Other prohibitions.

No sheriff, deputy sheriff, constable, or county police officer shall:

- (1) As a condition of proceeding with an investigation or prosecution of a case, request or require a victim of an alleged sexual offense to submit to a polygraph examination or any other device designed for the purpose of determining whether a person is telling the truth; or
- (2) Charge or threaten to charge the victim of an alleged sexual offense with prosecution for a criminal offense for refusing to submit to a polygraph examination or other device designed for the purpose of determining whether a person is telling the truth.

KRS 95.021 Police officer prohibited from requesting or requiring victim of alleged sexual offense to submit to polygraph or other examination - Other prohibitions.

No police officer shall:

- (1) As a condition of proceeding with an investigation or prosecution of a case, request or require a victim of an alleged sexual offense to submit to a polygraph examination or any other device designed for the purpose of determining whether a person is telling the truth; or
- (2) Charge or threaten to charge the victim of an alleged sexual offense with prosecution for a criminal offense for refusing to submit to a polygraph examination or other device designed for the purpose of determining whether a person is telling the truth.

502 KAR 20:020 (1-4) Detection of deception examiners.

Section 1. Definitions.

- (1) "Detection of deception examiner" is defined by KRS 329.010(1).
- (2) "Secretary" is defined by KRS 329.010(5).
- (3) "Sex crime" means an offense or attempt to commit an offense defined in:

- (a) KRS Chapter 510;
- (b) KRS 530.020;
- (c) KRS 530.064(1)(a);
- (d) KRS 531.310; or
- (e) KRS 531.320.

(4) "Thorough investigation" means:

- (a) Interviewing the victim, any witnesses, any potential witnesses, and the suspect, if possible;
- (b) Submitting any evidence to the laboratory if appropriate; and
- (c) Pursuing any leads identified during the investigation.

Section 2.

Advertising, soliciting, and discrimination are prohibited as follows:

- (1) An examiner shall not advertise in any manner which would tend to deceive or defraud the public.
- (2) An examiner shall not publish or circulate any fraudulent, false, or misleading statements as to the skill or method of practice of any person or examiner.
- (3) An examiner shall not claim superiority over other examiners as to skill or method of practice.
- (4) An examiner shall not divide fees, or agree to split or divide the fees received for detection of deception services with any person for bringing or referring a client.
- (5) An examiner shall not attempt to solicit business as a result of information or statements obtained from an examinee relating to the examinee's past employment or employer.
- (6) An examiner shall not refuse to render detection of deception services to or for any person solely on account of the race, color, creed, sex, or national origin of the person.

Section 3.

- (1) The examiner shall inform the prospective examinee that taking the detection of deception examination is a voluntary act and the examiner shall obtain the written consent of the examinee to undergo the examination.
- (2) The examiner shall not conduct an examination on any person whom the examiner believes, through observation or any other credible evidence, to be physically or psychologically unfit for the examination at that time.
- (3) The examiner shall, immediately upon request of the examinee, terminate an examination in progress.
- (4) The examiner shall not render a verbal or written opinion based on chart analysis, until the examinee has had a reasonable opportunity to explain any reactions to pertinent questions.
- (5) The examiner shall not interrogate or conduct an examination of an examinee's sexual behavior, or ask any questions that can be construed as being sexually oriented or personally embarrassing to the examinee, regardless of marital status, unless the topic is a specific issue or unless it refers to the basic matter pertinent to the examination.
- (6) The examiner shall not conduct an examination if the examiner has reason to believe the examination is intended to circumvent or defy the law.
- (7) The examiner shall not knowingly issue, or permit an employee to issue, a polygraph examination report which is misleading, biased, or falsified in any way. Each report shall be a factual, impartial, and objective account of the pertinent information developed during the examination and the examiner's professional conclusion, based on analysis of the polygraph charts.
- (8) The examiner shall not conduct a polygraph examination without first reviewing the issues to be covered during the examination and the general content of the questions to be asked during the examination with the examinee.
- (9) (a) The examiner shall not render a conclusive verbal or written decision, based on chart analysis, as to the truthfulness or deception of the examinee without having administered three (3) or more polygraph charts using the same relevant test questions.
 - 1. If after the examinee has submitted to fewer than three (3) charts, the examinee refuses

- to submit to additional charts, the results shall be recorded as no opinion.
2. The fact of the examinee's refusal shall be noted in the verbal or written report of the examination.
 - (b) An examiner may terminate an examination in progress at the examiner's discretion if, in the examiner's opinion, the examinee has become physically or psychologically unfit, or has become uncooperative to the point that it would be useless to continue the examination.
 - (10) (a) All questions and answers asked during a polygraph examination shall be marked on the polygraph charts at the appropriate place on the chart where the question was asked and the answer given.
 - (b) If a question sheet with numbered questions is used, the number of the asked question along with the answer given shall be noted and the question sheet shall be attached to the polygraph chart and made a part of the examinee's file.
 - (c) Each polygraph chart shall be identified as to the person being examined, the examiner, time and date of the examination, and the chart number.
 - (11) (a) The examiner shall not, unless professionally qualified to do so, include in any written report any statement purporting to be a medical, legal, or psychiatric opinion or which would infringe upon areas under the cognizance of professionals in those fields.
 - (b) The examiner may describe the appearance or behavior of the examinee, if:
 1. The information is pertinent to the examination; and
 2. The examiner refrains from offering any diagnosis which the examiner is professionally unqualified to make.
 - (12) (a) The examiner shall not offer testimony concerning the charts or conclusions presented by another examiner unless the examiner is thoroughly familiar with the techniques and procedures used by the other examiner.
 - (b) An examiner may testify concerning the examiner's independent examination of the same examinee.
 - (13) An examiner shall report to the cabinet any action or misconduct on the part of another examiner which would be in violation of the provisions of KRS Chapter 329 or 502 KAR Chapter 20.

Section 4. Detection of Deception Examinations of Victims of Sex Crimes.

- (1) The victim of a sex crime has the right to refuse examination and shall be informed of this right.
- (2) An examination shall not be requested, required, or conducted of a sex crime victim as a condition for proceeding with the investigation of the crime.
- (3) Except as provided by subsection (4) of this section, examination of a sex crime victim shall not be conducted unless:
 - (a) The victim's consent to the examination is in writing and received by the examiner before the examination begins;
 - (b) 1. The suspect has declined examination, has passed an examination or has been found unsuitable for an examination; or
 2. After a thorough investigation, the suspect cannot be identified or located;
 - (c) There is a clear issue to test on based on:
 1. Interviewing the victim, any witnesses, any potential witnesses, and the suspect, if possible;
 2. Submitting any evidence to the laboratory if appropriate; and
 3. Pursuing any leads identified during the investigation;
 - (d) Before the examination, the investigating officer has provided the examiner with a signed, written document:
 1. Describing any inconsistencies in the victim's allegation;
 2. Stating if any inconsistency can be substantiated by existing physical or testimonial evidence;

3. Listing investigative strategies which have been used in the case;
 4. Declaring that the victim has not been told that the investigation would cease if the victim refuses to consent to an examination; and
 5. Containing no reference to whether the victim is behaving like a typical sexual assault victim.
- (4) (a) A sex crime victim may request examination. The investigator may arrange for the requested examination and the examination may be conducted if:
1. The request is voluntary and at the victim's own initiative;
 2. It is documented in writing that the request is by the victim;
 3. The written request is signed by the victim;
 4. The written request is received by the examiner before the examination begins; and
 5. The victim has an opportunity to consult with a victims' advocate prior to the examination.
- (b) An examination shall not be considered to be at the victim's request if the victim agrees to the examination in response to a request by the investigator to take an examination.
- (5) Every reasonable attempt shall be made to avoid visible and audio contact between the victim and suspect during the examination process. If contact is made, the examination shall be postponed and rescheduled for another date and time.
- (6) The victim shall be advised that at the victim's request, a victim advocate shall be allowed to watch the examination from a two (2) way mirror or by closed circuit television in real time. The examiner and the victim shall be the only two (2) individuals inside the examination room during the entire examination process, except if a language interpreter is required.
- (7) At the beginning of the examination, the examiner shall advise the victim that the examination is a stressful experience and that if the victim feels uncomfortable at any time with the polygraph process, it shall be terminated immediately.
- (8) The victim shall not be interrogated under any circumstance. A post-examination debriefing shall be conducted to give the victim the opportunity to explain any unresolved responses on the examination. The victim shall be advised that upon the victim's request, a victim advocate shall be allowed to watch the debriefing session from a two (2) way mirror or closed circuit television.
- (9) The testing format utilized shall be a researched comparison/control question format (CQT). The relevant questions shall be answered with a "yes" answer.
- (10) An irrelevant/relevant question format shall not be utilized on any sex crime victim.
- (11) Past sexual history of the victim shall not be explored by the examiner.
- (12) Sex related comparison/control questions shall not be asked of the victim. Lie comparison questions excluding sex shall be used on sex crime victims.
- (13) At the end of the examination, the examiner shall advise the victim of the results.
- (14) Quality control of the examination shall be conducted in writing and maintained with the polygraph file at least until after adjudication of the case.
- (15) The entire examination shall be videotaped with adequate picture and sound from the time the victim walks into the testing room until the victim leaves the testing room for the last time. There shall not be a break in the videotaping of the process. The videotape shall be maintained as evidence until at least the investigation is adjudicated.

4. Human Trafficking Victims

KRS 422.295 Confidentiality of communications between human trafficking victim and caseworker.

- (1) As used in this section:
 - (a) "Confidential communication" means information transmitted between the victim and the caseworker in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the human trafficking counselor is consulted and includes all information regarding the facts and circumstances involving the trafficking;
 - (b) "Holder of the privilege" means the victim when he or she has no guardian or conservator, or a guardian or conservator of the victim when the victim has a guardian or conservator; and
 - (c) "Trafficking victim counselor" includes any of the following:
 1. A counselor, as that term is defined in Rule 506 of the Kentucky Rules of Evidence;
 2. A psychotherapist as that term is defined in Rule 507 of the Kentucky Rules of Evidence; and
 3. A person employed and supervised by one (1) of the persons specified in this paragraph to render services to human trafficking victims and who has received forty (40) hours of training in the history of human trafficking; civil and criminal law as it relates to human trafficking; societal attitudes towards human trafficking; peer counseling techniques; housing, public assistance, and other financial resources available to meet the financial needs of human trafficking victims; and referral services available to human trafficking victims.
- (2) A human trafficking victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to a trafficking victim counselor for the purpose of receiving counseling, therapy, services, information, or treatment related to human trafficking.
- (3) A human trafficking caseworker shall inform a trafficking victim of any applicable limitations on confidentiality of communications between the victim and the caseworker. This information may be given orally.

KRS 431.063 Human trafficking victim not to be incarcerated pending trial - Exceptions.

A victim of human trafficking shall not be held in a detention center, jail, or other secure facility pending trial for an offense arising from the human trafficking situation, except where the incarceration is found to be the least restrictive alternative to securing the appearance of that person before the court or the release of the person under any other reasonable condition would be a clear threat to public safety.

KRS 529.160 Expungement of records relating to violation of chapter when person charged or convicted was a victim of human trafficking at time of offense -- Motion -- Finding -- Presumption.

- (1) When a person is charged or convicted under this chapter, or with an offense which is not a violent crime as defined in KRS 17.165, and the person's participation in the offense is determined to be the direct result of being a victim of human trafficking, the person may make a motion in the court in which the charges were filed to expunge all records of the offense.
- (2) The motion shall be filed no sooner than sixty (60) days following the date the final judgment was entered by the court in which the charges were filed.

(3)

- (a) A motion filed under this section, any hearing conducted on the motion, and any relief granted are governed by KRS 431.076, 431.078, and 431.079 unless otherwise provided in this section.
- (b) For the purposes of expungement under KRS 431.076, a finding by the court that the person's participation in the offense was a direct result of being a victim of human trafficking shall deem the charges as dismissed with prejudice.
- (c) No official determination or documentation is required to find that the person's participation in the offense was a direct result of being a victim of human trafficking, but documentation from a federal, state, local, or tribal governmental agency indicating that the defendant was a victim at the time of the offense shall create a presumption that the defendant's participation in the offense was a direct result of being a victim.

KRS 630.125 Child not to be charged with or found guilty of status offense related to human trafficking.

If reasonable cause exists to believe the child is a victim of human trafficking, as defined in KRS 529.010, the child shall not be charged with or adjudicated guilty of a status offense related to conduct arising from the human trafficking of the child unless it is determined at a later time that the child was not a victim of human trafficking at the time of the offense.

KRS 15A.068 Duties of department if child may be victim of human trafficking -- Administrative regulations. (Department of Juvenile Justice duty).

- (1) If, during the course of screening, assessing, or providing services to a child committed to or in the custody of the department, there is reasonable cause to believe that the child is a victim of human trafficking as defined in KRS 529.010, the department shall:
 - (a) File a report with the Cabinet for Health and Family Services pursuant to KRS 620.030;
 - (b) Notify the child's attorney that the child may be a victim of human trafficking; and
 - (c) If the child does not pose a threat to public safety, petition the court to transfer custody from the department to the Cabinet for Health and Family Services.
- (2) After consultation with agencies serving victims of human trafficking, the department shall promulgate administrative regulations for the treatment of child victims of human trafficking who are committed to or in the custody of the department and pose a threat to public safety but do not qualify to be in the custody of the Cabinet for Health and Family Services under subsection (1)(c) of this section. The administrative regulations shall include provisions for appropriate screening, assessment, placement, treatment, and services for these children, the training of staff, and collaboration with service providers.

5. Interpretation Services Provided by Court for Individuals with Limited English Proficiency

KRS 30A.400 Interpreters -- Appointment -- Hearing to determine need.

- (1) If a person has been detained in police custody or has been arrested, an interpreter shall be provided prior to any interrogation or taking of a statement from the person if the court determines he meets the criteria set forth in KRS 30A.410.
- (2) Any statement made by a person who is entitled to the services of an interpreter under subsection (1) of this section to a law enforcement officer may be used as evidence against that person only if the statement was made, offered, or elicited in the presence of a qualified interpreter. This subsection shall not deny a person the right to make a voluntary confession.
- (3) If the eligibility of the individual for an interpreter is challenged, the judge may, on good cause shown, hold a hearing to determine the bona fide need for interpreter services.
- (4) If it is determined that the person is not entitled to these services, no portion of KRS 30A.425 to 30A.435 shall apply to him.

KRS 30A.405 Qualifications of interpreter -- Standards.

- (1) Any person appointed as interpreter pursuant to this chapter shall be qualified by training or experience to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.
- (2) The Supreme Court shall prescribe standards, such as national certification, for appointment, qualifications, duties, and other matters relating to interpreters. In the area of providing interpreters for persons who are deaf or hard of hearing as described under KRS 30A.410(1)(a), the standards shall be established after consultation with the Kentucky Commission on the Deaf and Hard of Hearing, the Kentucky Registry of Interpreters for the Deaf, and the Kentucky Association of the Deaf.
- (3) These rules and standards shall be administered by the Administrative Office of the Courts.

KRS 30A.410 When interpreter shall be provided -- Removal.

- (1) The court in any matter, criminal or civil, shall appoint a qualified interpreter or interpreters, to be paid out of the State Treasury, for the following categories of persons, whether they are parties, jurors, or witnesses:
 - (a) Persons who because of deafness or hard of hearing:
 1. Use sign language, such as pidgin, signed English, American Sign Language, or gestures; or
 2. Are oral/aural and use interpreters and assistive technology, as their primary mode of communication;
 - (b) Persons who cannot communicate in English; and
 - (c) Any other person who has, in the opinion of the court, another type of disability which will prevent him from properly understanding the nature of the proceedings or substantially prejudice his rights.
- (2) Upon request of the person for whom the interpreter is appointed, or on the court's own motion, an interpreter may be removed for inability to communicate with the person, or if for reasonable cause another interpreter is so desired by the person for whom the interpreter is appointed, or because the services of an interpreter are not desired by the person.

KRS 30A.415 Responsibility for payment for interpreter's services.

- (1) In criminal or civil cases, the Court of Justice shall be responsible for payment, including ordinary and reasonable expenses, for interpretive services for court appearances.
- (2) In any case in which the interpreter is providing services out of court, even though that service relates to a pending court case, the agency requiring the services of the interpreter shall be responsible for payment.

KRS 30A.420 Payment out of State Treasury.

In cases where compensation by the state is required or permitted interpreters' fees and ordinary and reasonable expenses shall be paid out of the State Treasury according to the pay schedule of the Judicial Personnel System.

KRS 30A.425 Duties of interpreter.

The duties of the interpreter may include:

- (1) Interpreting during court and court-related proceedings, including any and all meetings and conferences between client and his attorney;
- (2) Translating or interpreting documents;
- (3) Assisting in taking depositions;
- (4) Assisting in administering oaths;
- (5) Such other duties as may be required by the judge of the court making the appointment.

KRS 30A.430 Interpreter not to be examined as witness -- Other privileged communications.

Every person who acts as an interpreter in circumstances involving the arrest, police custody or other stage in a criminal, civil, or other matter of a person coming under KRS 30A.410 shall not be examined as a witness regarding conversations between that person and his attorney, when the conversations would otherwise be subject to the attorney-client privilege, without the consent of that person. Interpreters shall not be required to testify regarding any other privileged communications without the consent of the person for whom they are interpreting.

KRS 30A.435 Use of equipment by interpreter or disabled person -- Approval required.

- (1) In the performance of his duties the interpreter may utilize electronic recording, foreign language translation, and other equipment. A person who is deaf, hard of hearing, or speech impaired may elect to use assistive technology in lieu of or in addition to the services of an interpreter.
- (2) If the equipment sought to be used is of the type approved by the Administrative Office of the Courts, no further approval is required before the equipment may be used in court or court-related matters.
- (3) If the equipment is of a type for which no approval has been issued by the Administrative Office of the Courts, the use of the equipment for court or court-related matter shall be approved in writing and in advance by the director of the Administrative Office of the Courts or his designee or by the judge making the appointment.
- (4) If the equipment is of a type which has been disapproved by the Administrative Office of the Courts, it shall not be used in any court or court-related matter.
- (5) All equipment utilized in court or court-related matters shall be in proper mechanical and working order and shall be fit for the intended use.

6. Medical Records

KRS 422.315 Patient may ask to prohibit or limit use of his medical records.

Any patient whose medical records or charts are copied and delivered pursuant to KRS 422.300 to 422.330, any person acting on his behalf, the hospital having custody of such records, or any physician, nurse or other person responsible for entries on such charts or records shall have standing to apply to the court or other body before which the action or proceeding is pending for a protective order denying, restricting or otherwise limiting access and use of such copies or original charts and records. Such patients, persons, hospitals, physicians or nurses who are not parties to the action or proceeding and who wish to apply for a protective order may petition to intervene in the action or proceeding and simultaneously apply for such a protective order.

C. PRIVILEGES & OTHER TESTIMONIAL ISSUES

1. Privileges

KRE 501 General rule.

Except as otherwise provided by Constitution or statute or by these or other rules promulgated by the Supreme Court of Kentucky, no person has a privilege to:

- (1) Refuse to be a witness;
- (2) Refuse to disclose any matter;
- (3) Refuse to produce any object or writing; or
- (4) Prevent another from being a witness or disclosing any matter or producing any object or writing.

KRE 503 Lawyer-client privilege.

(a) Definitions. As used in this rule:

- (1) "Client" means a person, including a public officer, corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.
- (2) "Representative of the client" means:
 - (A) A person having authority to obtain professional legal services, or to act on advice thereby rendered on behalf of the client; or
 - (B) Any employee or representative of the client who makes or receives a confidential communication:
 - (i) In the course and scope of his or her employment;
 - (ii) Concerning the subject matter of his or her employment; and
 - (iii) To effectuate legal representation for the client.
- (3) "Lawyer" means a person authorized, or reasonably believed by the client to be authorized to engage in the practice of law in any state or nation.
- (4) "Representative of the lawyer" means a person employed by the lawyer to assist the lawyer in rendering professional legal services.
- (5) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) General rule of privilege.

A client has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made for the purpose of facilitating the rendition of professional legal services to the client:

- (1) Between the client or a representative of the client and the client's lawyer or a representative of the lawyer;
- (2) Between the lawyer and a representative of the lawyer;
- (3) By the client or a representative of the client or the client's lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;
- (4) Between representatives of the client or between the client and a representative of the client; or
- (5) Among lawyers and their representatives representing the same client.

(c) Who may claim the privilege.

The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

(d) Exceptions.

There is no privilege under this rule:

(1) Furtherance of crime or fraud.

If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(2) Claimants through same deceased client.

As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by transaction inter vivos;

(3) Breach of duty by a lawyer or client.

As to a communication relevant to an issue of breach of duty by a lawyer to the client or by a client to the lawyer;

(4) Document attested by a lawyer.

As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; and

(5) Joint clients.

As to a communication relevant to a matter of common interest between or among two (2) or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between or among any of the clients.

KRE 504 Husband-wife privilege.

(a) Spousal testimony.

The spouse of a party has a privilege to refuse to testify against the party as to events occurring after the date of their marriage. A party has a privilege to prevent his or her spouse from testifying against the party as to events occurring after the date of their marriage.

(b) Marital communications.

An individual has a privilege to refuse to testify and to prevent another from testifying to any confidential communication made by the individual to his or her spouse during their marriage. The privilege may be asserted only by the individual holding the privilege or by the holder's guardian, conservator, or personal representative. A communication is confidential if it is made privately by an individual to his or her spouse and is not intended for disclosure to any other person.

(c) Exceptions.

There is no privilege under this rule:

- (1) In any criminal proceeding in which the court determines that the spouses conspired or acted jointly in the commission of the crime charged;
- (2) In any proceeding in which one (1) spouse is charged with wrongful conduct against the person or property of:
 - (A) The other;
 - (B) A minor child of either;
 - (C) An individual residing in the household of either; or
 - (D) A third person if the wrongful conduct is committed in the course of wrongful conduct against any of the individuals previously named in this sentence; or
- (3) In any proceeding in which the spouses are adverse parties.

(d) Minor Child.

The court may refuse to allow the privilege in any proceeding if the interests of a minor child of either spouse may be adversely affected.

KRE 505 Religious privilege.

(a) Definitions. As used in this rule:

- (1) A "clergyman" is a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him.
- (2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General rule of privilege.

A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication between the person and a clergyman in his professional character as spiritual adviser.

(c) Who may claim the privilege.

The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

KRE 506 Counselor-client privilege.

(a) Definitions. As used in this rule:

(1) A “counselor” includes:

- (A) A certified school counselor who meets the requirements of the Kentucky Board of Education and who is duly appointed and regularly employed for the purpose of counseling in a public or private school of this state;
- (B) A sexual assault counselor, who is a person engaged in a rape crisis center, as defined in KRS Chapter 421, who has undergone forty (40) hours of training and is under the control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault;
- (C) A certified professional art therapist who is engaged to conduct art therapy under KRS 309.130 to 309.1399;
- (D) A licensed marriage and family therapist as defined in KRS 335.300 who is engaged to conduct marriage and family therapy pursuant to KRS 335.300 to 335.399;
- (E) A licensed professional clinical counselor or a licensed professional counselor associate as defined in KRS 335.500;
- (F) An individual who provides crisis response services as a member of the community crisis response team or local community crisis response team under KRS 36.250 to 36.270;
- (G) A victim advocate as defined in KRS 421.570 except a victim advocate who is employed by a Commonwealth’s attorney under KRS 15.760 or a county attorney pursuant to KRS 69.350; and
- (H) A Kentucky licensed pastoral counselor as defined in KRS 335.605 who is engaged to conduct pastoral counseling under KRS 335.600 to 335.699.

(2) A “client” is a person who consults or is interviewed or assisted by a counselor for the purpose of obtaining professional or crisis response services from the counselor.

(3) A communication is “confidential” if it is not intended to be disclosed to third persons, except persons present to further the interest of the client in the consultation or interview, persons reasonably necessary for the transmission of the communication, or persons present during the communication at the direction of the counselor, including members of the client’s family.

(b) General rule of privilege.

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of counseling the client, between himself, his counselor, and persons present at the direction of the counselor, including members of the client’s family.

(c) Who may claim the privilege?

The privilege may be claimed by the client, his guardian or conservator, or the personal representative of a deceased client. The person who was the counselor (or that person’s employer) may claim the privilege in the absence of the client, but only on behalf of the client.

(d) Exceptions. There is no privilege under this rule for any relevant communication:

- (1) If the client is asserting his physical, mental, or emotional condition as an element of a claim or defense; or, after the client’s death, in any proceeding in which any party relies upon the condition as an element of a claim or defense.
- (2) If the judge finds:
 - (A) That the substance of the communication is relevant to an essential issue in the case;
 - (B) That there are no available alternate means to obtain the substantial equivalent of the

- communication; and
- (C) That the need for the information outweighs the interest protected by the privilege. The court may receive evidence in camera to make findings under this rule.

KRE 507 Psychotherapist-patient privilege.

(a) Definitions. As used in this rule:

- (1) A “patient” is a person who, for the purpose of securing diagnosis or treatment of his or her mental condition, consults a psychotherapist.
- (2) A “psychotherapist” is:
 - (A) A person licensed by the state of Kentucky, or by the laws of another state, to practice medicine, or reasonably believed by the patient to be licensed to practice medicine, while engaged in the diagnosis or treatment of a mental condition;
 - (B) A person licensed or certified by the state of Kentucky, or by the laws of another state, as a psychologist, or a person reasonably believed by the patient to be a licensed or certified psychologist;
 - (C) A licensed clinical social worker, licensed by the Kentucky Board of Social Work; or
 - (D) A person licensed as a registered nurse or advanced registered nurse practitioner by the board of nursing and who practices psychiatric or mental health nursing.
- (3) A communication is “confidential” if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are present during the communication at the direction of the psychotherapist, including members of the patient’s family.
- (4) “Authorized representative” means a person empowered by the patient to assert the privilege granted by this rule and, until given permission by the patient to make disclosure, any person whose communications are made privileged by this rule.

(b) General rule of privilege.

A patient, or the patient’s authorized representative, has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications, made for the purpose of diagnosis or treatment of the patient’s mental condition, between the patient, the patient’s psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist, including members of the patient’s family.

(c) Exceptions. There is no privilege under this rule for any relevant communications under this rule:

- (1) In proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is in need of hospitalization;
- (2) If a judge finds that a patient, after having been informed that the communications would not be privileged, has made communications to a psychotherapist in the course of an examination ordered by the court, provided that such communications shall be admissible only on issues involving the patient’s mental condition; or
- (3) If the patient is asserting that patient’s mental condition as an element of a claim or defense, or, after the patient’s death, in any proceeding in which any party relies upon the condition as an element of a claim or defense.

KRE 509 Waiver of privilege by voluntary disclosure.

A person upon whom these rules confer a privilege against disclosure waives the privilege if he or his predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privilege matter. This rule does not apply if the disclosure itself is privileged. Disclosure of communications for the purpose of receiving third-party payment for professional services does not waive any privilege with respect to such communications.

KRE 510 Privileged matter disclosed under compulsion or without opportunity to claim privilege
A claim of privilege is not defeated by a disclosure which was:

- (1) Compelled erroneously; or
- (2) Made without opportunity to claim the privilege.

2. Evidence Related to Character & Other Activities of Parties

KRE 404 Character evidence and evidence of other crimes.

(a) *Character evidence generally.* Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

- (1) Character of accused. Evidence of a pertinent trait of character or of general moral character offered by an accused, or by the prosecution to rebut the same, or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under Rule 404(a)(2), evidence of the same trait of character of the accused offered by the prosecution;
- (2) Character of victim generally. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, other than in a prosecution for criminal sexual conduct, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;
- (3) Character of witnesses. Evidence of the character of witnesses, as provided in KRE 607, KRE 608, and KRE 609.

(b) *Other crimes, wrongs, or acts.* Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible:

- (1) If offered for some other purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident; or
- (2) If so inextricably intertwined with other evidence essential to the case that separation of the two (2) could not be accomplished without serious adverse effect on the offering party.

(c) *Notice requirement.* In a criminal case, if the prosecution intends to introduce evidence pursuant to subdivision (b) of this rule as a part of its case in chief, it shall give reasonable pretrial notice to the defendant of its intention to offer such evidence. Upon failure of the prosecution to give such notice the court may exclude the evidence offered under subdivision (b) or for good cause shown may excuse the failure to give such notice and grant the defendant a continuance or such other remedy as is necessary to avoid unfair prejudice caused by such failure.

KRE 410 Inadmissibility of pleas, plea discussions, and related statements.

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

- (1) A plea of guilty which was later withdrawn;
- (2) A plea of nolo contendere in a jurisdiction accepting such pleas;
- (3) Any statement made in the course of formal plea proceedings, under either state procedures or Rule 11 of the Federal Rules of Criminal Procedure, regarding either of the foregoing pleas; or
- (4) Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. However, such a plea or statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or

(ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

KRE 412 Rape and similar cases - Admissibility of victim's character and behavior.

(a) Evidence generally inadmissible.

The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subdivisions (b) and (c):

- (1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.
- (2) Evidence offered to prove any alleged victim's sexual predisposition.

(b) Exceptions:

- (1) In a criminal case, the following evidence is admissible, if otherwise admissible under these rules:
 - (A) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;
 - (B) evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and
 - (C) any other evidence directly pertaining to the offense charged.
- (2) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.

(c) Procedure to determine admissibility.

- (1) A party intending to offer evidence under subdivision (b) must:
 - (A) file a written motion at least fourteen (14) days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause requires a different time for filing or permits filing during trial; and
 - (B) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.
- (2) Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

3. Witness, Opinions, and Expert Testimony

KRE 601 Competency.

(a) General.

Every person is competent to be a witness except as otherwise provided in these rules or by statute.

(b) Minimal qualifications.

A person is disqualified to testify as a witness if the trial court determines that he:

- (1) Lacked the capacity to perceive accurately the matters about which he proposes to testify;
- (2) Lacks the capacity to recollect facts;
- (3) Lacks the capacity to express himself so as to be understood, either directly or through an interpreter;
or
- (4) Lacks the capacity to understand the obligation of a witness to tell the truth.

KRE 608 Evidence of character and conduct of witness.

(a) Opinion and reputation evidence of character.

The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific instances of conduct.

Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness: (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified. No specific instance of conduct of a witness may be the subject of inquiry under this provision unless the cross-examiner has a factual basis for the subject matter of his inquiry.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility.

KRE 612 Writing used to refresh memory.

Except as otherwise provided in the Kentucky Rules of Criminal Procedure, if a witness uses a writing during the course of testimony for the purpose of refreshing memory, an adverse party is entitled to have the writing produced at the trial or hearing or at the taking of a deposition, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony, the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal.

KRE 613 Prior statements of witnesses.

(a) Examining witness concerning prior statement.

Before other evidence can be offered of the witness having made at another time a different statement, he must be inquired of concerning it, with the circumstances of time, place, and persons present, as correctly as the examining party can present them; and, if it be in writing, it must be shown to the witness, with opportunity to explain it. The court may allow such evidence to be introduced when it is impossible to comply with this rule because of the absence at the trial or hearing of the witness sought to be contradicted, and when the court finds that the impeaching party has acted in good faith.

(b) This provision does not apply to admissions of a party-opponent as defined in KRE 801A.

KRE 615 Exclusion of witnesses.

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses and it may make the order on its own motion. This rule does not authorize exclusion of:

- (1) A party who is a natural person;
- (2) An officer or employee of a party which is not a natural person designated as its representative by its attorney; or
- (3) A person whose presence is shown by a party to be essential to the presentation of the party's cause.

KRE 701 Opinion testimony by lay witnesses.

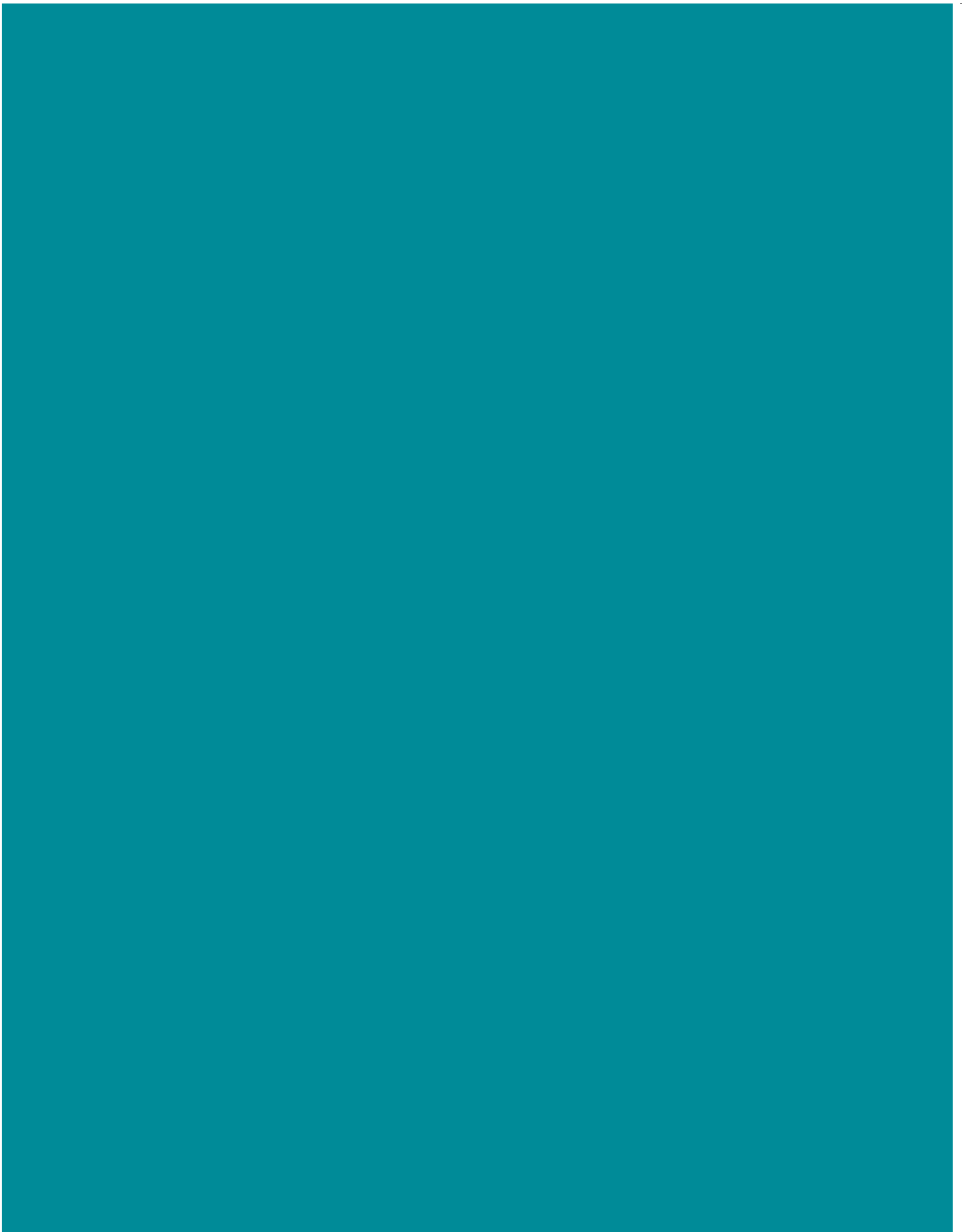
If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

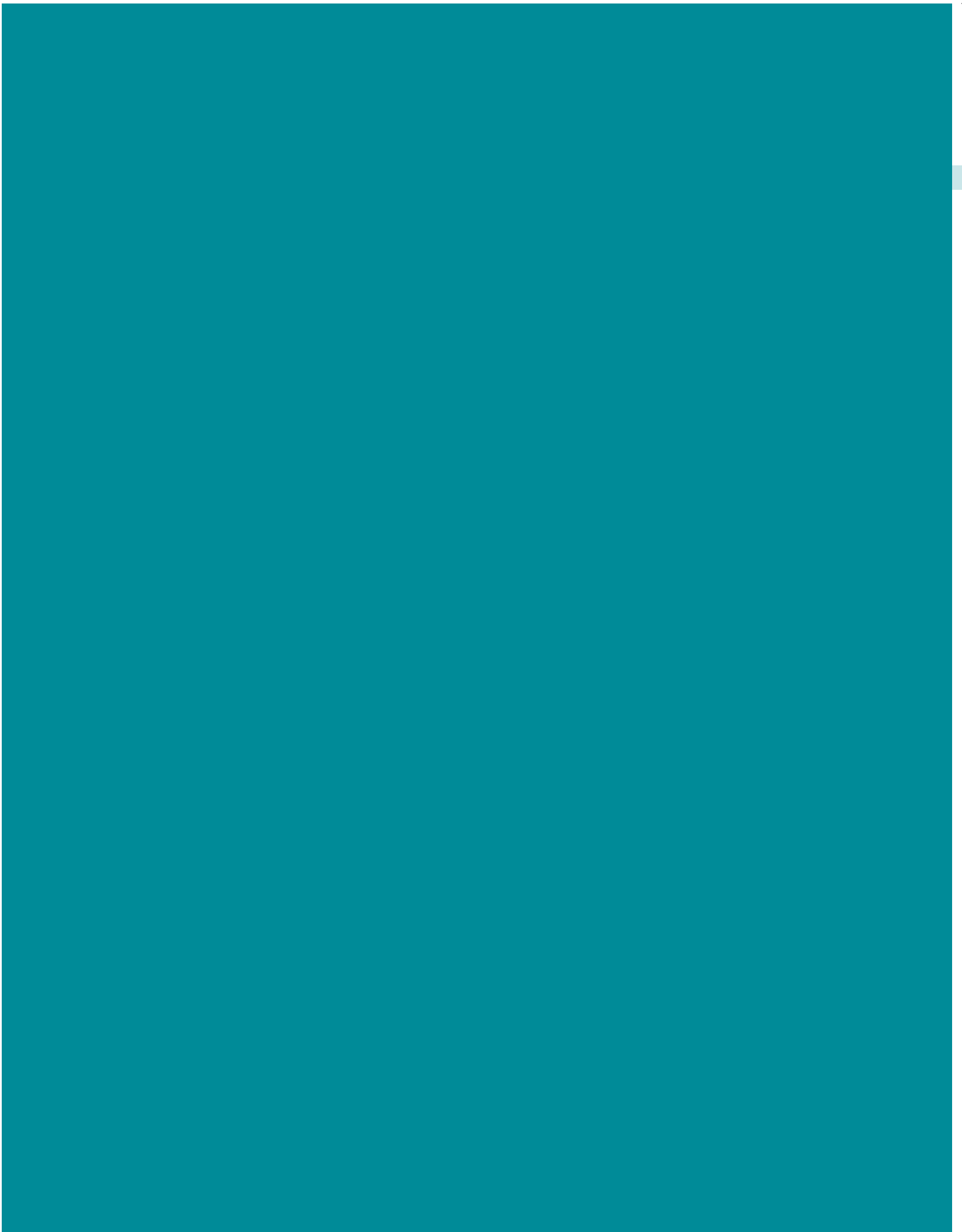
- (a) Rationally based on the perception of the witness,
- (b) Helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and
- (c) Not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

KRE 702 Testimony by experts.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if

- (1) the testimony is based upon sufficient facts or data,
- (2) the testimony is the product of reliable principles and methods, and
- (3) the witness has applied the principles and methods reliably to the facts of the case.





CHAPTER 2 VICTIM SERVICES & SERVICE PROVIDERS

A. SEXUAL ASSAULT MEDICAL-FORENSIC EXAMS

KASAP has published a toolkit with information relating to sexual assault forensic exams, including FAQs. Please contact us if you would like a copy.

Purpose of SAFE Exam

- To provide appropriate, quality, victim centered, trauma informed care to all victims who disclose sexual assault, abuse, or violence in a hospital or other exam facility.
- To increase evidence available for use in prosecutions by allowing victims who may be unsure of whether or not they wish to report to law enforcement immediately to have samples collected that may be used as evidence, in case of or when a report is filed.

1. Examination Requirements

216B.400 Emergency care -- Examination services for victims of sexual offenses -- Examination expenses paid by Kentucky Claims Commission -- Reporting to law enforcement -- Examination samples as evidence.

- (1) Where a person has been determined to be in need of emergency care by any person with admitting authority, no such person shall be denied admission by reason only of his or her inability to pay for services to be rendered by the hospital.
- (2) Every hospital of this state which offers emergency services shall provide that a physician, a sexual assault nurse examiner, who shall be a registered nurse licensed in the Commonwealth and credentialed by the Kentucky Board of Nursing as provided under KRS 314.142, or another qualified medical professional, as defined by administrative regulation promulgated by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707, is available on call twenty-four (24) hours each day for the examinations of persons seeking treatment as victims of sexual offenses as defined by KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, 510.130, 510.140, 530.020, 530.064(1)(a), and 531.310.
- (3) An examination provided in accordance with this section of a victim of a sexual offense may be performed in a sexual assault examination facility as defined in KRS 216B.015. An examination under this section shall apply only to an examination of a victim.
- (4) The physician, sexual assault nurse examiner, or other qualified medical professional, acting under a statewide medical forensic protocol which shall be developed by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707, and promulgated by the secretary of justice and public safety pursuant to KRS Chapter 13A shall, upon the request of any peace officer or prosecuting attorney, and with the consent of the victim, or upon the request of the victim, examine such person for the purposes of providing basic medical care relating to the incident and gathering samples that may be used as physical evidence. This examination shall include but not be limited to:
 - (a) Basic treatment and sample gathering services; and
 - (b) Laboratory tests, as appropriate.
- (5) Each victim shall be informed of available services for treatment of sexually transmitted infections, pregnancy, and other medical and psychiatric problems. Pregnancy counseling

- shall not include abortion counseling or referral information.
- (6) Each victim shall be informed of available crisis intervention or other mental health services provided by regional rape crisis centers providing services to victims of sexual assault.
 - (7) Notwithstanding any other provision of law, a minor may consent to examination under this section. This consent is not subject to disaffirmance because of minority, and consent of the parents or guardians of the minor is not required for the examination.
 - (8) (a) The examinations provided in accordance with this section shall be paid for by the Kentucky Claims Commission at a rate to be determined by the administrative regulation promulgated by the board after consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.
(b) Upon receipt of a completed claim form supplied by the board and an itemized billing for a forensic sexual assault examination or related services that are within the scope of practice of the respective provider and were performed no more than twelve (12) months prior to submission of the form, the board shall reimburse the hospital or sexual assault examination facility, pharmacist, health department, physician, sexual assault nurse examiner, or other qualified medical professional as provided in administrative regulations promulgated by the board pursuant to KRS Chapter 13A. Reimbursement shall be made to an out-of-state nurse who is credentialed in the other state to provide sexual assault examinations, an out-of-state hospital, or an out-of-state physician if the sexual assault occurred in Kentucky.
(c) Independent investigation by the Kentucky Claims Commission shall not be required for payment of claims under this section; however, the board may require additional documentation or proof that the forensic medical examination was performed.
 - (9) No charge shall be made to the victim for sexual assault examinations by the hospital, the sexual assault examination facility, the physician, the pharmacist, the health department, the sexual assault nurse examiner, other qualified medical professional, the victim's insurance carrier, or the Commonwealth.
 - (10) (a) Each victim shall have the right to determine whether a report or other notification shall be made to law enforcement, except where reporting of abuse and neglect of a child or a vulnerable adult is required, as set forth in KRS 209.030 and 620.030. No victim shall be denied an examination because the victim chooses not to file a police report, cooperate with law enforcement, or otherwise participate in the criminal justice system.
(b) If the victim chooses to report to law enforcement, the hospital shall notify law enforcement within twenty-four (24) hours.
(c)
 1. All samples collected during an exam where the victim has chosen not to immediately report to law enforcement shall be stored, released, and destroyed, if appropriate, in accordance with an administrative regulation promulgated by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.
 2. Facilities collecting samples pursuant to this section may provide the required secure storage, sample destruction, and related activities, or may enter into agreements with other agencies qualified to do so, pursuant to administrative regulation.
 3. All samples collected pursuant to this section shall be stored for at least one (1) year from the date of collection in accordance with the administrative regulation promulgated pursuant to this subsection.
 4. Notwithstanding KRS 524.140, samples collected during exams where the victim chose not to report immediately or file a report within one (1) year after collection may be destroyed as set forth in accordance with the administrative regulation promulgated pursuant to this subsection. The victim shall be informed of this process at the time of

the examination. No hospital, sexual assault examination facility, or designated storage facility shall be liable for destruction of samples after the required storage period has expired.

502 KAR 12:010. Sexual assault medical protocol.

This administrative regulation establishes the procedures to be followed by medical staff before, during, and after the examination of a victim of a sexual assault.

Note: this regulation is currently being updated. Spouse abuse is no longer the law; non-reported kits must be held for one year, not 90 days; Crime Victim Compensation Board is now called Kentucky Claims Commission under KRS Ch. 49; and 107 KAR is now 802 KAR. We have inserted lines through the outdated parts and added any replacements in parentheses.

Section 1. Definitions.

- (1) "Basic treatment" means basic medical care provided to victims of sexual offenses including a medical screening, an examination for medical injuries, treatment for sexually transmitted infections, and, if appropriate, delivery of post-exposure HIV prophylaxis.
- (2) "Designated storage facility" means an examination facility, local law enforcement agency, or other agency that has an agreement with an examination facility to provide secure storage for samples collected during sexual assault forensic-medical examinations that are not immediately reported to law enforcement..
- (3) "Examination Facility" means a sexual assault examination facility as defined in KRS 216B.015(26).
- (4) "Qualified medical professional" means any physician's assistant or advanced practice registered nurse whose training and scope of practice include performance of speculum examinations.
- (5) "Rape crisis center advocate" means a victim advocate who:
 - (a) Has met the requirements of KRS 421.570; and
 - (b) Works or volunteers for a rape crisis center regulated by the Cabinet for Health and Family Services, pursuant to KRS 211.600 and 920 KAR 2:010.
- (6) "Victim" means a person who may have suffered direct, threatened, or attempted physical or emotional harm from the commission or attempted commission of:
 - (a) A sexual offense, pursuant to KRS 510.010 to 510.140;
 - (b) Incest, pursuant to KRS 530.020; or
 - (c) An offense relating to:
 1. The use of a minor in a sexual performance, pursuant to KRS 531.310; or
 2. An unlawful transaction with a minor, pursuant to KRS 530.064(1)

Section 2. Preforensic Examination Procedure.

If a person seeking treatment as a victim arrives at an examination facility, the appropriate staff at the facility prior to conducting the forensic-medical examination shall comply with the following:

- (1) Reporting to the Rape Crisis Center Advocate.
 - (a) Contact the rape crisis center to inform the on call advocate that a victim has arrived at the examination facility for an examination; and
 - (b) Upon arrival of the advocate, ask if the victim wishes to have a rape crisis center advocate present for the examination or otherwise available for consultation;
- (2) Limited Mandatory Reporting to the Cabinet for Health and Family Services.
 - (a) If the victim is less than eighteen (18) years old:
 1. Assess whether the victim may be an abused, neglected, or dependent child, as defined in KRS 600.020. In cases of suspected child abuse, neglect, or dependency, medical

- personnel shall immediately report the incident to the Cabinet for Health and Family Services; a local or state law enforcement agency; or the Commonwealth's attorney or county attorney in accordance with KRS 620.030; and
2. If a report is made, consult with the Cabinet for Health and Family Services or law enforcement to determine whether referral to a regional children's advocacy center or other specialized treatment facility is in the best interest of the child; and
- (b) If the victim is eighteen (18) years old or older:
1. The examination facility shall not contact law enforcement or release any information to law enforcement without the victim's authorization;
 2. Determine whether a mandatory reporting law addressing ~~spouse abuse~~ or abuse of a vulnerable adult applies:
 - a. ~~Assess whether the victim may be an adult as defined in KRS 209A.020(4); and~~
 - b. Assess whether the victim may be an adult as defined in KRS 209.020(4); and
 3. If subparagraph ~~2.a or~~ 2.b of this paragraph applies, immediately report the incident to the Cabinet for Health and Family Services and notify the victim of the report;
- (3) Optional Reporting to Law Enforcement.
- (a) Ask the victim whether she or he wants to report the incident to law enforcement;
 - (b) If the victim chooses to report the incident to law enforcement, obtain the victim's consent for treatment and authorization for release of information, and contact law enforcement; and
 - (c) If the victim chooses not to report to law enforcement, information or samples shall not be released to law enforcement, unless the victim has specifically authorized the release of information or samples;
- (4) Inform the victim that all statements made during the interview and the sample collection process to physicians, nurses, other hospital personnel, or law enforcement officers are not privileged and may be disclosed;
 - (5) Provide a detailed explanation of the forensic-medical examination, the reasons for conducting the forensic-medical examination and the effect on a criminal prosecution if a forensic examination is not performed or reported to law enforcement;
 - (6) Advise the victim that photographs and other documentation, if released to law enforcement, may be used as evidence and that the photographs may include the genitalia;
 - (7) Advise the victim that the forensic-medical examination, including basic treatment, shall be conducted free of charge, but costs related to additional medical treatment may be incurred;
 - (8) Inform the victim that consent for the forensic sample collection process may be with-drawn at any time during the examination;
 - (9) Inform the victim of the need for a physical examination due to the risk of sexually transmitted infections, including HIV, pregnancy, injury, or other medical problems whether or not the victim chooses to have the evidence collected;
 - (10) Obtain documented consent from the victim prior to conducting the forensic-medical examination; and
 - (11) Document that the procedures established in this section are completed.

Section 3. The Forensic Examination.

- (1) A physical examination may be conducted for basic treatment and to collect samples in all cases of sexual assault, regardless of the length of time that may have elapsed between the time of the assault and the examination itself.
- (2) If the sexual assault occurred within ninety-six (96) hours prior to the forensic-medical examination, a Kentucky State Police Sexual Assault Evidence Collection Kit shall be used. This kit consists of:
 - (a) Instructions;
 - (b) Evidence envelope;

- (c) Comb; and
- (d) Swabs;
- (3) Personnel in attendance during the forensic examination shall be limited to the following persons:
 - (a) Examining physician, sexual assault nurse examiner, as defined in KRS 314.011(14), or qualified medical professional;
 - (b) Attending nurse and additional nursing personnel;
 - (c) Rape crisis center advocate; and
 - (d) Other persons who are:
 - 1. Dictated by the health needs of the victim; or
 - 2. Requested by the victim;
- (4) Photographs, including photographs of the genitalia, may be taken if the appropriate equipment is available at the examination facility, precautions are taken to ensure confidential storage, and the victim has consented to having photographs taken.
- (5) The following types of evidence may be collected during the examination:
 - (a) Hairs from the head or pubic region;
 - (b) Fingernail cuttings, swabs, or scrapings;
 - (c) Clothing fibers, or other trace evidence;
 - (d) Bodily fluids, including:
 - 1. Semen;
 - 2. Blood; and
 - 3. Saliva;
 - (e) Clothing; and
 - (f) Other samples that may be presented as evidence at a trial.
- (6) Samples shall not be collected if the victim is unconscious unless the collection is consistent with appropriate and necessary medical treatment.
- (7) The collection of samples shall cease immediately if the victim dies during the process.
- (8) The coroner shall be contacted if the victim dies during the sexual assault medical-forensic examination and the samples process and the evidence collected up to that time shall be delivered to the coroner or the coroner's designee, Collection of samples may be completed by medical personnel if requested by the coroner.
- (9) The coroner shall be notified in accordance with KRS 72.020 and samples shall not be collected if the victim is deceased upon arrival at the examination facility.

Section 4. Post-forensic Examination Procedures.

At the conclusion of the forensic-medical examination the appropriate personnel at the examination facility shall provide the victim with:

- (1) Information regarding follow-up procedures and appointments concerning:
 - (a) Sexually transmitted diseases;
 - (b) Pregnancy;
 - (c) Urinary tract or other infections; and
 - (d) Similar assault related health conditions;
- (2) Information regarding the availability of follow-up counseling and support services available from a rape crisis center or other mental health agency;
- (3) Information from the law enforcement officer regarding who to contact about the prosecution of the offense;
- (4) A garment or other appropriate clothing to wear in leaving the hospital, or provide assistance in obtaining other personal clothing;
- (5) Information about:
 - (a) The ~~Crime Victim's Compensation Board~~ (new name is Kentucky Claims Commission), as addressed in KRS Chapter ~~346~~ (49); and

(b) The following administrative regulations providing aid to a crime victim:

1. ~~107 KAR 1:005;~~

2. ~~107 KAR 1:010;~~

3. ~~107 KAR 1:015;~~

4. ~~107 KAR 1:025;~~ and

5. ~~107 KAR 1:040.~~ (107 KAR was repealed. Updated to 802 KAR 3:010 and 802 KAR 3:020)

Section 5. Storage and Transfer of Samples.

- (1) Chain of custody documentation shall be maintained throughout all storage and transfer procedures.
- (2) All samples shall be stored under circumstances that restrict access to reduce the likelihood of tampering and protect the chain of custody. The number of individuals with access to the storage area shall be limited to the minimum number possible.
- (3) The following information shall be maintained for each sample stored:
 - (a) Patient identifier;
 - (b) Date collected;
 - (c) Description of sample;
 - (d) Signature of the collecting medical professional;
 - (e) Date and time entered into storage and signature of person receiving; and
 - (f) Date and time removed from storage, signature of person removing, and purpose of removal.
- (4) If the victim chooses to report the incident to law enforcement as a crime or has authorized the release of samples to local law enforcement for secure storage, the examination facility shall transfer samples to local law enforcement officials as soon as possible.
- (5) If the victim chooses not to report the incident to law enforcement as a crime when the examination is performed, the examination facility shall arrange for the samples to be stored securely for at least ~~ninety (90) days~~ (one year).
- (6) The examination facility may either store samples or transfer samples to a designated storage facility.
- (7) The examination facility shall maintain documentation regarding transfers of samples.
- (8) Facilities or agencies providing secure storage of samples under this section shall assure compliance with subsections (5) and (6) of this Section within a locked or otherwise secure container in a limited-access location.
- (9) Storage agreements:
 - (a) May be long-term or case specific; and
 - (b) Shall designate sending and receiving facilities and certify compliance with subsections (1) through (9) of this section.
- (10) If the victim chooses not to report the incident to law enforcement as a crime when the examination is performed, samples shall not be released to a law enforcement agency except if:
 - (a) The local law enforcement agency receiving samples has entered into an agreement to serve as a designated storage facility;
 - (b) The victim later chooses to file a delayed report; or
 - (c) Pursuant to court order.

Section 6. Removal of Samples from Secure Storage.

Samples shall not be permanently removed from storage except if:

- (1) The victim authorizes release of samples to a law enforcement agency or other entity;
- (2) The time frame for storage has lapsed, as established by Section 5(5) of this administrative regulation;
- (3) The victim authorizes the destruction of the samples; or
- (4) A court order has been issued for release or destruction.

Section 7. Destruction of Samples.

- (1) ~~Ninety (90) days~~ (One year) after the sample was collected, the examination facility or designated storage facility may destroy the sample at any time in accordance with the facility's policy.
- (2) Destruction shall be conducted using biohazard precautions.
- (3) Destruction shall be documented by the examination facility or designated storage facility that stored the samples.
- (4) Samples may be destroyed upon the request of a victim. The victim's request for destruction shall be documented by the examination facility and designated storage facility, if used.

2. Payment for Exams

KRS 49.490 Sexual assault victim assistance fund.

- (1) There is established in the State Treasury the sexual assault victim assistance fund to be administered by the commission for the purpose of funding medical examinations for victims of sexual assault as provided in subsection (4) of this section and in KRS 216B.400. All moneys deposited or paid into the sexual assault victim assistance fund are appropriated and shall be available to the commission. Funds shall be disbursed by the State Treasurer upon the warrant of the commission.
- (2) The sexual assault victim assistance fund may receive state general fund appropriations, gifts, grants, federal funds, or other public or private funds or donations. Any federal matching funds received by the board or the crime victims' compensation fund for sexual assault victim assistance payments shall be deposited into the sexual assault victim assistance fund.
- (3) Any unencumbered or unallocated balances in the sexual assault victim assistance fund shall be invested as provided in KRS 42.500(9). Any income earned from investment, along with the unallocated or unencumbered balances in the fund, shall not lapse and shall be deemed a trust and agency account available solely for the purposes specified in subsection (1) of this section.
- (4) (a) For the purposes of this section, a children's advocacy center is a center as defined in KRS 620.020 that operates consistent with administrative regulations promulgated by the Cabinet for Health and Family Services.
(b) Upon receipt of a completed original claim form supplied by the board and itemized bill for a child sexual abuse medical examination performed at a children's advocacy center, the board shall reimburse the children's advocacy center for actual costs up to but not exceeding the amount of reimbursement established through administrative regulation promulgated by the Department for Medicaid Services.
(c) Independent investigation by the Crime Victims' Compensation Board shall not be required for payment of claims under this section; however, the board may require additional documentation as proof that the medical examination was performed.
- (5) If sexual assault victim assistance funds are insufficient to pay claims under subsection (4) of this section or KRS 216B.400, payment shall be made from the Crime Victims' Compensation Fund.

802 KAR 3:020. Payment schedule for sexual assault examinations.

Section 1. Sexual Assault Examination Program.

- (1) Reimbursement for performing a sexual assault forensic-medical examination pursuant to 502 KAR 12:010 shall be for the actual amount billed and shall not exceed:
 - (a) \$200 for a physician, sexual assault nurse examiner, or other qualified medical professional performing the examination;
 - (b) \$250 for an examination facility for use of an emergency or examination room;

- (c) \$100 for an examination facility or laboratory that performed diagnostic laboratory testing; and
 - (d) \$100 for an examination facility where administered medications and pharmaceuticals were prescribed as a result of the examination and as part of basic treatment.
- (2) Reimbursement for additional services related to a sexual assault forensic-medical examination requiring HIV post-exposure prophylaxis shall be for the actual amount billed and shall not exceed the following limitations:
- (a) \$150 for three (3) follow-up examinations, not to exceed a total of fifty (50) dollars per examination;
 - (b) Laboratory testing:
 - 1. \$150 for initial testing conducted during the sexual assault examination in the examination facility; and
 - 2. \$215 for follow-up testing conducted during the three (3) follow-up examinations, not to exceed:
 - a. Fifty (50) dollars for testing conducted during day five (5) to day seven (7) of prophylactic treatment;
 - b. Ninety (90) dollars for testing conducted after day twelve (12) of prophylactic treatment; and
 - c. Seventy-five (75) dollars for testing conducted near or at the end of prophylactic treatment; and
 - (c) Medications:
 - 1. \$800 for a twenty-eight (28) day supply of HIV prophylaxis medication, not to exceed:
 - a. \$200 for the first seven (7) day supply; and
 - b. \$600 for the remaining twenty-one (21) day supply; and
 - 2. Thirty (30) dollars for a twenty-eight (28) day supply of anti-nausea medication.

40 KAR 6:020. Funding assistance for child sexual abuse medical examinations.

Section 1. Definitions.

- (1) "Applicant" means an eligible provider applying for child sexual abuse medical examination funding assistance.
- (2) "Case management" means the administrative aspects of the child sexual abuse medical examination and includes the following:
 - (a) Transcription of records;
 - (b) Scheduling appointments;
 - (c) Coordination of services;
 - (d) Making referrals for services; and
 - (e) Consultation with multidisciplinary teams, court personnel, officers of the court, parents or guardians, social workers, law enforcement and any other party involved in the treatment or protection of the child.
- (3) "Child" is defined by KRS 15.900(1).
- (4) "Child sexual abuse medical examination" means a complete physical examination of a child with a special focus on the anal or genital area or oral cavity, and the case management associated with the physical examination.
- (5) "Eligible provider" means a private, nonprofit agency whose primary purpose is to provide, either directly or through contract, prevention, intervention, and treatment services to sexually abused children and their families, employing a child-focused multidisciplinary team approach.
- (6) "State board" is defined by KRS 15.900(4).

Section 2. Application for Child Sexual Abuse Medical Examination Funding Assistance.

- (1) An eligible provider may apply annually for funding assistance from the Child Victims' Trust

Fund. Funding shall be used to pay for the case-management aspects of a child sexual abuse medical examination. The term of the financial assistance shall be the state fiscal year.

- (2) Application for child sexual abuse medical examination funding assistance shall be made by submission of a completed:
 - (a) "Application for Child Sexual Abuse Medical Examination Funding Assistance" form; or
 - (b) Electronic application, if the applicant has that capability.

Section 3. Funding Requirements.

- (1) The total funds awarded annually by the state board to each applicant shall be limited by:
 - (a) Availability of funds; and
 - (b) Board approval.
- (2) Reimbursement for the case management aspects of an examination shall not exceed \$150 per case.
- (3) An applicant shall provide assurances to the state board that:
 - (a) Funds granted will:
 1. Be used solely for the purpose of reimbursing the case management aspects of child sexual abuse medical examinations;
 2. Supplement and not replace existing funds received by the applicant from other sources for child sexual abuse medical examinations; and
 3. Not be used to reimburse services for which there is private health insurance coverage, or if a third party has a legal obligation to pay; and
 - (b) Every person performing a child sexual abuse medical examination service will comply with applicable state and federal licensing or certification requirements.

Section 4. Funding Criteria.

Allocation of funding assistance for child sexual abuse medical examinations shall be based on funds available in the Child Victims' Trust Fund and whether the applicant:

- (1) Is currently providing, or plans to provide, child sexual abuse medical examinations:
 - (a) Directly; or
 - (b) By contract with medical providers;
- (2) Demonstrates a need for financial assistance to be used to provide medical examinations in the geographic area served by the applicant; and
- (3) Has demonstrated the ability to provide access to child sexual abuse medical examinations in the geographic region served by the applicant.

Section 5. Reporting Requirements.

Within ninety (90) days from the end of the state fiscal year, an applicant receiving financial assistance under this administrative regulation shall submit a final report to the state board containing the following information:

- (1) The applicant's total child sexual abuse medical examination budget for the period funded, including:
 - (a) The amount and sources of revenue for the examinations; and
 - (b) The total amount expended on the examinations; and
- (2) The number of child sexual abuse medical examinations conducted for the period funded.

Section 6. Appeals.

An applicant denied available funding under this administrative regulation shall have a right to appeal pursuant to KRS Chapter 13B.

Section 7. Incorporation by Reference.

- (1) "Application for Child Sexual Abuse Medical Examination Funding Assistance, December 2000", is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Victims Advocacy Division, Office of Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

3. Sexual Assault Nurse Examiners

KRS 314.011(14) Sexual Assault Nurse Examiner (SANE).

As used in this chapter, unless the context thereof requires otherwise:

- (14) "Sexual assault nurse examiner" means a registered nurse who has completed the required education and clinical experience and maintains a current credential from the board as provided under KRS 314.142 to conduct forensic examinations of victims of sexual offenses under the medical protocol issued by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee pursuant to KRS 216B.400(4).

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

Section 1. Definition. "SANE course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a sexual assault victim fourteen (14) years of age or older and to promote and preserve the victim's biological, psychological, and social health.

Section 2. SANE Course Approval Application.

- (1) On the form Application for Initial or Continued SANE Course Approval, the applicant for approval of a SANE course shall submit evidence to the board of completion of the requirements for course approval that consists of the following documentation:
 - (a) Position description and qualifications of the nurse administrator of the SANE course;
 - (b) Qualifications and description of the faculty;
 - (c) Course syllabus;
 - (d) Course completion requirements;
 - (e) Tentative course presentation dates;
 - (f) Records maintenance policy; and
 - (g) Copy of certificate of course completion form.
- (2) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure or a multistate licensure privilege pursuant to KRS 314.475, a baccalaureate or higher degree in nursing, and experience in adult and nursing education shall be administratively responsible for assessment, planning, development, implementation, and evaluation of the SANE course.
- (3) Faculty qualifications. The course shall be taught by multidisciplinary faculty with documented expertise in the subject matter. The name, title, and credentials identifying the educational and professional qualifications for each instructor shall be provided as part of the application.
- (4) Course syllabus. The syllabus shall include:
 - (a) Course prerequisites, requirements, and fees;
 - (b) Course outcomes, which shall provide statements of observable competencies, which if taken as a whole, present a clear description of the entry level behaviors to be achieved by the learner;
 - (c) Unit objectives for an individual, which shall be stated in operational or behavioral terms with supportive content identified;
 - (d) Content, which shall be described in detailed outline format with corresponding lesson plans and time frame, and which shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes;
 1. The SANE course shall include: a. A minimum of forty (40) hours of didactic instruction pursuant to subparagraph 3. of this paragraph; and b. The clinical practice experience required by subparagraph 2. of this paragraph.
 2. Clinical practice. The clinical portion of the course shall include: a. Detailed genital and anal inspection, including speculum insertion, visualization techniques, and use of equipment supervised by a physician, a physician assistant, an advanced practice

registered nurse, or a sexual assault nurse examiner until the student is deemed competent by the supervisor; b. Sexual assault history taking and examination techniques with evaluation supervised by a physician, a physician assistant, an advanced practice registered nurse, or a sexual assault nurse examiner; c. Observing live or previously recorded criminal trials and meeting with the Commonwealth Attorney or a representative from the Commonwealth Attorney's office in order to gain an understanding of the trial process including testifying; d. Meeting with the local rape crisis center and a rape crisis center victim advocate in order to gain an understanding of the services provided to victims by rape crisis centers and the role of an advocate; and e. Meeting with local law enforcement officers or investigators responsible for investigating reports of rape or sexual assault in order to gain an understanding of the investigative process.

3. The didactic portion of the course shall include instruction consistent with the Sexual Assault Nurse Examiner (SANE) Education Guidelines. It shall also include: a. Application of the Kentucky statewide medical protocol relating to the forensic and medical examination of an individual reporting sexual assault pursuant to KRS 216B.400(2) and (4); and b. The victim's bill of rights, KRS 421.500 through 421.575.

(e) Teaching methods with the activities of both instructor and learner specified in relation to the content outline, and which shall be congruent with stated course objectives and content, and reflect the application of adult learning principles;

(f) Evaluation methods, which shall be clearly defined for evaluating the learner's achievement of course outcomes, and which shall include a process for annual course evaluation by students, providers, faculty, and administration; and

(g) Instructional or reference materials required, which shall be identified.

(5) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

Section 3.

(1) Contact hour credit for continuing education. The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.

(3) Records shall be maintained for a period of five (5) years, including the following:

a. Provider name, date, and site of the course; and

b. Participant roster, containing at a minimum the name, Social Security number, and license number for each participant.

(4) A participant shall receive a certificate of completion that documents the following: (a) Name of participant; (b) Title of course, date, and location; (c) Provider's name; and (d) Name and signature of authorized provider representative

Section 4. Continued Board Approval of a SANE Course.

(1) An application for continued approval of a SANE course shall be submitted on the Application for Initial or Continued SANE Course Approval at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the Application for Initial or Continued SANE Course Approval.

(3) Continued approval shall be based on the past approval period performance and compliance with the board standards described in this administrative regulation.

Section 5.

The board may deny, revoke, or suspend the approval status of a SANE course for violation of this administrative regulation.

Section 6. Appeal.

If a SANE course administrator is dissatisfied with a board decision concerning approval and wishes a review of the decision, the procedure established in this section shall be followed.

- (1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.
- (2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential.

- (1) The applicant for the SANE credential shall:
 - a. Hold a current, active registered nurse license in Kentucky or a multistate licensure privilege pursuant to KRS 314.475;
 - b. Have completed a board approved SANE educational course or a comparable course;
 1. The board or its designee shall evaluate the applicant's course to determine its course comparability; and
 2. The board or its designee shall advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed;
 - c. Complete the Sexual Assault Nurse Examiner Application for Credential;
 - d. Pay the fee established in 201 KAR 20:240;
 - e. Provide a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI);
 - f. Use the FBI Applicant Fingerprint Card;
 - g. Pay any required fee to the KSP and the FBI;
 - h. Complete the criminal record check within six (6) months of the date of the application;
 - i. Provide a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
 - j. Provide a letter of explanation that addresses each conviction, if applicable.
- (2) Upon completion of the application process, the board shall issue the SANE credential for a period ending October 31.
- (3) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(e) of this section and any conviction is addressed by the board.

Section 8. Renewal.

- (1) To renew the SANE credential for the next period, each sexual assault nurse examiner shall complete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner or forensic nursing within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.
- (2) Upon completion of the required continuing education, completion of the Annual Credential Renewal Application: SANE Credential with RN in Kentucky or Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky), as applicable, and payment of the fee established in 201 KAR 20:240, the SANE credential shall be renewed at the same time the registered nurse license is renewed.
- (3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.
- (4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement.

- (1) If the SANE credential has lapsed for a period of less than four (4) consecutive registered nurse licensure periods, and the individual wants the credential reinstated, the individual shall

apply to reinstate the credential by:

- a. Submitting the Sexual Assault Nurse Examiner Application for Credential;
 - b. Paying the fee established in 201 KAR 20:240;
 - c. Submitting evidence of earning the continuing education requirement referenced in Section 8(1) of this administrative regulation for the number of registered nurse licensure periods since the SANE credential lapsed;
 - d. Providing a criminal record check by the KSP and FBI;
 - e. Using the FBI Applicant Fingerprint Card;
 - f. Paying any required fee to the KSP and the FBI;
 - g. Completing the criminal record check within six (6) months of the date of the application;
 - h. Providing a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
 - i. Providing a letter of explanation that addresses each conviction, if applicable.
- (2) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(d) of this section and any conviction is addressed by the board.
- (3) If the SANE credential has lapsed for more than four (4) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory

Committee concerning any proposed amendment to this administrative regulation as follows:

- (1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to approval by the board;
- (2) The board shall request that comments on the proposed amendment be forwarded to the board's designated staff person within ninety (90) days; and
- (3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly-scheduled meeting, shall consider the comments.

Section 11. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Application for Initial or Continued SANE Course Approval", 6/2014, Kentucky Board of Nursing;
 - (b) "Sexual Assault Nurse Examiner Application for Credential", 8/2016, Kentucky Board of Nursing;
 - (c) "Annual Credential Renewal Application: SANE Credential with RN in Kentucky", 5/2018, Kentucky Board of Nursing;
 - (d) "Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)", 5/2018, Kentucky Board of Nursing; and
 - (e) "Sexual Assault Nurse Examiner (SANE) Education Guidelines", 2015, International Association of Forensic Nurses.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222-5172, Monday through Friday, 8:00 a.m. to 4:30 p.m.

4. Facilities

216B.401 Designation of SANE-ready hospitals.

- (1) The secretary of the Cabinet for Health and Family Services shall designate as a SANE-ready hospital any acute care hospital which has certified, and recertifies annually, that a sexual assault nurse examiner as defined in KRS 314.011 is available on call twenty-four (24) hours each day for the examination of persons seeking treatment as victims of sexual offenses as defined by KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, 510.130, 510.140, 530.020, 530.064(1)(a), and 531.310.

- (2) The secretary shall suspend or revoke an acute care hospital's designation as a SANE-ready hospital if the hospital fails to recertify annually, or if it notifies the secretary that it no longer meets the requirements of this section.
- (3) (a) The cabinet shall maintain a list of SANE-ready hospitals and post the list on its Web site. The cabinet shall provide the list and periodic updates to the Kentucky Board of Emergency Medical Services.
(b) The Kentucky Board of Emergency Medical Services shall share the list with each local emergency medical services provider at least annually, and as new centers and hospitals are designated and certified.

KRS 216B.140 Licensed hospitals to provide services for child sexual abuse victims.

Each hospital licensed by the board shall provide medical and diagnostic services for child sexual abuse victims.

KRS 216B.990 (3) Penalties for Health Facilities for failure to provide sexual assault exam according to protocol.

Any hospital acting by or through its agents or employees which violates any provision of KRS 216B.400 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

KRS 216B.015 (27) Sexual Assault Exam Facility Defined.

"Sexual assault examination facility" means a licensed health facility, emergency medical facility, primary care center, or a children's advocacy center or rape crisis center that is regulated by the Cabinet for Health and Family Services, and that provides sexual assault examinations under KRS 216B.400

KRS 620.020 (4) Children's Advocacy Center (CAC) defined - Text included in Chapter 4, Section A.

5. Timelines for Hospitals, Law Enforcement, and Lab

KRS 216B.400(10)(b), (c)(3), and (c)(4) Emergency care (hospital report and storage)

(10)...

- (b) If the victim chooses to report to law enforcement, the hospital shall notify law enforcement within twenty-four (24) hours.
- (c) ...
 3. All samples collected pursuant to this section shall be stored for at least one (1) year from the date of collection in accordance with the administrative regulation promulgated pursuant to this subsection.
 4. Notwithstanding KRS 524.140, samples collected during exams where the victim chose not to report immediately or file a report within one (1) year after collection may be destroyed as set forth in accordance with the administrative regulation promulgated pursuant to this subsection. The victim shall be informed of this process at the time of the examination. No hospital, sexual assault examination facility, or designated storage facility shall be liable for destruction of samples after the required storage period has expired.

KRS 15.440(1)(i) Requirements for participation in fund distribution (law enforcement timelines to collect kit and send to lab, keep victims notified of testing)

(1) (i) Possesses by January 1, 2017, a written policy and procedures manual related to sexual assault examinations that meets the standards provided by, and has been approved by, the cabinet, and which includes:

1. A requirement that evidence collected as a result of an examination performed under KRS 216B.400 be taken into custody within five (5) days of notice from the collecting facility that the evidence is available for retrieval;
2. A requirement that evidence received from a collecting facility relating to an incident which occurred outside the jurisdiction of the police department be transmitted to a police department with jurisdiction within ten (10) days of its receipt by the police department;
3. A requirement that all evidence retrieved from a collecting facility under this paragraph be transmitted to the Department of Kentucky State Police forensic laboratory within thirty (30) days of its receipt by the police department;
4. A requirement that a suspect standard, if available, be transmitted to the Department of Kentucky State Police forensic laboratory with the evidence received from a collecting facility; and
5. A process for notifying the victim from whom the evidence was collected of the progress of the testing, whether the testing resulted in a match to other DNA samples, and if the evidence is to be destroyed. The policy may include provisions for delaying notice until a suspect is apprehended or the office of the Commonwealth's attorney consents to the notification, but shall not automatically require the disclosure of the identity of any person to whom the evidence matched.

KRS 524.140 Disposal of evidence that may be subject to DNA testing -- Motion to destroy -- Liability for destruction -- Penalty -- Retention of biological material.

(1) As used in this section:

(a) "Defendant" means a person charged with a:

1. Capital offense, Class A felony, Class B felony, or Class C felony; or
2. Class D felony under KRS Chapter 510; and

(b) "Following trial" means after:

1. The first appeal authorized by the Constitution of Kentucky in a criminal case has been decided; or
2. The time for the first appeal authorized by the Constitution of Kentucky in a criminal case has lapsed without an appeal having been filed.

(2) No item of evidence gathered by law enforcement, prosecutorial, or defense authorities that may be subject to deoxyribonucleic acid (DNA) evidence testing and analysis in order to confirm the guilt or innocence of a criminal defendant shall be disposed of prior to trial of a criminal defendant unless:

(a) The evidence has been in custody not less than fifty (50) years; or

(b) The evidence has been in custody not less than ten (10) years; and

1. The prosecution has determined that the defendant will not be tried for the criminal offense; and
2. The prosecution has made a motion, before the court in which the case would have been tried, to destroy the evidence.

(3) No item of evidence gathered by law enforcement, prosecutorial, or defense authorities that may be subject to deoxyribonucleic acid (DNA) evidence testing and analysis in order to confirm the guilt or innocence of a criminal defendant shall be disposed of following the trial unless:

(a) The evidence, together with DNA evidence testing and analysis results, has been presented at the trial, and the defendant has been found guilty, pled guilty, or entered an Alford plea at the trial;

(b) The evidence was not introduced at the trial, or if introduced at the trial was not the subject of DNA testing and analysis, and the defendant has been found guilty, pled guilty, or entered an Alford plea at the trial, and the trial court has ordered the destruction of the evidence after an adversarial hearing conducted upon motion of either the prosecution or the defendant;

- (c) The trial resulted in the defendant being found not guilty or the charges were dismissed after jeopardy attached, whether or not the evidence was introduced at the trial or was subject to DNA testing and analysis or not, and the trial court ordered the destruction of the evidence after an adversarial hearing conducted upon motion of either the prosecution or the defendant; or
 - (d) The trial resulted in the dismissal of charges against the defendant, and the defendant may be subject to retrial, in which event the evidence shall be retained until after the retrial, which shall be considered a new trial for the purposes of this section.
- (4) The burden of proof for a motion to destroy evidence that may be subject to DNA testing and analysis shall be upon the party making the motion, and the court may permit the destruction of the evidence under this section upon good cause shown favoring its destruction.
- (5) It is recognized by the General Assembly that the DNA evidence laboratory testing and analysis procedure consumes and destroys a portion of the evidence or may destroy all of the evidence if the sample is small. The consuming and destruction of evidence during the laboratory analysis process shall not result in liability for its consumption or destruction if the following conditions are met:
- (a) The Department of Kentucky State Police laboratory uses a method of testing and analysis which preserves as much of the biological material or other evidence tested and analyzed as is reasonably possible; or
 - (b) If the Department of Kentucky State Police laboratory knows or reasonably believes that the entire sample of evidence to be tested and analyzed that the laboratory, prior to the testing or analysis of the evidence, notifies in writing the court which ordered the testing and analysis and counsel for all parties:
 1. That the entire sample of evidence may be destroyed by the testing and analysis;
 2. The possibility that another laboratory may be able to perform the testing and analysis in a less destructive manner with at least equal results;
 3. The name of the laboratory capable of performing the testing and analysis, the costs of testing and analysis, the advantages of sending the material to that other laboratory, and the amount of biological material or other evidence which might be saved by alternative testing and analysis; and
 4. The Department of Kentucky State Police laboratory follows the directive of the court with regard to the testing and analysis; or
 - (c) If the Department of Kentucky State Police laboratory knows or reasonably believes that so much of the biological material or evidence may be consumed or destroyed in the testing and analysis that an insufficient sample will remain for independent testing and analysis that the laboratory follows the procedure specified in paragraph (b) of this subsection.
- (6) Destruction of evidence in violation of this section shall be a violation of KRS 524.100.
- (7) Subject to KRS 422.285(9), the appropriate governmental entity shall retain any biological material secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case. The governmental entity shall have the discretion to determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing and analysis.

KRS 17.175 (3-4) Centralized database for DNA identification records -- Analysis and classification of evidence -- Exemption from KRS 61.870 to 61.884 -- Expungement of information and destruction of DNA sample -- Penalty for unlawful use of DNA database identification system.

...

- (3) (a) The Department of Kentucky State Police forensic laboratory shall receive, analyze, and classify DNA samples received from the Department of Corrections, the Department of Juvenile Justice, and other sources, and shall file the DNA results in the centralized databases for law enforcement identification and statistical purposes. The department shall analyze

and classify all sexual assault evidence collection kits it receives. In cases where a suspect has been identified, the department may give priority to analysis and classification of sexual assault evidence collection kits where the reference standard for comparison is provided with the kit. Except as provided in paragraph (e) of this subsection, by July 1, 2018, the average completion rate for this analysis and classification shall not exceed ninety (90) days, and by July 1, 2020, the average completion rate for this analysis and classification shall not exceed sixty (60) days.

- (b) Failure to meet the completion time goals established in paragraph (a) of this subsection shall not be a basis for a dismissal of a criminal action or a bar to the admissibility of evidence.
 - (c) The Department of Kentucky State Police shall, by August 1 of each year, report to the Legislative Research Commission the yearly average completion rate for the immediately preceding five (5) fiscal years.
 - (d) With approval by the secretary of the Justice and Public Safety Cabinet in situations in which an equipment casualty necessitates the expedited acquisition or repair of laboratory equipment required for the analysis of evidence, the acquisition or repair shall be exempt from the Finance and Administration Cabinet's competitive bidding process for both acquisition and repair purposes. Each time the authority granted by this paragraph is used, the equipment acquisition or repair shall be fully documented within thirty (30) days by the agency head in a written or electronic letter to the secretary of the Finance and Administration Cabinet, attached to an ordering or payment document in the state's procurement system, which shall include:
 - 1. An explanation of the equipment acquired or repaired;
 - 2. The name of the vendor selected;
 - 3. The amount of procurement;
 - 4. Other price quotations obtained; and
 - 5. The basis for selection of the vendor.
 - (e) To the extent appropriated funds are insufficient to meet the average completion time goals established in paragraph (a) of this subsection, the Department of Kentucky State Police forensic laboratory shall no longer be required to meet the average completion time goals.
- (4) DNA identification records produced from the samples are not public records but shall be confidential and used only for law enforcement purposes. DNA identification records shall be exempt from the provisions of KRS 61.870 to 61.884.

...

B. RAPE CRISIS CENTERS

"Rape crisis centers" are organizations that offer support and educational services to individuals and families who have experienced any form of sexual harassment, abuse, or assault. While these centers may also be referred to as "sexual violence resource centers" or something similar, they are called "rape crisis centers" in Kentucky regulations and statutes.

KRS 211.600 Designation of regional rape crisis centers -- Provision of services.

- (1) The Cabinet for Health and Family Services shall designate one (1) nonprofit corporation in each area development district to serve as the regional rape crisis center. The designated agency shall serve as the regional planning authority for crisis and advocacy services for victims of sexual assault in the district in which the center is located.
- (2) The rape crisis center shall retain the designation unless it has been rescinded by the cabinet based on an annual review of the center's performance or the annual plan and budget

submitted by the center to the cabinet for funding for the next fiscal year.

- (3) A rape crisis center designated by the cabinet shall provide services that include, but are not limited to:
- (a) Crisis counseling;
 - (b) Mental health and related support services;
 - (c) Advocacy;
 - (d) Consultation;
 - (e) Public education; and
 - (f) The provision of training programs for professionals.

KRS 211.602 Funding for establishment and operation of regional rape crisis centers.

- (1) Notwithstanding the provisions of KRS 210.410, the secretary of the Cabinet for Health and Family Services or any other state or local government entity is hereby authorized to make state grants and other fund allocations to assist nonprofit corporations in the establishment and operation of regional rape crisis centers.
- (2) To be eligible for grants from any state government entity, a rape crisis center shall provide the services listed in KRS 211.600(3) and shall operate in a manner consistent with administrative regulations promulgated by the cabinet in accordance with KRS Chapter 13A.

211.603 Rape crisis center trust fund.

- (1) There is created a trust fund to be known as the rape crisis center trust fund. The fund shall be administered by the Cabinet for Health and Family Services.
- (2) The trust fund shall be funded with moneys collected through the designation of a taxpayer's refund as provided by KRS 141.447 and any contributions, gifts, donations, or appropriations designated for the trust fund. Moneys in the fund shall be used to support the services listed in KRS 211.600(3). No moneys in the fund shall be used to support abortion services or abortion education.
- (3) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in subsection (2) of this section.
- (4) Any interest earned upon moneys in the rape crisis center trust fund shall become a part of the fund and shall not lapse.
- (5) Moneys deposited in the fund are appropriated for the purposes set forth in this section and shall not be appropriated or transferred by the General Assembly for any other purposes.

KRS 211.604 Rape crisis center board -- Membership and duties.

- (1) A rape crisis center designated by the cabinet shall establish a board consisting of at least fifteen (15) members. At least one (1) member shall represent each county located in the area development district served by the center.
- (2) Each rape crisis center shall:
- (a) Act as the administering authority for the regional rape crisis center;
 - (b) Assess the availability and quality of services to victims of sexual assault within the district;
 - (c) Facilitate working relationships with other criminal justice, mental health, and other agencies that will improve the delivery of services to victims of sexual assault;
 - (d) Submit to the cabinet annually a plan and budget for services to be provided in the next fiscal year;
 - (e) Recruit and promote local financial support for the center from private and public sources; and
 - (f) Oversee and be responsible for the management of the rape crisis center in accordance with the plan and budget adopted by the board and administrative regulations promulgated by the cabinet in accordance with KRS Chapter 13A.

KRS 211.608 Confidentiality of rape crisis center clients' records.

All client records, requests for services, and reports that directly or indirectly identify a client or former client of a rape crisis center are confidential and shall not be disclosed by any person except as provided by law. The cabinet shall have access to client records, requests for services, and reports relating to any rape crisis center for the limited purpose of monitoring the center, and the cabinet shall promulgate an administrative regulation in accordance with KRS Chapter 13A that will set forth the process by which access to these documents will be gained, the nature of the monitoring that will take place, and the measures to be used to ensure confidentiality of the people identified in the records.

920 KAR 2:010 Standards for rape crisis centers.

Section 1. Definitions.

- (1) "Cabinet" means the Cabinet for Health and Family Services.
- (2) "Governing board" or "board" means a board that meets the requirements of KRS 211.604.
- (3) "Mental health discipline" means the practice of:
 - (a) Psychology;
 - (b) Social work;
 - (c) Psychiatric nursing;
 - (d) Marriage and family therapy;
 - (e) Professional counseling; and
 - (f) Art therapy.
- (4) "Rape crisis center", or "center", means an organization designated by the cabinet in accordance with KRS 211.604(1).
- (5) "Region" means an area development district created by KRS 147A.050.
- (6) "Regional MHMR board" means a regional mental health and mental retardation board established in accordance with KRS 210.370.
- (7) "Secretary" means the secretary of the Cabinet for Health and Family Services.
- (8) "Victim" means:
 - (a) A person who has been raped or sexually abused;
 - (b) A family member of a person who has been raped or sexually abused; or
 - (c) A friend, or other person associated with, a person who has been raped or sexually abused, and who has been affected by the rape or abuse.

Section 2. Designation and Recision of the Designation of a Rape Crisis Center.

- (1) An organization which has been funded by the cabinet to provide rape crisis services for the state fiscal year ending June 30, 2000 shall be the designated rape crisis center for the region in which it is located, unless the secretary rescinds the designation in accordance with subsection (2) of this section.
- (2) A center's designation is subject to recision if the cabinet determines that:
 - (a) It failed to submit a plan and budget which substantiates that it has the capacity to provide the services specified in KRS 211.600(3), in accordance with Section 16(1) of this administrative regulation;
 - (b) Its plan and budget is disapproved; or
 - (c) It has failed to operate in accordance with a requirement of this administrative regulation.
- (3) The cabinet shall notify a center in writing if the secretary rescinds the designation of the center as a regional rape crisis center. The notification shall:
 - (a) Specify the effective date of the recision;
 - (b) Identify the paragraph of subsection (2) of this section upon which the recision is based; and
- (4) Inform the center that it may request an administrative hearing, in accordance with Section 17 of this administrative regulation, to dispute the cabinet's decision.

Section 3. Requirements for a Board.

- (1) A board shall adopt written bylaws, that specify the:
 - (a) Purpose of the center;
 - (b) Qualifications for board members;
 - (c) Types of members including:
 - 1. Voting; and
 - 2. Ex-officio;
 - (d) Procedure for selecting a member;
 - (e) Terms of board membership;
 - (f) Method of filling a vacancy;
 - (g) The name, responsibility, and composition of each committee;
 - (h) Officers and the duties of officers;
 - (i) Procedure for election of officers;
 - (j) An annual meeting date for the election of officers;
 - (k) Procedure for removing a member; and
 - (l) Quorum requirements for a board meeting.
- (2) The board shall:
 - (a) Perform the functions specified in KRS 211.604(2);
 - (b) Record written minutes of each meeting of the board. The minutes shall specify the:
 - 1. Date and place of the meeting;
 - 2. The name of each member present;
 - 3. Each matter discussed;
 - 4. Each action taken; and
 - 5. Name of the reporter;
 - (c) Establish the following standing committees:
 - 1. Executive;
 - 2. Nominating;
 - 3. Finance;
 - 4. Personnel; and
 - 5. Program planning and evaluation;
 - (d) Retain minutes of each board meeting for five (5) years; and
 - (e) Establish written policies and procedures for the center.
- (3) The written policies and procedures shall include:
 - (a) Procedures which preserve the confidentiality of individual client records in accordance with applicable law; and
 - (b) A requirement that a person who provides a service shall assert and maintain the privileges conferred upon that person by federal and state law applicable to:
 - 1. The confidentiality of client records; and
 - 2. The disclosure of personally identifying information about a victim.
- (4) A board shall not contract with a member of the board to perform personal or professional services.

Section 4. Personnel Administration.

- (1) A center shall establish a personnel file for each employee which shall include:
 - (a) An application for employment;
 - (b) Documentation that the employee meets the qualifications for the position the employee holds, as specified in Sections 5(2), (4), and 6 of this administrative regulation; and
 - (c) A position description which specifies the:
 - 1. Title of the position;
 - 2. Duties of the position; and
 - 3. Training and experience required to qualify for the position.

- (2) The board shall establish personnel policies which govern
 - (a) Attendance and leave;
 - (b) Compensation;
 - (c) Fringe benefits;
 - (d) Circumstances which disqualify a person from serving as:
 - 1. An employee;
 - 2. A contractor; or
 - 3. A volunteer;
 - (e) Employee grievance procedures;
 - (f) Employee performance evaluations;
 - (g) Equal opportunity employment;
 - (h) A requirement for submission of documentation by an applicant that demonstrates the qualifications of the applicant;
 - (i) A requirement that an applicant submit documentation of a sanction previously imposed, or pending, against the applicant's license or certification; and
 - (j) A procedure for verifying an applicant's qualifications.
- (3) The policy required by subsection (2)(d) of this section shall disqualify a person from performing a client service, if the person has been:
 - (a) Convicted of a sex crime defined in KRS 17.165; or
 - (b) Convicted as a violent offender as defined in KRS 17.165.
- (4) A center shall conduct a criminal records check on:
 - (a) An applicant for a paid or volunteer position that includes a duty to provide services to a victim; and
 - (b) A prospective contractor, if the contract is to provide services to a victim.
- (5) A center shall maintain a list of persons with whom it contracts to provide therapy services.
- (6) A contract for performance of a service or administrative function shall provide that the cabinet shall have access to the contractor's facilities, staff, and records, as necessary for the cabinet to evaluate the contractor's performance.
- (7) If a center contracts for performance of therapy services, the contract shall specify requirements for:
 - (a) Individual client records;
 - (b) Documentation of services performed;
 - (c) Confidentiality of client related information;
 - (d) Specialized training required of the therapist concerning the treatment of victims;
 - (e) The fees that may be charged to a client; and
 - (f) The contractor's disclosure of:
 - 1. Punitive action taken against the contractor by a licensing or certification board, prior to or during the period the contract;
 - 2. A pending complaint that may result in punitive action against the contractor by a licensing or certification board;
 - 3. A conviction of the contractor on a criminal charge;
 - 4. A criminal charge currently pending against the contractor;
 - 5. The result of an adjudicated civil action against a contractor, related to the contractor's professional practice; and
 - 6. A pending civil action against the contractor, related to the contractor's professional practice, that may result in punitive action by a licensing or certification board.

Section 5. Required personnel.

- (1) The governing board shall employ an administrative director who shall:
 - (a) Be responsible for financial management of the center;
 - (b) Supervise the performance of staff and volunteers;
 - (c) Coordinate the design and delivery of rape and sexual abuse intervention services;
 - (d) Fulfill other duties assigned by the governing board;
 - (e) Report to the board on all center activities; and
 - (f) Ensure that a provider of a direct client service meets requirements of the professional board with regulating authority for the provider's practice.
- (2) The qualifications of an administrative director shall be:
 - (a) A masters degree from an accredited college or university; or
 - (b) A bachelors degree from an accredited college or university, and three (3) years of administrative experience.
- (3) An administrative director shall, in order to coordinate direct services to clients:
 - (a) Possess a certificate or license to practice, under the law of the Commonwealth of Kentucky, in a mental health discipline; or
 - (b) Employ and supervise a person who possesses a certificate or license to practice, under the law of the Commonwealth of Kentucky.
- (4) The board shall employ or contract for personnel to provide the services required by KRS 211.600(3).

Section 6. Qualifications of Service Providers.

- (1) A person who performs a crisis telephone service shall receive forty (40) hours of training on issues relevant to crisis intervention.
- (2) A person who performs a crisis counseling service shall:
 - (a) Be supervised by a person described in Section 5(3) of this administrative regulation;
 - (b) Have a bachelors degree from an accredited college or university; and
 - (c) Participate in forty (40) hours of training on rape and sexual abuse issues, within (3) three months of employment.
- (3) Eight (8) hours of the training required by subsection (2)(c) of this section shall occur prior to the performance of a crisis counseling service.
- (4) A person who performs a therapy service shall:
 - (a) Have a certificate or license to practice a mental health discipline under the laws of the Commonwealth of Kentucky;
 - (b) Have a masters degree in a mental health discipline from an accredited college or university;
 - (c) Have one (1) year of counseling or clinical experience; and
 - (d) Participate in forty (40) hours of training on rape and sexual abuse issues, within three (3) months of employment.
- (5) Eight (8) hours of the training required by subsection (4)(d) of this section shall occur prior to the performance of a therapy service.
- (6) A person who supervises medical or legal advocacy services shall:
 - (a) Have a bachelors degree from an accredited college or university;
 - (b) Participate in forty (40) hours of training on issues related to rape and sexual abuse, within three (3) months of employment; and
 - (c) Meet the definition of a victim's advocate in KRS 421.570.
- (7) Eight (8) hours of the training required by subsection (6)(b) of this section shall occur prior to the performance of a medical or legal advocacy service.
- (8) A person who supervises a volunteer shall have:
 - (a) A high school diploma; and
 - (b) Five (5) years of volunteer or work experience; and

- (c) Participate in forty (40) hours of training on issues related to rape and sexual abuse prior to supervising a volunteer.
- (9) A person who performs a volunteer service shall:
 - (a) Be twenty (20) years of age;
 - (b) Participate in forty (40) hours of training related to rape and sexual abuse prior to performing a volunteer service; and
 - (c) Be qualified in accordance with the requirements of this section which apply to the services that the volunteer is assigned to provide.
- (10) A staff member who performs a public education service shall:
 - (a) Have a bachelors degree from an accredited college or university; and
 - (b) Participate in forty (40) hours of training on issues related to rape and sexual abuse, within three (3) months of employment.
- (11) Eight (8) hours of the training required by subsection (10)(b) of this section shall occur prior to the performance of a public education service.
- (12) The qualifications specified in subsections (1) through (11) of this section shall not apply to an employee hired or a contractor engaged prior to the effective date of this administrative regulation if the employee or contractor meets the requirements that were in effect at the time the employee was hired or the contractor was engaged.
- (13) A person who provides client services shall participate in at least eight (8) hours of continuing education annually.

Section 7. Requirements for Crisis Services.

- (1) A rape crisis center shall assure that the following crisis services are available to a victim twenty-four (24) hours a day, seven (7) days a week:
 - (a) A toll-free crisis telephone service to include:
 - 1. A text telephone capacity; or
 - 2. Equivalent assistive technology for the deaf and hard of hearing.
 - (b) Crisis counseling services.
- (2) A victim who calls the crisis telephone service shall not be required to identify himself or herself.
- (3) A center shall establish policies and procedures for the operation of the crisis telephone service, as required by subsection (1)(a) of this section that specify conditions under which an employee or volunteer who answers a crisis call shall contact a supervisor.
- (4) The policies and procedures shall require that a supervisor be contacted if:
 - (a) A caller seems to present a danger to self or others;
 - (b) A caller is in danger; or
 - (c) The intervention of law enforcement may be appropriate.
- (5) A person who responds to a crisis telephone call outside the center's regular business hours shall inform supervisory staff by the close of business on the following business day.
- (6) A call that alleges or provides evidence of abuse, neglect, or exploitation shall be reported in accordance with:
 - (a) KRS 620.030, if applicable; or
 - (b) KRS 209.030, if applicable.
- (7) The center shall document each crisis telephone call in a log. Documentation shall include:
 - (a) The time, date, and purpose of the call;
 - (b) The name of the caller if given voluntarily;
 - (c) A referral made as a result of the call, if any; and
 - (d) Other action recommended by the employee or volunteer who answered the call, if any.
- (8) Face-to-face crisis counseling services shall be available during the regular business hours of the center and, at other hours, by appointment.
- (9) A center shall not charge a recipient of crisis counseling services for three (3) or fewer visits.

- (10) If a client needs or requests a service in addition to the counseling visits provided at no cost, in accordance with subsection (9) of this section, the center shall:
- (a) Provide the service; or
 - (b) Refer the client to another practitioner who, or agency which, provides the service.

Section 8. Requirements for Mental Health and Related Support Services.

- (1) Mental health and related support services shall include:
- (a) Therapy;
 - (b) Information; and
 - (c) Referral services.
- (2) Therapy may include:
- (a) Individual psychotherapy;
 - (b) Family psychotherapy;
 - (c) Group psychotherapy; and
 - (d) Medication management.
- (3) Therapy shall be available during regular business hours of the center.
- (4) A center shall maintain a record of current information about financial, medical, mental health, social services, and other resources for the referral of a victim.

Section 9. Requirements for Advocacy Services.

- (1) Advocacy services shall include both legal and medical advocacy services.
- (2) Advocacy services shall be available twenty-four (24) hours a day, seven (7) days a week, at no cost to a victim.
- (3) Advocacy services provided outside regular business hours shall be documented by the close of business on the following business day.
- (4) The center shall establish a protocol for advocacy services, listing the conditions under which a person who provides advocacy services shall contact a supervisor.
- (5) Legal advocacy services shall include:
- (a) Accompanying a victim to a court proceeding or a meeting with law enforcement or a criminal justice agency; and
 - (b) Educating a victim regarding:
 - 1. How the legal system operates; and
 - 2. The Victims Bill of Rights specified in KRS 421.500 to 421.575.
- (6) Legal advocacy services shall be limited to support and education, and shall not include offering legal advice or otherwise engaging in the practice of law, unless the service is provided by a licensed attorney;
- (7) Medical advocacy services shall include:
- (a) Accompanying a victim to a forensic rape examination or other medical care necessitated by the rape and sexual abuse; and
 - (b) Educating a victim regarding how the health care system operates.

Section 10. Requirements for Consultation Services.

- (1) Consultation services shall include discussion:
- (a) Related to a victim; and
 - (b) About the design of a program to assist a victim.
- (2) Consultation on behalf of a victim shall be:
- (a) Available twenty-four (24) hours a day, seven (7) days a week at no cost; and
 - (b) Provided under conditions that protect the victim's confidentiality.
- (3) The center shall obtain written permission for release of information from the victim prior to disclosure of personally identifying information.

Section 11. Requirements for Public Education Services.

- (1) Public education services shall include:
- (a) Prevention;
 - (b) Risk reduction;

- (c) General information;
- (d) Training programs regarding rape, sexual abuse, or related issues for schools, community groups, or professionals; and
- (e) Development or distribution of written materials which provide information on:
 - 1. Rape and sexual abuse; and
 - 2. How to contact the center for services.
- (2) Public education materials shall be prepared for an audience that is diverse in religion, race, disability, culture, and sexual orientation.
- (3) A center shall evaluate its public education programs using information from education program participants.

Section 12. Volunteer Program.

A rape crisis center shall maintain a roster of volunteers who may assist with the provision of:

- (1) A direct service to a victim of rape or sexual abuse; and
- (2) Administrative services for the center.

Section 13. Client Files.

- (1) A center shall document each service provided, to include:
 - (a) The date the service is performed;
 - (b) The recipient of the service;
 - (c) The type of service; and
 - (d) The name and title of the service provider.
- (2) A rape crisis center shall establish a file for each victim who is provided a therapy service. The file shall include:
 - (a) A current service plan that identifies the services needed by the victim; and
 - (b) A statement of the goals for intervention.
- (3) A client file shall be confidential, except as otherwise provided by law.

Section 14. Client Satisfaction and Grievances.

- (1) A rape crisis center shall establish a written grievance procedure that shall:
 - (a) Be given to each client who comes to the center for a service;
 - (b) Contain a description of the services provided by the center; and
 - (c) Specify the procedure for filing a client grievance.
- (2) A center shall evaluate, annually, the level of client satisfaction with its services, using information provided by clients.

Section 15 Monitoring.

- (1) The cabinet may monitor and review programs related to:
 - (a) The quality of a center's services;
 - (b) Compliance with the requirements of this administrative regulation;
 - (c) Implementation of a center's approved plan and budget.
- (2) Monitoring may include:
 - (a) Review of client records;
 - (b) Review of a report submitted to the cabinet;
 - (c) On-site visit for technical assistance or consultation;
 - (d) Interviews with the following persons:
 - 1. A center employee;
 - 2. A contract service provider;
 - 3. A volunteer; or
 - 4. A victim if they agree to participate in an interview; and
 - (e) Investigation of a problem or complaint.
- (3) A rape crisis center, and a subcontractor of a rape crisis center, shall grant the cabinet reasonable access to its facilities, staff, and records.

- (4) The cabinet, in its monitoring and review in accordance with subsection (1) of this section, shall preserve the confidentiality of a client record in accordance with KRS 214.185, and 194A.060, 902 KAR 20:091, Section 3(4)(c).

Section 16. Funding.

- (1) An entity designated as a regional rape crisis center shall submit the “Funding Application for Rape Crisis Centers and Rape Victim Services Programs” no later than ninety (90) days prior to the beginning of the period for which funds are requested.
- (2) A center shall be eligible to receive state funds and other allocations from the cabinet upon the secretary’s approval of a funding application submitted in accordance with subsection (1) of this section.

Section 17. Administrative Hearing Procedure.

- (1) A request for an administrative hearing shall be received by the cabinet no later than thirty (30) days after the date of the notice required by Section 2(3) of this administrative regulation. The request shall:
- (a) Identify the disputed decision; and
 - (b) State the basis on which the secretary’s decision is believed to be unwarranted or erroneous.
- (2) An administrative hearing shall be conducted by a hearing officer knowledgeable of cabinet policy.
- (3) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (4) A request for a hearing shall be considered abandoned if the appellant does not appear at the hearing on the scheduled date and the hearing has not been previously rescheduled.
- (5) A center may withdraw a request for an administrative hearing by:
- (a) Notifying the hearing officer, in writing, that the center wishes to withdraw the request; or
 - (b) Stating on the record, at the hearing, that the center withdraws the request.

Section 18. Material Incorporated by Reference.

- (1) “Funding Application for Rape Crisis Centers and Rape Victim Services Programs (July 1993)” form is incorporated by reference.
- (2) This material may be obtained, inspected, or copied, subject to applicable copyright law, at the Division of Mental Health, Department for Mental Health and Mental Retardation Services, Cabinet for Health and Family Services, Leestown Square, 4th Floor, Fairoaks Lane, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday to Friday.

C. Children’s Advocacy Centers

KRS 620.020 (4) Definition of Children’s advocacy center.

“Children’s advocacy center” means an agency that advocates on behalf of children alleged to have been abused; that assists in the coordination of the investigation of child abuse by providing a location for forensic interviews and medical examinations, and by promoting the coordination of services for children alleged to have been abused; and that provides, directly or by formalized agreements, services that include, but are not limited to, forensic interviews, medical examinations, mental health and related support services, court advocacy, consultation, training, and staffing of multidisciplinary teams. (also see Chapter 4, Section A.)

KRS 620.040 (7)(i) Multidisciplinary team staffing. – *Text included in Chapter 4, Section A.*

KRS 620.045 Funding for regional children’s advocacy center.

- (1) The secretaries of the Cabinet for Health and Family Services and the Justice and Public Safety Cabinet are authorized to make state grants and other fund allocations to assist nonprofit corporations in the establishment and operation of regional children’s advocacy centers.

- (2) To be eligible for grants from any state government entity, a children’s advocacy center shall meet the statutory definition of a children’s advocacy center as provided in this chapter and shall operate consistent with administrative regulations promulgated by the Cabinet for Health and Family Services in accordance with KRS Chapter 13A.

KRS 620.050 (2) Immunity for sharing of information by children’s advocacy centers. -Text included in Chapter 4, Section A.

KRS 620.050 (6 - 10) Confidentiality of reports -- Exceptions -- Parent’s access to records -- Sharing of information by children’s advocacy centers -- Confidentiality of interview with child. -Text included in Chapter 4, Section A.

920 KAR 2:040 Standards for children’s advocacy centers.

Section 1. Definitions.

- (1) “Governing board” or “board” means the board of directors vested with the legal responsibility for management of the children’s advocacy center.
- (2) “Mental health discipline” means:
- (a) Art therapy in accordance with KRS 309.130 to 309.1399;
 - (b) Marriage and family therapy in accordance with KRS 335.300 to 335.399;
 - (c) Professional counseling in accordance with KRS 335.500 to 335.599;
 - (d) Psychiatric nursing in accordance with KRS 202A.011(12)(d);
 - (e) Psychiatry in accordance with KRS 202A.011(12)(b);
 - (f) Psychology in accordance with KRS Chapter 319; or
 - (g) Social work in accordance with KRS 335.010 to 335.170.
- (3) “Referral agreement” means a written protocol or process:
- (a) Defined within the operating policies of the center; and
 - (b) That details how services required by Section 4 of this administrative regulation are established for the center’s clients if the center does not have the capacity to provide these services.
- (4) “Regional children’s advocacy center” or “center” means an agency defined by KRS 620.020(4) and designated by the cabinet to serve as the regional children’s advocacy center in accordance with KRS 620.045(1).

Section 2. Governing Board of Directors.

- (1) A center shall be managed by a governing board in order to allow community involvement in the planning, development, and evaluation of services.
- (2) A governing board shall adopt written bylaws. The bylaws shall include the:
- (a) Purpose of the agency;
 - (b) Minimum and maximum number of board member positions;
 - (c) Qualifications for board members;
 - (d) Method of selecting board members;
 - (e) Terms of board members;
 - (f) Officers and duties;
 - (g) Method of election of officers and chairpersons;
 - (h) Quorum requirements for meetings of the board; and
 - (i) Method for removal of directors.
- (3) The duties of the board shall be to:
- (a) Schedule meetings of the board to be held at least six (6) times per state fiscal year;
 - (b) Maintain minutes of each meeting of the board containing:
 - 1. The date and place of the meeting;
 - 2. Names of board members present;

- 3. The subject matter discussed and actions taken; and
- 4. The name of the reporter;
- (c) Establish standing committees of the board to include executive, nominating, finance, and personnel committees;
- (d) Establish restrictions on reimbursement of board members, including the prohibition against a member contracting with the board to perform personal or professional services;
- (e) Ensure that the facility housing the center is properly clean, maintained, private, and child-friendly; and
- (f) Recruit and maintain board members who provide broad regional representation of the Area Development District where the center is located.

Section 3. Personnel Management.

- (1) A personnel file shall be maintained by the center for each employee.
- (2) The minimum contents of the personnel file shall include:
 - (a) Current professional credentials to reflect training and experience adequate for qualification for the position to which the employee is hired;
 - (b) Conditions or terms of employment that shall include a confidentiality statement signed by the employee;
 - (c) A personnel action document reflecting a change in status of an employee, such as salary change, promotion, resignation, or termination;
 - (d) A position description document including title of the position, description of duties, and requirements of training and experience necessary to qualify for the position; and
 - (e) Results from a criminal records background and central registry check conducted in accordance with KRS 17.165 and 922 KAR 1:470 on the employee during the application process and every two (2) years thereafter while employed by the center.
- (3) Written personnel policies shall be established by the center and shall include:
 - (a) Attendance and leave policies;
 - (b) Compensation plan;
 - (c) Hiring, disciplinary, and firing practices;
 - (d) Staff development and continuing education provisions;
 - (e) Employee grievance procedures;
 - (f) Employee performance evaluations;
 - (g) Equal opportunity employment statements;
 - (h) Staff screening; and
 - (i) Staff training and orientation.
- (4) The governing board shall employ one (1) staff person as executive director of the children's advocacy center. The executive director shall:
 - (a) Be responsible for financial management of the center, including budgets and grant writing;
 - (b) Supervise the duties and activities of center staff and volunteers;
 - (c) Coordinate the design and delivery of services;
 - (d) Fulfill duties as required by the governing board;
 - (e) Report directly to the board on all center activities;
 - (f) Have a master's degree from an accredited college or university and three (3) years of experience in:
 - 1. Human services;
 - 2. Management; or
 - 3. A criminal justice field; and
 - (g) Affirm a commitment to the welfare and protection of children.
- (5) (a) A governing board may establish the staff positions specified in subparagraphs 1 through 5 of this paragraph.
 - 1. Child advocate. A child advocate shall have a bachelor's degree from an accredited college or university and two (2) years of experience in a human services or criminal

- justice field.
2. Therapist. A therapist shall:
 - a. Have a doctorate or master degree from an accredited college or university in a mental health discipline and two (2) years post-degree counseling or clinical experience; and
 - b. Possess a certificate or license to practice under the laws of the Commonwealth of Kentucky in a mental health discipline.
 3. Forensic interviewer. A forensic interviewer, if employed by the center, shall have:
 - a. A doctorate or master degree from an accredited college or university in a mental health discipline;
 - b. Two (2) years of post-degree counseling or clinical experience; and
 - c. Three (3) years of experience interviewing children.
 4. Multidisciplinary team facilitator. A multidisciplinary team facilitator shall have a bachelor's degree from an accredited college or university and two (2) years of experience in a human services or criminal justice field.
 5. Other staff necessary to support the administration or service delivery of the agency.
- (b) The qualifications established in paragraph (a)1-4 of this subsection shall not apply to center staff hired prior to December 17, 2007.
- (c) Within three (3) months of employment, staff providing direct services to a child shall have received twenty-four (24) hours of training on issues related to child abuse.
- (d) Within three (3) months of beginning service, a center volunteer who has access to or contact with a child shall have received twenty-four (24) hours of training on issues related to child abuse.
- (e) An employee of a center shall receive at least eight (8) hours of the training required by paragraph (c) of this subsection before providing services to a child.
- (f) A center volunteer who has access to or contact with a child shall receive at least eight (8) hours of training required by paragraph (d) of this subsection before providing services at the center.
- (g) 1. A center contracting for direct services to a child by a professional not on the staff of the center shall document that the professional meets the qualifications outlined in this section.
 2. An agreement for provision of service shall: a. Be on file at the center; and b. Specify the qualifications of the staff.
- (h) An employee of a children's advocacy center shall be at least twenty-one (21) years of age.
- (i) An applicant for employment shall submit to a criminal records check in accordance with KRS 17.165 during the application process and every two (2) years thereafter while employed by the center.
- (j) A center volunteer who has access to or contact with a child shall submit to a criminal records check in accordance with KRS 17.165 prior to beginning service to the center and every two (2) year thereafter while service is being provided to the center.
- (k) An employee of a center under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with children in the center until the employee is cleared of the charge.
- (l) A center volunteer under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with children in the center until the center volunteer is cleared of the charge.
- (m) An employee or designated agent shall have immunity from civil liability and shall be provided a defense in civil actions pursuant to KRS 620.050(2).

Section 4. Center Services and Responsibilities.

- (1) A center shall:
- (a) Provide:
 1. Advocacy services;
 2. Counseling services;

3. Clinical services;
 4. Forensic interviewing;
 5. Multidisciplinary team facilitation;
 6. Medical examination services; and
 7. Consultation and education services; or
- (b) Develop a referral agreement to refer clients to a provider of the services listed in paragraph (a)1 through 7 of this subsection.
- (2) Advocacy services assist child victims and their non-offending caregivers and may include:
- (a) Accompaniment to court or court-related meetings;
 - (b) Case management services; or
 - (c) Information and referral services.
- (3) Counseling services may include:
- (a) A crisis telephone line;
 - (b) Crisis counseling services; and
 - (c) Support group services.
- (4) (a) Clinical services may include:
1. A mental health evaluation;
 2. Individual therapy services for a child and non-offending caretaker and family; or
 3. Group therapy services for a child and non-offending caretaker.
- (b) Clinical services shall be provided by a professional who meets the requirements of Section 3(5)(a)2 of this administrative regulation.
- (5) Forensic interviewing shall include structured interviews with a child for the purpose of facilitating a criminal investigation and may be provided on site at the center by:
- (a) The center staff forensic interviewer in accordance with Section 3(5)(a)(3) of this administrative regulation;
 - (b) A law enforcement officer; or
 - (c) A worker who is employed by the cabinet.
- (6) A child's recorded interview shall not be duplicated except in accordance with KRS 620.050(10).
- (7) Multidisciplinary team facilitation may include:
- (a) Scheduling of meetings;
 - (b) Case tracking;
 - (c) Case review; or
 - (d) Data collection.
- (8) (a) Medical examination services shall be:
1. Reimbursed by the Department for Medicaid Services in accordance with 907 KAR 3:160; and
 2. Provided by:
 - a. A licensed physician with pediatric experience and expertise in the evaluation and treatment of child abuse;
 - b. A licensed advanced practice registered nurse with pediatric experience and expertise in evaluation and treatment of child abuse; or
 - c. A sexual assault nurse examiner certified in accordance with KRS 314.011(14) and 314.142 if the child is fourteen (14) years of age or older.
- (b) If a medical exam is conducted by the center staff or a contractor, a mental health evaluation shall be provided:
1. Within twenty-four (24) hours of the medical exam; or
 2. If the medical exam will be billed to Medicaid, the same day and at the same location as the medical exam, in accordance with Section 907 KAR 3:160, Section 1(1)(d).
- (9) (a) Consultation and education services may include:
1. School-based prevention programs;

2. Community education programs;
 3. Media presentations;
 4. In-service training; or
 5. Case consultation services.
- (b) A center shall provide a minimum of one (1) training session per year for community partners or the community at large.
- (10) In addition to providing services to children in the county in which the center is located, regional center staff shall serve:
- (a) Children in other counties in the area development district, including those who need medical examinations or forensic interviewing services; and
 - (b) As a technical assistant and consultation resource to criminal justice and human service professionals in the area development district in which the center is located.
- (11) Services provided by a center shall be coordinated with multidisciplinary teams as defined in KRS 431.600 and 620.020.
- (12) A center shall provide written policies and procedures for clients and volunteers that include:
- (a) Volunteer screening;
 - (b) Volunteer training and orientation;
 - (c) Grievance procedures for clients and volunteers;
 - (d) Safety;
 - (e) Clients of the center;
 - (f) Client records;
 - (g) Intake;
 - (h) Comprehensive child sexual abuse examinations;
 - (i) Therapy;
 - (j) Forensic interviews; and
 - (k) Mandatory reporting of child and adult abuse.
- (13) A center shall provide to the non-offending caregiver written instructions that include:
- (a) The name and contact information for the center;
 - (b) The name of the cabinet staff member involved in the case;
 - (c) The names of law enforcement personnel handling the case;
 - (d) The name and contact information for the County or Commonwealth Attorney involved in the case;
 - (e) The name and contact information for the receiving medical provider if a referral for additional assessment or treatment is made;
 - (f) The name and contact information for the receiving mental health provider if a referral for additional assessment or treatment is made; and
 - (g) Any known information regarding follow-up appointment times and recommended aftercare referrals.
- (14) A center shall develop and maintain written confidentiality policies and procedures to ensure client privacy as provided in Kentucky Rules of Evidence 506 and 507.
- (15) A center shall develop and maintain written policies to limit disclosure of confidential information pursuant to KRS 620.050(5).
- (16) A center shall maintain good standing as a private, nonprofit agency within the Commonwealth of Kentucky.
- (17) (a) A center shall obtain the following insurance coverage:
1. Malpractice insurance for the center staff, Board of Directors, and volunteers;
 2. Liability insurance for the center staff, Board of Directors, and volunteers;
 3. Fidelity bonding;
 4. Facility insurance; and
 5. Workers compensation insurance.
- (b) If contracted professionals provide their own insurance and are not covered by the center,

the center shall maintain documentation that shows an active and appropriate policy.

(c) The center shall submit documentation showing proof of insurance to the cabinet.

Section 5. Client Files and Documentation.

(1) A center shall open a client file for a child who is provided a service, excluding service that is limited to a telephone conversation.

(2) A client file shall include information sufficient to document the services provided or referral made by the center and shall include:

(a) The names of the client and primary caregiver;

(b) The name of the recipient of service;

(c) The client's address;

(d) The client's date of birth;

(e) Each date of service provided by the center;

(f) The name and title of each service provider of the center;

(g) A description of any services provided by the center;

(h) The referral sources used;

(i) A description of any follow-up services provided; and

(j) Descriptions of contacts with, report to, and referrals from the cabinet and law enforcement agency.

(3) (a) A center shall maintain a system for tracking:

1. Services rendered by region, except that comprehensive medical services and forensic interviewing shall be tracked by county of the client's residence;

2. Clients seen by county of client's residence;

3. Referrals made; and

4. Contacts with other community agencies on behalf of clients.

(b) Documentation shall be sufficient to support statistics reported to the cabinet.

Section 6. Funding.

(1) (a) The cabinet shall designate one (1) regional children's advocacy center in each area development district.

(b) A children's advocacy center designated on or after July 1, 2007, shall retain the designation unless it has been rescinded by the cabinet based on:

1. Periodic review of the center's performance; or

2. The annual plan and budget submitted by the center to the cabinet for funding for the next fiscal year.

(c) The cabinet shall notify the Office of the Attorney General, the Department for Medicaid Services, and the Justice and Public Safety Cabinet of any designation of a regional children's advocacy center made pursuant to this administrative regulation.

(2) The requirements of this administrative regulation shall not prohibit the center from applying for nongovernmental grants or fundraising to support efforts consistent with the mission of the center.

(3) (a) In addition to the provisions of subsection 1(b) of this Section, the Commissioner of the Department for Community Based Services may rescind the designation of a center if a determination is made that the center failed to:

1. Submit a budget and plan for services which shall substantiate the capacity to provide services specified in KRS 620.020(4) and in accordance with this administrative regulation;

2. Operate in accordance with a budget and plan for services approved by the cabinet; or

3. Operate in accordance with the requirements of this administrative regulation.

(b) Any notice of rescission of a designation shall:

1. Be in writing;

2. Be mailed to the center's last known mailing address;

3. State the basis for the rescission;

4. State the effective date of the rescission; and
 5. State any appeal rights.
- (c) The cabinet shall notify the Office of the Attorney General, the Department for Medicaid Services, and the Justice and Public Safety Cabinet of any notice of rescission of a designation of a regional children's advocacy center issued pursuant to this administrative regulation. Failure by the cabinet to provide such notice shall not serve as grounds for the affected center to invalidate the notice of rescission.
- (4) Cabinet funding for a center shall be contracted through the regional center or the centers' state association.
- (5) A center may contract or establish referral agreements with other agencies or professionals to provide services as defined within Section 4 of this administrative regulation.
- (6) (a) Except in cases where designation has terminated, as set forth in subsection 1(b) of this Section, a center that has received written notice its designation has been rescinded may appeal the determination of the Commissioner of the Department for Community Based Services by requesting an administrative hearing.
- (b) Any request for an administrative hearing shall be in writing and shall be received by the Department for Community Based Services within thirty (30) days of the date of receipt of the notice of rescission. This type of request shall be sent to the Office of the Commissioner, Department for Community Based Services, Cabinet for Health and Family Services, 275 East Main Street, 3rd Floor, Frankfort, Kentucky 40621.
- (c) Any administrative hearing held pursuant to this administrative regulation shall be conducted in accordance with KRS Chapter 13B by a hearing officer employed by the cabinet.
- (d) A request for an administrative appeal shall stay the rescission of the designation until the administrative appeal process is final.
- (e) The stay on the rescission of the designation granted by Section 6(6)(d) in this administrative regulation shall not extend to judicial review, unless a stay is granted pursuant to KRS 13B.140(4).

Section 7. Audit and Monitoring.

- (1) The cabinet or its agent shall randomly, or upon receipt of a complaint, audit, monitor, or conduct program reviews of a center.
- (2) A center shall allow the cabinet or its agent access to its property and records as required by subsection (1) of this section.

Section 8. Grievance and Appeals Process. Client grievances. A center shall establish a written grievance procedure that shall:

- (1) Be given to the parent or guardian of each child who comes to the center for services; and
- (2) Contain a description of the services provided by the center and the procedure for filing a client grievance in accordance with 922 KAR 1:320, Section 10.

D. DOMESTIC VIOLENCE PROGRAMS

KRS 209A.045 Domestic violence shelter fund -- Department of Revenue to administer -- Cabinet for Health and Family Services to use -- Primary service providers.

- (1) There is hereby created a trust and agency account in the State Treasury to be known as the domestic violence shelter fund. Each county clerk shall remit to the fund, by the tenth of the month, ten dollars (\$10) from each twenty-four dollars (\$24) collected during the previous month from the issuance of marriage licenses. The fund shall be administered by the Department of Revenue. The Cabinet for Health and Family Services shall use the funds for the purpose of providing protective shelter services for domestic violence victims.
- (2) The Cabinet for Health and Family Services shall designate one (1) nonprofit corporation in each area development district to serve as the primary service provider and regional planning

authority for domestic violence shelter, crisis, and advocacy services in the district in which the designated provider is located.

922 KAR 5:040 Standards for state-funded domestic violence shelters.

Section 1. Definitions.

- (1) "Agency" means a private or public nonprofit incorporated organization, or organization in the process of obtaining nonprofit status:
 - (a) That has the capacity to provide domestic violence shelter and related services to a client; and
 - (b) With whom the cabinet or its designee contracts for services.
- (2) "Cabinet" is defined by KRS 209.020(2) and 209A.020(1).
- (3) "Client" means a:
 - (a) Victim as defined by KRS 209A.020(6); and
 - (b) Dependent child of the victim.
- (4) "Dating violence and abuse" is defined by KRS 209A.020(2).
- (5) "Director" means an individual responsible for the administration of the domestic violence shelter and related services.
- (6) "District" is defined by KRS 205.455(4).
- (7) "Domestic violence and abuse" is defined by KRS 209A.020(3).
- (8) "Domestic violence shelter" means a program which provides a client:
 - (a) A safe place to stay; and
 - (b) Related services including:
 1. Counseling;
 2. Advocacy;
 3. Food; and
 4. Information and referral services.
- (9) "Governing board" means a legally-constituted group of individuals whose function is to oversee operations of an agency providing domestic violence shelter.
- (10) "Professional" is defined by KRS 209A.020(5).
- (11) "Reportable incidents" means an occurrence that would require the director of the domestic violence shelter to make a report of the incident to the program's governing board for liability reasons.
- (12) "Victim" is defined by KRS 209A.020(6).
- (13) "Volunteer" means a person who:
 - (a) Is either third-party funded or who is donating free service time; and
 - (b) Works directly in the domestic violence shelter or is performing a related service at the request of the director

Section 2. Management.

- (1)(a) Each agency shall be managed by a governing board constituted to allow broad community participation in its activities.
- (b) The governing board shall:
 1. Have the authority and responsibility to ensure continuing compliance with this administrative regulation and other relevant federal, state, and local law, including KRS 61.870 to 61.884, 209.030(2) and (7), 209.140, Chapter 209A, and 45 C.F.R. Parts 74 and 92, where applicable;
 2. Develop written personnel policy and procedures including:
 - a. Job classifications;
 - b. Specifications;
 - c. A compensation plan;
 - d. Attendance and leave policies;
 - e. Fringe benefits;

- f. Affirmative action;
 - g. Personnel grievance procedures; and
 - h. Hiring and firing practices, including lay-off and disciplinary procedures;
3. Adopt written bylaws, including:
 - a. The purpose of the agency;
 - b. Number of members;
 - c. Qualifications for board memberships;
 - d. Composition;
 - e. The method of selecting members;
 - f. Terms of members;
 - g. Officers and duties;
 - h. Method of electing officers and chairpersons;
 - i. Standing committees;
 - j. Provision for approval of programs and budgets;
 - k. The frequency of board meetings and attendance requirements; and
 - l. Provision for official record of meetings and action taken; and
 4. Be responsible for ensuring that all reports, records, or information deemed necessary to determine fiscal, administrative and programmatic effectiveness are submitted to the cabinet or its designee.
- (2) (a) A domestic violence shelter shall create an advisory board for the purpose of studying and recommending functions to the governing board if the governing board provides no direct oversight to the domestic violence shelter.
 - (b) The governing board shall:
 1. Not delegate the responsibility of the final approval, responsibility, accountability, or direction of agency policy to the advisory board; and
 2. Retain responsibility for the functions specified in subsection (1) of this section.
 - (3) Board meetings shall be conducted in compliance with the most current version of "Robert's Rules of Order".
 - (4) The governing board shall make a copy of personnel policy and procedures available to staff, volunteers, and the cabinet or its designee.
 - (5) The governing board and advisory board, if appropriate, shall:
 - (a) Forward the official minutes of each meeting within thirty (30) days of approval to:
 1. Each member of the board; and
 2. The cabinet or its designee; and
 - (b) Follow the guidelines in the most current version of "Robert's Rules of Order".
 - (6) If the agency is a subsidiary of a larger entity, the provisions of subsections (1) through (5) of this section shall apply to the larger entity.

Section 3. Staff.

- (1)(a) An agency's governing board shall appoint one (1) staff person as a domestic violence shelter director.
 - (b) The director shall:
 1. Have responsibility for supervision of the duties and activities of staff and volunteers;
 2. Coordinate domestic violence shelter and related services;
 3. Fulfill the duties as required by the governing and advisory board; and
 4. Report directly to the board on domestic violence program activities.
- (2) The agency shall:
 - (a) Maintain and assure the provision of competent staff to provide services at the domestic violence shelter as follows:
 1. Volunteers shall be under the control and direction of the director even though they are not paid staff; and
 2. Staff shall:

- a. Be at least eighteen (18) years of age;
 - b. Have education, training, or experience to perform their particular job;
 - c. Have a willingness to work with others, including clients coping with multiple issues;
 - d. Be knowledgeable in domestic violence and abuse issues; and
 - e. Be knowledgeable in dating violence and abuse issues;
- (b) Submit to the cabinet or its designee a staffing pattern indicating:
- 1. Areas of responsibility; and
 - 2. Lines of authority and supervision;
- (c) Provide and maintain a record of orientation and in-service training for staff and volunteers responsible for service delivery;
- (d) Implement a system to assure compliance with:
- 1. Affirmative action standards; and
 - 2. Equal opportunity employment standards;
- (e) Provide a system for hearing and resolving grievances of staff and volunteers; and
- (f) Provide cabinet-approved training:
- 1. As governed by KRS 194A.550 to all full and part-time staff and volunteers having direct contact with clients; and
 - 2. To include initial training courses and continuing education courses to be completed at least once every two (2) years.

Section 4. Physical Facilities.

- (1) The domestic violence shelter shall:
- (a) Comply with applicable local, state, and federal building, fire, safety, and health codes relating to construction, sanitation, and building maintenance, including:
 - 1. KRS 45.313;
 - 2. 815 KAR 7:120;
 - 3. 815 KAR 7:125;
 - 4. 815 KAR 10:060;
 - 5. KRS 198B.050; and
 - 6. KRS 211.350 to 211.380;
 - (b) Be:
 - 1. Of sound construction;
 - 2. Suitable for residential use;
 - 3. Dry; and
 - 4. Adequately heated, ventilated, and lighted; and
 - (c) Have:
 - 1. Windows, doors, stoves, heaters, furnaces, pipes, and ventilating fans protected;
 - 2. Screening provided for windows and doors unless air-conditioned;
 - 3. Floors free from splinters and easily cleaned; and
 - 4. Gas heaters and stoves properly ventilated.
- (2) The domestic violence shelter shall provide a recreation area with comfortable furnishings in sufficient quantity to accommodate the number of children and adults receiving services.
- (3) Bedrooms in a domestic violence shelter shall:
- (a) Be equipped with a bed or other age- and developmentally appropriate sleeping arrangement of adequate size for each client; and
 - (b) Have space for each client's belongings, including clothing.
- (4) The domestic violence shelter and grounds shall be well maintained.
- (5) Each domestic violence shelter shall maintain a security system to provide for the physical safety of the client.

Section 5. Medical and Dental. The domestic violence shelter shall assure that access to emergency medical and dental services are available within the community or within close proximity.

Section 6. Meals. The domestic violence shelter shall provide a client with three (3) meals per day, which shall consist of at least three (3) of the following five (5) basic food groups:

- (1) Grains;
- (2) Vegetables;
- (3) Fruits;
- (4) Dairy products; and
- (5) Meat and beans.

Section 7. Services.

- (1) The domestic violence shelter shall maintain and provide services on a continuing basis and for as many hours as are necessary to meet the needs of an eligible person.
- (2) Staff of the domestic violence shelter shall apprise a client of resources available from:
 - (a) The domestic violence shelter; and
 - (b) The community.
- (3) Upon a client's entrance into the domestic violence shelter, or if a client is receiving a domestic violence and abuse or dating violence and abuse related service, domestic violence shelter staff shall obtain and record in a client case record the following minimal information:
 - (a) Name, date of birth, sex, address, marital status;
 - (b) Name and date of birth of an accompanying dependent; and
 - (c) Identification of reason for intake.
- (4) Upon a client's entrance into the domestic violence shelter, or if a client is receiving a domestic violence related service, domestic violence shelter staff shall obtain and record the following information in a client case record, if observed or needed:
 - (a) Identification of physical injury;
 - (b) Medical attention provided; and
 - (c) Identification of physical condition or ailment, which may impact services to be offered the client.
- (5) Domestic violence shelter staff shall report information:
 - (a) To law enforcement, upon request of the victim, in accordance with KRS 209A.100; and
 - (b) Concerning known or suspected child abuse, neglect, or dependency or abuse, neglect, or exploitation of a vulnerable adult to the cabinet in accordance with KRS 209A.110(2) and (3).
- (6) Upon completion of the gathering of information as required in subsections (3) and (4) of this section, domestic violence shelter staff shall develop a service plan:
 - (a) For each client; and
 - (b) To establish a summary of services needed by the client and available within the domestic violence shelter and community.
- (7) Domestic violence shelter staff shall document and maintain in the client's case record any:
 - (a) Referral of the client for services outside the domestic violence shelter; and
 - (b) Service coordination with other agencies.
- (8) The domestic violence shelter shall:
 - (a) Offer Daily program activities with emphasis upon each client's physical, intellectual, and social needs;
 - (b) Have and enforce a policy, which prohibits possession of weapons, alcohol, or nonprescribed drugs while in the shelter;
 - (c) Provide a locked cabinet for client medication storage;
 - (d) Develop and implement procedures to provide for the movement to more appropriate accommodations for those clients who:
 1. Present a danger to self or others; or
 2. Refuse to comply with domestic violence shelter rules governing the safety of staff and clients;

- (e) Establish written procedures to be given to each client upon initial contact describing:
 - 1. The services to be rendered; and
 - 2. A method for handling client complaints including:
 - a. An opportunity for the client to have access to the cabinet's grievance procedure for review in accordance with 922 KAR 1:320, Section 10; and
 - b. The cabinet's access to client records in the possession of each domestic violence shelter for review upon the filing of a service complaint by the client;
 - (f) Assure that services are available to clients in the area development district in which the agency is located;
 - (g) Accept referrals on a statewide basis, if space is available;
 - (h) Cooperate with other domestic violence agencies on a statewide basis;
 - (i) Develop and implement procedures for emergency and temporary domestic violence shelter closure;
 - (j) Maintain a record of reportable incidents involving a client and forward a copy of the incident report to the cabinet or its designee; and
 - (k) Develop and implement a plan for the provision of outreach services in counties of the area development district in which it is located.
- (9) (a) Unless conditions specified in paragraph (b) of this subsection are met, domestic violence shelter staff shall not dispense nor administer medication, but shall allow each client to take their own medication as prescribed.
- (b) Domestic violence shelter staff may dispense or administer emergency medication to a client if:
- 1. The domestic violence shelter staff has received training on the emergency medication;
 - 2. Emergency medication may be necessary to save a client's life; and
 - 3. Measures are taken to prevent unauthorized access to the emergency medication by a client in the domestic violence shelter.
- (10) A domestic violence shelter shall make educational materials available to professionals in accordance with KRS 209A.130.

Section 8. Records.

- (1) A case record shall be:
 - (a) Maintained on each client served by the domestic violence shelter during the time that the client is receiving services;
 - (b) Strictly confidential; and
 - (c) Shared only in accordance with KRS 209A.070.
- (2) Records of the cabinet or its designee in the possession of an agency are strictly confidential and shall be shared with other individuals or organizations:
 - (a) Only as provided in KRS 209.140, 194A.060, and 620.050; and
 - (b) With the prior written permission of the cabinet.
- (3) The cabinet shall have access to the agency property and to records of services provided, including agency financial and client case records for the purpose of auditing and monitoring.
- (4) Domestic violence shelters shall keep client case records for six (6) years after the last day of service.

922 KAR 5:050 Funding requirements for domestic violence shelters.

Section 1. Definitions.

- (1) "Agency" means a private or public nonprofit incorporated organization, or organization in the process of obtaining nonprofit status:
 - (a) That has the capacity to provide domestic violence shelter and related services to a client; and
 - (b) With whom the cabinet or its designee contracts for services.
- (2) "Annual plan and budget" means the annual application for funding submitted to the cabinet or

its designee by each domestic violence shelter.

(3) "Cabinet" is defined by KRS 209.020(2) and 209A.020(2).

(4) "Client" means a:

- (a) Domestic violence victim; and
- (b) Dependent child of the domestic violence victim.

(5) "District" is defined by KRS 205.455(4).

(6) "Service provider" means the agency within each area development district, designated by the cabinet or its designee as the focal point of service delivery for domestic violence shelter and related services.

Section 2. General Funds. The cabinet or its designee shall annually allocate appropriated general funds to cabinet-approved service providers for the operation of domestic violence.

Section 3. Service Provider.

(1) (a) The cabinet or its designee shall approve one (1) service provider for each area development district to receive an allocation of general funds in accordance with KRS 209.160(2).

(b) The approval shall be in effect unless rescinded following a review of the agency's performance and its annual plan and budget proposal for the upcoming year.

(2) (a) The cabinet or its designee shall select a service provider after a determination that the service provider meets the standards set forth in 922 KAR 5:040.

(b) Each selected agency shall submit a properly executed annual plan and budget proposal which shall indicate each agency's capacity to provide domestic violence shelter and other related services for a client.

(c) The application for funding shall:

- 1. Specify the type and kind of services the provider proposes to perform, either as a provider or under subcontract;
- 2. Detail fiscal considerations;
- 3. Assure that the agency and subcontractors shall comply with applicable federal and state laws, including KRS Chapters 209, 209A, and 45 C.F.R. Parts 74 and 92, where applicable; and
- 4. Include a commitment to provide outreach services in counties of the area development district in which it is located.

(3) (a) The cabinet or its designee shall allocate general funds to the service provider in each area development district.

(b) The service provider shall:

- 1. Shall be limited to providing services to the area development district where the service provider is located; and
- 2. May provide services to a client of another area development district if:
 - a. Shelter space or services are available for an additional client of another area development district; or
 - b. An emergency situation, such as a temporary closure of another area development district's domestic violence shelter, exists.

Section 4. Trust and Agency Funds.

(1) The cabinet or its designee shall:

(a) Designate an agency as a service provider to receive trust and agency funds from the account created in KRS 209.160(1);

(b) Allocate trust and agency funds among each designated service provider at the amount approved by the cabinet or its designee for each designated service provider in accordance with the provider's approved plan and budget; and

(c) Require unencumbered funds to be returned to the cabinet if there is a change in the designated service provider.

(2) The cabinet or its designee may:

- (a) Hold trust and agency funds allocated to a service provider at the beginning of each fiscal year which are not expended, to be expended by the same service provider the following year in accordance with the approved annual plan and budget; or
- (b) Assign unencumbered funds returned from a designated service provider to a new designated service provider.

E. PROSECUTORS & AFFILIATES

1. *Prosecution-Based Victim Advocates*

KRS 15.760(6) Employment of Victim advocate (Commonwealth attorneys).

- (6) (a) Each Commonwealth's attorney shall be authorized to employ individually or jointly with one (1) or more other Commonwealth's attorneys at least one (1) victim advocate to counsel and assist crime victims as defined in KRS 421.500.
- (b) An individual employed as a victim advocate shall be a person who by a combination of education, professional qualification, training, and experience is qualified to perform the duties of this position. The victim advocate shall be an individual at least eighteen (18) years of age, of good moral character, with at least two (2) years of experience working in the human services field or court system in a position requiring professional contact with children or adults, who has:
 - 1. Received a baccalaureate degree in social work, sociology, psychology, guidance and counseling, education, religion, criminal justice, or other human service field; or
 - 2. Received a high school diploma or equivalency certificate, and, in addition to the experience required in this subsection, has at least four (4) years' experience working in the human services field or court system.
- (c) Each Commonwealth's attorney who employs an individual to serve as a victim advocate shall develop a written job description which describes the duties of the position and shall ensure the victim advocate completes training relating to the appropriate intervention with crime victims, including victims of domestic violence and victims of elder abuse, neglect, or exploitation or other crimes against the elderly. Each victim advocate shall perform those duties necessary to insure compliance with the crime victim's bill of rights contained in KRS 421.500 to 421.530. No victim advocate shall engage in political activities while in the course of performing his duties as victim advocate or the practice of law as defined in KRS 524.130. The creation and funding of any new personnel position shall be reviewed and approved by the Prosecutors Advisory Council.

KRS 69.350 Employment of victim advocate (county attorneys).

- (1) Each county attorney may employ individually or jointly with one (1) or more other county attorneys at least one (1) victim advocate to counsel and assist crime victims as defined in KRS 421.500.
- (2) An individual employed as a victim advocate shall be a person who by a combination of education, professional qualification, training, and experience is qualified to perform the duties of this position. The victim advocate shall be an individual at least eighteen (18) years of age, of good moral character, with at least two (2) years of experience working in the human services field or court system in a position requiring professional contact with children or adults, who has:
 - (a) Received a baccalaureate degree in social work, sociology, psychology, guidance and counseling, education, religion, criminal justice, or other human service field; or
 - (b) Received a high school diploma or equivalency certificate, and, in addition to the experience required in this subsection, has at least four (4) years' experience working in the

human services field or court system.

- (3) Each county attorney who employs an individual to serve as a victim advocate shall develop a written job description which describes the duties of the position and shall ensure the victim advocate completes training relating to the appropriate intervention with crime victims, including victims of domestic violence and elder abuse, neglect, and exploitation and other crimes against the elderly. Each victim advocate shall perform those duties necessary to insure compliance with the crime victim's bill of rights contained in KRS 421.500 to 421.530. No victim advocate shall engage in political activities while in the course of performing duties as victim advocate or the practice of law as defined in KRS 524.130. The creation and funding of any new personnel position shall be reviewed and approved by the Prosecutors Advisory Council.

KRS 421.570 Training requirement for victim advocates -- Prohibition against practicing law. -
Text included in Chapter 1, Section A.

KRS 421.575 Role of victim advocates in court proceedings - *Text included in Chapter 1, Section A.*

2. Prosecuting Attorneys

a. Duties and Roles

KRS 15.725 Duties of Commonwealth's attorney and county attorneys.

- (1) The Commonwealth's attorney shall attend each Circuit Court held in his judicial circuit. He shall, except as provided in KRS 15.715 and KRS Chapter 131, have the duty to prosecute all violations whether by adults or by juveniles subject to the jurisdiction of the Circuit Court of the criminal and penal laws which are to be tried in the Circuit Court in his judicial circuit. In addition, he shall have the primary responsibility within his judicial circuit to present evidence to the grand jury concerning such violations.
- (2) The county attorney shall attend the District Court in his county and prosecute all violations whether by adults or by juveniles subject to the jurisdiction of the regular or juvenile session of the District Court of criminal and penal laws, except as provided in KRS Chapter 131, within the jurisdiction of said District Court.
- (3) The Commonwealth's attorney and county attorneys in a judicial circuit shall cooperate in the enforcement of criminal and penal laws of the Commonwealth. When necessary, the Commonwealth's attorney and county attorney shall assist each other in prosecution within their respective courts. Each Commonwealth's attorney and county attorney may enter into agreements to share or redistribute prosecutorial duties in the Circuit and District Courts. Any prosecutorial or related duty assigned by statute to the Commonwealth's attorney may be performed by the county attorney, and any prosecutorial or related duty assigned by statute to the county attorney may be performed by the Commonwealth's attorney pursuant to these agreements. Copies of the agreements shall when executed be forwarded to the Attorney General, the chief judges of the Circuit and District Courts, and the chief regional judges of the Circuit and District Courts.
- (4) The Prosecutors Advisory Council shall in allocating resources between the Commonwealth's and county attorney take the agreements into account.
- (5) In the event of the absence from a county of all District Judges and all Circuit Judges and all trial commissioners, the circuit clerk in each county may issue criminal warrants prepared by the Commonwealth's attorney or county attorney, who shall certify that there is no District Judge, Circuit Judge, or trial commissioner within the county.

KRS 15.727 Duty of Commonwealth’s attorney and county attorney to assist child sexual abuse multidisciplinary team.

Pursuant to KRS 431.600, each Commonwealth’s attorney and each county attorney shall assist any child sexual abuse multidisciplinary team established in his circuit or county, unless the Prosecutors Advisory Council has voted to relieve him of this responsibility.

KRS 15.020 Attorney General as Chief law officer and adviser.

The Attorney General is the chief law officer of the Commonwealth of Kentucky and all of its departments, commissions, agencies, and political subdivisions, and the legal adviser of all state officers, departments, commissions, and agencies, and when requested in writing shall furnish to them his written opinion touching any of their official duties, and shall prepare proper drafts of all instruments of writing required for public use, and shall exercise all common law duties and authority pertaining to the office of the Attorney General under the common law, except when modified by statutory enactment. He shall communicate with the Legislative Research Commission as required by KRS 418.075. Except as otherwise provided in KRS 48.005 and 2000 Ky. Acts ch. 483, sec. 8, he shall appear for the Commonwealth in all cases in the Supreme Court or Court of Appeals wherein the Commonwealth is interested, and shall also commence all actions or enter his appearance in all cases, hearings, and proceedings in and before all other courts, tribunals, or commissions in or out of the state, and attend to all litigation and legal business in or out of the state required of him by law, or in which the Commonwealth has an interest, and any litigation or legal business that any state officer, department, commission, or agency may have in connection with, or growing out of, his or its official duties, except where it is made the duty of the Commonwealth’s attorney or county attorney to represent the Commonwealth. When any attorney is employed for any said agency, the same shall have the approval of such agency before such employment. If any funds of any kind or nature whatsoever are recovered by or on behalf of the Commonwealth, in any action, including an ex rel. action where the Attorney General has entered an appearance or is a party according to statutory or common law authority, those funds shall be handled under KRS 48.005.

b. Intervention by Attorney General

KRS 15.190 Assistance in criminal proceedings on request of local prosecuting officials.

County and Commonwealth attorneys may request in writing the assistance of the Attorney General in the conduct of any criminal investigation or proceeding. The Attorney General may take such action as he deems appropriate and practicable under the circumstances in the rendering of such assistance.

KRS 15.200 May intervene or direct criminal proceeding on request of Governor, court or grand jury -- Subpoenas.

- (1) Whenever requested in writing by the Governor, or by any of the courts or grand juries of the Commonwealth, or upon receiving a communication from a sheriff, mayor, or majority of a city legislative body stating that his participation in a given case is desirable to effect the administration of justice and the proper enforcement of the laws of the Commonwealth, the Attorney General may intervene, participate in, or direct any investigation or criminal action, or portions thereof, within the Commonwealth of Kentucky necessary to enforce the laws of the Commonwealth.
- (2) He may subpoena witnesses, secure testimony under oath for use in civil or criminal trials, investigations or hearings affecting the Commonwealth, its departments or political subdivisions.

KRS 15.205 Attorney General may direct Commonwealth's attorney or county attorney to act as special prosecutor.

When the Attorney General has been requested to participate in a given case pursuant to KRS 15.200, the Attorney General may, at his own discretion, direct that a Commonwealth's attorney or county attorney from another circuit or district participate in the case as a special prosecutor for the Commonwealth.

KRS 15.715 Intervention in criminal prosecutions by Attorney General -Prosecution of complaint against local prosecutor.

- (1) In the event of the incapacity, refusal without sufficient grounds, inability, conflict of interest of the local prosecutor, or his failure to act in a certain case or cases, the council may authorize, by the vote of no less than five (5) of its members, the Attorney General to initiate, intervene, or supersede a local prosecutor for the purpose of prosecuting the criminal business in question of the Commonwealth in that circuit or district after due notice having been given to the local prosecutor.
- (2) When the Attorney General shall proceed under subsection (1) of this section, he shall petition the Circuit Court of that circuit to disqualify the county attorney or Commonwealth's attorney for good cause shown, when the county attorney or Commonwealth's attorney refuses to disqualify himself. The action of the Circuit Court shall be subject to review according to the Rules of the Supreme Court.
- (3) If the Attorney General's petition to disqualify the local prosecutor was sustained by the Circuit Court, the Attorney General shall file and prosecute a complaint against the local prosecutor pursuant to KRS 61.120.
- (4) If the office of Commonwealth's attorney or the office of county attorney becomes vacant, the Attorney General or his designee shall perform the duties of that office until such time as the successor of that Commonwealth's attorney or of that county attorney shall be appointed or elected as elsewhere provided by law or until the Commonwealth's attorney or county attorney resumes the duties of his office as provided by law.
- (5) When the Attorney General has been authorized to participate in a given case pursuant to subsections (1), (2), (3), and (4) of this section, he may, at his own discretion, direct a Commonwealth's attorney or county attorney from another circuit or district to serve as the special prosecutor, who shall be reimbursed for all of his actual expenses.
- (6) The Attorney General shall have the duty, within the Forty-eighth Judicial Circuit, to prosecute any person who receives compensation from the Treasury of the Commonwealth of Kentucky for all violations of the criminal and penal laws arising out of, involving or in connection with state funds, or the sale or transfer of goods or services by or to the Commonwealth or any of its political subdivisions; and specifically including, but not limited to, all violations set forth in KRS Chapters 521 and 522. Nothing herein shall be construed to change the venue provision presently existing under Kentucky law as of July 15, 1980.
- (7) Whenever the Attorney General shall undertake any of the actions prescribed in this section, he shall be authorized to exercise all powers and perform all duties in respect to such criminal actions or proceedings which the prosecuting attorney would otherwise perform or exercise, including, but not limited to, the authority to sign, file, and present any and all complaints, affidavits, information, presentments, accusations, indictments, subpoenas, and processes of any kind, and to appear before all grand juries, courts, or tribunals.

KRS 15.733 Disqualification of prosecuting attorney -- Appointment of a special prosecutor.

- (1) For the purposes of this section the following words or phrases shall have the meaning indicated:
 - (a) "Proceeding" includes pretrial, trial, appellate review, or other stages of litigation;
 - (b) "Fiduciary" includes such relationships as executor, administrator, conservator, trustee, and

guardian;

- (c) "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:
 - 1. Ownership in a mutual or common investment fund that holds securities, or a proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, or ownership of government securities is a "financial interest" only if the outcome of the proceeding could substantially affect the value of the interest;
 - 2. An office in an educational, religious, charitable, fraternal, or civil organization is not a "financial interest" in securities held by the organization.
- (2) Any prosecuting attorney shall disqualify himself in any proceeding in which he or his spouse, or a member of his immediate family either individually or as a fiduciary:
 - (a) Is a party to the proceeding, or an officer, director, or trustee of a party;
 - (b) Is acting as a lawyer in the proceeding;
 - (c) Is known by the prosecuting attorney to have an interest that could be substantially affected by the outcome of the proceeding;
 - (d) Is to the prosecuting attorney's knowledge likely to be a material witness in the proceeding;
 - (e) Has served in private practice or government service, other than as a prosecuting attorney, as a lawyer or rendered a legal opinion in the matter in controversy;
 - (f) Has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.
- (3) Any prosecuting attorney may be disqualified by the court in which the proceeding is presently pending, upon a showing of actual prejudice.
- (4) In the event that a prosecuting attorney is disqualified, he shall certify such fact in writing to the Attorney General who may direct another Commonwealth's attorney or county attorney or an assistant attorney general as a special prosecutor to represent the Commonwealth in that proceeding.

3. Prosecutors Advisory Council

KRS 15.705 Prosecutors Advisory Council.

- (1) For the purpose of administration of the unified prosecutorial system, there is hereby created the Prosecutors Advisory Council, hereafter referred to as the council.
- (2) The council shall consist of nine (9) members who shall be residents of Kentucky and shall include the Attorney General; three (3) Commonwealth's attorneys, one (1) from counties containing a consolidated local government, a city with a population of twenty thousand (20,000) or more based on the most recent federal decennial census, or an urban-county government, one (1) from counties containing a city with a population equal to or greater than eight thousand (8,000) but less than twenty thousand (20,000) based on the most recent federal decennial census, and one (1) from the other counties, each of whom shall be appointed by the Governor from a list of three (3) names for each Commonwealth's attorney position submitted by the Commonwealth's Attorneys Association; and three (3) county attorneys, one (1) from counties containing a consolidated local government, a city with a population equal to or greater than twenty thousand (20,000) based on the most recent federal decennial census, or an urban-county government, one (1) from counties containing a city with a population equal to or greater than eight thousand (8,000) but less than twenty thousand (20,000) based on the most recent federal decennial census, and one (1) from the other counties, each of whom shall be appointed by the Governor from a list of three (3) names for each county attorney position submitted by the County Attorneys Association; and two (2) nonattorney citizen members. The Attorney General shall serve during his term of office and the other members shall serve at the

pleasure of the Governor

- (3) The Attorney General shall be the chairman of the council. Five (5) members shall constitute a quorum for the conduct of business. The council shall promulgate annually a schedule of meetings. Special meetings may be called by the chairman or five (5) members of the council. A minimum of ten (10) days' notice must be given prior to the call of a special meeting. Such a notice may be waived by a majority of the council.
- (4) The council shall be responsible for, but not limited to, the preparation of the budget of the unified prosecutorial system of the Commonwealth of Kentucky and the continuing legal education and program development of the unified prosecutorial system of Kentucky.
- (5) Each nonattorney citizen member of the council shall receive twenty-five dollars (\$25) per day for attending each meeting. All council members shall be reimbursed for actual expenses incurred in the performance of their duties.

KRS 15.706 Prosecutors Advisory Council to collect data on sexual offenses involving minors.

- (1) The Prosecutors Advisory Council shall collect statistical data regarding the investigation, prosecution, dismissal, conviction, or acquittal of any person charged with committing, attempting to commit, or complicity to a sexual offense defined by KRS Chapter 510 involving a minor, human trafficking offenses involving a minor engaged in commercial sexual activity, incest involving a minor, use of a minor in a sexual performance, or unlawful transaction with a minor.
- (2) Each Commonwealth's attorney, each county attorney, the secretary of the Cabinet for Health and Family Services, the commissioner of the Department of Kentucky State Police, each Circuit Court clerk, and the Administrative Office of the Courts shall provide any data requested by the council for this purpose, on a form prescribed by the council, at intervals as the council may direct.
- (3) The council may contract with any other public agency to collect the data in lieu of collecting the data itself.
- (4) The Prosecutors Advisory Council may promulgate administrative regulations to specify information to be reported.
- (5) The information required to be reported by this section shall be provided by each Commonwealth's attorney and county attorney at the end of each quarter of the calendar year or as otherwise directed by the Prosecutors Advisory Council.
- (6) The Prosecutors Advisory Council and the Office of the Attorney General shall compile the information by county and issue a public report at least annually.
- (7) The public report shall not contain the name or identifying information of a victim or person not formally charged with the commission of child sexual abuse or human trafficking of a child. Information collected by the Commonwealth's attorney or county attorney or by the Prosecutors Advisory Council containing data which cannot be published shall be excluded from inspection, unless by court order, from the Open Records Law.
- (8) Any Commonwealth's attorney or any county attorney who fails to report information as defined by this section or administrative regulation shall be subject to salary reduction as authorized by KRS 61.120.

4. Victim, Witness, & Family Protection Program

KRS 15.247 Victim, witness, and family protection program -- Protective services

- (1) The Attorney General shall develop and administer a program for the protection of crime victims and witnesses and their immediate families.
- (2) Within the limits of the administrative regulations, guidelines, and appropriations for this purpose, the program shall provide funding to the Department of Kentucky State Police or to a sheriff's office or city or county police department agreeing to provide protection to crime

- victims and witnesses and their families.
- (3) Any Commonwealth's attorney or county attorney may apply to the Attorney General for funding for protection of crime victims, witnesses, and their families.
 - (4) No protective service shall be rendered to the same person for more than six (6) months.
 - (5) Protective services funded by this program shall be limited to:
 - (a) Physical protection of the person;
 - (b) Physical security measures for the person's residence, vehicle, workplace, or combination thereof; or
 - (c) Short-term relocation.
 - (6) The Attorney General shall promulgate administrative regulations under KRS Chapter 13A for the operation of the program.
 - (7) Nothing in this statute shall be construed to create a cause of action for money damages against the state, a county, a municipality, or any of their agencies, public officials, or employees.
 - (8) No court shall order a law enforcement agency to protect crime victim witnesses or their immediate families.
 - (9) No record that may lead to the identity of a person seeking or given protection under this section shall be an open record. This protection shall extend even to the question of whether such a record exists.

40 KAR 6:010 Kentucky Victim and Witness Protection Program.

Section 1. Definitions.

- (1) "Council" means the Prosecutors Advisory Council established by KRS 15.705.
- (2) "Law enforcement agency" means
 - (a) The Kentucky State Police;
 - (b) A sheriff's office;
 - (c) A county police department; or
 - (d) A city police department.
- (3) "Program" means the Kentucky Victim and Witness Protection Program.
- (4) "Prosecutor" means a:
 - (a) Commonwealth's attorney or his authorized assistant;
 - (b) County attorney or his authorized assistant.
- (5) "Protective services" is defined by 1998 Ky. Acts ch. 606, sec. 50.
- (6) "Victim or witness at risk of harm" means a person who is:
 - (a)
 1. A crime victim as defined in KRS 421.500(1); or
 2. A crime witness expected to testify before a grand jury, at a trial, or other judicial proceeding; or
 3. A member of the immediate family of a crime victim or crime witness; and
 - (b) Cooperating with the law enforcement agency providing the protective services and performing the investigation, and the prosecutor of a criminal case; and
 - (c) At substantial risk of imminent serious physical injury; and
 - (d) Unable to provide protective services to himself.

Section 2. Eligible Costs.

- (1) Excluding distributions of advances pursuant to Section 5 of this administrative regulation, program funding shall be limited to the reimbursement of the costs of protective services provided to a victim or witness at risk of harm.
- (2) Reimbursement shall be limited to the costs of protective services provided by a law enforcement agency to a victim or witness at risk of harm for a maximum of 180 days in each criminal case. Each day during which protective services are provided shall count as one (1) day.
- (3) Reimbursement shall be limited to the costs for protective services that:
 - (a) Were paid by the law enforcement agency with the funds of:
 1. The law enforcement agency; or

2. A fiscal court; or
3. A city government; or
4. Other fund sources available to the law enforcement agency; and
- (b) Meet the requirements established by the provisions of this administrative regulation; and
- (c) Are not funded by appropriations or other funds allocated to the law enforcement agency that provided the protective services.
- (4) Reimbursement shall be limited to the costs of protective services that were necessary and reasonable for the protection of a victim or witness at risk of harm.
- (5) The following costs of protective services shall be deemed reasonable:
 - (a) The regular hourly wage and benefit rate, or the regular overtime hourly wage and benefit rate when applicable, of the employee of a law enforcement agency that provided protective services to a victim or witness at risk of harm.
 - (b) Cost of lodging that:
 1. Is the most economical lodging, at government rates if available; and
 2. Has been determined by the law enforcement agency to be appropriate for the protection of the victim or witness at risk of harm.
 - (c) Meals, as follows:
 1. Areas designated as nonhigh rate areas by the Secretary of the Finance and Administration Cabinet in 200 KAR 2:006: a maximum of six (6) dollars, per person, for breakfast; seven (7) dollars, per person, for lunch; and fourteen (14) dollars, per person, for supper; and
 2. Areas designated as high rate areas by the Secretary of the Finance and Administration Cabinet in 200 KAR 2:006: a maximum of seven (7) dollars, per person, for breakfast; eight (8) dollars, per person, for lunch; and eighteen (18) dollars, per person, for supper.
 - (d) Cost of the most economical personal hygiene products.
 - (e) Cost of emergency long distance phone calls to family members or employers.
 - (f) Cost of clothing items that have been determined by the law enforcement agency to be required for the protection of the victim or witness at risk of harm.
 - (g) Cost of child care, at the most economical rate, that has been determined by the law enforcement agency to be appropriate for the protection of the victim or witness at risk of harm.
 - (h) Cost of the temporary emergency use of a cellular phone.
 - (i) Actual mileage at twenty seven (27) cents per mile.
 - (j) Cost of a rental vehicle at the most economical rate available.
 - (k) Cost of cab, bus, train, or air fare at the most economical rate available that has been determined by the law enforcement agency to be appropriate transportation for the protection of the victim or witness at risk of harm.
 - (l) Cost of temporary storage of a vehicle at the most economical rate available that has been determined by the law enforcement agency to be appropriate for the protection of the victim or witness at risk of harm.
 - (m) Cost of the installation, rekeying, repair, or replacement of locks at a locksmith's regular rate for government work.
 - (n) Cost of the installation of a temporary alarm at an installer's regular rate for government work.
- (6) The Attorney General shall approve the reimbursement of the costs of protective services that are not specified in subsection (5) of this section, if he has determined that under the circumstances the costs were necessary and reasonable for the protection of a victim or witness at risk of harm.
- (7) Reimbursement shall be limited to the most economical costs, at government rates if applicable, of protective services that met the needs of the protective services.
- (8) Reimbursement of the cost of protective equipment shall be limited to the portion of its value

allocated to use in the protective services, if the equipment is retained by the victim or witness at risk of harm.

- (9) A law enforcement agency providing protective services shall utilize an available existing government service, if it determines that the service is appropriate for the protection of the victim or witness at risk of harm.
- (10) A law enforcement agency shall comply with applicable state or local procurement requirements.

Section 3. Law Enforcement Agency's Application for Reimbursement.

- (1) A law enforcement agency seeking reimbursement of the costs of protective services provided to a victim or witness at risk of harm shall submit an application for reimbursement to a prosecutor who has jurisdiction over the crime.
- (2) An application for reimbursement shall be made on the "Kentucky Victim and Witness Protection Program Application for Reimbursement" form.
- (3) An application for reimbursement shall include:
 - (a) The name of the law enforcement agency.
 - (b) The criminal case name and number or defendant's name, if known.
 - (c) The name of the person receiving the protective services.
 - (d) A signed statement by a law enforcement officer that the person receiving the protective services is a victim or witness at risk of harm.
 - (e) A complete description of the protective services provided, including:
 1. The type of protective services provided;
 2. The name of person who received the services;
 3. The dates the services were provided;
 4. The cost of the protective services;
 5. A statement whether the law enforcement agency expects to submit additional applications for reimbursement for the criminal case; and
 6. A statement whether the costs of protective services were paid with an advance of program funds specified in Section 5 of this administrative regulation.
 - (f) Excluding the receipts for meals to be reimbursed pursuant to Section 2(5)(c) of this administrative regulation, the receipts for the protective services provided.
 - (g) A statement signed by the head of the law enforcement agency or his authorized agent that the:
 1. Law enforcement agency requests reimbursement of the costs of the protective services provided;
 2. Costs of the protective services meet the requirements established by the provisions of this administrative regulation; and
 3. Costs of the protective services are not funded by appropriations or other funds allocated to the law enforcement agency.
- (4) The completed application for reimbursement shall be submitted by the law enforcement agency to a prosecutor who has jurisdiction over the crime.

Section 4. Prosecutor's Application for Reimbursement.

- (1) A prosecutor shall review an application for reimbursement submitted by a law enforcement agency and determine whether he will submit the application to the Attorney General.
- (2) If the prosecutor determines to submit the application for reimbursement to the Attorney General, he shall sign a statement that he recommends reimbursement of all or part of the costs of the protective services.
- (3) An application for reimbursement submitted from a prosecutor to the Attorney General shall be transmitted by the Attorney General to the council for review and recommendations.
- (4) The council shall review and consider an application for reimbursement at a regular meeting, or at a special meeting called for the purpose of reviewing applications for reimbursement.
- (5) The council shall consider applications in the order received.

- (6) The council shall recommend that:
 - (a) All or part of an application for reimbursement be approved; or
 - (b) An application for reimbursement be denied.
- (7) The council shall base its recommendation on the requirements established by the provisions of this administrative regulation.
- (8) The council shall submit its recommendation to the Attorney General.
- (9) The Attorney General shall review the recommendation of the council and determine whether to:
 - (a) Approve all or part of an application for reimbursement; or
 - (b) Deny an application for reimbursement.
- (10) If the Attorney General approves all or part of an application for reimbursement, the law enforcement agency that provided the protective services shall be reimbursed from program funds in the amount approved by the Attorney General.
- (11) An application for reimbursement of the costs of protective services may be submitted at any time, after the protective services were provided, during the state fiscal year in which the services were provided.

Section 5. Application for Advance of Funds.

- (1) A law enforcement agency requesting an advance of program funds shall submit an application for an advance of program funds to a prosecutor who has jurisdiction over the crime.
- (2) An advance of program funds shall be limited to a maximum of \$500 for each application for an advance of program funds.
- (3) An advance of program funds shall be limited to the payment of the costs of protective services that:
 - (a) Have been provided by the law enforcement agency to a victim or witness at risk of harm; and
 - (b) Cannot be paid with other funds available to the law enforcement agency.
- (4) An application for an advance of Program funds shall be made on a “Kentucky Victim and Witness Protection Program Application for Advance of Program Funds” form.
- (5) An application shall include a statement signed by the head of the law enforcement agency or his authorized agent that:
 - (a) It has incurred or will incur costs of protective services that must be paid before the law enforcement agency can arrange for payment of the costs;
 - (b) It requests an advance of program funds;
 - (c) It intends to submit an application for reimbursement of the costs of the protective services pursuant to Section 3 of this administrative regulation;
 - (d) It will use the advance of program funds for the provision of protective services pursuant to the provisions of this administrative regulation; and
 - (e) The costs of the protective services for which the advance is requested cannot be paid with other funds available to the law enforcement agency.
- (6) The application shall be submitted by the law enforcement agency to a prosecutor who has jurisdiction over the crime.
- (7) The prosecutor shall review an application for an advance of program funds submitted by a law enforcement agency and determine whether he will submit the application to the Attorney General.
- (8) If the prosecutor determines to submit the application for an advance of program funds to the Attorney General, he shall:
 - (a) Sign a statement that he recommends all or part of the advance; and
 - (b) Submit the application for an advance of program funds to the Attorney General.
- (9) The Attorney General shall distribute an advance of program funds to a law enforcement agency if he determines that an application complies with the provisions of this section.
- (10) The distribution of an advance of program funds shall be made during the Office of the

Attorney General's regular business hours, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays.

- (11) The advance of program funds shall be limited to the amount recommended by the prosecutor.
- (12) The advance of program funds shall be made payable to the:
 - (a) Law enforcement agency;
 - (b) Head of the law enforcement agency; or
 - (c) Authorized agent of the head of the law enforcement agency.
- (13) The law enforcement agency shall report an expenditure of an advance of program funds on its application for reimbursement specified in Section 3 of this administrative regulation.
- (14) The law enforcement agency shall:
 - (a) Report an unexpended advance of program funds on its application for reimbursement to the prosecutor; and
 - (b) Return the unexpended advance of program funds with its application for reimbursement to the prosecutor.
- (15) The law enforcement agency shall repay the Attorney General the amount of an advance of program funds that it has expended, if the application for reimbursement of the costs of protective services for which the advance was made is denied.
- (16) A law enforcement agency shall not submit an application for an advance of program funds for the costs of protective services for a victim or witness at risk of harm if it has:
 - (a) Submitted an application for an advance of program funds for the costs of protective services for that victim or witness at risk of harm;
 - (b) Received an advance of Program funds; and
 - (c) Not submitted an application for reimbursement of the costs of the protective services provided with the advance of the program funds.

Section 6. Notice of Estimated Costs.

- (1) If a law enforcement agency begins providing protective services for which it intends to submit an application for reimbursement to a prosecutor, it shall notify the prosecutor and Attorney General, within three (3) business days, on a "Kentucky Victim and Witness Protection Program Notice of Estimated Costs" form, of the estimated costs and time period of the protective services it expects to include on the application.
- (2) If a law enforcement agency determines that the cost of the protective services it expects to include on an application for reimbursement will be greater than the estimated costs previously reported, it shall immediately submit an updated notice of estimated costs to the prosecutor and Attorney General.
- (3) If the Attorney General determines that the total of the estimated costs received by the Attorney General pursuant to subsection (1) of this section exceeds the available program funding, he shall notify the law enforcement agencies that have submitted a notice of estimated costs, and law enforcement agencies that submit a notice of estimated costs thereafter, that program funding may become obligated before the review of all law enforcement agency applications for reimbursement are completed.
- (4) If the Attorney General determines that all program funding has been obligated for the remainder of a fiscal year, he shall notify all prosecutors and law enforcement agencies that:
 - (a) Funding has been obligated; and
 - (b) If additional funding for the program becomes available, applicants:
 1. Will be notified; and
 2. May resubmit applications for funding.

Section 7. Material Incorporated by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Kentucky Victim and Witness Protection Program Application for Reimbursement OAG Form VWPP-01 (10/98)";

- (b) "Kentucky Victim and Witness Protection Program Notice of Estimated Costs OAG Form VWPP-02 (10/98)"; and
 - (c) "Kentucky Victim and Witness Protection Program Application for Advance of Program Funds OAG Form VWPP-03 (10/98)".
- (2) This material may be inspected, copied, or obtained at the Office of the Attorney General, 1024 Capital Center Drive, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

F. CRIME VICTIMS' COMPENSATION FUND

KRS 49.270 Public purpose of indemnifying crime victims.

The General Assembly hereby declares that it serves a public purpose and is of benefit to the state to indemnify those needy persons who are innocent victims of criminal acts and who suffer bodily or psychological injury or death as a consequence thereof. Such persons or their dependents may thereby suffer disability, incur financial hardships and become dependent upon public assistance. To that end, it is the General Assembly's intent that aid, care and support be provided by the state, as a matter of grace, for such victims of crime.

KRS 49.280 Definitions for chapter.

As used in KRS 49.270 to 49.490, unless the context otherwise requires:

- (1) "Child" means any person less than eighteen (18) years of age;
- (2) "Claimant" means any of the following claiming compensation under KRS 49.270- 49.490: a victim, a dependent of a deceased victim, a third person other than a collateral source, or an authorized person acting on behalf of any of them who is legally responsible for the expenses incurred by the victim as a result of the crime committed against the victim;
- (3) "Criminally injurious conduct" means conduct that occurs or is attempted in this jurisdiction, poses a substantial threat of personal physical, psychological injury, or death, and is punishable by fine, imprisonment, or death. Criminally injurious conduct shall include an act of terrorism, as defined in 18 U.S.C. sec. 2331, committed outside of the United States against a resident of Kentucky. Acts which, but for the insanity or mental irresponsibility or lack of capacity of the perpetrator, would constitute criminal conduct shall be deemed to be criminally injurious conduct. The operation of a motor vehicle, motorcycle, train, boat, aircraft, or other vehicle in violation of law does not constitute a criminally injurious conduct unless the injury or death was intentionally inflicted or involved a violation of KRS 189A.010, driving under the influence;
- (4) "Family," when used with reference to a person, shall mean:
 - (a) Any person related to such person within the third degree of consanguinity;
 - (b) Any person maintaining a sexual relationship with such person; or
 - (c) Any person residing in the same household with such person; and
- (5) (a) "Victim" means a needy person who suffers personal physical or psychological injury or death from a criminal act in Kentucky as a result of:
 - 1. Criminally injurious conduct;
 - 2. A good faith effort to prevent criminally injurious conduct; or
 - 3. A good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct.
- (b) "Victim" shall also mean a resident who is a victim of a crime occurring outside this state if:
 - 1. The crime would be compensable had it occurred inside this state; and
 - 2. The crime occurred in a state which does not have a crime victim compensation program, for which the victim is eligible as eligibility is set forth in KRS 49.310.
- (c) "Victim" shall also mean a resident of this state who is injured or killed by an act of terrorism, as defined in 18 U.S.C. sec. 2331, committed outside the United States.

KRS 49.290 Nonresident victims of criminal acts occurring in Kentucky -- Limits on operation of statute.

- (1) "Victim" shall also include nonresidents of this state who suffer losses as a direct result of criminal acts occurring within this state.
- (2) This section shall be operative only during those time periods during which the commission determines that federal funds are available to the state for the compensation of victims of crime.

KRS 49.300 Powers and duties of commission.

In addition to the powers and authority outlined in KRS 49.020, the commission shall have the following powers and duties:

- (1) To promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of KRS 49.270 to 49.490, including administrative regulations for the approval of attorney's fees for representation before the commission or upon judicial review;
- (2) To hear and determine all matters relating to claims for compensation, and the power to reinvestigate or reopen claims without regard to statutes of limitations;
- (3) To request from prosecuting attorneys and law enforcement officers investigations and data to enable the board to determine whether, and the extent to which, a claimant qualifies for compensation. The statute providing confidentiality for juvenile session of District Court records does not apply to proceedings under KRS 49.270 to 49.490;
- (4) To hold hearings in accordance with the provisions of KRS Chapter 13B. The powers provided in this subsection may be delegated by the commission to any member or employee thereof. If necessary to carry out any of its powers and duties, the commission may petition any Circuit Court for an order;
- (5) Upon the filing of an application by a claimant, to negotiate binding fee settlements with the providers of services to claimants that may be eligible for an award under KRS 49.370(3);
- (6) To make available for public inspection all commission decisions and opinions, administrative regulations, written statements of policy, and interpretations formulated, promulgated, or used by it in discharging its functions;
- (7) To publicize widely the availability of reparations and information regarding the claims therefore; and
- (9) To make an annual report, by January 1 of each year, of its activities for the preceding fiscal year to the Office of the State Budget Director and to the Interim Joint Committee on Appropriations and Revenue. Each such report shall set forth a complete operating and financial statement covering its operations during the year.

KRS 49.310 Eligibility for awards.

- (1) Except as provided in subsections (2) and (3) of this section, the following persons shall be eligible for awards pursuant to KRS 49.270 to 49.490:
 - (a) A victim of criminally injurious conduct;
 - (b) A surviving spouse, parent, or child of a victim of criminally injurious conduct who died as a direct result of such conduct;
 - (c) Any other person dependent for his principal support upon a victim of criminally injurious conduct who died as a direct result of such crime; and
 - (d) Any person who is legally responsible for the medical expenses or funeral expenses of a victim.
- (2) No victim or dependent shall be denied compensation solely because he is a relative of the offender or was living with the offender as a family or household member at the time of the injury or death. However, the board may award compensation to a victim or dependent who is a relative, family or household member of the offender only if the board can reasonably determine the offender will not receive significant economic benefit or unjust enrichment from the compensation.

(3) No compensation of any kind shall be awarded when injury occurred while the victim was confined in any state, county, urban-county, or city jail, prison, or other correctional facility, or any state institution maintained and operated by the Cabinet for Health and Family Services.

KRS 49.320 Victim of hate crime deemed victim of criminally injurious conduct.

A person who suffers personal injury as a result of conduct in violation of KRS 532.031 is a victim of criminally injurious conduct as defined in KRS 49.280 and is eligible for awards pursuant to KRS 49.270 to 49.490.

KRS 49.330 Application for award - Filing of claim form - Effect of pending criminal prosecution on commission proceedings.

- (1) A claim form may be filed by a person eligible to receive an award, as provided in KRS 49.310 or, if such person is a minor, by his parent or guardian.
- (2) A claim form must be filed by the claimant not later than five (5) years after the occurrence of the criminally injurious conduct upon which such claim is based, or not later than five (5) years after the death of the victim; provided, however, that upon good cause shown, the board may extend the time for filing if, in a particular case, the interest of justice so requires.
- (3) Claims shall be filed in the office of the commission in person or by mail in accordance with the administrative regulations promulgated by the commission. Only printed claim forms supplied by the commission shall be accepted. The commission shall accept for filing all claims submitted by persons eligible under subsection (1) of this section and alleging the jurisdiction requirements set forth in KRS 49.270 to 49.490 and meeting the requirements as to form in the rules and regulations of the commission.
- (4) Upon filing of a claim pursuant to KRS 49.270 to 49.490, the commission shall promptly notify the United States attorney (if a federal offense is involved), the Commonwealth's attorney or county attorney of the county wherein the crime is alleged to have occurred. If, within ten (10) days after such notification, such United States attorney, Commonwealth's attorney, or county attorney advises the board that a criminal prosecution is pending upon the same alleged crime and requests that action by the commission be deferred, the board shall defer all proceedings under KRS 49.270 to 49.490 until such time as such criminal prosecution has been concluded and shall so notify such United States attorney, Commonwealth's or county attorney, and the claimant. When such criminal prosecution has been concluded such United States attorney, Commonwealth's or county attorney shall promptly so notify the commission. Nothing in this section shall limit the authority of the board to grant emergency awards pursuant to KRS 49.360.

KRS 49.340 Investigation of claim - Examination of records and reports -- Hearing -- Order -- Appeal.

- (1) A claim, when accepted for filing, shall be assigned by the executive director of the commission to an investigator for investigation. All claims arising from the death of an individual as a direct result of a crime shall be considered together.
- (2) The investigator to whom such claim is assigned shall examine the papers filed in support of the claim and the validity of the claim. The investigation shall include, but not be limited to, an examination of police, court, and official records and reports concerning the crime.
- (3) If the mental, physical, or emotional condition of a victim or claimant is material to a claim, the commission may order the victim or claimant to submit to a mental or physical examination by a physician or psychiatrist, and may order an autopsy of a deceased victim. A report upon an examination shall be filed with the investigator setting out findings, including results of all tests made, diagnosis, prognosis, and other conclusions.
- (4) For purposes of KRS 49.270 to 49.490, there is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical, mental, or emotional condition of the claimant or victim in a proceeding under KRS 49.270 to

49.490 in which that condition is an element.

- (5) Claims shall be investigated and determined, regardless of whether the alleged criminal has been apprehended or prosecuted for or convicted of any crime based upon the same incident, or has been acquitted, or found not guilty of the crime in question owing to criminal irresponsibility or other legal exemption.
- (6) Upon completion of the investigator's report, the claim shall be assigned to a commission member who may decide the claim in favor of a claimant in the amount claimed on the basis of the papers filed in support thereof and the report of the investigation of the claim within thirty (30) days of the assignment of the claim. If the commission member is unable to decide the claim upon the basis of the papers and the report, he shall order a hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.
- (7) After examining the papers filed in support of the claim and the report of investigation, and after a hearing, if any, the commission member to whom the claim was assigned shall issue a recommended order either granting an award pursuant to KRS 49.370 or deny the claim. The commission shall review the recommended order and any exceptions filed to it, and shall by majority vote issue a final order.
- (8) A final order of the commission may be appealed by filing a petition for judicial review in the county where the claim accrued or in Franklin Circuit Court in accordance with KRS Chapter 13B.

KRS 49.350 Failure to perfect claim - Denial and bar to reassertion of claim.

Following the initial filing of a claim, if a claimant or victim does not take such further steps as may be necessary to support or perfect the claim as may be required by the commission within thirty (30) days after such requirement is made by the commission, the claimant or victim shall be deemed in default. In such case the commission shall summarily deny the claim and the claimant or victim shall be forever barred from reasserting the claim. The commission may remit such proceedings on good cause shown that the failure to take the steps required by the commission was totally and completely beyond the control of the claimant or victim.

KRS 49.360 Emergency award pending final decision.

- (1) Notwithstanding the provisions of KRS 49.340, if it appears to the commission member to whom a claim is assigned, prior to taking action upon such claim that:
 - (a) Such claim is one with respect to which an award probably will be made; and
 - (b) Undue hardship will result to the claimant if immediate payment is not made. Emergency payment under subsection (2) of this section may be made.
- (2) Upon such findings under subsection (1) of this section the commission member may make an emergency award to the claimant pending a final decision in the case provided that:
 - (a) The amount of such emergency award shall not exceed five hundred dollars (\$500);
 - (b) The amount of such emergency award shall be deducted from any final award made to the claimant; and
 - (c) The excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the commission.

KRS 49.370 Awards, findings, and amounts.

- (1) No award shall be made unless the commission or commission member, as the case may be, finds that:
 - (a) Criminally injurious conduct occurred;
 - (b) Such criminally injurious conduct resulted in personal physical or psychological injury to, or death of, the victim; and

- (c) Police records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless the commission, for good cause shown, finds the delay to have been justified.
- (2) Except for claims related to sexual assault and domestic violence, the commission upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies shall deny, reconsider, or reduce an award.
- (3) Any award made pursuant to KRS 49.270 to 49.490 shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services, including mental health counseling, necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from such injury. Mental health counseling shall be paid for a maximum of two (2) years, but only after proper documentation is submitted to the commission stating what treatment is planned and for what period of time. The commission shall have the power to discontinue mental health counseling at any time within the two (2) year period. Replacement of eyeglasses and other corrective lenses shall be included in an award, provided they were broken or damaged during the crime.
- (4) Any award made for loss of earnings or financial support may be considered for a claimant who has loss of support or wages due to the crime for which the claim is filed. Unless reduced pursuant to other provisions of KRS 49.270 to 49.490, the award shall be equal to net earnings at the time of the criminally injurious conduct; however, no such award shall exceed one hundred fifty dollars (\$150) for each week of lost earnings or financial support. The wage earner or source of support must have been employed or paying support at the time the crime occurred. Said employment shall be verified by the staff of the commission after information is provided by the claimant or victim. Should the claimant or victim fail to supply the commission with the information requested, the portion of the claim for lost wages or support shall be denied. If there are two (2) or more persons entitled to an award as a result of the injury or death of a person which is the direct result of criminally injurious conduct, the award shall be apportioned by the commission among the claimants.
- (5) The commission is authorized to set a reasonable limit for the payment of funeral and burial expenses which shall include funeral costs, a monument, and grave plot. In no event shall an award for funeral expenses exceed five thousand dollars (\$5,000).
- (6) Any award made under KRS 49.270 to 49.490 shall not exceed twenty-five thousand dollars (\$25,000) in total compensation to be received by or paid on behalf of a claimant from the fund.
- (7) No award shall be made for any type of property loss or damage, except otherwise permitted in KRS 49.270 to 49.490.

KRS 49.390. Reduction of award -- Determination of victim's contribution -- Basis of denial of claim.

- (1) Any award made pursuant to KRS 49.270 to 49.490 shall be reduced by the amount of any payments received or to be received by the claimant as a result of the injury from the following sources:
- (a) From or on behalf of the person who committed the crime;
 - (b) Under insurance programs mandated by law;
 - (c) From public funds;
 - (d) Under any contract of insurance wherein the claimant is the insured or beneficiary; and
 - (e) As an emergency award pursuant to KRS 49.360.
- (2) In determining the amount of an award, the commission or commission member shall determine whether, because of his or her conduct, the claimant or the victim of such crime contributed to the infliction of the victim's injury, and shall reduce the amount of the award or reject the claim altogether, in accordance with such determination; however, the commission

or commission member may disregard for this purpose the responsibility of the claimant or the victim for the victim's injury where the record shows that such responsibility was attributable to efforts by the claimant or victim to prevent a crime or an attempted crime from occurrence in his or her presence or to apprehend a person who had committed a crime in his or her presence or had in fact committed a felony. The commission or commission members may request that either the county attorney or Commonwealth's attorney or both state whether in their opinion, the victim suffered injuries as the result of a crime and has cooperated with the prosecution and law enforcement authorities. The commission or commission member shall not be bound by such opinions and recommendations and if needed may order a further investigation of the claim

- (3) The commission or commission member may consider whether the victim's injuries were the ordinary and foreseeable result of unlawful and criminal activities in determining the claimant's eligibility for an award. If the commission or commission member finds that the claimant will not suffer serious financial hardship if not granted financial assistance pursuant to KRS 49.270 to 49.490, the commission or commission member shall deny an award. In determining such serious financial hardship, the commission or commission member shall consider all of the financial resources of the claimant. The commission shall establish specific standards by rule for determining such serious financial hardships.

KRS 49.400 Effect of filing false information.

Any person who procures or attempts to procure compensation with the commission by filing false information shall have the claim denied and be forever barred from filing a claim with this commission.

KRS 49.410. Manner of payment -- Annual reconsideration.

- (1) The award shall be paid in a lump sum, except that in the case of death or protracted disability the award shall provide for periodic payments to compensate for loss of earnings or support. No award made pursuant to KRS 49.270 to 49.490 shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim.
- (2) The commission shall reconsider at least annually every award being paid in installments. An order or reconsideration of an award shall not require refund of amounts previously paid unless the award was obtained by fraud.

KRS 49.430 Federal participation.

The commission may apply for funds from, and submit all necessary forms to, any federal agency participating in a cooperative program to compensate victims of crime.

KRS 49.440 Records of proceedings are public -- Confidentiality protected.

The record of a proceeding before the commission or a commission member shall be a public record; provided, however, that any record or report obtained by the commission, the confidentiality of which is protected by any other law or regulation, shall remain confidential subject to such law or regulation.

KRS 49.460 Subrogation.

- (1) No right of action at law against a person who has committed a criminal act for damages as a consequence of such act shall be lost as a consequence of receiving benefits under the provisions of KRS 49.270 to 49.490. In the event any person receiving benefits under KRS 49.270 to 49.490 additionally seeks a remedy for damages from the person or persons who have committed the criminal act resulting in damages, then and in that event the commission shall be subrogated to and have a lien upon any recovery so made to the extent of the payments made by the state to or on behalf of such person under KRS 49.270 to 49.490.
- (2) If compensation is awarded, the state is subrogated to all the claimant's rights to receive or recover benefits or advantages, for economic loss for which and to the extent only that compensation is awarded from a source which is, or, if readily available to the victim or claimant would be, a collateral source.

KRS 49.470 Award constitutes debt owed state -- Manner of payment.

- (1) Any payment of benefits to or on behalf of a victim under KRS 49.270 to 49.490 creates a debt due and owing to the state by any person found to have committed such criminal act in either a civil or criminal court proceeding in which he is a party.
- (2) The court when placing any convicted person, who owes a debt to the state as a consequence of a criminal act, on probation and conditional discharge as provided in KRS 533.020 may set as a condition of the probation or conditional discharge the payment of the debt to the state. The court also may set the schedule or amounts of payments to be made subject to modification based on change of circumstances.
- (3) The parole board shall also have the right to make payment of the debt to the state a condition of parole under the provisions of KRS Chapter 439 subject to modification based on change of circumstances.

KRS 49.480 Crime victims' compensation fund.

- (1) There is established in the State Treasury the crime victims' compensation fund, hereinafter referred to as the "fund," to be administered by the commission. Nothing herein shall be construed to limit the power of the court to order additional forms of restitution including public or charitable work or reparation to the victim, to the fund, or otherwise as authorized by law.
- (2) The fund shall consist of moneys from the following: appropriations by the General Assembly; the federal government; disbursements provided under KRS 42.320(2)(g); and any other public or private source. Any unexpended balance remaining in the fund at the end of the biennium shall not lapse and be transferred to the general fund, but shall remain in the crime victims' compensation fund. Any funds not utilized by the commission shall be used to provide assistance to programs for victims and the commission shall allocate such funds to any agency providing services to victims. In the event there are insufficient funds in the fund to pay all claims in full, all claims shall be paid at seventy percent (70%). If there are no moneys in the fund, then no claim shall be paid until moneys have again accumulated. In addition to payment of claims, moneys in the fund shall be used to pay all the necessary and proper expenses of the commission

802 KAR 3:010 Crime victims compensation.

Section 1. Filing Claims.

- (1) A claim shall be:
 - (a) Legibly written, typed, or printed on the Crime Victim Compensation Form;
 - (b) Signed by the claimant; and
 - (c) Filed by mail, electronic mail to crimevictims@ky.gov, or delivered in person to the commission.
- (2) If applying for lost wages or loss of support, a claim shall be supplemented by:
 - (a) A notarized Employment Verification form; and
 - (b) If requested by commission staff: 1. A Physician Statement form; or 2. A Mental Health Counselor's Report form.

Section 2. Kentucky Medical Assistance Program.

- (1) The commission shall cross-reference every claim with those claims that appear in the Kentucky Medical Assistance Program (KMAP) database maintained by the Cabinet for Health and Family Services.
- (2) If a crime victim is covered by Medicare or Medicaid, the commission's staff will provide the commission a list of:
 - (a) All itemized medical charges for which that victim seeks compensation; and
 - (b) The victim's services covered by medical assistance as reported in KMAP.
- (3) Upon making an award to a Medicaid-eligible crime victim, the commission shall not consider any medical bills submitted by or on behalf of the victim for any KMAP-covered services.
- (4) If the commission makes an award to a victim who received medical assistance for a KMAP-covered service, the KMAP as final payor shall not be responsible for the payment of any portion of that claim awarded by the commission.

Section 3. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Crime Victim Compensation Form", February 2018;
 - (b) "Employment Verification", February 2018;
 - (c) "Physician Statement", February 2018; and
 - (d) "Mental Health Counselor's Report", February 2018.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Claims Commission, 130 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://cvcb.ky.gov/Pages/default.aspx>.

G. MINORS' CONSENT FOR SERVICES

KRS 210.410 (2) Outpatient mental health services for child victims.

- (2) The services required in subsection (1)(a), (b), (c), (d), and (e) of this section, in addition to primary care services, if provided, shall be available to the mentally ill, drug abusers and alcohol abusers, and all age groups including children and the elderly. The services required in subsection (1)(a), (b), (c), (d), (e), and (f), in addition to primary care services, if provided, shall be available to individuals with an intellectual disability. The services required in subsection (1)(b) of this section shall be available to any child age sixteen (16) or older upon request of such child without the consent of a parent or legal guardian, if the matter for which the services are sought involves alleged physical or sexual abuse by a parent or guardian whose consent would otherwise be required.

KRS 214.185 Diagnosis and treatment of disease, addictions, or other conditions of minor.

- (1) Any physician, upon consultation by a minor as a patient, with the consent of such minor may make a diagnostic examination for venereal disease, pregnancy, alcohol or other drug abuse or addiction and may advise, prescribe for, and treat such minor regarding venereal disease, alcohol and other drug abuse or addiction, contraception, pregnancy, or childbirth, all without the consent of or notification to the parent, parents, or guardian of such minor patient, or to any other person having custody of such minor patient. Treatment under this section does not include inducing of an abortion or performance of a sterilization operation. In any such case, the physician shall incur no civil or criminal liability by reason of having made such diagnostic examination or rendered such treatment, but such immunity shall not apply to any negligent acts or omissions.
- (2) Any physician may provide outpatient mental health counseling to any child age sixteen (16) or older upon request of such child without the consent of a parent, parents, or guardian of such child.
- (3) Notwithstanding any other provision of the law, and without limiting cases in which consent may be otherwise obtained or is not required, any emancipated minor or any minor who has contracted a lawful marriage or borne a child may give consent to the furnishing of hospital, medical, dental, or surgical care to his or her child or himself or herself and such consent shall not be subject to disaffirmance because of minority. The consent of the parent or parents of such married or emancipated minor shall not be necessary in order to authorize such care. For the purpose of this section only, a subsequent judgment of annulment of marriage or judgment of divorce shall not deprive the minor of his adult status once obtained. The provider of care may look only to the minor or spouse for payment for services under this section unless other persons specifically agree to assume the cost.
- (4) Medical, dental, and other health services may be rendered to minors of any age without the consent of a parent or legal guardian when, in the professional's judgment, the risk to the minor's life or health is of such a nature that treatment should be given without delay and the requirement of consent would result in delay or denial of treatment.
- (5) The consent of a minor who represents that he may give effective consent for the purpose of receiving medical, dental, or other health services but who may not in fact do so, shall be deemed effective without the consent of the minor's parent or legal guardian, if the person rendering the service relied in good faith upon the representations of the minor.
- (6) The professional may inform the parent or legal guardian of the minor patient of any treatment given or needed where, in the judgment of the professional, informing the parent or guardian would benefit the health of the minor patient.
- (7) Except as otherwise provided in this section, parents, the Cabinet for Health and Family Services, or any other custodian or guardian of a minor shall not be financially responsible for services rendered under this section unless they are essential for the preservation of the health of the minor.

KRS 216B.400 (7) Consent for Sexual Assault Examinations.

- (7) Notwithstanding any other provision of law, a minor may consent to examination under this section. This consent is not subject to disaffirmance because of minority, and consent of the parents or guardians of the minor is not required for the examination.

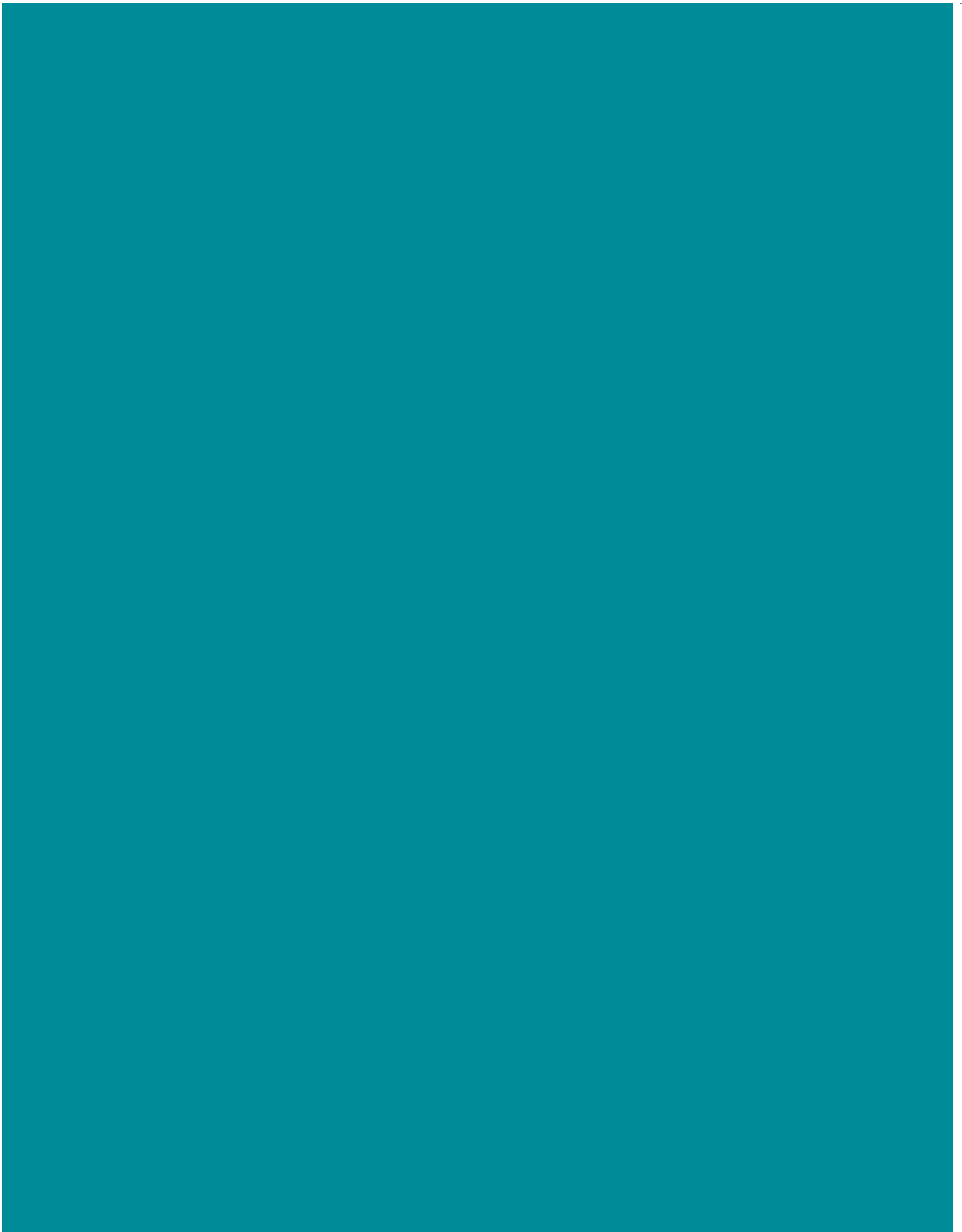
KRS 222.441 (1) Capacity of minor to consent to (alcohol & drug related) treatment.

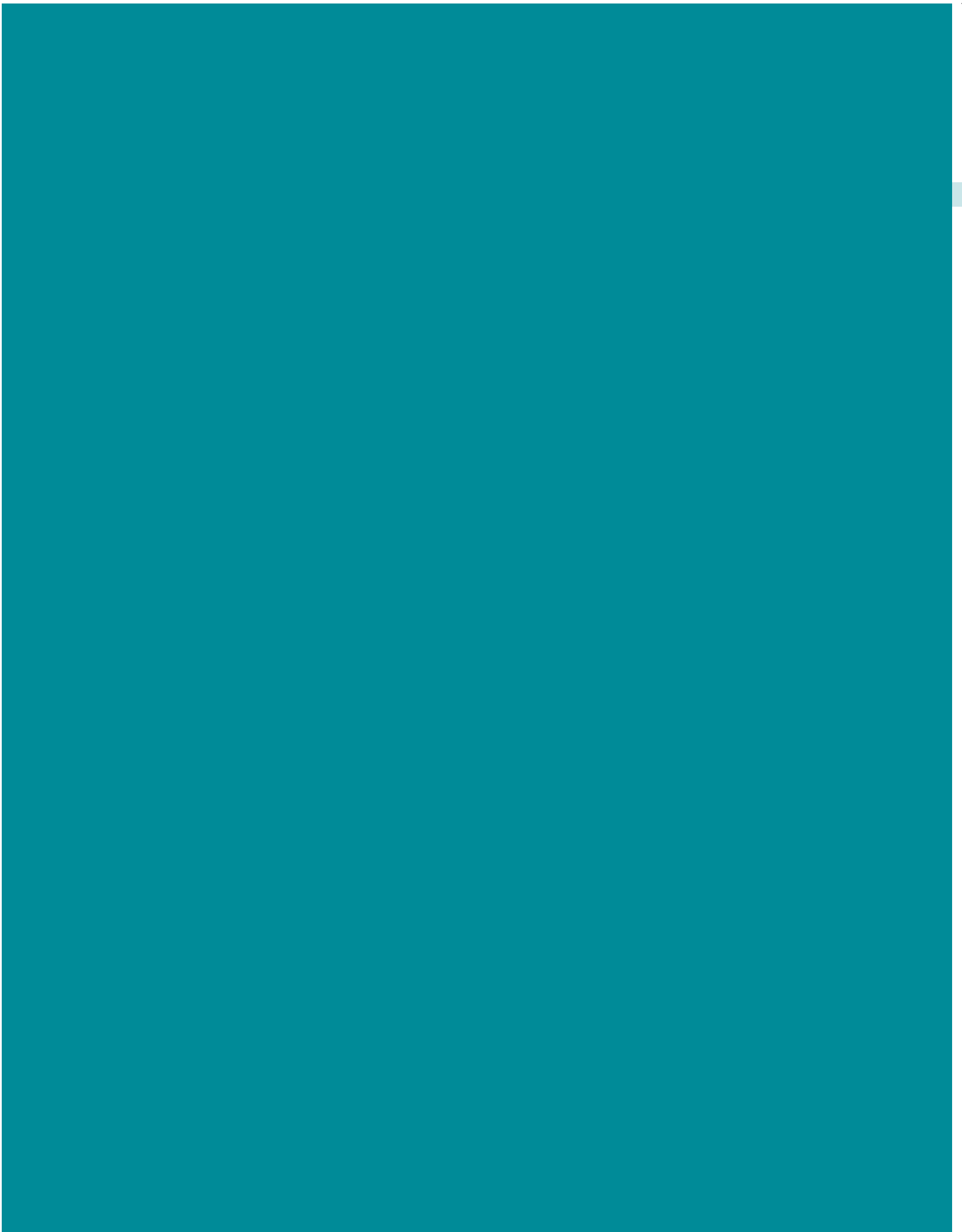
(1) Notwithstanding any other law, a minor who suffers from an alcohol and other drug abuse problem or emotional disturbance from the effects of a family member or legal guardian's alcohol and other drug abuse problem or the parent or guardian of the minor may give consent to the furnishing of medical care or counseling related to the assessment or treatment of the conditions. The consent of the minor shall be valid as if the minor had achieved majority. No person or facility shall incur liability by reason of having made a diagnostic examination or rendered treatment as provided in this section, but the immunity shall not apply to any negligent acts or omissions.

KRS 645.030 Voluntary admission to hospital (related to mental illness).

An authorized staff physician may admit for observation, diagnosis, and treatment at a hospital any child who is mentally ill or has symptoms of mental illness:

- (1) Upon written application of a parent or other person exercising custodial control or supervision, if the child is under sixteen (16) years of age. At or before the child's admission, the child, parent or other person shall be informed of his rights under KRS 645.230 and 645.240. Any child admitted under this subsection who reaches his sixteenth birthday while hospitalized shall consent to his continued hospitalization or shall request his release. If the child fails to choose, the hospital shall advise the court-designated worker and the parent or other person exercising custodial control or supervision;
- (2) Upon written application by a child who is at least sixteen (16) years of age and one of his parents or a person exercising custodial control or supervision. At or before admission, the child shall be informed of his right to give notice of his intent to leave under KRS 645.190 and his right to consult an attorney or his court-designated worker under KRS 645.130. The child may consult an attorney prior to his admission; or
- (3) Upon written application by a child who is at least sixteen (16) years of age. At or before admission, the child shall be informed of his rights under KRS 645.190 and his parents' rights under KRS 645.220, 645.230 and 645.240.





CHAPTER 3 COMMITTEES, MEETINGS, AND RECORDS

A. STATUTORY COMMITTEES, TEAMS, AND COUNCILS

1. Child Sexual Abuse Multidisciplinary Teams (MDTs)

a. Local MDTs

KRS 620.020(7) Definition of Multidisciplinary team (MDT). - Text included in Chapter 4, Section A.

KRS 620.040(7) MDT Membership & Operations.- Text included in Chapter 4, Section A.

KRS 431.600 Coordination of child sexual abuse investigations and prosecutions -- Protection of and counseling for child victims.

- (1) Each investigation of reported or suspected sexual abuse of a child shall be conducted by a specialized multidisciplinary team composed, at a minimum, of law enforcement officers and social workers from the Cabinet for Health and Family Services. Cabinet for Health and Family Services social workers shall be available to assist in all investigations under this section but shall be lead investigators only in those cases of reported or suspected sexual abuse of a child in which a person exercising custodial control or supervision, as defined in KRS 600.020, is the alleged or suspected perpetrator of the abuse. Additional team members may include Commonwealth's and county attorneys, children's advocacy center staff, mental health professionals, medical professionals, victim advocates, including those for victims of human trafficking, educators, and other related professionals, as necessary, operating under protocols governing roles, responsibilities, and procedures developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse and promulgated by the Attorney General as administrative regulations pursuant to KRS Chapter 13A.
- (2) Local protocols shall be developed in each county or group of contiguous counties by the agencies and persons specified in subsection (1) of this section specifying how the state protocols shall be followed within the county or group of contiguous counties. These protocols shall be approved by the Kentucky Multidisciplinary Commission on Child Sexual Abuse.
- (3) If adequate personnel are available, each Commonwealth's attorney's office and each county attorney's office shall have a child sexual abuse specialist.
- (4) Commonwealth's attorneys and county attorneys, or their assistants, shall take an active part in interviewing and familiarizing the child alleged to have been abused, or who is testifying as a witness, with the proceedings throughout the case, beginning as early as practicable in the case.
- (5) If adequate personnel are available, Commonwealth's attorneys and county attorneys shall provide for an arrangement which allows one (1) lead prosecutor to handle the case from inception to completion to reduce the number of persons involved with the child victim.
- (6) Commonwealth's attorneys and county attorneys and the Cabinet for Health and Family Services and other team members shall minimize the involvement of the child in legal proceedings, avoiding appearances at preliminary hearings, grand jury hearings, and other proceedings when possible.
- (7) Commonwealth's attorneys and county attorneys shall make appropriate referrals for counseling, private legal services, and other appropriate services to ensure the future protection of the child when a decision is made not to prosecute the case. The Commonwealth's attorney or county attorney shall explain the decision not to prosecute to the family or guardian, as

appropriate, and to the child victim.

- (8) To the extent practicable and when in the best interest of a child alleged to have been abused, interviews with a child shall be conducted at a children's advocacy center.

KRS 15.727 Duty of Commonwealth's attorney and county attorney to assist child sexual abuse multidisciplinary team. - Text included in Chapter 2, Section E. 2. a.

40 KAR 3:020 Protocol for operation of local multidisciplinary teams on child sexual abuse.

Section 1. Incorporation of Reference.

- (1) The "Model Protocol for the Operation of Local Multidisciplinary Teams, September 1995 Edition" developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse is hereby incorporated by reference.
- (2) This document may be inspected, copied or obtained at the Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. Monday through Friday.

NOTE: The Model Protocol is also available online at <https://ag.ky.gov/protecting-children/KMCCSA>

b. Kentucky Multidisciplinary Commission on Child Sexual Abuse

KRS 431.650 Kentucky Multidisciplinary Commission on Child Sexual Abuse.

- (1) The Kentucky Multidisciplinary Commission on Child Sexual Abuse is hereby created.
- (2) The commission shall be composed of the following members:
- (a) The commissioner of the Department for Community Based Services or a designee;
 - (b) The commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities or a designee;
 - (c) One (1) social service worker who is employed by the Department for Community Based Services to provide child protective services, who shall be appointed by the secretary of the Cabinet for Health and Family Services;
 - (d) One (1) therapist who provides services to sexually abused children, who shall be appointed by the secretary of the Cabinet for Health and Family Services;
 - (e) The commissioner of the Department of Kentucky State Police or a designee;
 - (f) One (1) law enforcement officer who is a detective with specialized training in conducting child sexual abuse investigations, who shall be appointed by the secretary of the Justice and Public Safety Cabinet;
 - (g) One (1) employee of the Administrative Office of the Courts appointed by the Chief Justice of the Supreme Court of Kentucky;
 - (h) Two (2) employees of the Attorney General's Office who shall be appointed by the Attorney General;
 - (i) One (1) Commonwealth's attorney who shall be appointed by the Attorney General;
 - (j) The commissioner of the Department of Education or a designee;
 - (k) One (1) school counselor, school psychologist, or school social worker who shall be appointed by the commissioner of the Department of Education;
 - (l) The executive director of the Division of Child Abuse and Domestic Violence Services or a designee;
 - (m) One (1) representative of a children's advocacy center who shall be appointed by the Governor;
 - (n) One (1) physician appointed by the Governor; and

- (o) One (1) former victim of a sexual offense or one (1) parent of a child sexual abuse victim who shall be appointed by the Attorney General.
- (3) Appointees shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment.
- (4) The commission shall elect a chairperson annually from its membership.

KRS 431.660 Duties and powers of commission.

- (1) The Kentucky Multidisciplinary Commission on Child Sexual Abuse shall:
 - (a) Prepare and issue a model protocol for local multidisciplinary teams regarding investigation and prosecution of child sexual abuse and the role of children’s advocacy centers on multidisciplinary teams.
 - (b) Review and approve protocols prepared by local multidisciplinary teams.
 - (c) Advise local multidisciplinary teams on the investigation and prosecution of child sexual abuse.
 - (d) Receive data on child sexual abuse cases collected by the Prosecutors Advisory Council and issue annual reports.
 - (e) Collect data on the operation of local multidisciplinary teams.
 - (f) Seek funding to support special projects relating to the operation of local multidisciplinary teams.
 - (g) Receive and review complaints regarding local multidisciplinary teams, and make appropriate recommendations.
 - (h) Recommend to the Governor, Legislative Research Commission, and Supreme Court changes in state programs, legislation, administrative regulations, policies, budgets, and treatment and service standards which may facilitate effective intervention of child sexual abuse cases and the investigation and prosecution of perpetrators of child sexual abuse, and which may improve the opportunity for victims of child sexual abuse to receive treatment.
- (2) The Kentucky Multidisciplinary Commission on Child Sexual Abuse may, within budget limitations, establish and maintain necessary offices, appoint employees, and prescribe the duties and compensation for the appointed employees.

KRS 431.670 Attachment of commission to Office of the Attorney General.

For administrative purposes only, the Kentucky Multidisciplinary Commission on Child Sexual Abuse shall be attached to the Office of the Attorney General.

2. Sexual Assault Response Team Advisory Committee

KRS 403.707 Sexual Assault Response Team Advisory Committee.

- (1) The Sexual Assault Response Team Advisory Committee is established.
- (2) The Sexual Assault Response Team Advisory Committee shall be co-chaired by the executive director of the Kentucky Association of Sexual Assault Programs and the commissioner of the Department of Kentucky State Police or the commissioner’s designee.
- (3) The membership of the Sexual Assault Response Team Advisory Committee shall consist of the following:
 - (a) The executive director of the Kentucky Board of Nursing or the executive director’s designee;
 - (b) The executive director of the Kentucky Nurses Association or the executive director’s designee;
 - (c) The executive director of the Kentucky Hospital Association or the executive director’s designee;
 - (d) The executive director of the Kentucky Association of Children’s Advocacy Centers;

- (e) The director of the Department of Kentucky State Police Crime Lab;
 - (f) The commissioner of the Department for Community Based Services or the commissioner's designee;
 - (g) The director of the Victims' Advocacy Division of the Office of the Attorney General or the director's designee;
 - (h) A sexual assault nurse examiner appointed by the secretary of the Cabinet for Health and Family Services;
 - (i) A representative from a sexual assault response team appointed by the executive director of the Kentucky Association of Sexual Assault Programs;
 - (j) A physician appointed by the secretary of the Cabinet for Health and Family Services; and
 - (k) A Commonwealth's attorney or an assistant Commonwealth's attorney appointed by the Attorney General.
- (4) Members appointed under subsection (3)(h) to (k) of this section shall serve at the pleasure of the appointing authority and shall not serve longer than four (4) years without reappointment.
- (5) The Sexual Assault Response Team Advisory Committee shall:
- (a) Serve in an advisory capacity to the Kentucky Board of Nursing in accomplishing the duties set forth under KRS 314.142;
 - (b) Serve in an advisory capacity to the Justice and Public Safety Cabinet in the development of the statewide sexual assault protocol required under KRS 216B.400(4);
 - (c) Develop a model protocol for the operation of sexual assault response teams which shall include the roles of sexual assault nurse examiners, physicians, law enforcement, prosecutors, and victim advocates;
 - (d) Provide assistance to each regional rape crisis center, as designated by the Cabinet for Health and Family Services, in establishing a regional sexual assault response team;
 - (e) Develop model policies for law enforcement agencies related to handling sexual assault examination kits and investigating sexual assaults with a victim-centered, evidence-based approach;
 - (f) By January 1, 2018, report to the General Assembly on the results of the analysis of previously untested sexual assault examination kits submitted to the Department of Kentucky State Police forensic laboratory pursuant to 2016 Ky. Acts ch. 58, sec. 1, including whether analysis of those kits led to the identification and prosecution of suspects and the cost to society of the offenses committed by the suspects identified;
 - (g) By July 1, 2018, and by each July 1 thereafter, report to the General Assembly and to the secretary of the Justice and Public Safety Cabinet on the number of sexual assaults reported, the number of sexual assault examination kits submitted to the Department of Kentucky State Police forensic laboratory, the number of kits tested, and the number of charges filed and convictions obtained in sexual assault cases in the previous calendar year;
 - (h) Provide information and recommendations concerning the activities of the agency or organization represented by each individual committee member as related to sexual assault issues and programs within the purview of the agency or organization; and
 - (i) Recommend to the appropriate state agency any changes in statute, administrative regulation, training, policy, and budget to promote a multidisciplinary response to sexual assault.

3. Domestic Violence Coordinating Councils & Fatality Review Teams

KRS 403.705 Domestic violence coordinating councils & Domestic violence Fatality review teams - Duties.

- (1) One (1) or more local domestic violence coordinating councils may be established in any jurisdiction or group of counties.
- (2) Membership on local domestic violence coordinating councils may include, but not be limited

to, judges, Commonwealth's and county attorneys, law enforcement officers, probation or parole officers, spouse abuse center staff, other victim advocates defined under KRS 421.570, family service workers employed by the Cabinet for Health and Family Services, mental health professionals, health care professionals, educators, public advocates, and other persons as deemed appropriate.

- (3) The purpose of local domestic violence coordinating councils shall include, but not be limited to, the promotion of public awareness about domestic violence, the facilitation of interagency coordination, and the assessment of service delivery related to domestic violence.
- (4) Local domestic violence coordinating councils shall develop a local protocol consistent with nationally recognized practice.
- (5) Local domestic violence coordinating councils may, if authorized by the local coroner or a medical examiner, create a domestic violence fatality review team, the purpose of which shall be to prevent future deaths and injuries related to domestic violence.
- (6) Domestic violence fatality review teams of local domestic violence coordinating councils may:
 - (a) Analyze information regarding local domestic violence fatalities to identify trends, patterns, and risk factors;
 - (b) Evaluate the effectiveness of local prevention and intervention strategies; and
 - (c) Recommend, to the appropriate state or local governmental agency, changes in the Kentucky Revised Statutes, administrative regulations, policies, budgets, and treatment and service standards that may facilitate the prevention of domestic violence fatalities. The fatality review team may establish a protocol for the investigation of domestic violence fatalities and may establish operating rules and procedures as it deems necessary to carry out the purposes of this section.
- (7) The review of a case by a domestic violence fatality review team may include information from reports generated or received by agencies, organizations, or individuals responsible for investigation, prosecution, or treatment in the case.
- (8) The proceedings, records, opinions, and deliberations of the domestic violence fatality review team shall be privileged and shall not be subject to discovery, subpoena, or introduction into evidence in any civil action in any manner that would directly or indirectly identify specific persons or cases reviewed by the local team. Nothing in this subsection shall be construed to restrict or limit the right to discover or use in any civil action any evidence that is discoverable independent of the proceedings of the domestic violence fatality review team.

4. Criminal Justice Council

KRS 15A.075 Criminal Justice Council - Membership - Duties - Administrative support.

- (1) The Criminal Justice Council is hereby created within the Justice and Public Safety Cabinet.
- (2) The council shall undertake such research and other activities as may be authorized or directed by:
 - (a) The secretary of the Justice and Public Safety Cabinet; or
 - (b) The General Assembly.
- (3) The membership of the council shall consist of:
 - (a) The secretary of the Justice and Public Safety Cabinet, ex officio;
 - (b) The Attorney General or his or her designee;
 - (c) The chair of the Judiciary Committee of the House of Representatives, nonvoting ex officio;
 - (d) The chair of the Judiciary Committee of the Senate, nonvoting ex officio;
 - (e) The director of the Administrative Office of the Courts, ex officio;
 - (f) The public advocate, ex officio;
 - (g) The president of the Kentucky Association of Criminal Defense Lawyers or his or her designee;
 - (h) The commissioner of the Department for Behavioral Health, Developmental and Intellectual

- Disabilities, ex officio;
- (i) The commissioner of the Department of Kentucky State Police or his or her designee;
- (j) The commissioner of the Department of Corrections, ex officio;
- (k) The commissioner of the Department of Juvenile Justice, ex officio; and
- (l) Six (6) at-large members appointed by the Governor, as follows:
 1. One (1) District Judge and one (1) Circuit Judge nominated by the Chief Justice of the Kentucky Supreme Court;
 2. One (1) member representing law enforcement;
 3. One (1) member of the County Attorneys' Association;
 4. One (1) member of the Commonwealth Attorneys' Association; and
 5. One (1) member representing community-based organizations, whether for-profit or nonprofit, with experience in programs such as substance abuse prevention and treatment, case management, mental health, or counseling.
- (4) The chairs of the House and Senate Judiciary Committees shall serve as co-chairs.
- (5) At-large members shall be appointed by August 1, 2017, and shall serve a term of two (2) years, and may be reappointed.
- (6) Each ex officio member, except for legislative members, may designate a proxy by written notice to the council prior to call of order of each meeting, and the proxy shall be entitled to participate as a full voting member.
- (7) Each member of the council shall have one (1) vote. Members of the council shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties. The council shall meet at least quarterly. Meetings shall be held at the call of the chair, or upon the written request of two (2) members to the chair.
- (8) A simple majority of the members of the council shall constitute a quorum for the conduct of business at a meeting.
- (9) The council is authorized to establish committees and appoint additional persons who may not be members of the council, as necessary to effectuate its purposes.
- (10) The council's administrative functions shall be performed by the executive director of the Office of Legislative and Intergovernmental Services, appointed by the secretary of the Justice and Public Safety Cabinet and supported by the administrative, clerical, and other staff as allowed by budgetary limitations and as needed to fulfill the council's role and mission and to coordinate its activities.

5. State Child Sexual Abuse & Exploitation Prevention Board

KRS 15.900 Definitions for KRS 15.910 to 15.940.

As used in KRS 15.910 to 15.940:

- (1) "Child" means a person under eighteen (18) years of age;
- (2) "Child sexual abuse and exploitation" means harm to a child's health or welfare by any person, responsible or not for the child's health or welfare, which harm occurs or is threatened through nonaccidental sexual contact which includes violations of KRS 510.040 to 510.150, 530.020, 530.070, 531.310, 531.320, and 531.370;
- (3) "Local task force" means an organization which meets the criteria described in KRS 15.940;
- (4) "State board" means the State Child Sexual Abuse and Exploitation Prevention Board created in KRS 15.910;
- (5) "Prevention program" means a system of direct provision of child sexual abuse and exploitation prevention services to a child, parent, or guardian, but shall not include research programs related to prevention of child sexual abuse and exploitation; and
- (6) "Trust fund" means the child victims' trust fund established in the Office of the State Treasurer.

KRS 15.905 State Child Sexual Abuse and Exploitation Prevention Board.

- (1) The State Child Sexual Abuse and Exploitation Prevention Board is created as an autonomous agency within the Office of the Attorney General.
- (2) The state board may appoint an executive director of the state board to exercise the powers and carry out the duties of the state board.

KRS 15.910 Members of board - Terms - Chairman - Expenses.

- (1) The state board shall be composed of the following members:
 - (a) The secretary of the Cabinet for Health and Family Services, the secretary of the Finance and Administration Cabinet, the chief state school officer, the commissioner of the Department of Kentucky State Police, and the Attorney General, or designees authorized to speak on their behalf; and
 - (b) Ten (10) public members appointed by the Governor. It is recommended that, as a group, the public members shall demonstrate knowledge in the area of child sexual abuse and exploitation prevention; shall be representative of the demographic composition of this state; and, to the extent practicable, shall be representative of all the following categories: parents, school administrators, law enforcement, the religious community, the legal community, the medical community, professional providers of child sexual abuse and exploitation prevention services, and volunteers in child sexual abuse and exploitation prevention services.
- (2) The term of each public member shall be three (3) years, except that of the public members first appointed, three (3) shall serve for three (3) years, three (3) for two (2) years, and four (4) for one (1) year. A public member shall not serve more than two (2) consecutive terms, whether partial or full. A vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment.
- (3) The Attorney General shall serve as chairman or designate a chairperson of the state board in which case the chairperson shall serve in that position at the pleasure of the Attorney General. The state board may elect other officers and committees as it considers appropriate.
- (4) There shall be no per diem compensation; however, the schedule for reimbursement of expenses for the public members of the state board shall be the same as for state employees. The reimbursement, executive director and staff salaries, and all actual and necessary operating expenses of the state board shall be paid from the trust fund, pursuant to an authorization as provided in KRS 15.935.

KRS 15.915 Public meetings and records.

- (1) The business which the state performs shall be conducted at a public meeting of the state board held in compliance with the Open Meetings Act.
- (2) A writing prepared, owned, used, in the possession of, or retained by the state board of the performance in an official function shall be made available to the public in compliance with the Open Records Act.

KRS 15.920 Duties of board.

- (1) The state board shall do all of the following:
 - (a) Meet not less than twice annually at the call of the chairperson;
 - (b) One (1) year after the original appointment of the state board, and biennially thereafter, develop a state plan for the distribution of funds from the trust fund. In developing the plan, the state board shall review already existing prevention programs. The plan shall assure that an equal opportunity exists for establishment of prevention programs and receipt of trust fund money among all geographic areas in this state. The plan shall be transmitted to the clerk of the House of Representatives, to the clerk of the Senate, and to the Governor;

- (c) Provide for the coordination and exchange of information on the establishment and maintenance of prevention programs;
 - (d) Develop and publicize criteria for the receipt of trust fund money by eligible local task forces and eligible prevention programs;
 - (e) Review, approve, and monitor the expenditure of trust fund money by local task forces and prevention programs;
 - (f) Provide statewide educational and public informational seminars for the purpose of developing appropriate public awareness regarding the prevention of child sexual abuse and exploitation; encourage professional persons and groups to recognize and deal with prevention of child sexual abuse and exploitation; encourage and coordinate the development of local task forces; make information about the prevention of child sexual abuse and exploitation available to the public and organizations and agencies which deal with problems of child sexual abuse and exploitation; and encourage the development of community prevention programs; and
 - (g) Establish a procedure for an annual, internal evaluation of the functions, responsibilities, and performance of the state board. In a year in which the biennial state plan is prepared, the evaluation shall be coordinated with the preparation of the state plan.
- (2) The state board may enter into contracts with public or private agencies to fulfill the requirements of this section. The state board shall utilize existing state resources and staff of participating departments whenever practicable.

KRS 15.925 Recommendations of board.

The state board may recommend to the Governor and the General Assembly changes in state programs, statutes, policies, budgets, and standards which will reduce the problem of child sexual abuse and exploitation, improve coordination among state agencies that provide prevention services and improve the condition of children and parents or guardians who are in need of prevention program services.

KRS 15.930 Use of funds.

The state board may accept federal funds granted by the Congress or executive order for the purposes of KRS 15.900 to 15.940 as well as gifts and donations from individuals, private organizations, or foundations. All funds received in the manner described in this section shall be transmitted to the State Treasurer for deposit in the trust fund, and shall be made available for expenditure as appropriated by the General Assembly.

KRS 15.935 Purposes for disbursement of funds.

- (1) The state board may authorize the disbursement of available money from the trust fund, upon legislative appropriations, for exclusively the following purposes, which are listed in the order of preference for expenditure:
- (a) To fund a private nonprofit or public organization in the development or operation of a prevention program if at least all of the following conditions are met:
 - 1. The appropriate local task force has reviewed and approved the program. This subparagraph does not apply if a local task force does not exist for the geographic area to be served by the program;
 - 2. The organization agrees to match fifty percent (50%) of the amount requested from the trust fund. At least ten percent (10%) of the amount requested shall be matched through dollars, and the remaining match shall be through in-kind contributions. The type of contributions shall be subject to the approval of the state board;
 - 3. The organization demonstrates a willingness and ability to provide program models and consultation to organizations and communities regarding program development and maintenance; and

4. Other conditions that the state board may deem appropriate;
 - (b) To fund the cost of medical examinations of victims of suspected child sexual abuse to the extent the fee for an examination is a service not eligible to be paid for by Medicaid or private insurance. The fees paid for this examination shall not exceed reasonable, usual, and customary charges as set by the state board;
 - (c) To fund the cost of counseling and other mental health services to victims of child sexual abuse to the extent the fees for counseling and mental health services are services not eligible to be paid for by Medicaid or private insurance. The fees paid for counseling and mental health services shall not exceed reasonable, usual, and customary charges as set by the state board;
 - (d) To fund local task forces;
 - (e) To fund a statewide public education and awareness campaign on child sexual abuse, making use of electronic and print media to inform the public about the nature of child sexual abuse, legal reporting requirements, victim rights, legal remedies, agency services, and prevention strategies;
 - (f) To fund and evaluate the comparative success of statewide comprehensive approaches to prevention education making use of multiple approaches; and
 - (g) To fund the state board created in KRS 15.905 for the actual and necessary operating expenses that the board incurs in performing its duties.
- (2) Authorizations for disbursement of trust fund money under subsection (1)(g) of this section shall be kept at a minimum in furtherance of the primary purpose of the trust fund which is to disburse money under subsections (1)(a), (b), (c), (d), (e), and (f) of this section to encourage the direct provision of services to prevent child abuse and exploitation, and to provide medical examination and counseling or other mental health services for victims of child sexual abuse.

KRS 41.400 Child victims' trust fund - Limitation on disbursement.

- (1) The child victims' trust fund is created as a separate fund in the office of the State Treasurer. The fund shall be expended only as provided in this section.
- (2) The State Treasurer shall credit to the trust fund all amounts received for this purpose and any amounts received under KRS 141.440.
- (3) The State Treasurer shall invest trust fund money in the same manner as surplus funds are invested. Earnings shall be credited to the trust fund.
- (4) Until the total amount of assets in the trust fund exceeds twenty million dollars (\$20,000,000), not more than one-half of the money contributed to the trust fund each year, plus the earnings credited to the trust fund during the previous fiscal year, and the money earned by the sale of child victims' trust fund license plates pursuant to KRS Chapter 186, shall be available for disbursement upon the authorization of the state board as provided in KRS 15.935. After such time that the State Treasurer certifies that the assets in the trust fund exceed twenty million dollars (\$20,000,000), only the earnings credited to the trust fund shall be available for disbursement upon the authorization of the state board as provided in KRS 15.935.
- (5) Funds granted or funds received as gifts or donations to the child victims' trust fund shall be available for disbursement upon appropriation by the General Assembly, and funds authorized for expenditure shall not be considered assets for purposes of subsection (4) of this section.

KRS 15.940 Criteria for making grants to local task forces.

In making grants to a local task force, the state board shall consider the degree to which the local task force meets the following criteria:

- (1) Has as its primary purpose the development and facilitation of a collaborative community prevention program in a specific geographical area. The prevention program shall utilize trained volunteers and existing community resources wherever practicable;

- (2) Is comprised of local law enforcement and social services representatives and does not exclude any organization or person that the state board deems necessary;
- (3) Demonstrates a willingness and ability to provide prevention program models and consultation to organizations and communities regarding prevention program development and maintenance;
- (4) Agrees to match fifty percent (50%) of the amount requested from the trust fund. At least ten percent (10%) of the amount requested shall be matched through dollars, and the remaining match shall be through in-kind contributions. The amount and types of in-kind services are subject to the approval of the state board; and
- (5) Other criteria that the state board deems appropriate.

KRS 15.942 Training plan for investigation of child sexual abuse and protection of victims.

The Justice and Public Safety Cabinet, the Attorney General, the Administrative Office of the Courts, and the Cabinet for Health and Family Services shall develop a training plan for investigation of child sexual abuse cases and protection of child sexual abuse victims within the Commonwealth. They may seek assistance from any educational, legal, and mental and physical health-care professionals needed for implementation of training programs.

KRS 15.946 In-service training for peace officers on child sexual abuse.

The Kentucky Law Enforcement Council shall provide an in-service training program for peace officers in child development, the dynamics of physical and sexual abuse, the impact of violence on child development, the treatment of offenders, and related issues. Each peace officer desiring to participate in the Kentucky Law Enforcement Foundation Fund program, if eligible to participate, shall successfully complete the in-service training.

KRS 15.948 Attorney General to have staff available specially trained in child sexual abuse - Assistance to prosecutors.

The Attorney General shall have staff available who are specially trained in child sexual abuse. Commonwealth's attorneys and county attorneys may request assistance in the investigation and prosecution of child sexual abuse cases in accordance with provisions of this chapter.

B. OPEN MEETINGS AND OPEN RECORDS ACTS

1. Open Meetings Act

KRS 61.800 Legislative statement of policy.

The General Assembly finds and declares that the basic policy of KRS 61.805 to 61.850 is that the formation of public policy is public business and shall not be conducted in secret and the exceptions provided for by KRS 61.810 or otherwise provided for by law shall be strictly construed.

KRS 61.805 Definitions for KRS 61.805 to 61.850.

As used in KRS 61.805 to 61.850, unless the context otherwise requires:

- (1) "Meeting" means all gatherings of every kind, including video teleconferences, regardless of where the meeting is held, and whether regular or special and informational or casual gatherings held in anticipation of or in conjunction with a regular or special meeting;
- (2) "Public agency" means:
 - (a) Every state or local government board, commission, and authority;
 - (b) Every state or local legislative board, commission, and committee;
 - (c) Every county and city governing body, council, school district board, special district board, and municipal corporation;
 - (d) Every state or local government agency, including the policy-making board of an institution

- of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;
- (e) Any body created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act in the legislative or executive branch of government;
- (f) Any entity when the majority of its governing body is appointed by a “public agency” as defined in paragraph (a), (b), (c), (d), (e), (g), or (h) of this subsection, a member or employee of a “public agency,” a state or local officer, or any combination thereof;
- (g) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff or a committee formed for the purpose of evaluating the qualifications of public agency employees, established, created, and controlled by a “public agency” as defined in paragraph (a), (b), (c), (d), (e), (f), or (h) of this subsection; and
- (h) Any interagency body of two (2) or more public agencies where each “public agency” is defined in paragraph (a), (b), (c), (d), (e), (f), or (g) of this subsection;
- (3) “Action taken” means a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body; and
- (4) “Member” means a member of the governing body of the public agency and does not include employees or licensees of the agency.
- (5) “Video teleconference” means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment.

KRS 61.810 Exceptions to open meetings.

- (1) All meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times, except for the following:
 - (a) Deliberations for decisions of the Kentucky Parole Board;
 - (b) Deliberations on the future acquisition or sale of real property by a public agency, but only when publicity would be likely to affect the value of a specific piece of property to be acquired for public use or sold by a public agency;
 - (c) Discussions of proposed or pending litigation against or on behalf of the public agency;
 - (d) Grand and petit jury sessions;
 - (e) Collective bargaining negotiations between public employers and their employees or their representatives;
 - (f) Discussions or hearings which might lead to the appointment, discipline, or dismissal of an individual employee, member, or student without restricting that employee’s, member’s, or student’s right to a public hearing if requested. This exception shall not be interpreted to permit discussion of general personnel matters in secret;
 - (g) Discussions between a public agency and a representative of a business entity and discussions concerning a specific proposal, if open discussions would jeopardize the siting, retention, expansion, or upgrading of the business;
 - (h) State and local cabinet meetings and executive cabinet meetings;
 - (i) Committees of the General Assembly other than standing committees;
 - (j) Deliberations of judicial or quasi-judicial bodies regarding individual adjudications or appointments, at which neither the person involved, his representatives, nor any other individual not a member of the agency’s governing body or staff is present, but not including any meetings of planning commissions, zoning commissions, or boards of adjustment;
 - (k) Meetings which federal or state law specifically require to be conducted in privacy;
 - (l) Meetings which the Constitution provides shall be held in secret; and
 - (m) That portion of a meeting devoted to a discussion of a specific public record exempted

from disclosure under KRS 61.878(1)(m). However, that portion of any public agency meeting shall not be closed to a member of the Kentucky General Assembly.

- (n) Meetings of any selection committee, evaluation committee, or other similar group established under KRS Chapter 45A or 56 to select a successful bidder for award of a state contract.
- (2) Any series of less than quorum meetings, where the members attending one (1) or more of the meetings collectively constitute at least a quorum of the members of the public agency and where the meetings are held for the purpose of avoiding the requirements of subsection (1) of this section, shall be subject to the requirements of subsection (1) of this section. Nothing in this subsection shall be construed to prohibit discussions between individual members where the purpose of the discussions is to educate the members on specific issues.

KRS 61.815 Requirements for conducting closed sessions.

- (1) Except as provided in subsection (2) of this section, the following requirements shall be met as a condition for conducting closed sessions authorized by KRS 61.810:
 - (a) Notice shall be given in regular open meeting of the general nature of the business to be discussed in closed session, the reason for the closed session, and the specific provision of KRS 61.810 authorizing the closed session;
 - (b) Closed sessions may be held only after a motion is made and carried by a majority vote in open, public session;
 - (c) No final action may be taken at a closed session; and
 - (d) No matters may be discussed at a closed session other than those publicly announced prior to convening the closed session.
- (2) Public agencies and activities of public agencies identified in paragraphs (a), (c), (d), (e), (f), but only so far as (f) relates to students, (g), (h), (i), (j), (k), (l), and (m) of subsection (1) of KRS 61.810 shall be excluded from the requirements of subsection (1) of this section.

KRS 61.820 Schedule of regular meetings to be made available.

- (1) All meetings of all public agencies of this state, and any committees or subcommittees thereof, shall be held at specified times and places which are convenient to the public. In considering locations for public meetings, the agency shall evaluate space requirements, seating capacity, and acoustics.
- (2) All public agencies shall provide for a schedule of regular meetings by ordinance, order, resolution, bylaws, or by whatever other means may be required for the conduct of business of that public agency. The schedule of regular meetings shall be made available to the public.

KRS 61.823 Special meetings - Emergency meetings.

- (1) Except as provided in subsection (5) of this section, special meetings shall be held in accordance with the provisions of subsections (2), (3), and (4) of this section.
- (2) The presiding officer or a majority of the members of the public agency may call a special meeting.
- (3) The public agency shall provide written notice of the special meeting. The notice shall consist of the date, time, and place of the special meeting and the agenda. Discussions and action at the meeting shall be limited to items listed on the agenda in the notice.
- (4) (a) As soon as possible, written notice shall be delivered personally, transmitted by facsimile machine, or mailed to every member of the public agency as well as each media organization which has filed a written request, including a mailing address, to receive notice of special meetings. The notice shall be calculated so that it shall be received at least twenty-four (24) hours before the special meeting. The public agency may periodically, but no more often than once in a calendar year, inform media organizations that they will have to submit a new written request or no longer receive written notice of special meetings until a new

written request is filed.

- (b) A public agency may satisfy the requirements of paragraph (a) of this subsection by transmitting the written notice by electronic mail to public agency members and media organizations that have filed a written request with the public agency indicating their preference to receive electronic mail notification in lieu of notice by personal delivery, facsimile machine, or mail. The written request shall include the electronic mail address or addresses of the agency member or media organization.
 - (c) As soon as possible, written notice shall also be posted in a conspicuous place in the building where the special meeting will take place and in a conspicuous place in the building which houses the headquarters of the agency. The notice shall be calculated so that it shall be posted at least twenty-four (24) hours before the special meeting.
- (5) In the case of an emergency which prevents compliance with subsections (3) and (4) of this section, this subsection shall govern a public agency's conduct of a special meeting. The special meeting shall be called pursuant to subsection (2) of this section. The public agency shall make a reasonable effort, under emergency circumstances, to notify the members of the agency, media organizations which have filed a written request pursuant to subsection (4)(a) of this section, and the public of the emergency meeting. At the beginning of the emergency meeting, the person chairing the meeting shall briefly describe for the record the emergency circumstances preventing compliance with subsections (3) and (4) of this section. These comments shall appear in the minutes. Discussions and action at the emergency meeting shall be limited to the emergency for which the meeting is called.

KRS 61.826 Video teleconferencing of meetings.

- (1) A public agency may conduct any meeting through video teleconference.
- (2) Notice of a video teleconference shall comply with the requirements of KRS 61.820 or 61.823 as appropriate. In addition, the notice of a video teleconference shall:
 - (a) Clearly state that the meeting will be a video teleconference; and
 - (b) Precisely identify a primary location of the video teleconference where all members can be seen and heard and the public may attend in accordance with KRS 61.840.
- (3) The same procedures with regard to participation, distribution of materials, and other matters shall apply in all video teleconference locations.
- (4) Any interruption in the video or audio broadcast of a video teleconference at any location shall result in the suspension of the video teleconference until the broadcast is restored.

KRS 61.835 Minutes to be recorded - Open to public.

The minutes of action taken at every meeting of any such public agency, setting forth an accurate record of votes and actions at such meetings, shall be promptly recorded and such records shall be open to public inspection at reasonable times no later than immediately following the next meeting of the body.

KRS 61.840 Conditions for attendance.

No condition other than those required for the maintenance of order shall apply to the attendance of any member of the public at any meeting of a public agency. No person may be required to identify himself in order to attend any such meeting. All agencies shall provide meeting room conditions, including adequate space, seating, and acoustics, which insofar as is feasible allow effective public observation of the public meetings. All agencies shall permit news media coverage, including but not limited to recording and broadcasting.

KRS 61.846 Enforcement by administrative procedure -- Appeal.

- (1) If a person enforces KRS 61.805 to 61.850 pursuant to this section, he shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section.

The person shall submit a written complaint to the presiding officer of the public agency suspected of the violation of KRS 61.805 to 61.850. The complaint shall state the circumstances which constitute an alleged violation of KRS 61.805 to 61.850 and shall state what the public agency should do to remedy the alleged violation. The public agency shall determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of the complaint whether to remedy the alleged violation pursuant to the complaint and shall notify in writing the person making the complaint, within the three (3) day period, of its decision. If the public agency makes efforts to remedy the alleged violation pursuant to the complaint, efforts to remedy the alleged violation shall not be admissible as evidence of wrongdoing in an administrative or judicial proceeding. An agency's response denying, in whole or in part, the complaint's requirements for remedying the alleged violation shall include a statement of the specific statute or statutes supporting the public agency's denial and a brief explanation of how the statute or statutes apply. The response shall be issued by the presiding officer, or under his authority, and shall constitute final agency action.

- (2) If a complaining party wishes the Attorney General to review a public agency's denial, the complaining party shall forward to the Attorney General a copy of the written complaint and a copy of the written denial within sixty (60) days from receipt by that party of the written denial. If the public agency refuses to provide a written denial, a complaining party shall provide a copy of the written complaint within sixty (60) days from the date the written complaint was submitted to the presiding officer of the public agency. The Attorney General shall review the complaint and denial and issue within ten (10) days, excepting Saturdays, Sundays, and legal holidays, a written decision which states whether the agency violated the provisions of KRS 61.805 to 61.850. In arriving at the decision, the Attorney General may request additional documentation from the agency. On the day that the Attorney General renders his decision, he shall mail a copy to the agency and a copy to the person who filed the complaint.
- (3) (a) If a public agency agrees to remedy an alleged violation pursuant to subsection (1) of this section, and the person who submitted the written complaint pursuant to subsection (1) of this section believes that the agency's efforts in this regard are inadequate, the person may complain to the Attorney General.
 - (b) The person shall provide to the Attorney General: 1. The complaint submitted to the public agency; 2. The public agency's response; and 3. A written statement of how the public agency has failed to remedy the alleged violation.
 - (c) The adjudicatory process set forth in subsection (2) of this section shall govern as if the public agency had denied the original complaint.
- (4) (a) A party shall have thirty (30) days from the day that the Attorney General renders his decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under KRS 61.848.
 - (b) If an appeal is not filed within the thirty (30) day time limit, the Attorney General's decision, as to whether the agency violated the provisions of KRS 61.805 to 61.850, shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or where the alleged violation occurred.
- (5) A public agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding enforcement of KRS 61.805 to 61.850.

KRS 61.848 Enforcement by judicial action - De novo determination in appeal of Attorney General's decision - Voidability of action not substantially complying - Awards in willful violation actions.

- (1) The Circuit Court of the county where the public agency has its principal place of business or where the alleged violation occurred shall have jurisdiction to enforce the provisions of KRS 61.805 to 61.850, as they pertain to that public agency, by injunction or other appropriate order on application of any person.

- (2) A person alleging a violation of the provisions of KRS 61.805 to 61.850 shall not have to exhaust his remedies under KRS 61.846 before filing suit in a Circuit Court. However, he shall file suit within sixty (60) days from his receipt of the written denial referred to in subsections (1) and (2) of KRS 61.846 or, if the public agency refuses to provide a written denial, within sixty (60) days from the date the written complaint was submitted to the presiding officer of the public agency.
- (3) In an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to subsection (4)(a) of KRS 61.846, the court shall determine the matter de novo.
- (4) Except as otherwise provided by law or rule of court, proceedings arising under this section take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.
- (5) Any rule, resolution, regulation, ordinance, or other formal action of a public agency without substantial compliance with the requirements of KRS 61.810, 61.815, 61.820, and KRS 61.823 shall be voidable by a court of competent jurisdiction.
- (6) Any person who prevails against any agency in any action in the courts regarding a violation of KRS 61.805 to 61.850, where the violation is found to be willful, may be awarded costs, including reasonable attorneys' fees, incurred in connection with the legal action. In addition, it shall be within the discretion of the court to award the person an amount not to exceed one hundred dollars (\$100) for each instance in which the court finds a violation. Attorneys' fees, costs, and awards under this subsection shall be paid by the agency responsible for the violation.

KRS 61.850 Construction.

KRS 61.805 to 61.850 shall not be construed as repealing any of the laws of the Commonwealth relating to meetings but shall be held and construed as ancillary and supplemental thereto.

2. Open Records Act

Note: Pursuant to the "Privacy Exception" of the Open Records Act, as interpreted by the Kentucky Supreme Court, information regarding sexual assault victims may be redacted from open records, including police reports. Additional information is included in Chapter 7, A.

KRS 61.870 Definitions for KRS 61.872 to 61.884.

As used in KRS 61.872 to 61.884, unless the context requires otherwise:

- (1) "Public agency" means:
 - (a) Every state or local government officer;
 - (b) Every state or local government department, division, bureau, board, commission, and authority;
 - (c) Every state or local legislative board, commission, committee, and officer;
 - (d) Every county and city governing body, council, school district board, special district board, and municipal corporation;
 - (e) Every state or local court or judicial agency;
 - (f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;
 - (g) Any body created by state or local authority in any branch of government;
 - (h) Any body which derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds. However, any funds derived from a state or local authority in compensation for goods or services that are provided by a

- contract obtained through a public competitive procurement process shall not be included in the determination of whether a body is a public agency under this subsection;
- (i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof;
 - (j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and
 - (k) Any interagency body of two (2) or more public agencies where each public agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this subsection;
- (2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned or maintained by or for a body referred to in subsection (1)(h) of this section that are not related to functions, activities, programs, or operations funded by state or local authority;
- (3) (a) "Software" means the program code which makes a computer system function, but does not include that portion of the program code which contains public records exempted from inspection as provided by KRS 61.878 or specific addresses of files, passwords, access codes, user identifications, or any other mechanism for controlling the security or restricting access to public records in the public agency's computer system.
- (b) "Software" consists of the operating system, application programs, procedures, routines, and subroutines such as translators and utility programs, but does not include that material which is prohibited from disclosure or copying by a license agreement between a public agency and an outside entity which supplied the material to the agency;
- (4) (a) "Commercial purpose" means the direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee.
- (b) "Commercial purpose" shall not include:
- 1. Publication or related use of a public record by a newspaper or periodical;
 - 2. Use of a public record by a radio or television station in its news or other informational programs; or
 - 3. Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties;
- (5) "Official custodian" means the chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control;
- (6) "Custodian" means the official custodian or any authorized person having personal custody and control of public records;
- (7) "Media" means the physical material in or on which records may be stored or represented, and which may include, but is not limited to paper, microform, disks, diskettes, optical disks, magnetic tapes, and cards; and
- (8) "Mechanical processing" means any operation or other procedure which is transacted on a machine, and which may include, but is not limited to a copier, computer, recorder or tape processor, or other automated device.
- (9) "Booking photograph and photographic record of inmate" means a photograph or image of an individual generated by law enforcement for identification purposes when the individual is booked into a detention facility as defined in KRS 520.010 or photograph and image of an inmate taken pursuant to KRS 196.099.

KRS 61.871 Policy of KRS 61.870 to 61.884 - Strict construction of exceptions of KRS 61.878.

The General Assembly finds and declares that the basic policy of KRS 61.870 to 61.884 is that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.

KRS 61.8715 Legislative findings.

The General Assembly finds an essential relationship between the intent of this chapter and that of KRS 171.410 to 171.740, dealing with the management of public records, and of KRS 42.720 to 42.742, 45.253, 171.420, 186A.040, 186A.285, and 194A.146, dealing with the coordination of strategic planning for computerized information systems in state government; and that to ensure the efficient administration of government and to provide accountability of government activities, public agencies are required to manage and maintain their records according to the requirements of these statutes. The General Assembly further recognizes that while all government agency records are public records for the purpose of their management, not all these records are required to be open to public access, as defined in this chapter, some being exempt under KRS 61.878.

KRS 61.872 Right to inspection - Limitation.

- (1) All public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No person shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.
- (2) Any person shall have the right to inspect public records. The official custodian may require written application, signed by the applicant and with his name printed legibly on the application, describing the records to be inspected. The application shall be hand delivered, mailed, or sent via facsimile to the public agency.
- (3) A person may inspect the public records:
 - (a) During the regular office hours of the public agency; or
 - (b) By receiving copies of the public records from the public agency through the mail. The public agency shall mail copies of the public records to a person whose residence or principal place of business is outside the county in which the public records are located after he precisely describes the public records which are readily available within the public agency. If the person requesting the public records requests that copies of the records be mailed, the official custodian shall mail the copies upon receipt of all fees and the cost of mailing.
- (4) If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records.
- (5) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed three (3) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection.
- (6) If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.

KRS 61.874 Abstracts, memoranda, copies -- Agency may prescribe fee -- Use of nonexempt public records for commercial purposes -- Online access.

- (1) Upon inspection, the applicant shall have the right to make abstracts of the public records and memoranda thereof, and to obtain copies of all public records not exempted by the terms of KRS 61.878. When copies are requested, the custodian may require a written request and advance payment of the prescribed fee, including postage where appropriate. If the applicant desires copies of public records other than written records, the custodian of the records shall duplicate the records or permit the applicant to duplicate the records; however, the custodian shall ensure that such duplication will not damage or alter the original records.
- (2) (a) Nonexempt public records used for noncommercial purposes shall be available for copying in either standard electronic or standard hard copy format, as designated by the party requesting the records, where the agency currently maintains the records in electronic format. Nonexempt public records used for noncommercial purposes shall be copied in standard hard copy format where agencies currently maintain records in hard copy format. Agencies are not required to convert hard copy format records to electronic formats.
(b) The minimum standard format in paper form shall be defined as not less than 8 1/2 inches x 11 inches in at least one (1) color on white paper, or for electronic format, in a flat file electronic American Standard Code for Information Interchange (ASCII) format. If the public agency maintains electronic public records in a format other than ASCII, and this format conforms to the requestor's requirements, the public record may be provided in this alternate electronic format for standard fees as specified by the public agency. Any request for a public record in a form other than the forms described in this section shall be considered a nonstandardized request.
- (3) The public agency may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required. If a public agency is asked to produce a record in a nonstandardized format, or to tailor the format to meet the request of an individual or a group, the public agency may at its discretion provide the requested format and recover staff costs as well as any actual costs incurred.
- (4) (a) Unless an enactment of the General Assembly prohibits the disclosure of public records to persons who intend to use them for commercial purposes, if copies of nonexempt public records are requested for commercial purposes, the public agency may establish a reasonable fee.
(b) The public agency from which copies of nonexempt public records are requested for a commercial purpose may require a certified statement from the requestor stating the commercial purpose for which they shall be used, and may require the requestor to enter into a contract with the agency. The contract shall permit use of the public records for the stated commercial purpose for a specified fee.
(c) The fee provided for in subsection (a) of this section may be based on one or both of the following:
 1. Cost to the public agency of media, mechanical processing, and staff required to produce a copy of the public record or records;
 2. Cost to the public agency of the creation, purchase, or other acquisition of the public records.
- (5) It shall be unlawful for a person to obtain a copy of any part of a public record for a:
 - (a) Commercial purpose, without stating the commercial purpose, if a certified statement from the requestor was required by the public agency pursuant to subsection (4)(b) of this section; or
 - (b) Commercial purpose, if the person uses or knowingly allows the use of the public record for a different commercial purpose; or

- (c) Noncommercial purpose, if the person uses or knowingly allows the use of the public record for a commercial purpose. A newspaper, periodical, radio or television station shall not be held to have used or knowingly allowed the use of the public record for a commercial purpose merely because of its publication or broadcast, unless it has also given its express permission for that commercial use.
- (6) Online access to public records in electronic form, as provided under this section, may be provided and made available at the discretion of the public agency. If a party wishes to access public records by electronic means and the public agency agrees to provide online access, a public agency may require that the party enter into a contract, license, or other agreement with the agency, and may charge fees for these agreements. Fees shall not exceed:
 - (a) The cost of physical connection to the system and reasonable cost of computer time access charges; and
 - (b) If the records are requested for a commercial purpose, a reasonable fee based on the factors set forth in subsection (4) of this section.

KRS 61.8745 Damages recoverable by public agency for person's misuse of public records.

A person who violates subsections (2) to (6) of KRS 61.874 shall be liable to the public agency from which the public records were obtained for damages in the amount of:

- (1) Three (3) times the amount that would have been charged for the public record if the actual commercial purpose for which it was obtained or used had been stated;
- (2) Costs and reasonable attorney's fees; and
- (3) Any other penalty established by law.

KRS 61.8746 Commercial use of booking photographs or official inmate photographs prohibited -- Conditions -- Right of action -- Damages.

- (1) A person shall not utilize a booking photograph or a photograph of an inmate taken pursuant to KRS 196.099 originally obtained from a public agency for a commercial purpose if: (a) The photograph will be placed in a publication or posted on a Web site; and (b) Removal of the photograph from the publication or Web site requires the payment of a fee or other consideration.
- (2) Any person who has requested the removal of a booking photograph or photo taken pursuant to KRS 196.099 of himself or herself: (a) Which was subsequently placed in a publication or posted on a Web site; and (b) Whose removal requires the payment of a fee or other consideration; shall have a right of action in Circuit Court by injunction or other appropriate order and may also recover costs and reasonable attorney's fees. (3) At the court's discretion, any person found to have violated this section in an action brought under subsection (2) of this section, may be liable for damages for each separate violation, in an amount not less than: (a) One hundred (\$100) dollars a day for the first thirty (30) days; (b) Two hundred and fifty (\$250) dollars a day for the subsequent thirty (30) days; and (c) Five hundred (\$500) dollars a day for each day thereafter. If a violation is continued for more than one (1) day, each day upon which the violation occurs or is continued shall be considered and constitute a separate violation.

KRS 61.876 Agency to adopt rules and regulations.

- (1) Each public agency shall adopt rules and regulations in conformity with the provisions of KRS 61.870 to 61.884 to provide full access to public records, to protect public records from damage and disorganization, to prevent excessive disruption of its essential functions, to provide assistance and information upon request and to insure efficient and timely action in response to application for inspection, and such rules and regulations shall include, but shall not be limited to:
 - (a) The principal office of the public agency and its regular office hours;
 - (b) The title and address of the official custodian of the public agency's records;

- (c) The fees, to the extent authorized by KRS 61.874 or other statute, charged for copies;
- (d) The procedures to be followed in requesting public records.
- (2) Each public agency shall display a copy of its rules and regulations pertaining to public records in a prominent location accessible to the public.
- (3) The Finance and Administration Cabinet may promulgate uniform rules and regulations for all state administrative agencies.

KRS 61.878 Certain public records exempted from inspection except on order of court
-Restriction of state employees to inspect personnel files prohibited.

- (1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:
 - (a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;
 - (b) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the disclosure or publication of which is directed by another statute;
 - (c)
 1. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;
 2. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:
 - a. In conjunction with an application for or the administration of a loan or grant;
 - b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;
 - c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or
 - d. For the grant or review of a license to do business.
 3. The exemptions provided for in subparagraphs 1. and 2. of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;
 - (d) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;
 - (e) Public records which are developed by an agency in conjunction with the regulation or supervision of financial institutions, including but not limited to, banks, savings and loan associations, and credit unions, which disclose the agency's internal examining or audit criteria and related analytical methods;
 - (f) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;
 - (g) Test questions, scoring keys, and other examination data used to administer a licensing

examination, examination for employment, or academic examination before the exam is given or if it is to be given again;

- (h) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;
- (i) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;
- (j) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;
- (k) All public records or information the disclosure of which is prohibited by federal law or regulation;
- (l) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly;
- (m)
 1. Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:
 - a. Criticality lists resulting from consequence assessments;
 - b. Vulnerability assessments;
 - c. Antiterrorism protective measures and plans;
 - d. Counterterrorism measures and plans;
 - e. Security and response needs assessments;
 - f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;
 - g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency; and
 - h. Records when their disclosure will expose a vulnerability referred to in this subparagraph and that describe the exact physical location of hazardous chemical, radiological, or biological materials.
 2. As used in this paragraph, "terrorist act" means a criminal act intended to:
 - a. Intimidate or coerce a public agency or all or part of the civilian population;
 - b. Disrupt a system identified in subparagraph 1.f. of this paragraph; or
 - c. Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.
 3. On the same day that a public agency denies a request to inspect a public record for a reason identified in this paragraph, that public agency shall forward a copy of the written denial of the request, referred to in KRS 61.880(1), to the executive director of the

Kentucky Office of Homeland Security and the Attorney General.

4. Nothing in this paragraph shall affect the obligations of a public agency with respect to disclosure and availability of public records under state environmental, health, and safety programs.
 5. The exemption established in this paragraph shall not apply when a member of the Kentucky General Assembly seeks to inspect a public record identified in this paragraph under the Open Records Law;
- (n) Public or private records, including books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, having historic, literary, artistic, or commemorative value accepted by the archivist of a public university, museum, or government depository from a donor or depositor other than a public agency. This exemption shall apply to the extent that nondisclosure is requested in writing by the donor or depositor of such records, but shall not apply to records the disclosure or publication of which is mandated by another statute or by federal law.
- (o) Records of a procurement process under KRS Chapter 45A or 56. This exemption shall not apply after:
1. A contract is awarded; or
 2. The procurement process is canceled without award of a contract and there is a determination that the contract will not be resolicited; and
- (p) Communications of a purely personal nature unrelated to any governmental function.
- (2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.
- (3) No exemption in this section shall be construed to deny, abridge, or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him. The records shall include, but not be limited to, work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, layoffs, disciplinary actions, examination scores, and preliminary and other supporting documentation. A public agency employee, including university employees, applicant, or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.
- (4) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.
- (5) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.

KRS 61.880 Denial of inspection - Role of Attorney General.

- (1) If a person enforces KRS 61.870 to 61.884 pursuant to this section, he shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section. Each public agency, upon any request for records made under KRS 61.870 to 61.884, shall determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the three (3) day period, of its decision. An agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his authority, and it shall constitute final agency action.
- (2) (a) If a complaining party wishes the Attorney General to review a public agency's denial of

a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection. If the public agency refuses to provide a written response, a complaining party shall provide a copy of the written request. The Attorney General shall review the request and denial and issue within twenty (20) days, excepting Saturdays, Sundays and legal holidays, a written decision stating whether the agency violated provisions of KRS 61.870 to 61.884.

(b) In unusual circumstances, the Attorney General may extend the twenty (20) day time limit by sending written notice to the complaining party and a copy to the denying agency, setting forth the reasons for the extension, and the day on which a decision is expected to be issued, which shall not exceed an additional thirty (30) work days, excepting Saturdays, Sundays, and legal holidays. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper resolution of an appeal:

1. The need to obtain additional documentation from the agency or a copy of the records involved;
2. The need to conduct extensive research on issues of first impression; or
3. An unmanageable increase in the number of appeals received by the Attorney General.

(c) On the day that the Attorney General renders his decision, he shall mail a copy to the agency and a copy to the person who requested the record in question. The burden of proof in sustaining the action shall rest with the agency, and the Attorney General may request additional documentation from the agency for substantiation. The Attorney General may also request a copy of the records involved but they shall not be disclosed.

(3) Each agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding the enforcement of KRS 61.870 to 61.884. The Attorney General shall not, however, be named as a party in any Circuit Court actions regarding the enforcement of KRS 61.870 to 61.884, nor shall he have any duty to defend his decision in Circuit Court or any subsequent proceedings.

(4) If a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees or the misdirection of the applicant, the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.

(5) (a) A party shall have thirty (30) days from the day that the Attorney General renders his decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under KRS 61.882.

(b) If an appeal is not filed within the thirty (30) day time limit, the Attorney General's decision shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained.

KRS 61.882 Jurisdiction of Circuit Court in action seeking right of inspection - Burden of proof - Costs - Attorney fees.

(1) The Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained shall have jurisdiction to enforce the provisions of KRS 61.870 to 61.884, by injunction or other appropriate order on application of any person.

(2) A person alleging a violation of the provisions of KRS 61.870 to 61.884 shall not have to exhaust his remedies under KRS 61.880 before filing suit in a Circuit Court.

(3) In an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the court shall determine the matter de novo. In an original action or an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the burden of proof shall be on the public agency. The court on its own motion,

or on motion of either of the parties, may view the records in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

- (4) Except as otherwise provided by law or rule of court, proceedings arising under this section take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.
- (5) Any person who prevails against any agency in any action in the courts regarding a violation of KRS 61.870 to 61.884 may, upon a finding that the records were willfully withheld in violation of KRS 61.870 to 61.884, be awarded costs, including reasonable attorney's fees, incurred in connection with the legal action. If such person prevails in part, the court may in its discretion award him costs or an appropriate portion thereof. In addition, it shall be within the discretion of the court to award the person an amount not to exceed twenty-five dollars (\$25) for each day that he was denied the right to inspect or copy said public record. Attorney's fees, costs, and awards under this subsection shall be paid by the agency that the court determines is responsible for the violation.

KRS 61.884 Person's access to record relating to him.

Any person shall have access to any public record relating to him or in which he is mentioned by name, upon presentation of appropriate identification, subject to the provisions of KRS 61.878.

KRS 61.168 Body-worn cameras and video and audio recordings -- Disclosure, retention, and availability for viewing governed by KRS 61.870 to 61.884 and 171.410 to 171.740 -- Exceptions.

(1) As used in this section:

- (a) "Body-worn camera" means a video or audio electronic recording device that is carried by or worn on the body of a public safety officer. This definition does not include a dashboard mounted camera or recording device used in the course of clandestine investigations;
- (b) "Body-worn camera recording" or "recording" means a video or audio recording, or both, that is made by a body-worn camera during the course of a public safety officer's official duties;
- (c) "Personal representative" means a court-appointed guardian, attorney, or agent possessing written authorization to act on behalf of a person that is involved in an incident contained in a body-worn camera recording, a person holding a power of attorney for a person that is involved in an incident contained in a body-worn camera recording, or the parent or guardian of a minor child depicted in a body-worn camera recording. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person, the deceased person's surviving spouse, parent, or adult child, the deceased person's attorney, or the parent or guardian of a surviving minor child of the deceased;
- (d) "Public agency" has the same meaning as in KRS 61.870(1);
- (e) "Public safety officer" means any individual that is an employee of a public agency who is certified as a first responder under KRS Chapter 311A or whose employment duties include law enforcement or firefighting activities; and
- (f) "Use of force" means any action by a public safety officer that results in death, physical injury as defined in KRS 500.080(13), discharge of a personal body weapon, chemical agent, impact weapon, extended range impact weapon, sonic weapon, sensory weapon, conducted energy weapon, or a firearm, or involves the intentional pointing of a public safety officer's firearm at a member of the public.

(2) Except as provided in this section, the disclosure of body-worn camera recordings shall be governed by the Kentucky Open Records Act, as set forth in KRS 61.870 to 61.884.

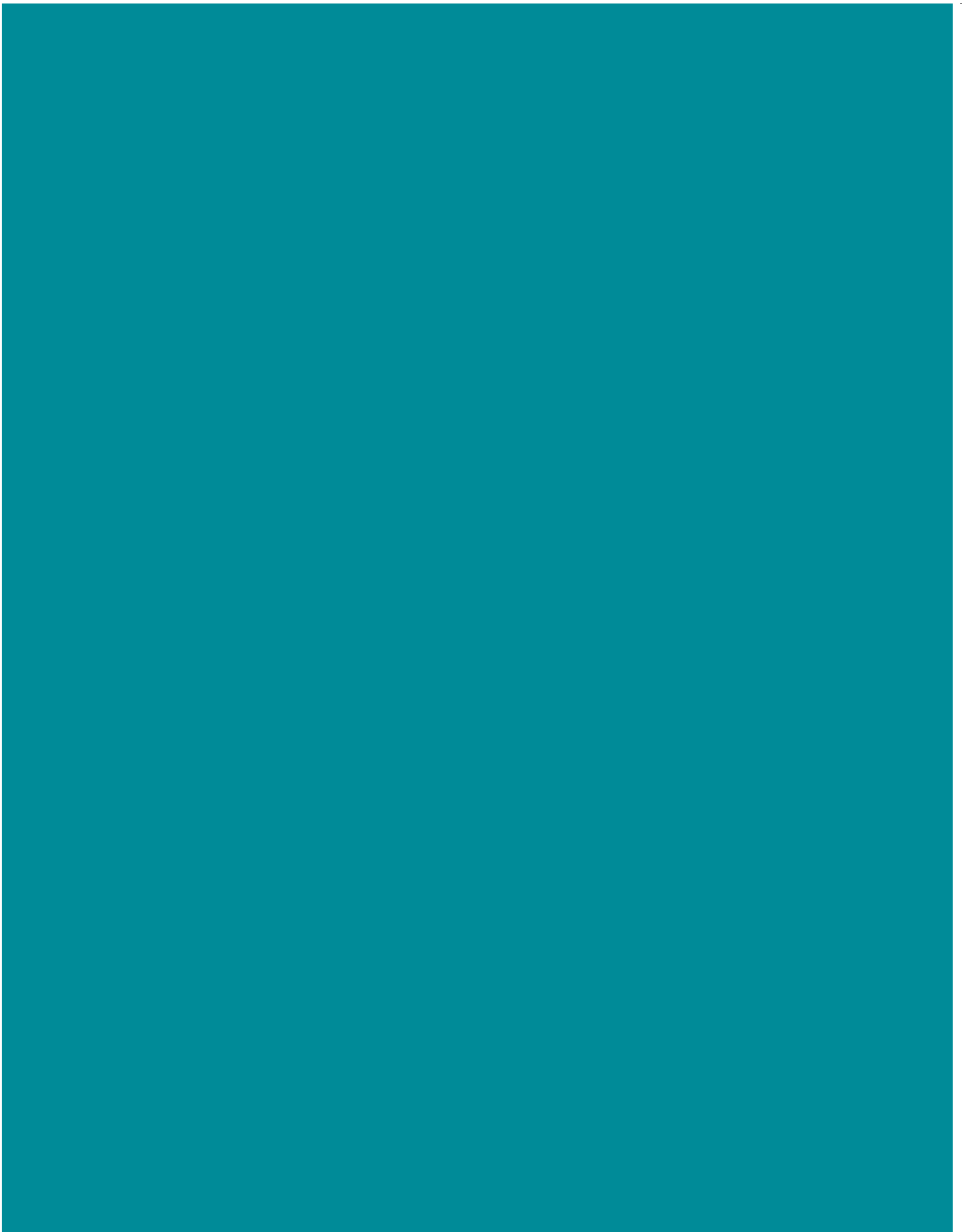
(3) The retention of body-worn camera video recordings shall be governed by KRS 171.410 to 171.740, and the administrative regulations promulgated by the Kentucky Department of

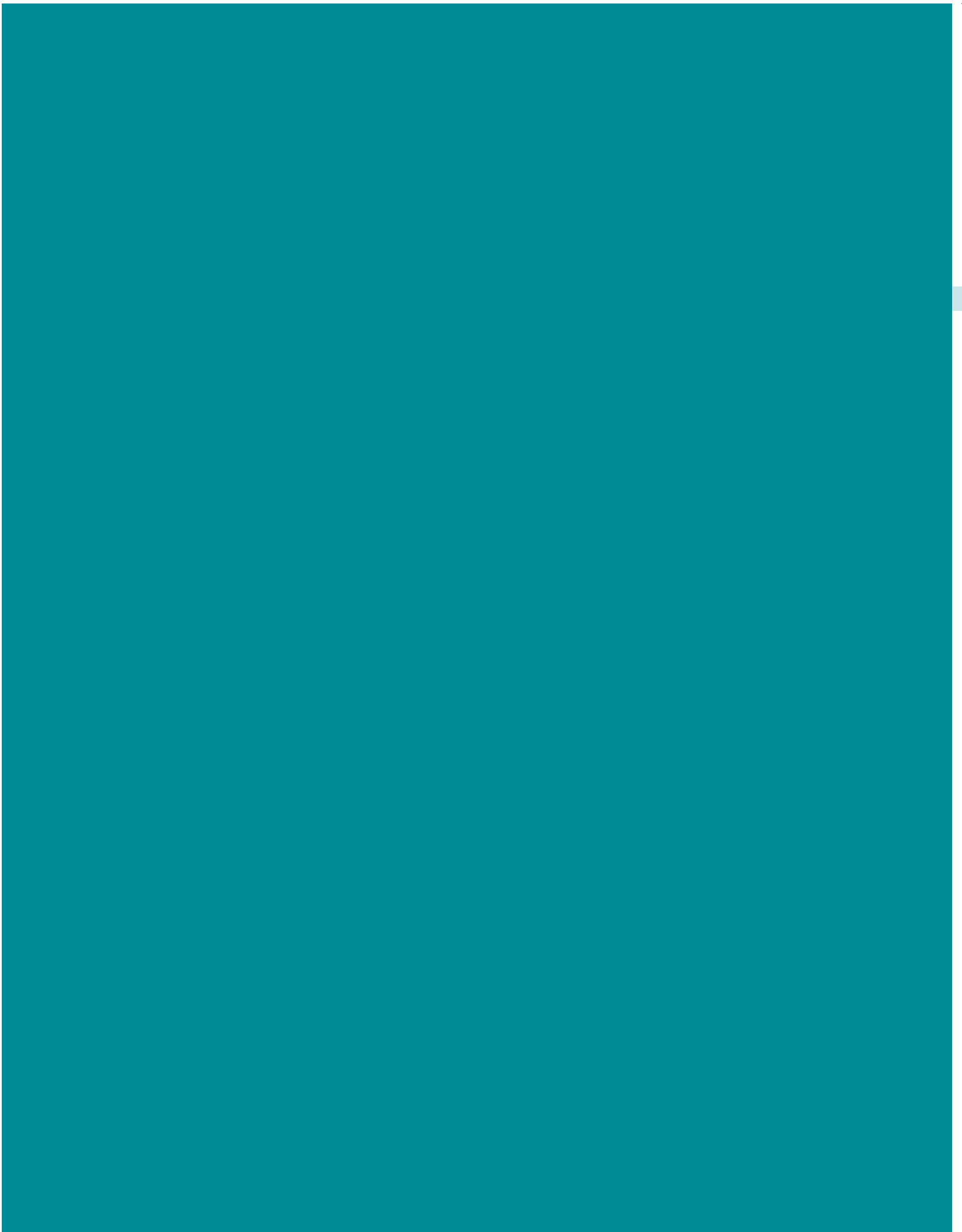
Libraries and Archives.

- (4) Notwithstanding KRS 61.878(4), unless the request meets the criteria provided under subsection (5) of this section, a public agency may elect not to disclose bodyworn camera recordings containing video or audio footage that:
- (a) Includes the interior of a place of a private residence where there is a reasonable expectation of privacy, unless the legal owner or lessee with legal possession of the residence requests in writing that the release be governed solely under the provisions of KRS 61.870 to 61.884;
 - (b) Includes the areas inside of a medical facility, counseling, or therapeutic program office where a patient is registered to receive treatment, receiving treatment, waiting for treatment, or being transported in the course of treatment;
 - (c) Would disclose health care information shared with patients, their families, or with a patient's care team or that is considered protected health information under the Health Insurance Portability and Accountability Act of 1996;
 - (d) Includes the areas inside of a correctional facility when disclosure would reveal details of the facility that would jeopardize the safety, security, or wellbeing of those in custody, the staff of the correctional facility, or law enforcement officers;
 - (e) Is of a sexual nature or video footage that contains nude images of an individual's genitals, pubic area, anus, or the female nipple;
 - (f) Is of a minor child, including but not limited to footage involving juvenile custody matters;
 - (g) Includes the body of a deceased individual;
 - (h) Would reveal the identity of witnesses, confidential law enforcement informants, or undercover law enforcement officers, or if the release could jeopardize the safety, security, or well-being of a witness or confidential informant;
 - (i) Would reveal the location information of a domestic violence program or emergency shelter;
 - (j) Would reveal information related to schools, colleges, and universities that is protected by the federal Family Educational Rights and Privacy Act;
 - (k) Would result in the disclosure of nonpublic or confidential data classified as Criminal Justice Information Services data by the Federal Bureau of Investigation;
 - (l) Includes a public safety officer carrying out duties directly related to the hospitalization of persons considered mentally ill;
 - (m) Includes the depiction of the serious injury or death of a public safety officer; or
 - (n) Includes footage made in conjunction with a law enforcement exercise that includes special response team actions, hostage negotiations, or training events, but only where the public release of tactics, operational protocol, or methodology would disadvantage the capability of public safety officers to successfully respond in emergency or other dangerous situations.
- (5) If the recording contains video or audio footage that:
- (a) Depicts an encounter between a public safety officer where there is a use of force, the disclosure of the record shall be governed solely by the provisions of KRS 61.870 to 61.884, including all of the exceptions contained therein;
 - (b) Depicts an incident which leads to the detention or arrest of an individual or individuals, the disclosure of the record shall be governed solely by the provisions of KRS 61.870 to 61.884, including all of the exceptions contained therein;
 - (c) Depicts an incident which is the subject of a formal complaint submitted against a public safety officer under KRS 15.520, 67C.326, or 95.450, or depicts an incident which is the subject of a formal legal or administrative complaint against the agency employing the public safety officer, the release of the record shall be governed by the provisions of KRS 61.870 to 61.884, including all of the exceptions contained therein; or
 - (d) Is requested by a person or other entity or the personal representative of a person or entity that is directly involved in the incident contained in the bodyworn camera recording, it shall be made available by the public agency to the requesting party for viewing on the premises

of the public agency, but the public agency shall not be required to make a copy of the recording except as provided in KRS 61.169. The requesting parties shall not be limited in the number of times they may view the recording under this paragraph.

- (6) Nothing in this section or KRS 61.169 shall be interpreted to override any provision related to:
- (a) Reports by law enforcement officers and criminal justice agencies under KRS 17.150;
 - (b) The law and rules governing discovery or the submission and display of evidence in any court proceeding, whether criminal or civil, or any administrative proceeding; or
 - (c) The provisions of KRS 189A.100.





CHAPTER 4 MANDATORY REPORTING, INFORMATION, & SCHOOL REQUIREMENTS

Note: A summary of Kentucky's mandatory reporting laws is included in Chapter 7, Sections D and E.

A. CHILD ABUSE, NEGLECT, AND EXPLOITATION

1. *Reporting and Investigation Standards*

KRS 600.020 Definitions for KRS Chapters 600 to 645. *(excerpts only)*

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

- (1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when:
- (a) His or her parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person exercising custodial control or supervision of the child:
 1. Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
 2. Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
 3. Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005;
 4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
 5. Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
 6. Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
 7. Abandons or exploits the child;
 8. Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child; or
 9. Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) cumulative months out of forty-eight (48) months; or
 - (b) A person twenty-one (21) years of age or older commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon a child less than sixteen (16) years of age;

...
(9) "Child" means any person who has not reached his or her eighteenth birthday, unless otherwise provided;

...
(20) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;

...
(26) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his or her age, development, culture, and environment as testified to by a qualified mental health professional;

...
(42) "Nonoffender" means a child alleged to be dependent, neglected, or abused and who has not been otherwise charged with a status or public offense;

(43) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;

(44) "Nonsecure setting" means a nonsecure facility or a residential home, including a child's own home, where a child may be temporarily placed pending further court action. Children before the court in a county that is served by a state operated secure detention facility, who are in the detention custody of the Department of Juvenile Justice, and who are placed in a nonsecure alternative by the Department of Juvenile Justice, shall be supervised by the Department of Juvenile Justice;

...
(46) "Parent" means the biological or adoptive mother or father of a child;

(47) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

...
(49) "Physical injury" means substantial physical pain or any impairment of physical condition;

...
(60) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;

(61) "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions in which the parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person having custodial control or supervision of the child or responsibility for his or her welfare, uses or allows, permits, or encourages the use of the child for purposes of the sexual stimulation of the perpetrator or another person;

(62) "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person having custodial control or supervision of a child or responsible for his or her welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person having custodial control or supervision of a child or responsible for his or her welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;

(63) "Social service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who

has been approved by the cabinet to provide, under its supervision, services to families and children;

KRS 620.010 Legislative purpose.

In addition to the purposes set forth in KRS 600.010, this chapter shall be interpreted to effectuate the following express legislative purposes regarding the treatment of dependent, neglected and abused children. Children have certain fundamental rights which must be protected and preserved, including but not limited to, the rights to adequate food, clothing and shelter; the right to be free from physical, sexual or emotional injury or exploitation; the right to develop physically, mentally, and emotionally to their potential; and the right to educational instruction and the right to a secure, stable family. It is further recognized that upon some occasions, in order to protect and preserve the rights and needs of children, it is necessary to remove a child from his or her parents.

KRS 620.020 Definitions for chapter.

The definitions in KRS Chapter 600 shall apply to this chapter. In addition, as used in this chapter, unless the context requires otherwise:

- (1) "Case permanency plan" means a document identifying decisions made by the cabinet, for both the biological family and the child, concerning action which needs to be taken to assure that the child in foster care expeditiously obtains a permanent home;
- (2) "Case progress report" means a written record of goals that have been achieved in the case of a child;
- (3) "Case record" means a cabinet file of specific documents and a running record of activities pertaining to the child;
- (4) "Children's advocacy center" means an agency that advocates on behalf of children alleged to have been abused; that assists in the coordination of the investigation of child abuse by providing a location for forensic interviews and medical examinations, and by promoting the coordination of services for children alleged to have been abused; and that provides, directly or by formalized agreements, services that include, but are not limited to, forensic interviews, medical examinations, mental health and related support services, court advocacy, consultation, training, and staffing of multidisciplinary teams;
- (5) "Foster care" means the provision of temporary twenty-four (24) hour care for a child for a planned period of time when the child is:
 - (a) Removed from his parents or person exercising custodial control or supervision and subsequently placed in the custody of the cabinet; and
 - (b) Placed in a foster home or private child-caring facility or child-placing agency but remains under the supervision of the cabinet;
- (6) "Local citizen foster care review board" means a citizen board which provides periodic permanency reviews of children placed in the custody of the cabinet by a court order of temporary custody or commitment under this chapter;
- (7) "Multidisciplinary teams" means local teams operating under protocols governing roles, responsibilities, and procedures developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse pursuant to KRS 431.600;
- (8) "Pediatric abusive head trauma" means the various injuries or conditions that may result following the vigorous shaking, slamming, or impacting the head of an infant or young child. These injuries or conditions, also known as pediatric acquired abusive head trauma, have in the past been called "Shaken Baby Syndrome" or "Shaken Infant Syndrome." Pediatric abusive head trauma injuries or conditions have included but are not limited to the following:
 - (a) Irreversible brain damage;
 - (b) Blindness;
 - (c) Retinal hemorrhage;
 - (d) Eye damage;

- (e) Cerebral palsy;
 - (f) Hearing loss;
 - (g) Spinal cord injury;
 - (h) Paralysis;
 - (i) Seizures;
 - (j) Learning disability;
 - (k) Death;
 - (l) Central nervous system injury as evidenced by central nervous system hemorrhaging;
 - (m) Closed head injury;
 - (n) Rib fracture; and
 - (o) Subdural hematoma;
- (9) "Permanence" means a relationship between a child and an adult which is intended to last a lifetime, providing commitment and continuity in the child's relationships and a sense of belonging;
- (10) "Preventive services" means those services which are designed to help maintain and strengthen the family unit by preventing or eliminating the need for removal of children from the family;
- (11) "Reasonable efforts" means the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community in accordance with the state plan for Public Law 96-272 which are necessary to enable the child to safely live at home;
- (12) "Reunification services" means remedial and preventive services which are designed to strengthen the family unit, to secure reunification of the family and child where appropriate, as quickly as practicable, and to prevent the future removal of the child from the family; and
- (13) "State citizen foster care review board" means a board created by KRS 620.310.

KRS 620.023 Evidence to be considered in determining the best interest of a child.

- (1) Evidence of the following circumstances if relevant shall be considered by the court in all proceedings conducted pursuant to KRS Chapter 620 in which the court is required to render decisions in the best interest of the child:
- (a) Mental illness as defined in KRS 202A.011 or an intellectual disability as defined in KRS 202B.010 of the parent, as attested to by a qualified mental health professional, which renders the parent unable to care for the immediate and ongoing needs of the child;
 - (b) Acts of abuse or neglect as defined in KRS 600.020 toward any child;
 - (c) Alcohol and other drug abuse, as defined in KRS 222.005, that results in an incapacity by the parent or caretaker to provide essential care and protection for the child;
 - (d) A finding of domestic violence and abuse as defined in KRS 403.720, whether or not committed in the presence of the child;
 - (e) Any other crime committed by a parent which results in the death or permanent physical or mental disability of a member of that parent's family or household; and
 - (f) The existence of any guardianship or conservatorship of the parent pursuant to a determination of disability or partial disability as made under KRS 387.500 to 387.770 and 387.990.
- (2) In determining the best interest of the child, the court may consider the effectiveness of rehabilitative efforts made by the parent or caretaker intended to address circumstances in this section.

KRS 620.029 Duties of cabinet relating to children who are victims of human trafficking.

- (1) In order to provide the most effective treatment for children who are victims of human trafficking, as defined in KRS 529.010, the cabinet shall:
- (a) Investigate a report alleging a child is a victim of human trafficking pursuant to KRS

620.030(3);

- (b) Provide or ensure the provision of appropriate treatment, housing, and services consistent with the status of the child as a victim of human trafficking; and
 - (c) Proceed in the case in accordance with applicable statutes governing cases involving dependency, neglect, or abuse regardless of whether the person believed to have caused the human trafficking of the child is a parent, guardian, or person exercising custodial control or supervision.
- (2) In order to effectuate the requirements of this section, the cabinet shall:
- (a) Consult with agencies serving victims of human trafficking to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, services, temporary and long-term placement of these children, training of staff, the designation of specific staff, and collaboration with service providers and law enforcement; and
 - (b) By November 1 of each year, beginning in 2013, submit to the Legislative Research Commission a comprehensive report detailing the number of reports the cabinet has received regarding child victims of human trafficking, the number of reports in which the cabinet has investigated and determined that a child is the victim of human trafficking, and the number of cases in which services were provided.

KRS 620.030 Duty to report dependency, neglect, abuse, or human trafficking.

- (1) Any person who knows or has reasonable cause to believe that a child is dependent, neglected, or abused shall immediately cause an oral or written report to be made to a local law enforcement agency or the Department of Kentucky State Police; the cabinet or its designated representative; the Commonwealth's attorney or the county attorney; by telephone or otherwise. Any supervisor who receives from an employee a report of suspected dependency, neglect, or abuse shall promptly make a report to the proper authorities for investigation. If the cabinet receives a report of abuse or neglect allegedly committed by a person other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall refer the matter to the Commonwealth's attorney or the county attorney and the local law enforcement agency or the Department of Kentucky State Police. Nothing in this section shall relieve individuals of their obligations to report.
- (2) Any person, including but not limited to a physician, osteopathic physician, nurse, teacher, school personnel, social worker, coroner, medical examiner, child-caring personnel, resident, intern, chiropractor, dentist, optometrist, emergency medical technician, paramedic, health professional, mental health professional, peace officer, or any organization or agency for any of the above, who knows or has reasonable cause to believe that a child is dependent, neglected, or abused, regardless of whether the person believed to have caused the dependency, neglect, or abuse is a parent, guardian, person exercising custodial control or supervision, or another person, or who has attended such child as a part of his or her professional duties shall, if requested, in addition to the report required in subsection (1) or (3) of this section, file with the local law enforcement agency or the Department of Kentucky State Police or the Commonwealth's or county attorney, the cabinet or its designated representative within forty-eight (48) hours of the original report a written report containing:
- (a) The names and addresses of the child and his or her parents or other persons exercising custodial control or supervision;
 - (b) The child's age;
 - (c) The nature and extent of the child's alleged dependency, neglect, or abuse, including any previous charges of dependency, neglect, or abuse, to this child or his or her siblings;
 - (d) The name and address of the person allegedly responsible for the abuse or neglect; and
 - (e) Any other information that the person making the report believes may be helpful in the

furtherance of the purpose of this section.

- (3) Any person who knows or has reasonable cause to believe that a child is a victim of human trafficking as defined in KRS 529.010 shall immediately cause an oral or written report to be made to a local law enforcement agency or the Department of Kentucky State Police; or the cabinet or its designated representative; or the Commonwealth's attorney or the county attorney; by telephone or otherwise. This subsection shall apply regardless of whether the person believed to have caused the human trafficking of the child is a parent, guardian, or person exercising custodial control or supervision.
- (4) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.
- (5) The cabinet upon request shall receive from any agency of the state or any other agency, institution, or facility providing services to the child or his or her family, such cooperation, assistance, and information as will enable the cabinet to fulfill its responsibilities under KRS 620.030, 620.040, and 620.050.
- (6) Any person who intentionally violates the provisions of this section shall be guilty of a:
 - (a) Class B misdemeanor for the first offense;
 - (b) Class A misdemeanor for the second offense; and
 - (c) Class D felony for each subsequent offense.

KRS 620.040 Duties of prosecutor, police, and cabinet -- Prohibition as to school personnel -- Multidisciplinary teams.

- (1)
 - (a) Upon receipt of a report alleging abuse or neglect by a parent, guardian, or person exercising custodial control or supervision, pursuant to KRS 620.030(1) or (2), or a report alleging a child is a victim of human trafficking pursuant to KRS 620.030(3), the recipient of the report shall immediately notify the cabinet or its designated representative, the local law enforcement agency or the Department of Kentucky State Police, and the Commonwealth's or county attorney of the receipt of the report unless they are the reporting source.
 - (b) Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk determined, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse or human trafficking of a child shall be considered high risk and shall not be referred to any other community agency.
 - (c) The cabinet shall, within seventy-two (72) hours, exclusive of weekends and holidays, make a written report to the Commonwealth's or county attorney and the local enforcement agency or the Department of Kentucky State Police concerning the action that has been taken on the investigation.
 - (d) If the report alleges abuse or neglect by someone other than a parent, guardian, or person exercising custodial control or supervision, or the human trafficking of a child, the cabinet shall immediately notify the Commonwealth's or county attorney and the local law enforcement agency or the Department of Kentucky State Police.
- (2)
 - (a) Upon receipt of a report alleging dependency pursuant to KRS 620.030(1) and (2), the recipient shall immediately notify the cabinet or its designated representative.
 - (b) Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk, the cabinet shall investigate the allegation or accept the report for an assessment

of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse or human trafficking of a child shall be considered high risk and shall not be referred to any other community agency.

- (c) The cabinet need not notify the local law enforcement agency or the Department of Kentucky State Police or county attorney or Commonwealth's attorney of reports made under this subsection unless the report involves the human trafficking of a child, in which case the notification shall be required.
- (3) If the cabinet or its designated representative receives a report of abuse by a person other than a parent, guardian, or other person exercising custodial control or supervision of a child, it shall immediately notify the local law enforcement agency or the Department of Kentucky State Police and the Commonwealth's or county attorney of the receipt of the report and its contents, and they shall investigate the matter. The cabinet or its designated representative shall participate in an investigation of noncustodial physical abuse or neglect at the request of the local law enforcement agency or the Department of Kentucky State Police. The cabinet shall participate in all investigations of reported or suspected sexual abuse or human trafficking of a child.
- (4) School personnel or other persons listed in KRS 620.030(2) do not have the authority to conduct internal investigations in lieu of the official investigations outlined in this section.
- (5) (a) If, after receiving the report, the law enforcement officer, the cabinet, or its designated representative cannot gain admission to the location of the child, a search warrant shall be requested from, and may be issued by, the judge to the appropriate law enforcement official upon probable cause that the child is dependent, neglected, or abused. If, pursuant to a search under a warrant, a child is discovered and appears to be in imminent danger, the child may be removed by the law enforcement officer.
- (b) If a child who is in a hospital or under the immediate care of a physician appears to be in imminent danger if he or she is returned to the persons having custody of him or her, the physician or hospital administrator may hold the child without court order, provided that a request is made to the court for an emergency custody order at the earliest practicable time, not to exceed seventy-two (72) hours.
- (c) Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person exercising custodial control or supervision if there exist reasonable grounds for the officer to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused, or is a victim of human trafficking and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child. The officer or the person to whom the officer entrusts the child shall, within twelve (12) hours of taking the child into protective custody, request the court to issue an emergency custody order.
- (d) When a law enforcement officer, hospital administrator, or physician takes a child into custody without the consent of the parent or other person exercising custodial control or supervision, he or she shall provide written notice to the parent or other person stating the reasons for removal of the child. Failure of the parent or other person to receive notice shall not, by itself, be cause for civil or criminal liability.
- (6) To the extent practicable and when in the best interest of a child alleged to have been abused, interviews with the child shall be conducted at a children's advocacy center.
- (7) (a) One (1) or more multidisciplinary teams may be established in every county or group of contiguous counties.
- (b) Membership of the multidisciplinary team shall include but shall not be limited to social service workers employed by the Cabinet for Health and Family Services and law enforcement officers. Additional team members may include Commonwealth's and county attorneys, children's advocacy center staff, mental health professionals, medical

professionals, victim advocates including advocates for victims of human trafficking, educators, and other related professionals, as deemed appropriate.

- (c) The multidisciplinary team shall review child sexual abuse cases and child human trafficking cases involving commercial sexual activity referred by participating professionals, including those in which the alleged perpetrator does not have custodial control or supervision of the child or is not responsible for the child's welfare. The purpose of the multidisciplinary team shall be to review investigations, assess service delivery, and to facilitate efficient and appropriate disposition of cases through the criminal justice system.
- (d) The team shall hold regularly scheduled meetings if new reports of sexual abuse or child human trafficking cases involving commercial sexual activity are received or if active cases exist. At each meeting, each active case shall be presented and the agencies' responses assessed.
- (e) The multidisciplinary team shall provide an annual report to the public of nonidentifying case information to allow assessment of the processing and disposition of child sexual abuse cases and child human trafficking cases involving commercial sexual activity.
- (f) Multidisciplinary team members and anyone invited by the multidisciplinary team to participate in a meeting shall not divulge case information, including information regarding the identity of the victim or source of the report. Team members and others attending meetings shall sign a confidentiality statement that is consistent with statutory prohibitions on disclosure of this information.
- (g) The multidisciplinary team shall, pursuant to KRS 431.600 and 431.660, develop a local protocol consistent with the model protocol issued by the Kentucky Multidisciplinary Commission on Child Sexual Abuse. The local team shall submit the protocol to the commission for review and approval.
- (h) The multidisciplinary team review of a case may include information from reports generated by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case, KRS 610.320 to KRS 610.340 notwithstanding.
- (i) To the extent practicable, multidisciplinary teams shall be staffed by the local children's advocacy center.

KRS 620.050 Immunity for good faith actions or reports -- Investigations -- Confidentiality of reports -- Exceptions -- Parent's access to records -- Sharing of information by children's advocacy centers -- Confidentiality of interview with child -- Exceptions -- Confidentiality of identifying information regarding reporting individual -- Internal review and report - Waiver - Medical diagnostic procedures - Sharing information with relatives.

- (1) Anyone acting upon reasonable cause in the making of a report or acting under KRS 620.030 to 620.050 in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action. However, any person who knowingly makes a false report and does so with malice shall be guilty of a Class A misdemeanor.
- (2) Any employee or designated agent of a children's advocacy center shall be immune from any civil liability arising from performance within the scope of the person's duties as provided in KRS 620.030 to 620.050. Any such person shall have the same immunity with respect to participation in any judicial proceeding. Nothing in this subsection shall limit liability for negligence. Upon the request of an employee or designated agent of a children's advocacy center, the Attorney General shall provide for the defense of any civil action brought against the employee or designated agent as provided under KRS 12.211 to 12.215.
- (3) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof,

in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.

- (4) Upon receipt of a report of an abused, neglected, or dependent child pursuant to this chapter, the cabinet as the designated agency or its delegated representative shall initiate a prompt investigation or assessment of family needs, take necessary action, and shall offer protective services toward safeguarding the welfare of the child. The cabinet shall work toward preventing further dependency, neglect, or abuse of the child or any other child under the same care, and preserve and strengthen family life, where possible, by enhancing parental capacity for adequate child care.
- (5) The report of suspected child abuse, neglect, or dependency and all information obtained by the cabinet or its delegated representative, as a result of an investigation or assessment made pursuant to this chapter, except for those records provided for in subsection (6) of this section, shall not be divulged to anyone except:
 - (a) Persons suspected of causing dependency, neglect, or abuse;
 - (b) The custodial parent or legal guardian of the child alleged to be dependent, neglected, or abused;
 - (c) Persons within the cabinet with a legitimate interest or responsibility related to the case;
 - (d) A licensed child-caring facility or child-placing agency evaluating placement for or serving a child who is believed to be the victim of an abuse, neglect, or dependency report;
 - (e) Other medical, psychological, educational, or social service agencies, child care administrators, corrections personnel, or law enforcement agencies, including the county attorney's office, the coroner, and the local child fatality response team, that have a legitimate interest in the case;
 - (f) A noncustodial parent when the dependency, neglect, or abuse is substantiated;
 - (g) Members of multidisciplinary teams as defined by KRS 620.020 and which operate pursuant to KRS 431.600;
 - (h) Employees or designated agents of a children's advocacy center;
 - (i) Those persons so authorized by court order; or
 - (j) The external child fatality and near fatality review panel established by KRS 620.055.
- (6) (a) Files, reports, notes, photographs, records, electronic and other communications, and working papers used or developed by a children's advocacy center in providing services under this chapter are confidential and shall not be disclosed except to the following persons:
 1. Staff employed by the cabinet, law enforcement officers, and Commonwealth's and county attorneys who are directly involved in the investigation or prosecution of the case, including a cabinet investigation or assessment of child abuse, neglect, and dependency in accordance with this chapter;
 2. Medical and mental health professionals listed by name in a release of information signed by the guardian of the child, provided that the information shared is limited to that necessary to promote the physical or psychological health of the child or to treat the child for abuse-related symptoms;
 3. The court and those persons so authorized by a court order;
 4. The external child fatality and near fatality review panel established by KRS 620.055; and
 5. The parties to an administrative hearing conducted by the cabinet or its designee in accordance with KRS Chapter 13B in an appeal of a cabinet substantiated finding of abuse or neglect. The children's advocacy center may, in its sole discretion, provide testimony in lieu of files, reports, notes, photographs, records, electronic and other communications, and working papers used or developed by the center if the center determines that the release poses a threat to the safety or well-being of the child, or would be in the best interests of the child. Following the administrative hearing and

any judicial review, the parties to the administrative hearing shall return all files, reports, notes, photographs, records, electronic and other communications, and working papers used or developed by the children's advocacy center to the center.

- (b) The provisions of this subsection shall not be construed as to contravene the Rules of Criminal Procedure relating to discovery.
- (7) Nothing in this section shall prohibit a parent or guardian from accessing records for his or her child providing that the parent or guardian is not currently under investigation by a law enforcement agency or the cabinet relating to the abuse or neglect of a child.
- (8) Nothing in this section shall prohibit employees or designated agents of a children's advocacy center from disclosing information during a multidisciplinary team review of a child sexual abuse case as set forth under KRS 620.040. Persons receiving this information shall sign a confidentiality statement consistent with statutory prohibitions on disclosure of this information.
- (9) Employees or designated agents of a children's advocacy center may confirm to another children's advocacy center that a child has been seen for services. If an information release has been signed by the guardian of the child, a children's advocacy center may disclose relevant information to another children's advocacy center.
- (10) (a) An interview of a child recorded at a children's advocacy center shall not be duplicated, except that the Commonwealth's or county attorney prosecuting the case may:
1. Make and retain one (1) copy of the interview; and
 2. Make one (1) copy for the defendant's or respondent's counsel that the defendant's or respondent's counsel shall not duplicate.
- (b) The defendant's or respondent's counsel shall file the copy with the court clerk at the close of the case.
- (c) Unless objected to by the victim or victims, the court, on its own motion, or on motion of the attorney for the Commonwealth shall order all recorded interviews that are introduced into evidence or are in the possession of the children's advocacy center, law enforcement, the prosecution, or the court to be sealed.
- (d) The provisions of this subsection shall not be construed as to contravene the Rules of Criminal Procedure relating to discovery.
- (11) Identifying information concerning the individual initiating the report under KRS 620.030 shall not be disclosed except:
- (a) To law enforcement officials that have a legitimate interest in the case;
 - (b) To the agency designated by the cabinet to investigate or assess the report;
 - (c) To members of multidisciplinary teams as defined by KRS 620.020 that operated under KRS 431.600
 - (d) Under a court order, after the court has conducted an in camera review of the record of the state related to the report and has found reasonable cause to believe that the reporter knowingly made a false report; or
 - (e) The external child fatality and near fatality review panel established by KRS 620.055.
- (12) (a) Information may be publicly disclosed by the cabinet in a case where child abuse or neglect has resulted in a child fatality or near fatality.
- (b) The cabinet shall conduct an internal review of any case where child abuse or neglect has resulted in a child fatality or near fatality and the cabinet had prior involvement with the child or family. The cabinet shall prepare a summary that includes an account of:
1. The cabinet's actions and any policy or personnel changes taken or to be taken, including the results of appeals, as a result of the findings from the internal review; and
 2. Any cooperation, assistance, or information from any agency of the state or any other agency, institution, or facility providing services to the child or family that were requested and received by the cabinet during the investigation of a child fatality or near fatality.
- (c) The cabinet shall submit a report by September 1 of each year containing an analysis of all summaries of internal reviews occurring during the previous year and an analysis of

historical trends to the Governor, the General Assembly, and the state child fatality review team created under KRS 211.684.

- (13) When an adult who is the subject of information made confidential by subsection (5) of this section publicly reveals or causes to be revealed any significant part of the confidential matter or information, the confidentiality afforded by subsection (5) of this section is presumed voluntarily waived, and confidential information and records about the person making or causing the public disclosure, not already disclosed but related to the information made public, may be disclosed if disclosure is in the best interest of the child or is necessary for the administration of the cabinet's duties under this chapter.
- (14) As a result of any report of suspected child abuse or neglect, photographs and X-rays or other appropriate medical diagnostic procedures may be taken or caused to be taken, without the consent of the parent or other person exercising custodial control or supervision of the child, as a part of the medical evaluation or investigation of these reports. These photographs and X-rays or results of other medical diagnostic procedures may be introduced into evidence in any subsequent judicial proceedings or an administrative hearing conducted by the cabinet or its designee in accordance with KRS Chapter 13B in an appeal of a cabinet substantiated finding of child abuse or neglect. The person performing the diagnostic procedures or taking photographs or X-rays shall be immune from criminal or civil liability for having performed the act. Nothing herein shall limit liability for negligence.
- (15) In accordance with 42 U.S.C. sec. 671, the cabinet shall share information about a child in the custody of the cabinet with a relative or a parent of the child's sibling for the purposes of:
 - (a) Evaluating or arranging a placement for the child;
 - (b) Arranging appropriate treatment services for the child; or
 - (c) Establishing visitation between the child and a relative, including a sibling of the child.

KRS 620.055 External child fatality and near fatality review panel -- Creation -- Members -- Meetings -- Duties -- Responsibilities -- Information required to be provided to members -- Confidentiality -- Destruction of information following conclusion of panel's examination -- Application of open records and open meetings law -- Limitation of liability -- Annual evaluation of panel's work.

- (1) An external child fatality and near fatality review panel is hereby created and established for the purpose of conducting comprehensive reviews of child fatalities and near fatalities, reported to the Cabinet for Health and Family Services, suspected to be a result of abuse or neglect. The panel shall be attached to the Justice and Public Safety Cabinet for staff and administrative purposes.
- (2) The external child fatality and near fatality review panel shall be composed of the following five (5) ex officio nonvoting members and fifteen (15) voting members:
 - (a) The chairperson of the House Health and Welfare Committee of the Kentucky General Assembly, who shall be an ex officio nonvoting member;
 - (b) The chairperson of the Senate Health and Welfare Committee of the Kentucky General Assembly, who shall be an ex officio nonvoting member;
 - (c) The commissioner of the Department for Community Based Services, who shall be an ex officio nonvoting member;
 - (d) The commissioner of the Department for Public Health, who shall be an ex officio nonvoting member;
 - (e) A family court judge selected by the Chief Justice of the Kentucky Supreme Court, who shall be an ex officio nonvoting member;
 - (f) A pediatrician from the University of Kentucky's Department of Pediatrics who is licensed and experienced in forensic medicine relating to child abuse and neglect to be selected by the Attorney General from a list of three (3) names provided by the dean of the University of Kentucky School of Medicine;

- (g) A pediatrician from the University of Louisville's Department of Pediatrics who is licensed and experienced in forensic medicine relating to child abuse and neglect to be selected by the Attorney General from a list of three (3) names provided by the dean of the University of Louisville School of Medicine;
 - (h) The state medical examiner or designee;
 - (i) A court-appointed special advocate (CASA) program director to be selected by the Attorney General from a list of three (3) names provided by the Kentucky CASA Association;
 - (j) A peace officer with experience investigating child abuse and neglect fatalities and near fatalities to be selected by the Attorney General from a list of three (3) names provided by the commissioner of the Kentucky State Police;
 - (k) A representative from Prevent Child Abuse Kentucky, Inc. to be selected by the Attorney General from a list of three (3) names provided by the president of the Prevent Child Abuse Kentucky, Inc. board of directors;
 - (l) A practicing local prosecutor to be selected by the Attorney General;
 - (m) The executive director of the Kentucky Domestic Violence Association or the executive director's designee;
 - (n) The chairperson of the State Child Fatality Review Team established in accordance with KRS 211.684 or the chairperson's designee;
 - (o) A practicing social work clinician to be selected by the Attorney General from a list of three (3) names provided by the Board of Social Work;
 - (p) A practicing addiction counselor to be selected by the Attorney General from a list of three (3) names provided by the Kentucky Association of Addiction Professionals;
 - (q) A representative from the family resource and youth service centers to be selected by the Attorney General from a list of three (3) names submitted by the Cabinet for Health and Family Services;
 - (r) A representative of a community mental health center to be selected by the Attorney General from a list of three (3) names provided by the Kentucky Association of Regional Mental Health and Mental Retardation Programs, Inc.;
 - (s) A member of a citizen foster care review board selected by the Chief Justice of the Kentucky Supreme Court; and
 - (t) An at-large representative who shall serve as chairperson to be selected by the Secretary of State.
- (3) (a) By August 1, 2013, the appointing authority or the appointing authorities, as the case may be, shall have appointed panel members. Initial terms of members, other than those serving ex officio, shall be staggered to provide continuity. Initial appointments shall be: five (5) members for terms of one (1) year, five (5) members for terms of two (2) years, and five (5) members for terms of three (3) years, these terms to expire, in each instance, on June 30 and thereafter until a successor is appointed and accepts appointment.
- (b) Upon the expiration of these initial staggered terms, successors shall be appointed by the respective appointing authorities, for terms of two (2) years, and until successors are appointed and accept their appointments. Members shall be eligible for reappointment. Vacancies in the membership of the panel shall be filled in the same manner as the original appointments.
- (c) At any time, a panel member shall recuse himself or herself from the review of a case if the panel member believes he or she has a personal or private conflict of interest.
- (d) If a voting panel member is absent from two (2) or more consecutive, regularly scheduled meetings, the member shall be considered to have resigned and shall be replaced with a new member in the same manner as the original appointment.
- (e) If a voting panel member is proven to have violated subsection (13) of this section, the member shall be removed from the panel, and the member shall be replaced with a new member in the same manner as the original appointment.

- (4) The panel shall meet at least quarterly and may meet upon the call of the chairperson of the panel.
- (5) Members of the panel shall receive no compensation for their duties related to the panel, but may be reimbursed for expenses incurred in accordance with state guidelines and administrative regulations.
- (6) Each panel member shall be provided copies of all information set out in this subsection, including but not limited to records and information, upon request, to be gathered, unredacted, and submitted to the panel within thirty (30) days by the Cabinet for Health and Family Services from the Department for Community Based Services or any agency, organization, or entity involved with a child subject to a fatality or near fatality:
 - (a) Cabinet for Health and Family Services records and documentation regarding the deceased or injured child and his or her caregivers, residents of the home, and persons supervising the child at the time of the incident that include all records and documentation set out in this paragraph:
 - 1. All prior and ongoing investigations, services, or contacts;
 - 2. Any and all records of services to the family provided by agencies or individuals contracted by the Cabinet for Health and Family Services; and
 - 3. All documentation of actions taken as a result of child fatality internal reviews conducted pursuant to KRS 620.050(12)(b);
 - (b) Licensing reports from the Cabinet for Health and Family Services, Office of Inspector General, if an incident occurred in a licensed facility;
 - (c) All available records regarding protective services provided out of state;
 - (d) All records of services provided by the Department for Juvenile Justice regarding the deceased or injured child and his or her caregivers, residents of the home, and persons involved with the child at the time of the incident;
 - (e) Autopsy reports;
 - (f) Emergency medical service, fire department, law enforcement, coroner, and other first responder reports, including but not limited to photos and interviews with family members and witnesses;
 - (g) Medical records regarding the deceased or injured child, including but not limited to all records and documentation set out in this paragraph:
 - 1. Primary care records, including progress notes; developmental milestones; growth charts that include head circumference; all laboratory and X-ray requests and results; and birth record that includes record of delivery type, complications, and initial physical exam of baby;
 - 2. In-home provider care notes about observations of the family, bonding, others in home, and concerns;
 - 3. Hospitalization and emergency department records;
 - 4. Dental records;
 - 5. Specialist records; and
 - 6. All photographs of injuries of the child that are available;
 - (h) Educational records of the deceased or injured child, or other children residing in the home where the incident occurred, including but not limited to the records and documents set out in this paragraph:
 - 1. Attendance records;
 - 2. Special education services;
 - 3. School-based health records; and
 - 4. Documentation of any interaction and services provided to the children and family. The release of educational records shall be in compliance with the Family Educational Rights and Privacy Act, 20 U.S.C. sec. 1232g and its implementing regulations;
 - (i) Head Start records or records from any other child care or early child care provider;

- (j) Records of any Family, Circuit, or District Court involvement with the deceased or injured child and his or her caregivers, residents of the home and persons involved with the child at the time of the incident that include but are not limited to the juvenile and family court records and orders set out in this paragraph, pursuant to KRS Chapters 199, 403, 405, 406, and 600 to 645:
 - 1. Petitions;
 - 2. Court reports by the Department for Community Based Services, guardian ad litem, court-appointed special advocate, and the Citizen Foster Care Review Board;
 - 3. All orders of the court, including temporary, dispositional, or adjudicatory; and 4. Documentation of annual or any other review by the court;
 - (k) Home visit records from the Department for Public Health or other services;
 - (l) All information on prior allegations of abuse or neglect and deaths of children of adults residing in the household;
 - (m) All law enforcement records and documentation regarding the deceased or injured child and his or her caregivers, residents of the home, and persons involved with the child at the time of the incident; and
 - (n) Mental health records regarding the deceased or injured child and his or her caregivers, residents of the home, and persons involved with the child at the time of the incident.
- (7) The panel may seek the advice of experts, such as persons specializing in the fields of psychiatric and forensic medicine, nursing, psychology, social work, education, law enforcement, family law, or other related fields, if the facts of a case warrant additional expertise.
 - (8) The panel shall post updates after each meeting to the Web site of the Justice and Public Safety Cabinet regarding case reviews, findings, and recommendations.
 - (9) The panel chairperson, or other requested persons, shall report a summary of the panel's discussions and proposed or actual recommendations to the Interim Joint Committee on Health and Welfare of the Kentucky General Assembly monthly or at the request of a committee co-chair. The goal of the committee shall be to ensure impartiality regarding the operations of the panel during its review process.
 - (10) The panel shall publish an annual report by December 1 of each year consisting of case reviews, findings, and recommendations for system and process improvements to help prevent child fatalities and near fatalities that are due to abuse and neglect. The report shall be submitted to the Governor, the secretary of the Cabinet for Health and Family Services, the Chief Justice of the Supreme Court, the Attorney General, and the director of the Legislative Research Commission for distribution to the Child Welfare Oversight and Advisory Committee established in KRS 6.943 and the Judiciary Committee.
 - (11) Information and record copies that are confidential under state or federal law and are provided to the external child fatality and near fatality review panel by the Cabinet for Health and Family Services, the Department for Community Based Services, or any agency, organization, or entity for review shall not become the information and records of the panel and shall not lose their confidentiality by virtue of the panel's access to the information and records. The original information and records used to generate information and record copies provided to the panel in accordance with subsection (6) of this section shall be maintained by the appropriate agency in accordance with state and federal law and shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. All open records requests shall be made to the appropriate agency, not to the external child fatality and near fatality review panel or any of the panel members. Information and record copies provided to the panel for review shall be exempt from the Kentucky Open Records Act, KRS 61.870 to 61.884. At the conclusion of the panel's examination, all copies of information and records provided to the panel involving an individual case shall be destroyed by the Justice and Public Safety Cabinet.
 - (12) Notwithstanding any provision of law to the contrary, the portions of the external child fatality and near fatality review panel meetings during which an individual child fatality or near fatality

case is reviewed or discussed by panel members may be a closed session and subject to the provisions of KRS 61.815(1) and shall only occur following the conclusion of an open session. At the conclusion of the closed session, the panel shall immediately convene an open session and give a summary of what occurred during the closed session.

- (13) Each member of the external child fatality and near fatality review panel, any person attending a closed panel session, and any person presenting information or records on an individual child fatality or near fatality shall not release information or records not available under the Kentucky Open Records Act, KRS 61.870 to 61.884 to the public.
- (14) A member of the external child fatality and near fatality review panel shall not be prohibited from making a good faith report to any state or federal agency of any information or issue that the panel member believes should be reported or disclosed in an effort to facilitate effectiveness and transparency in Kentucky's child protective services.
- (15) A member of the external child fatality and near fatality review panel shall not be held liable for any civil damages or criminal penalties pursuant to KRS 620.990 as a result of any action taken or omitted in the performance of the member's duties pursuant to this section and KRS 620.050, except for violations of subsection (11), (12), or (13) of this section.
- (16) Beginning in 2014 the Legislative Program Review and Investigations Committee of the Kentucky General Assembly shall conduct an annual evaluation of the external child fatality and near fatality review panel established pursuant to this section to monitor the operations, procedures, and recommendations of the panel and shall report its findings to the General Assembly.

KRS 620.160 Motion to seal child's record.

Upon attaining majority, a person who was the subject of an action under this chapter may make a motion for the sealing of records relating to a petition filed under this chapter. In its discretion, the court may order the record unsealed for good cause shown.

KRS 620.990 Penalty.

- (1) Except as otherwise provided in this chapter, any person intentionally violating the provisions of this chapter shall be guilty of a Class B misdemeanor.
- (2) The use of information by public officers and by defense counsel for purposes of investigation and trial of cases or other proceedings under the provisions of KRS Chapters 600 to 645 or in any criminal prosecution or appeal shall not constitute a violation of this chapter.

922 KAR 1:330. Child protective services.

Section 1. Definitions.

- (1) "Assessment" means the collection and analysis of information to inform decision-making about or service provision to a child or a family, including:
 - (a) An observable threat or threatening condition to the child's safety;
 - (b) A factor present that increases the likelihood of child abuse, neglect, or dependency; and
 - (c) Child or family strengths and protective capacities.
- (2) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).
- (3) "Caretaker" means a parent, guardian, or other person exercising custodial control or supervision of a child.
- (4) "Child fatality" is defined by KRS 211.684.
- (5) "Child protective services" means preventive and corrective services directed toward:
 - (a) Safeguarding the rights and welfare of an abused, neglected, or dependent child;
 - (b) Assuring for each child a safe and nurturing home;
 - (c) Improving the abilities of parents to carry out parental responsibilities;
 - (d) Strengthening family life; and
 - (e) Assisting a parent or other person responsible for the care of a child in recognizing and

remedying conditions detrimental to the welfare of the child.

- (6) "Dependent child" is defined by KRS 600.020(20).
- (7) "Human trafficking" is defined by KRS 529.010(5).
- (8) "Initial determination" means an evaluation of risk factors to determine immediate safety and risk of harm resulting in a decision whether to proceed with an:
 - (a) Investigation; or
 - (b) Assessment.
- (9) "Investigation" means a process of collecting information and evaluating risk factors to determine if a child:
 - (a) Has been abused or neglected;
 - (b) Is dependent; or
 - (c) Is a victim of human trafficking.
- (10) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).
- (11) "Preponderance of evidence" means that evidence is sufficient to conclude that it is more likely than not that an alleged perpetrator committed an act of child abuse or neglect as defined by KRS 600.020(1).
- (12) "Prior involvement" means any assessment or investigation, of which the cabinet has record, with a child or family in the area of protection and permanency prior to the child's fatality or near fatality investigation.
- (13) "Services needed" means a low risk finding with no perpetrator that indicates a family needs to be linked to community services.
- (14) "Sexual abuse" is defined by KRS 600.020(61).
- (15) "Sexual exploitation" is defined by KRS 600.020(62).
- (16) "Substantiated" means:
 - (a) An admission of abuse or neglect by the person responsible;
 - (b) A judicial finding of child abuse or neglect; or
 - (c) A preponderance of evidence exists that abuse or neglect was committed by the caretaker.
- (17) "Unable to locate" means that:
 - (a) Identifying information about the family is insufficient for locating them; or
 - (b) The family has moved and their new location is not known.
- (18) "Unsubstantiated" means there is insufficient evidence, indicators, or justification present for substantiation of abuse or neglect.
- (19) "Victim of human trafficking" is defined by KRS 529.010(13).

Section 2. A Report of Child Abuse, Neglect, or Dependency.

- (1) In accordance with 42 U.S.C. 5106a(b)(2)(B)(i), the cabinet shall accept reports of alleged child abuse, neglect, or dependency made pursuant to KRS 620.030.
 - (a) A twenty-four (24) hour on-call response system and the child abuse hotline, for the receipt of emergency reports after normal office hours, shall be made available to those in a community who may have information regarding:
 - 1. Child abuse, neglect, or dependency; or
 - 2. Human trafficking of a child.
 - (b) Cabinet staff or designee shall attempt to elicit from the person reporting suspected child abuse, neglect, dependency, or human trafficking as much information about the child's circumstances as possible, including:
 - 1. Specific information as to the nature and extent of:
 - a. Abuse, neglect, or dependency; or
 - b. Human trafficking;
 - 2. The cause of the abuse, neglect, or dependency;
 - 3. The location of the child and family;
 - 4. Knowledge or suspicion of a previous incident;
 - 5. Identifying information regarding a witness to the alleged incident that resulted in the

- child's condition;
 - 6. An action taken by the reporting person, if applicable;
 - 7. Present danger or threat of danger to the child or cabinet staff; and
 - 8. Information in accordance with KRS 620.030(2) and (3).
- (c) The reporting person's identity shall remain confidential, unless ordered to be divulged by a court of competent jurisdiction.
- (d) The cabinet shall investigate or accept as an assessment an anonymous report that provides sufficient information regarding an incident involving a child:
- 1. Who is alleged to be dependent; or
 - 2. And alleged:
 - a. Abuse or neglect perpetrated by a caretaker; or
 - b. Human trafficking of the child.
- (e) Immunity from liability shall be in accordance with 42 U.S.C. 5106a(b)(2)(B)(vii) and KRS 620.050(1) and (2).
- (2) The cabinet shall not undertake an investigation or assessment for a report of abuse or neglect allegedly perpetrated by a non-caretaker, with the exception of a report of human trafficking, but shall refer the matter in compliance with KRS 620.030(1).
- (3) Pursuant to KRS 620.040(1)(b) and (2)(b), if a report does not meet an acceptance criterion for an investigation or assessment, the cabinet shall:
- (a) Not accept the report for investigation or assessment;
 - (b) Refer the caller to a community resource that may meet family needs if available; and
 - (c) Keep a record of the report in accordance with 42 U.S.C. 5106a(b)(2)(B)(xii).
- (4) Acceptance criteria for an investigation or assessment. The cabinet shall:
- (a) Investigate or conduct an assessment upon the receipt of a report of physical abuse, if the report alleges:
 - 1. An injury that is, or has been, observed on a child that was allegedly inflicted nonaccidentally by a caretaker;
 - 2. Physical abuse if no current observable injury is seen;
 - 3. A child being hit in a critical area of the body, such as the head, neck, genitals, abdomen, or back; or
 - 4. Physical injury to a child, as defined by KRS 600.020(46), that is the result of an altercation between the child and the caretaker. The cabinet shall explore the following:
 - a. Age of the child;
 - b. Precipitating factors;
 - c. Degree of appropriateness of force used by the caretaker; and
 - d. Need for further services to assist in eliminating violent behavior in the home;
 - (b) Investigate or conduct an assessment upon receipt of a report that alleges neglect of a child perpetrated by a caretaker that may result in harm to the health and safety of a child in the following areas:
 - 1. Hygiene neglect if:
 - a. A child has physical symptoms that require treatment due to poor care; or
 - b. The child's physical health and safety are negatively affected due to an act or omission by the caretaker;
 - 2. Supervision neglect if the individual reporting has reason to believe that the physical health and safety of the child may be negatively affected by lack of necessary and appropriate supervision;
 - 3. Food neglect if a child shows symptoms of:
 - a. Malnutrition;
 - b. Dehydration; or
 - c. Not having been provided adequate food for a period of time that interferes with the health needs of the child, based on height or weight norms for the child's age;

4. Clothing neglect if a child suffers from:
 - a. Illness;
 - b. Exposure; or
 - c. Frostbite due to inadequate clothing provided to the child or the clothing provided is insufficient to protect the child from the elements;
5. Environmental neglect, if a serious health and safety hazard is present and the caretaker is not taking appropriate action to eliminate the problem;
6. Educational neglect if the: a. School system has exhausted its resources to correct the problem and complied with its duties pursuant to KRS 159.140; and b. Caretaker's neglect prevents the child from attending school or receiving appropriate education;
7. Medical neglect, in accordance with 42 U.S.C. 5106a(b)(2)(C), if a child has not received a medical assessment or is not receiving treatment for an injury, illness, or disability that if left untreated may:
 - a. Be life-threatening;
 - b. Result in permanent impairment;
 - c. Interfere with normal functioning and worsen; or
 - d. Be a serious threat to the child's health due to the outbreak of a vaccine preventable disease, unless the child is granted an exception to immunization pursuant to KRS 214.036;
8. At risk of harm due to an act described at KRS 600.020(1), if a child is:
 - a. Born exposed to drugs or alcohol, as documented by a health care provider pursuant to: (i) 42 U.S.C. 5106a(b)(2)(B)(ii); and (ii) KRS 620.030(2);
 - b. Involved in an incident of domestic violence;
 - c. Permitted to use drugs or alcohol under circumstances that create a risk to the emotional or physical health of the child;
 - d. In a situation if the factors provided in a report indicate that: (i) An act of sexual abuse, sexual exploitation, or prostitution involving a child may occur; or (ii) The child exhibits physical or behavioral indicators of sexual abuse; or
 - e. In a situation where the circumstances are such that a child is likely to be physically abused; or
9. Exploitation neglect if the:
 - a. Caretaker has used a child or child's financial resources for personal gain;
 - b. Caretaker has enticed a child to become involved in criminal activities; or
 - c. Child is a victim of human trafficking;
- (c) Receive and investigate a report that alleges sexual abuse of a child committed or allowed to be committed by a caretaker. An investigation may be conducted without a specific allegation if a child has a sexually transmitted disease;
- (d) Receive and investigate or complete an assessment upon the receipt of a report that alleges a child is dependent, pursuant to KRS 600.020(19); and
- (e) Investigate or complete an assessment upon the receipt of a report that alleges emotional injury or risk of emotional injury to a child by a caretaker pursuant to KRS 600.020(25).
- (5) The following criteria shall be used in identifying a report of abuse, neglect, or dependency not requiring a child protective services investigation or assessment:
 - (a) The victim of the report of abuse, neglect, or dependency is age eighteen (18) or over at the time of the report;
 - (b) There is insufficient information to locate the child or to explore leads to locate;
 - (c) The problem described does not meet the statutory definitions of abuse, neglect, or dependency;
 - (d) The reporter notifies the cabinet that a child is injured, but the reporter does not allege injuries were the result of abuse or neglect;
 - (e) The report concerns custody changes, custody related issues, or lifestyle issues, without

- allegations of abuse, neglect, or dependency;
 - (f) Pursuant to KRS 503.110(1), corporal punishment appropriate to the age of the child, without an injury, mark, bruise, or substantial risk of harm;
 - (g) The report concerns a newborn infant abandoned pursuant to KRS 620.350; or
 - (h) An allegation of spouse abuse to a married youth under the age eighteen (18).
- (6) A report of corporal punishment described in subsection (5)(f) of this section shall be reported to and assessed by the cabinet, if alleged to be committed by a caretaker parent who:
- (a) Provides foster, pre-adoptive, or respite care services for a child in the custody of the cabinet; and
 - (b) Is approved pursuant to 922 KAR 1:310 or 922 KAR 1:350.

Section 3. Initial Investigation or Assessment.

- (1) Based upon an accepted report of child abuse, neglect, or dependency, the cabinet shall, in accordance with KRS 620.040(1)(b) or (2)(b), and 42 U.S.C. 5106a(b)(2)(B)(iv), make an initial determination as to the immediate safety and risk of harm to a child.
- (2) The cabinet shall have face-to-face contact with the child or, in the case of a child fatality, initiate the investigation within four (4) hours after acceptance of the report if a report of child abuse, neglect, or dependency:
- (a) Includes a child who is:
 - 1. The alleged victim of a fatality or near fatality; or
 - 2. A surviving child in the care of the alleged perpetrator of a child fatality or near fatality;
 or
 - (b)
 - 1. Involves a child who is:
 - a. Under four (4) years of age; or
 - b. Unable to verbally or nonverbally communicate the child's needs as provided by the reporting source; and
 - 2. Indicates a high risk of harm to the child due to:
 - a. Physical abuse in accordance with Section 2(4)(a) of this administrative regulation;
 - b. Supervision neglect in accordance with Section 2(4)(b)2. of this administrative regulation;
 - c. Sexual abuse in accordance with Section 2(4)(c) of this administrative regulation, and the alleged:
 - (i) Perpetrator has access to the child; or
 - (ii) Perpetrator's access to the child is unknown by the reporting source.
- (3) The cabinet shall have face-to-face contact with the child within twenty-four (24) hours after acceptance of the report, if a report of child abuse, neglect, or dependency:
- (a) 1. Indicates a high risk of harm to the child; or
 - 2. Alleges the child is the victim of human trafficking; and
 - (b) Criteria of subsection (2) of this section are not met.
- (4) If the report of child abuse, neglect, or dependency indicates a moderate risk of harm to a child, the cabinet shall have face-to-face contact with the child within forty-eight (48) hours after acceptance of the report.
- (5) If the report of child abuse, neglect, or dependency indicates a low risk of harm to a child, the cabinet shall have face-to-face contact with the child within seventy-two (72) hours after acceptance of the report.
- (6) Cabinet staff shall be permitted to interview an alleged victim of child abuse or neglect without obtaining the consent of the child's parent, guardian, or person exercising custodial control in accordance with KRS 620.072.
- (7) Cabinet staff shall incorporate an unannounced home visit in accordance with provisions in KRS 620.072.
- (8) Cabinet staff shall advise the individual under investigation of the complaints or allegations in

- accordance with 42 U.S.C. 5106a(b)(2)(B)(xviii).
- (9) A written assessment shall:
- (a) Be completed by the cabinet on every investigation; and
 - (b) Document efforts if the cabinet is unable to locate the family.
- (10) The cabinet shall provide or make a referral to any community-based service:
- (a) Available to a child, caretaker, or a child's family:
 - 1. In accordance with 42 U.S.C. 5106a(b)(2)(B)(v),(vi),(ix),(xi), or (xxi); or
 - 2. Pursuant to KRS 620.029 or 620.040(1)(b) or (2)(b); and
 - (b) Necessary to:
 - 1. Reduce risk to a child; and
 - 2. Provide family support.
- (11) The cabinet shall make a referral for early intervention services pursuant to 42 U.S.C. 5106a(b)(2)(B)(xxi) for a child under the age of three (3) who is involved in a substantiated case of abuse or neglect.
- (12) (a) The cabinet may develop a Prevention Plan at any point during an investigation or assessment to protect the health and safety of a child.
- (b) The Prevention Plan shall be:
- 1. Completed in hardcopy;
 - 2. Developed in conjunction with a family and the family's identified support system;
 - 3. Agreed upon by the participants; and
 - 4. Signed by all parties identified to participate in the Prevention Plan, unless a party is unwilling or unable to sign.
- (13) If an investigation or assessment is conducted as a result of a child being referred pursuant to Section 2(4)(b)8. of this administrative regulation, the cabinet shall develop a Prevention Plan in accordance with 42 U.S.C. 5106a(b)(2)(B)(iii).
- (14) Collateral contact shall be made pursuant to KRS 620.030, 620.040, and 620.050.
- (15) (a) A medical or psychological examination may be required if a report of child abuse, neglect, or dependency alleges that a child has suffered physical or sexual harm or emotional injury.
- (b) A medical examination shall be conducted in accordance with KRS 620.050(14).
- (16) Cabinet staff shall coordinate an investigation with a children's advocacy center governed by 920 KAR 2:040, in accordance with KRS 620.040(6) and (7).
- (17) Pursuant to KRS 620.030(5), an agency, institution, or facility serving the child or family shall provide cooperation, assistance, and information necessary for the cabinet to conduct an investigation or assessment.
- (18) Photographs may be taken of a child or a child's environment during a protective services investigation or assessment in accordance with KRS 620.050(14).
- (19) An interview with a child shall be conducted pursuant to KRS 620.040(6).
- (20) (a) A child sexual abuse or human trafficking investigation shall be conducted jointly with law enforcement and other multidisciplinary team members pursuant to KRS 431.600(1) and (8), 620.040(3), and 42 U.S.C. 5106a(b)(2)(B)(xi).
- (b) The cabinet's primary responsibility shall be the protection of the child.
- (21) If there is reason to believe a child is in imminent danger, or if a parent or caretaker of a child refuses the cabinet entry to a child's home or refuses to allow a child to be interviewed, the cabinet may request assistance:
- (a) From law enforcement; or
 - (b) Through a request for a court order pursuant to KRS 620.040(5)(a).
- (22) (a) If the court issues a search warrant for execution by law enforcement, cabinet staff may accompany law enforcement officers.
- (b) Except as provided in KRS 605.090(3), the cabinet shall not remove a committed child from the child's home without a court order.

- (23) At the request of law enforcement, the cabinet shall, pursuant to KRS 620.040(3):
- (a) Provide assistance in interviewing an alleged child abuse victim in a noncaretaker report; and
 - (b) Not be the lead investigator in a noncaretaker investigation.

Section 4. Alleged Perpetrators of Abuse, Neglect, or Dependency Age Twelve (12) to Eighteen (18).

- (1) A report of child abuse, neglect, or dependency involving alleged perpetrators in a care-taking role age twelve (12) to eighteen (18) shall be subject to investigation or assessment.
- (2) If substantiated, a child age twelve (12) to eighteen (18) shall be identified as the alleged perpetrator.

Section 5. Child Fatality or Near Fatality Investigations.

- (1) The cabinet shall investigate a report of child fatality or near fatality alleged to be the result of abuse or neglect in accordance with KRS 620.040.
- (2) If there is a surviving child in the care of the alleged perpetrator, the cabinet shall determine the safety of the surviving child through immediate assessment in accordance with this administrative regulation.
- (3) If a child fatality or near fatality allegedly due to abuse or neglect occurs, cabinet staff shall immediately notify the Office of the Director of the Division of Protection and Permanency.
- (4) If a fatality or near fatality occurs to a child in the custody of the cabinet in an out-of-home placement, the cabinet shall make an immediate effort to notify:
 - (a) The biological or legal parents; and
 - (b) The Office of the Director of the Division of Protection and Permanency.
- (5) If parental rights have been terminated, and there are special circumstances including ongoing contact with the child, the cabinet shall notify a child's biological or legal parents of the child's fatality or near fatality.
- (6) The cabinet shall notify the Department of Public Advocacy, Protection and Advocacy Division, in the Justice and Public Safety Cabinet if:
 - (a) 1. A child identified as a protection and advocacy client dies as a result of alleged abuse or neglect; and
 - 2. The alleged perpetrator is a person exercising custodial control or supervision; or
 - (b) A child fatality has occurred as a result of:
 - 1. Placement in a seclusion room pursuant to 922 KAR 1:390; or
 - 2. Therapeutic hold applied pursuant to 922 KAR 1:300.
- (7) The cabinet shall notify the following persons, in writing, of a fatality of a child in the custody of the cabinet:
 - (a) Judge of the committing court; and
 - (b) Guardian ad litem for the deceased child.
- (8) The cabinet may make public disclosure of a fatality or near fatality in accordance with:
 - (a) KRS 620.050(5) and (12); and
 - (b) 42 U.S.C. 5106a(b)(2)(A)(x).
- (9) If the alleged perpetrator was not a parent, guardian, or person exercising custodial control or supervision, notification of the child fatality or near fatality shall be in accordance with KRS 620.030(1).
- (10) The cabinet shall:
 - (a) Be in compliance with KRS 620.050(12) in cases where the cabinet has had prior involvement; and
 - (b) Provide annual reporting in accordance with 42 U.S.C. 5106a(d)(4)(5)(6)(11).
- (11) If a child fatality or near fatality occurs in a licensed facility, the cabinet shall notify the licensing authority in accordance with 42 U.S.C. 5106a(b)(2)(A)(ix).

Section 6. Reports of Child Abuse, Neglect, or Dependency in Cabinet-approved Homes or Licensed Facilities.

- (1) Pursuant to KRS 620.030(5), the cabinet shall have the authority to obtain necessary information to complete an investigation in a report of child abuse, neglect, or dependency in a:
 - (a) Child-caring facility licensed in accordance with 922 KAR 1:300 or its subcontractor;
 - (b) Child-placing agency licensed in accordance with 922 KAR 1:310 or its subcontractor;
 - (c) Child-care center licensed in accordance with 922 KAR 2:090;
 - (d) Family child-care home certified in accordance with 922 KAR 2:100;
 - (e) Child care provider registered in accordance with 922 KAR 2:180; or
 - (f) Foster, adoptive, or respite care provider home approved pursuant to 922 KAR 1:350.
- (2) If a report of alleged child abuse, neglect, or dependency in a home approved pursuant to 922 KAR 1:310 or 922 KAR 1:350 is accepted, the designated cabinet staff shall:
 - (a) Immediately contact the service region administrator or designee; and
 - (b) Assign staff to conduct the investigation.
- (3) If a report of alleged child abuse or neglect in a licensed child-care center, a certified family child-care home, or a registered child care provider is accepted, cabinet staff shall:
 - (a) Notify the cabinet's Division of Child Care to share information and request assistance in locating alternate care if needed; and
 - (b) Conduct an investigation.
- (4) If a report of alleged child abuse or neglect in a licensed child-caring facility, child-placing agency placement, certified family child-care home, or licensed child-care center is accepted, cabinet staff shall:
 - (a) Notify the Office of the Inspector General, Division of Regulated Child Care; and
 - (b) Conduct an investigation.
 1. If possible, an investigation shall be coordinated and conducted jointly with the Division of Regulated Child Care. However, if not possible, the cabinet shall proceed with an investigation.
 - 2.a. An entrance interview with the facility administrator or designee shall be conducted; and
 - b. The nature of the report shall be outlined without disclosing the name of the reporting source.
 3. If the cabinet substantiates the report of child abuse or neglect and the alleged perpetrator is an employee of the facility, the cabinet shall notify the provider or program director within thirty (30) working days, unless a necessary extension is granted by the designated cabinet staff in a supervisory role.
- (5) The cabinet shall share written findings of an investigation with the Division of Child Care for a:
 - (a) Licensed child-care center;
 - (b) Certified family child-care home; or
 - (c) Registered child care provider.
- (6) The cabinet shall share written findings of an investigation with the Office of Inspector General for a:
 - (a) Licensed child-care center;
 - (b) Certified family child-care home;
 - (c) Registered child care provider;
 - (d) Licensed child-caring facility; or
 - (e) Licensed child-placing agency.
- (7) As soon as practical after a determination has been made that a child is in imminent danger or that a child needs to be removed, verbal or written notification shall be provided to the Division of Child Care or to the Office of the Inspector General.

Section 7. Interviewing a Child in a School Setting.

- (1) Pursuant to KRS 620.030(5), the cabinet may, upon receipt of a report of child abuse or neglect, initiate an investigation or assessment at a school, which may include the review and copying of relevant school records pertaining to the child.
- (2) If initiating an investigation or assessment at a school, the cabinet shall:
 - (a) Inform appropriate school personnel of the need to interview a child regarding the report; and
 - (b) Give necessary information concerning the allegation and investigation only to school personnel with a legitimate interest in the case.

Section 8. Investigation of an Employee of the School System.

If a report of child abuse or neglect involving school personnel is received, the following shall apply:

- (1) An investigation shall be conducted;
- (2) If the allegation is made about a school employee exercising custody and control of a child, with the incident occurring during school time or other school-related activity, the cabinet shall, if possible, conduct an interview away from the school grounds, with each of the following persons:
 - (a) The child;
 - (b) The parent or legal guardian;
 - (c) The alleged perpetrator; and
 - (d) Other collateral source, if any, in accordance with Section 3(14) of this administrative regulation;
- (3) The findings shall be shared with the custodial parent and the alleged perpetrator.
- (4) The cabinet shall notify the appropriate supervisor of the alleged perpetrator, in writing, of the following:
 - (a) That an investigation has been conducted;
 - (b) The results of the investigation; and
 - (c) That the alleged perpetrator has the right to appeal pursuant to 922 KAR 1:480.
- (5) A person desiring other information shall employ the open records procedure, as described in 922 KAR 1:510.

Section 9. Written Notice of Findings of Investigation.

The cabinet shall provide notification to specified government officials in accordance with KRS 620.040(1) and (2) and 42 U.S.C. 5106a(b)(2)(A)(ix).

Section 10. Substantiation Criteria and Submission of Findings.

- (1) The cabinet shall use the definitions of "abused or neglected child" in KRS 600.020(1) in determining if an allegation is substantiated.
- (2) A finding of an investigation or assessment shall be based upon the:
 - (a) Information and evidence collected by the cabinet during the report's investigation or assessment; and
 - (b) Condition that is present, rather than an action taken to remediate an issue or concern pertaining to a child's health, safety, or welfare.
- (3) Cabinet staff may find and substantiate abuse or neglect, or make a services needed finding, at any point during an investigation or assessment or prior to case closure and aftercare planning in accordance with Section 12 of this administrative regulation, if preponderance of the evidence exists.
- (4)(a) At the completion of an investigation or assessment involving a caretaker, the cabinet shall make a finding of:
 1. Unsubstantiated child abuse or neglect;
 2. Substantiated child abuse or neglect;
 3. Child fatality or near fatality related to abuse or neglect;
 4. Unable to locate the child;

- 5. Services needed for the child or child's family, which may include a dependent child; or
 - 6. Closed, which may include completed service provision.
- (b) At the completion of an investigation involving human trafficking of a child by a noncaretaker, the cabinet shall make a finding of:
- 1. Confirmed human trafficking;
 - 2. Not confirmed human trafficking; or
 - 3. Unable to locate the child.
- (5) A cabinet finding shall not be a judicial finding.
- (6) The cabinet staff's supervisor or designee shall review and approve the final finding of the investigation or assessment.
- (7) Upon approval of the finding by designated cabinet staff in a supervisory role, the cabinet shall send a notice of finding and notice of the perpetrator's right to appeal in accordance with 922 KAR 1:480, Section 3, to the alleged or substantiated perpetrator by certified mail to the last known address of the perpetrator.
- (8) Upon approval of the finding by designated cabinet staff in a supervisory role, the cabinet shall:
- (a) Send a notice of finding to the child's parent or guardian by certified mail; or
 - (b) Give a notice of finding to the parent or guardian, in person, with the parent or guardian and a witness signature to document receipt of the notice.
- (9) The cabinet's notice of a substantiated finding of child abuse or neglect shall include:
- (a) The factual basis for the finding of child abuse or neglect;
 - (b) The results of the investigation;
 - (c) Information about the perpetrator's right to appeal the substantiated finding in accordance with 922 KAR 1:480; and
 - (d) A statement informing the perpetrator that the perpetrator's name shall be added to the central registry in accordance with 922 KAR 1:470.

Section 11. Appeals.

- (1) The perpetrator of a substantiated finding of child abuse or neglect may request a hearing in accordance with 922 KAR 1:480.
- (2) A person may have additional hearing rights as specified in 922 KAR 1:320.

Section 12. Closure and Aftercare Planning.

- (1) (a) A decision to close a child protective services case shall be based on evidence that the factors resulting in the child abuse, neglect, or dependency have been resolved to the extent that the family is able to:
 - 1. Protect the child; and
 - 2. Meet the needs of the child.
 (b) Prior to a case's closure in accordance with paragraph (a) of this subsection, designated cabinet staff in a supervisory role shall review and agree to the decision to close the child protective services case.
- (2) If the cabinet does not have the authority to obtain court-ordered cooperation from a family, the cabinet shall close the child protective services investigation or assessment.
- (3) Unless court-ordered cooperation from the family cannot be obtained in accordance in subsection (2) of this section, a child protective services case shall not be closed if withdrawal of services places a child at risk of abuse, neglect, or dependency.
- (4) A family shall be:
 - (a) Notified in writing of the decision to close the protective services case; and
 - (b) Advised of the right to a fair hearing in compliance with 922 KAR 1:320, Section 2.
- (5) Aftercare planning shall link a family to community resources for the purpose of continuing preventive measures if the cabinet discontinues services in accordance with this section.
- (6) The Aftercare Plan shall be developed upon the completion of an investigation or assessment, if an issue or concern identified by the cabinet falls below the level that triggers a protection services case being opened.

- (7) (a) When it is determined that a protective services case is appropriate for closure, the cabinet shall work with the family to develop the Aftercare Plan.
- (b) The focus of the Aftercare Plan shall be to prevent a recurrence of abuse, neglect, or dependency to the child in the home.
- (8) The cabinet may open a child protective services case in accordance with 922 KAR 1:140, 1:400, 1:410, or 1:430.
- (9) The cabinet may request the assistance of a court of competent jurisdiction to protect the child in accordance with KRS 620.070.

Section 13. Incorporation by Reference.

- (1) The following material is incorporated by reference: (a) "Aftercare Plan", 2/04; and (b) "Prevention Plan", 6/04.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

922 KAR 1:470 Central registry.

Section 1. Definitions.

- (1) "Abused or neglected child" is defined by KRS 600.020(1).
- (2) "Administrative review" means that the status of the individual subject to the central registry check is pending the outcome of an:
 - (a) Investigation or assessment in accordance with 922 KAR 1:330; or
 - (b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.
- (3) "Child fatality" is defined by KRS 211.684.
- (4) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).
- (5) "Sexual abuse" is defined by KRS 600.020(61).
- (6) "Sexual exploitation" is defined by KRS 600.020(62).

Section 2. Central Registry.

- (1) The central registry shall include the name of each individual:
 - (a) Who has been found by the cabinet to have abused or neglected a child on or after October 1, 1998; and
 - (b) 1. Who waived the right to appeal a substantiated finding of child abuse or neglect in accordance with:
 - a. 922 KAR 1:480;
 - b. 922 KAR 1:320; or
 - c. 922 KAR 1:330, Section 11; or
 - 2. Whose substantiated incident was upheld upon appeal.
- (2) Each name shall:
 - (a) Remain on the central registry for a period of at least seven (7) years; and
 - (b) Be removed from the central registry after a period of seven (7) years if:
 - 1. No additional incident of child abuse or neglect has been substantiated by the cabinet since the time of the incident for which the individual's name was placed on the registry; and
 - 2. Cabinet records indicate that the incident for which the individual's name was placed on the registry did not relate to:
 - a. Sexual abuse or sexual exploitation of a child;
 - b. A child fatality related to abuse or neglect;
 - c. A near fatality related to abuse or neglect; or
 - d. Involuntary termination of parental rights in accordance with KRS 625.050 through 625.120.
- (3) This administrative regulation shall not apply to cabinet background checks required by 922 KAR 1:490.

(4) This administrative regulation shall not limit the cabinet's ability to disclose information in accordance with KRS 620.050 and 42 U.S.C. 5106a(b)(2)(B)(viii), (ix), and (x).

Section 3. Procedure for Requesting a Central Registry Check.

- (1) If information from the central registry is required by law, a request for a central registry check may be made by an:
- (a) Individual;
 - (b) Organization; or
 - (c) Other entity.
- (2) The cabinet shall conduct a check of the central registry for each individual who:
- (a) Submits a request for a check of the central registry in accordance with subsection (4) of this section; and
 - (b) 1. Applies for initial licensure;
 - 2. Is hired by, or volunteers with an entity required by law to obtain information contained in the central registry; or
 - 3. Is hired by, or volunteers with, an entity that may require a central registry check as a condition for working with children on a regular basis.
- (3) An individual who is not required by law to obtain information contained in the central registry shall submit an open records request in accordance with 922 KAR 1:510.
- (4) A request for a central registry check shall be made:
- (a) By submitting to the cabinet:
 - 1. a. A completed DCC-374, Child Care Central Registry Check, for an individual in child care as specified by 42 U.S.C. 9858f, KRS 199.466, or Title 922 KAR Chapter 2; or
 - b. A completed DPP-156, Central Registry Check, for an individual required by a law not specified in clause a. of this subparagraph no later than five (5) working days after:
 - (i) The date of employment of an individual required by law to submit to a central registry check; or
 - (ii) A volunteer's first day, if the volunteer is required by law to submit to a central registry check; and
 - 2. A nonrefundable fee of ten (10) dollars:
 - a. (i) Submitted by check or money order; and
 - (ii) Made payable to the Kentucky State Treasurer; or
 - b. Made available through a prepaid account established with the cabinet; or
 - (b) Through another cabinet system, such as the Kentucky National Background Check Program established in accordance with 906 KAR 1:190. (5) A state requesting a child abuse or neglect check from the cabinet as required by 42 U.S.C. 671(a)(20) shall follow the procedures described in 922 KAR 1:490, Section 4.

Section 4. Administrative Review.

- (1) The cabinet shall indicate on a central registry check if the individual is pending administrative review by the cabinet.
- (2) An individual subject to administrative review in accordance with this section may submit an open records request in accordance with 922 KAR 1:510.

Section 5. Incorporation by Reference.

- (1) The following material is incorporated by reference:
- (a) "DPP-156, Central Registry Check," 1/18; and
 - (b) "DCC-374, Child Care Central Registry Check," 11/13/17.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

922 KAR 1:480 Appeal of child abuse and neglect investigative findings.

Section 1. Definitions.

- (1) "Abused or neglected child" is defined by KRS 600.020(1).
- (2) "Administrative hearing" is defined by KRS 13B.010(2).
- (3) "Appellant" means a perpetrator who requests an administrative hearing or on whose behalf an administrative hearing is requested by the perpetrator's legal representative.
- (4) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).
- (5) "Compelling need" means a hearing officer determines that a probability exists by which a child would be unable to reasonably communicate because of emotional distress produced by the perpetrator's presence.
- (6) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal, including:
 - (a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or
 - (b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:
 1. Submit a written request for appeal; or
 2. Participate in a proceeding related to an administrative hearing.
- (7) "Hearing officer" is defined by KRS 13B.010(7).
- (8) "Perpetrator" means a person who, as a result of an investigation, has been determined by the cabinet to have abused or neglected a child.

Section 2. Right to Appeal.

A person who has been found by the cabinet to have abused or neglected a child may appeal the cabinet's finding through an administrative hearing.

Section 3. Notification and Request for Appeal.

- (1) The cabinet shall provide to a perpetrator:
 - (a) Notice of a substantiated finding of child abuse or neglect in accordance with 922 KAR 1:330, Section 10; and
 - (b) A copy of the DPP-155, Request for Appeal of Child Abuse or Neglect Investigative Finding.
- (2) The cabinet shall disclose confidential information in accordance with 42 U.S.C. 5106a(b)(2)(B) (viii), (ix) to any federal, state, or local government entity, or an agent of a government entity, that has a need for the information in order to carry out its responsibility under the law to protect children from abuse and neglect.
- (3) A request for appeal shall:
 - (a) Be submitted:
 1. In writing by the appellant, with the assistance of the cabinet if the appellant is unable to comply without assistance; and
 2. To the cabinet no later than thirty (30) calendar days from the date the notice of a substantiated finding of child abuse or neglect is postmarked;
 - (b) Describe the nature of the investigative finding;
 - (c) Specify the reason the appellant disputes the cabinet's substantiated finding of child abuse or neglect;
 - (d) Specify the name of each known cabinet staff person involved with the investigation; and
 - (e) Include a copy of the notice of a substantiated finding of child abuse or neglect if available.
- (4)
 - (a) Upon receipt of a written request for appeal, the cabinet shall confirm whether the matter is subject to review through an administrative hearing.
 - (b) If the matter is not subject to review, the cabinet shall inform the individual in writing that the matter:
 1. Is not appealable; and
 2. May be pursued through the service complaint process described in 922 KAR 1:320, Section 4 or 10.

(5) The cabinet shall not dismiss a request for appeal as untimely if an appellant demonstrates good cause.

Section 4. Matters Not Appealable Through an Administrative Hearing.

- (1) The following shall not be subject to review through an administrative hearing:
- (a) A matter in which a civil court having competent jurisdiction:
 - 1. Has heard evidence and made a final judicial determination that abuse or neglect of a child did or did not occur; or
 - 2. Is currently engaged in legal proceedings regarding the same issue being appealed;
 - (b) 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;
 - (c) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue;
 - (d) An appeal that has been abandoned by an appellant who failed to demonstrate good cause for failure to go forward;
 - (e) Failure to submit a written request for appeal within the time frame established by Section 3(3)(a) of this administrative regulation, unless an appellant demonstrates good cause; or
 - (f) An investigation that results in an unsubstantiated finding of abuse or neglect of a child.
- (2) If an appellant is denied an administrative hearing in accordance with subsection (1)(a) of this section, the cabinet shall change an investigative finding:
- (a) In accordance with a civil court's finding regarding abuse or neglect; or
 - (b) To a services needed finding in accordance with 922 KAR 1:330 and 42 U.S.C. 5106a(b)(2)(B)(v).

Section 5. Investigative Findings.

- (1) The cabinet reserves the right, in its sole discretion, to amend, modify, or reverse an investigative finding of child abuse or neglect at any time based upon:
- (a) A review of the cabinet's records; or
 - (b) Subsequent discovery of additional information.
- (2) If amendment, modification, or reversal of an investigative finding results in a substantiated finding of abuse or neglect of a child, the cabinet shall act in accordance with:
- (a) Section 3(1) and (2) of this administrative regulation; and
 - (b) 922 KAR 1:330, Section 10(8).

Section 6. Administrative Hearing.

- (1) Each administrative hearing conducted by the cabinet or its designee shall be held in accordance with KRS Chapter 13B.
- (2) The proceedings of an administrative hearing shall be disclosed only in accordance with KRS 194A.060, 620.050, 42 U.S.C. 1320d-1320d-9, 42 U.S.C. 1397-1397e, 42 U.S.C. 5106a, 920 KAR 1:060, 922 KAR 1:470, and 922 KAR 1:510.
- (3) (a) A hearing officer may, upon a determination of compelling need, permit a child to provide testimony in a manner in which the child is not able to hear or see the appellant.
(b) At the discretion of the child, the child's parent, or the child's legal guardian, a child required to testify in an administrative hearing may be accompanied by an adult who serves in a therapeutic or supportive capacity to the child.
- (4) If a hearing officer orders the testimony of a child to be taken in accordance with subsection (3) of this section, the hearing officer shall permit the appellant to hear the testimony of the child.

Section 7. Recommended Order.

- (1) A copy of the recommended order shall be sent simultaneously to:
- (a) Each party to the administrative hearing;
 - (b) The commissioner of the Department for Community Based Services; and
 - (c) The secretary of the Cabinet for Health and Family Services or designee.

- (2) If a party to a hearing disagrees with the recommended order, the party may file a written exception as provided in KRS 13B.110(4) with the secretary, which shall:
 - (a) Be filed within fifteen (15) calendar days of the date the recommended order was mailed;
 - (b) Be based on facts and evidence presented at the hearing;
 - (c) Not refer to evidence that was not introduced at the hearing; and
 - (d) Be sent to each other party involved in the hearing.

Section 8. Final Order.

- (1) The secretary of the Cabinet for Health and Family Services or designee shall issue a final order in accordance with KRS 13B.120.
- (2) (a) Final administrative action shall be taken, unless waived by an appellant, within ninety (90) calendar days from the date of the request for an administrative hearing as required by 45 C.F.R. 205.10.
 - (b) If the appellant waives the ninety (90) calendar day requirement specified in paragraph (a) of this subsection, the hearing officer shall notify all parties to the hearing when final administrative action will be taken.
- (3) An aggrieved party may petition for judicial review in accordance with:
 - (a) KRS 13B.140 to 13B.160; or
 - (b) KRS 23A.010.

Section 9. Incorporation by Reference.

- (1) "DPP-155, Request for Appeal of Child Abuse or Neglect Investigative Finding", 7/17, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

KRS 199.466 Background check of child abuse and neglect records at request of parent or legal guardian employing individual to care for minor child.

- (1) A parent or legal guardian employing an individual to care for his or her minor child may request the results of a background check of the child abuse and neglect records maintained by the cabinet from the individual by submitting the same form and paying the same fee that would be submitted by an entity required by law to request such a background check on an employee or volunteer for the purpose of determining whether there has been a substantiated finding of child abuse or neglect for the child-care provider. The form shall contain the signature of the individual consenting to the background check.
- (2) The cabinet shall notify the individual on whom the background check was completed of the results.
 - (a) If the results show no substantiated findings of child abuse or neglect on the registry for the individual, the cabinet shall send the individual a letter stating that they have no findings of substantiated abuse or neglect.
 - (b) If the results show substantiated findings of child abuse or neglect on the registry for the individual, the cabinet shall send the individual the results of the search.
- (3) The cabinet shall make the form for requesting a background check of the child abuse and neglect records maintained by the cabinet available on its Web site along with information on how to locate a child-care provider certified or licensed by the cabinet and how to request a criminal background check for a child-care provider.
- (4) The cabinet shall promulgate administrative regulations to implement subsection (1) of this section.

2. Placement of Juvenile Sex Offenders & Required Disclosures

KRS 605.090 Alternative treatment for committed children - Notice of inappropriate behavior of child - Procedures for removal of child committed as dependent, neglected, or abused - Reports - Written transfer summary - Placement of public offenders.

- (1) Unless precluded by law, any child committed to the Department of Juvenile Justice or the cabinet may by the decision of the Department of Juvenile Justice or the cabinet or its designee, at any time during the period of his or her commitment, be:
- (a) Upon fourteen (14) days' prior written notice to the court, discharged from commitment. Written notice of discharge shall be given to the committing court and to any other parties as may be required by law;
 - (b) Placed in the home of the child's parents, in the home of a relative, a suitable foster home, or boarding home, upon such conditions as the Department of Juvenile Justice or the cabinet may prescribe and subject to visitation and supervision by a social service worker or juvenile probation and parole officer.
 - 1. At the time a committed child is placed in the home of his or her parents by the Department of Juvenile Justice or the cabinet, the parents shall be informed in writing of the conditions of the placement and the criteria that will be used to determine whether removal is necessary.
 - 2. At the time a committed child is placed anywhere other than the home of the child's parents, the cabinet or the Department of Juvenile Justice shall inform the foster home, the relative, or the governing authority of any private facility or agency in which the child has been placed whether the minor placed is a juvenile sexual offender as defined in KRS 635.505(2) or of any inappropriate sexual acts or sexual behavior by the child specifically known to the cabinet or Department of Juvenile Justice, and any behaviors of the child specifically known to the cabinet or Department of Juvenile Justice that indicate a safety risk for the placement. Information received by any private facility or agency under this paragraph shall be disclosed immediately and directly to the individual or individuals who have physical custody of the child.
 - 3. If, after a placement is made, additional information is obtained by the cabinet or the Department of Juvenile Justice about inappropriate sexual behavior or other behavior of the committed child that may indicate a safety risk for the placement, the cabinet or the Department of Juvenile Justice shall as soon as practicable, but no later than seventy-two (72) hours after the additional information is received, inform the foster parent, relative, fictive kin, or private facility or agency. Additional information received by any private facility or agency shall be disclosed immediately and directly to the individual or individuals who have physical custody of the child.
 - 4. Information disclosed under this paragraph shall be limited to the acts or behaviors of the committed child and shall not constitute a violation of confidentiality under KRS Chapter 610 or 620. No foster parent, relative, fictive kin, or other person caring for a committed child shall divulge the information received under this paragraph to persons who do not have a legitimate interest or responsibility relating to the case. Nothing in this subparagraph shall prohibit the disclosure or sharing of information between a foster parent, relative, fictive kin, custodian, private facility, or governmental entity for the protection of any child. A violation of this subparagraph is a Class B misdemeanor;
 - (c) Placed in one (1) of the facilities or programs operated by the Department of Juvenile Justice or the cabinet, except that no child committed under the provisions of KRS 610.010(2)(a)(b), or (c) shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as a public offender unless the cabinet and the department agree, and the court consents, that the placement is in the best interest of the child and that the placement does not exceed a group home level;

- (d) Placed in a child-caring facility operated by a local governmental unit or by a private organization willing to receive the child, upon such conditions as the cabinet may prescribe;
 - (e) However, under no circumstances shall a child committed under KRS Chapter 620 be placed in a home, facility, or other shelter with a child who has been committed to the Department of Juvenile Justice for commission of a sex crime, as that term is defined in KRS 17.500, unless the child committed for the commission of a sex crime is kept segregated from other children in the home, facility, or other shelter that have not been committed for the commission of a sex crime;
 - (f) Treated as provided in KRS Chapter 645;
 - (g) Following the transfer or placement of a child pursuant to paragraphs (b), (c), (d), (e), or (f) of this subsection, the Department of Juvenile Justice or the cabinet shall, within fourteen (14) days, excluding weekends and holidays, give written notice to the court of the transfer, the placement, and the reasons therefor.
- (2) No child ten (10) years of age or under shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as public offenders, except that a child charged with the commission of a capital offense or with an offense designated as a Class A or Class B felony may be detained in a state-operated detention facility when there is no available less restrictive alternative.
- (3) If a child committed to the cabinet as dependent, neglected, or abused is placed in the home of the child's parents, the child shall not be removed except in accordance with the following standards and procedures:
- (a) If the social service worker believes that the committed child continues to be dependent, neglected, or abused, but immediate removal is unnecessary to protect the child from imminent death or serious physical injury, the casework situation and evidence shall be reviewed with his supervisor to determine whether to continue work with the family intact or to remove the child. There shall be documentation that the social service worker, prior to the court hearing, made an effort to contact the parents to inform them of the specific problems that could lead to removal so they have an opportunity to take corrective action. If the parents are unavailable or do not respond to attempts to communicate, the specific circumstances shall be documented;
 - (b) If it appears that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm and there is not reasonably available an alternative less drastic than removal of the child from the home, the cabinet shall petition the District Court to review the commitment pursuant to KRS 610.120 in relation to the cabinet's intention to remove the child from the parent's home. The petition shall set forth the facts which constitute the need for removal of the child. The court shall serve notice of the petition and the time and place of the hearing on the parents; however, the social service worker shall also contact the parents to ensure that they received the notice and are aware of the right to be represented by counsel. If the parents' whereabouts are unknown, notice may be mailed to the last known address of an adult who is a near relative. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall not be removed from the parents' home;
 - (c) If a social service worker finds a committed, unattended child who is too young to take care of himself, the social service worker shall make reasonable efforts to arrange for an emergency caretaker in the child's home until the parents return or fail to return within a reasonable time. If no in-home caretaker is available for the child, the social service worker shall request any appropriate law enforcement officer to take the child into protective custody. If, after a reasonable time, it appears the child has been abandoned, the cabinet shall petition the District Court to review the case; or

- (d) If there exist reasonable grounds to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents are unable or unwilling to protect the child, the social service worker shall, with the assistance of a law enforcement officer, immediately remove the child prior to filing a petition for review. Within seventy-two (72) hours after the removal, the cabinet shall file a petition for review in District Court pursuant to KRS 610.120 with a request for an expeditious hearing. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall be returned to the parents' home.
- (4) The cabinet or the Department of Juvenile Justice, as appropriate, shall notify the juvenile court of the county of placement with the conditions of supervised placement of each child placed in that county from one (1) of the residential treatment facilities operated by the Department of Juvenile Justice or the cabinet. Notice of the conditions of such placement may be made available by the court to any law enforcement agency.
- (5) The person in charge of any home to which a child is probated, and the governing authority of any private facility or agency to which a child is committed, shall make such reports to the court as the court may require, and such reports as the Department of Juvenile Justice or the cabinet may require in the performance of its functions under the law. The Department of Juvenile Justice or the cabinet shall have the power to make such visitations and inspections of the homes, facilities, and agencies in which children who have committed public offenses have been placed as it deems necessary to carry out its functions under the law.
- (6) The Department of Juvenile Justice or the cabinet shall provide a written transfer summary to the person in charge of any foster home or any governing authority of any private facility or agency in which the Department of Juvenile Justice or the cabinet has placed a child. The written summary shall include, at a minimum, demographic information about the child, a narrative statement detailing the child's prior placements, the length of time the child has been committed, a description of the services and assistance provided to the child or the child's family since the most current case plan, a copy of the current case plan for the child and the child's family, and a copy of the child's medical and educational passport, if available, provided that no information shall be provided that violates any statutory confidentiality requirements. The transfer summary shall state whether the child placed is a juvenile sexual offender as defined in KRS 635.505(2), and include information required under subsection (1) of this section. The transfer summary shall be provided by the Department of Juvenile Justice if it is responsible for the child, or the cabinet if it is responsible for the child, within seven (7) days of the placement of the child with the person, agency, or facility providing care to the child.
- (7) The Department of Juvenile Justice may assist the courts in placing children who have committed public offenses in boarding homes, and, under agreements with the individual courts, may assume responsibility for making such placements. Counties may pay or contribute towards the expenses of maintaining such children and, to the extent authorized by the fiscal court, the Department of Juvenile Justice may incur obligations chargeable to the county for such expenses.

KRS 620.090 Temporary custody orders.

- (1) If, after completion of the temporary removal hearing, the court finds there are reasonable grounds to believe the child is dependent, neglected or abused, the court shall issue an order for temporary removal and shall grant temporary custody to the cabinet or other appropriate person or agency. Preference shall be given to available and qualified relatives of the child considering the wishes of the parent or other person exercising custodial control or supervision, if known. The order shall state the specific reasons for removal and show that alternative less restrictive placements and services have been considered. The court may recommend a

placement for the child.

- (2) In placing a child under an order of temporary custody, the cabinet or its designee shall use the least restrictive appropriate placement available. Preference shall be given to available and qualified relatives of the child considering the wishes of the parent or other person exercising custodial control or supervision, if known. The child may also be placed in a facility or program operated or approved by the cabinet, including a foster home, or any other appropriate available placement. However, under no circumstance shall the child be placed in a home, facility, or other shelter with a child who has been committed to the Department of Juvenile Justice for commission of a sex crime as that term is defined in KRS 17.500, unless the child committed for the commission of a sex crime is kept segregated from other children in the home, facility, or other shelter that have not been committed for the commission of a sex crime.
- (3) If the court finds there are not reasonable grounds to believe the child is dependent, neglected or abused, or if no action is taken within seventy-two (72) hours, the emergency custody order shall be dissolved automatically and the cabinet or its designee shall return the child to the parent or other person exercising custodial control or supervision. A request for a continuance of the hearing by the parent or other person exercising custodial control or supervision shall constitute action precluding automatic dissolution of the emergency custody order.
- (4) When the court issues a temporary order for the custody of a child, the court may order that, within two (2) weeks, arrangements be made for the child to receive a thorough medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. The costs of the examination shall be paid by the cabinet.
- (5) The child shall remain in temporary custody with the cabinet for a period of time not to exceed forty-five (45) days from the date of the removal from his home. The court shall conduct the adjudicatory hearing and shall make a final disposition within forty-five (45) days of the removal of the child. The court may extend such time after making written findings establishing the need for the extension and after finding that the extension is in the child's best interest.
- (6) If custody is granted to a grandparent of the child pursuant to this section, the court shall consider granting reasonable visitation rights to any other grandparent of the child if the court determines the grandparent has a significant and viable relationship with the child as established in KRS 405.021(1)(c).

KRS 620.230 Case permanency plans.

- (1) For each child placed in the custody of the cabinet by an order of commitment, the cabinet shall file a case permanency plan for the child with the court and send a copy to the Administrative Office of the Courts Citizen Foster Care Review Board Program as soon as the plan is prepared but no later than thirty (30) days after the effective date of the order. Notwithstanding the provisions of KRS 620.090(5), if a child remains in the temporary custody of the cabinet for longer than forty-five (45) days and if a request is submitted by the Administrative Office of the Courts Citizen Foster Care Review Board Program, the cabinet shall provide a copy of the case permanency plan for the child.
- (2) The case permanency plan shall include, but need not be limited to:
 - (a) A concise statement of the reasons why the child is in the custody of the cabinet;
 - (b) A statement of the actions which have been taken with regard to the child to the date of the plan;
 - (c) A statement of the proposed actions which may be taken or are contemplated with regard to the child during the next six (6) months and during the entire duration of the time the child is in the custody of the cabinet;
 - (d) Contemplated placements for the child;
 - (e) If the child is placed outside the home, reasons why the child cannot be protected adequately in the home, the harms the child may suffer if left in the home, factors which may indicate when the child can be returned to the home, and efforts the cabinet or others

- are making to return the child to the home;
 - (f) If the child is placed outside the home, the steps that the cabinet will take to minimize the harm to the child as a result of the action, both at the time of removal and on a long-term basis;
 - (g) A description of the type of home, child-caring facility, child-placing agency or facility in which the child is to be placed or has been placed, and a statement why the placement is appropriate for the child, including but not limited to:
 1. Age;
 2. Educational needs;
 3. Medical needs;
 4. Emotional needs;
 5. Relationship with parents; and
 6. Number of children the home is authorized to care for and the number of children currently residing in the home;
 - (h) If the placement is outside the child's original county of residence, documentation that no closer placement is appropriate or available, and the reasons why the placement made was chosen;
 - (i) A description of the services for the child and his family to be provided or arranged by the cabinet to facilitate the return of the child to his own home or to another permanent placement;
 - (j) A list of objectives and specific tasks, together with specific time frames for each task, for which the parents have agreed to assume responsibility, including a schedule of regular visits with the child;
 - (k) A projected schedule of time intervals by which each of the services, objectives, and tasks outlined in the case permanency plan should be accomplished and a schedule of time intervals which have already been accomplished or are in the process of accomplishment;
 - (l) If the child is to remain at home, a description of the potential harm which could befall the child and measures that are being taken to prevent or minimize such harm; and
 - (m) If the child is to remain at home, reasons why he cannot be placed in foster care or why such care is not needed.
- (3) Under no circumstance shall a child be placed in a home, facility, or other shelter with a child who has been committed to the Department of Juvenile Justice for commission of a sex crime as defined in KRS 17.500, unless the child committed for the commission of a sex crime is kept segregated from other children in the home, facility, or other shelter that have not been committed for the commission of a sex crime.

B. VULNERABLE ADULT ABUSE, NEGLECT, AND EXPLOITATION

KRS 209.010 Purpose and application of chapter.

- (1) The purpose of this chapter is:
- (a) To provide for the protection of adults who may be suffering from abuse, neglect, or exploitation, and to bring said cases under the purview of the Circuit or District Court;
 - (b) To provide that any person who becomes aware of such cases shall report them to a representative of the cabinet, thereby causing the protective services of the state to be brought to bear in an effort to protect the health and welfare of these adults in need of protective services and to prevent abuse, neglect, or exploitation; and
 - (c) To promote coordination and efficiency among agencies and entities that have a responsibility to respond to the abuse, neglect, or exploitation of adults.
- (2) This chapter shall apply to the protection of adults who are the victims of abuse, neglect, or exploitation inflicted by a person or caretaker. It shall not apply to victims of domestic violence unless the victim is also an adult as defined in KRS 209.020(4).

KRS 209.020 Definitions for chapter.

As used in this chapter, unless the context otherwise requires:

- (1) "Secretary" means the secretary of the Cabinet for Health and Family Services;
- (2) "Cabinet" means the Cabinet for Health and Family Services;
- (3) "Department" means the Department for Community Based Services of the Cabinet for Health and Family Services;
- (4) "Adult" means a person eighteen (18) years of age or older who, because of mental or physical dysfunctioning, is unable to manage his or her own resources, carry out the activity of daily living, or protect himself or herself from neglect, exploitation, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services;
- (5) "Protective services" means agency services undertaken with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited. These services may include but are not limited to conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action; social services aimed at preventing and remedying abuse, neglect, and exploitation; and services directed toward seeking legal determination of whether or not the adult in need of protective services has been abused, neglected, or exploited and to ensure that he or she obtains suitable care in or out of his or her home;
- (6) "Caretaker" means an individual or institution who has been entrusted with or who has the responsibility for the care of the adult as a result of family relationship, or who has assumed the responsibility for the care of the adult person voluntarily or by contract, employment, legal duty, or agreement;
- (7) "Deception" means but is not limited to:
 - (a) Creating or reinforcing a false impression, including a false impression as to law, value, intention, or other state of mind;
 - (b) Preventing another from acquiring information that would affect his or her judgment of a transaction; or
 - (c) Failing to correct a false impression that the deceiver previously created or reinforced, or that the deceiver knows to be influencing another to whom the person stands in a fiduciary or confidential relationship;
- (8) "Abuse" means the infliction of injury, sexual abuse, unreasonable confinement, intimidation, or punishment that results in physical pain or injury, including mental injury;
- (9) "Exploitation" means obtaining or using another person's resources, including but not limited to funds, assets, or property, by deception, intimidation, or similar means, with the intent to deprive the person of those resources;
- (10) "Investigation" shall include but is not limited to:
 - (a) A personal interview with the individual reported to be abused, neglected, or exploited. When abuse or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation;
 - (b) An assessment of individual and environmental risk and safety factors;
 - (c) Identification of the perpetrator, if possible; and
 - (d) Identification by the Office of Inspector General of instances of failure by an administrator or management personnel of a regulated or licensed facility to adopt or enforce appropriate policies and procedures, if that failure contributed to or caused an adult under the facility's care to be abused, neglected, or exploited;
- (11) "Emergency" means that an adult is living in conditions which present a substantial risk of death or immediate and serious physical harm to himself or herself or others;
- (12) "Emergency protective services" are protective services furnished an adult in an emergency;
- (13) "Protective placement" means the transfer of an adult from his or her present living arrangement to another;

- (14) "Court" means the Circuit Court or the District Court if no judge of that Circuit Court is present in the county;
- (15) "Records" means the medical, mental, health, and financial records of the adult that are in the possession of any hospital, firm, corporation, or other facility, if necessary to complete the investigation mandated in this chapter. These records shall not be disclosed for any purpose other than the purpose for which they have been obtained;
- (16) "Neglect" means a situation in which an adult is unable to perform or obtain for himself or herself the goods or services that are necessary to maintain his or her health or welfare, or the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult; and
- (17) "Authorized agency" means:
 - (a) The Cabinet for Health and Family Services;
 - (b) A law enforcement agency or the Department of Kentucky State Police;
 - (c) The office of a Commonwealth's attorney or county attorney; or
 - (d) The appropriate division of the Office of the Attorney General.

KRS 209.030 Administrative regulations - Reports of adult abuse, neglect, or exploitation - Cabinet actions - Status and disposition reports.

- (1) The secretary may promulgate administrative regulations in accordance with KRS Chapter 13A to effect the purposes of this chapter. While the cabinet shall continue to have primary responsibility for investigation and the provision of protective services under this chapter, nothing in this chapter shall restrict the powers of another authorized agency to act under its statutory authority.
- (2) Any person, including but not limited to physician, law enforcement officer, nurse, social worker, cabinet personnel, coroner, medical examiner, alternate care facility employee, or caretaker, having reasonable cause to suspect that an adult has suffered abuse, neglect, or exploitation, shall report or cause reports to be made in accordance with the provisions of this chapter. Death of the adult does not relieve one of the responsibility for reporting the circumstances surrounding the death.
- (3) An oral or written report shall be made immediately to the cabinet upon knowledge of suspected abuse, neglect, or exploitation of an adult.
- (4) Any person making such a report shall provide the following information, if known:
 - (a) The name and address of the adult, or of any other person responsible for his care;
 - (b) The age of the adult;
 - (c) The nature and extent of the abuse, neglect, or exploitation, including any evidence of previous abuse, neglect, or exploitation;
 - (d) The identity of the perpetrator, if known;
 - (e) The identity of the complainant, if possible; and
 - (f) Any other information that the person believes might be helpful in establishing the cause of abuse, neglect, or exploitation.
- (5) Upon receipt of the report, the cabinet shall conduct an initial assessment and take the following action:
 - (a) Notify within twenty-four (24) hours of the receipt of the report the appropriate law enforcement agency. If information is gained through assessment or investigation relating to emergency circumstances or a potential crime, the cabinet shall immediately notify and document notification to the appropriate law enforcement agency;
 - (b) Notify each appropriate authorized agency. The cabinet shall develop standardized procedures for notifying each appropriate authorized agency when an investigation begins and when conditions justify notification during the pendency of an investigation;
 - (c) Initiate an investigation of the complaint; and

- (d) Make a written report of the initial findings together with a recommendation for further action, if indicated.
- (6) (a) The cabinet shall, to the extent practicable, coordinate its investigation with the appropriate law enforcement agency and, if indicated, any appropriate authorized agency or agencies.
(b) The cabinet shall, to the extent practicable, support specialized multidisciplinary teams to investigate reports made under this chapter. This team may include law enforcement officers, social workers, Commonwealth's attorneys and county attorneys, representatives from other authorized agencies, medical professionals, and other related professionals with investigative responsibilities, as necessary.
- (7) Any representative of the cabinet may enter any health facility or health service licensed by the cabinet at any reasonable time to carry out the cabinet's responsibilities under this chapter. Any representative of the cabinet actively involved in the conduct of an abuse, neglect, or exploitation investigation under this chapter shall also be allowed access to financial records and the mental and physical health records of the adult which are in the possession of any hospital, firm, financial institution, corporation, or other facility if necessary to complete the investigation mandated by this chapter. These records shall not be disclosed for any purpose other than the purpose for which they have been obtained.
- (8) Any representative of the cabinet may with consent of the adult or caretaker enter any private premises where any adult alleged to be abused, neglected, or exploited is found in order to investigate the need for protective services for the purpose of carrying out the provisions of this chapter. If the adult or caretaker does not consent to the investigation, a search warrant may be issued upon a showing of probable cause that an adult is being abused, neglected, or exploited, to enable a representative of the cabinet to proceed with the investigation.
- (9) If a determination has been made that protective services are necessary when indicated by the investigation, the cabinet shall provide such services within budgetary limitations, except in such cases where an adult chooses to refuse such services.
- (10) In the event the adult elects to accept the protective services to be provided by the cabinet, the caretaker shall not interfere with the cabinet when rendering such services.
- (11) The cabinet shall consult with local agencies and advocacy groups, including but not limited to long-term care ombudsmen, law enforcement agencies, bankers, attorneys, providers of nonemergency transportation services, and charitable and faith-based organizations, to encourage the sharing of information, provision of training, and promotion of awareness of adult abuse, neglect, and exploitation, crimes against the elderly, and adult protective services.
- (12) (a) By November 1 of each year and in accordance with state and federal confidentiality and open records laws, each authorized agency that receives a report of adult abuse, neglect, or exploitation shall submit a written report to the cabinet that provides the current status or disposition of each case referred to that agency by the cabinet under this chapter during the preceding year. The Elder Abuse Committee established in KRS 209.005 may recommend practices and procedures in its model protocol for reporting to the cabinet under this section.
(b) By December 30 of each year, the cabinet shall provide a written report to the Governor and the Legislative Research Commission that summarizes the status of and actions taken on all reports received from authorized agencies and specific departments within the cabinet under this subsection. The cabinet shall identify any report required under paragraph (a) of this subsection that is not received by the cabinet. Identifying information about individuals who are the subject of a report of suspected adult abuse, neglect, or exploitation shall not be included in the report under this paragraph. The report shall also include recommendations, as appropriate, to improve the coordination of investigations and the provision of protective services. The cabinet shall make the report available to community human services organizations and others upon request.

KRS 209.032 Query as to whether prospective or current employee has validated substantiated finding of adult abuse, neglect, or exploitation -- Administrative regulations -- Central registry of substantiated findings made on or after July 15, 2014.

(1) As used in this section:

(a) "Employee" means a person who:

1. Is hired directly or through a contract by a vulnerable adult services provider who has duties that involve or may involve one-on-one contact with a patient, resident, or client; or
2. Is a volunteer who has duties that are equivalent to the duties of an employee providing direct services and the duties involve, or may involve, one-on-one contact with a patient, resident, or client;

(b) "Validated substantiated finding of adult abuse, neglect, or exploitation" means that the cabinet has:

1. Entered a final order concluding by a preponderance of the evidence that an individual has committed adult abuse, neglect, or exploitation against a different adult for whom the individual was providing care or services as an employee or otherwise with the expectation of compensation;
2. The individual has been afforded an opportunity for an administrative hearing under procedures compliant with KRS Chapter 13B, and an appeal to the Circuit Court of the county where the abuse, neglect, or exploitation is alleged to have occurred or, if the individual consents, to the Franklin Circuit Court; and
3. That any appeal, including the time allowed for filing an appeal, has concluded or expired; and

(c) "Vulnerable adult service provider" means:

1. Adult day health care program centers as defined in KRS 216B.0441;
2. Adult day training facilities;
3. Assisted-living communities as defined in KRS 194A.700;
4. Boarding homes as defined in KRS 216B.300;
5. Group homes for individuals with an intellectual disability and developmentally disabled (ID/DD);
6. Home health agencies as defined in KRS 216.935;
7. Hospice programs or residential hospice facilities licensed under KRS Chapter 216B;
8. Long-term-care hospitals as defined in 42 U.S.C. sec. 1395ww(d)(1)(B)(iv);
9. Long-term-care facilities as defined in KRS 216.510;
10. Personal services agencies as defined in KRS 216.710;
11. Providers of home and community-based services authorized under KRS Chapter 205, including home and community based waiver services and supports for community living services; and
12. State-owned and operated psychiatric hospitals.

(2) A vulnerable adult services provider shall query the cabinet as to whether a validated substantiated finding of adult abuse, neglect, or exploitation has been entered against an individual who is a bona fide prospective employee of the provider. The provider may periodically submit similar queries as to its current employees and volunteers. The cabinet shall reply to either type of query only that it has or has not entered such a finding against the named individual.

(3) An individual may query the cabinet as to whether the cabinet's records indicate that a validated substantiated finding of adult abuse, neglect, or exploitation has been entered against him or her. The cabinet shall reply only that it has or has not entered such a finding against the named individual, although this limitation shall not be construed to prevent the individual who is the subject of the investigation from obtaining cabinet records under other law, including the Kentucky Open Records Act. An individual making a query under this subsection may direct that the results of the query be provided to an alternative recipient seeking to utilize the care or

services of the querying individual.

- (4) Every cabinet investigation of adult abuse, neglect, or exploitation committed by an employee or a person otherwise acting with the expectation of compensation shall be conducted in a manner affording the individual being investigated the level of due process required to qualify any substantiated finding as a validated substantiated finding of adult abuse, neglect, or exploitation.
- (5) The cabinet shall promulgate administrative regulations to implement the provisions of this section. Included in these administrative regulations shall be:
 - (a) An error resolution process allowing an individual whose name is erroneously reported to have been the subject of a validated substantiated finding of adult abuse, neglect, or exploitation to request the correction of the cabinet's records; and
 - (b) A designation of the process by which queries may be submitted in accordance with this section, which shall require that the queries be made using a secure methodology and only by providers and persons authorized to submit a query under this section.
- (6) If the cabinet does not respond to a query under subsection (2) of this section within twenty-four (24) hours and a vulnerable adult services provider hires or utilizes an employee provisionally, the provider shall not be subject to liability solely on the basis of hiring or utilizing the employee before having received the cabinet's response.
- (7) This section shall only apply to instances of abuse, neglect, or exploitation substantiated on or after July 15, 2014, which shall be compiled into a central registry for the purpose of queries submitted under this section.

KRS 209.040 Remedies - Injunctive relief.

Any court may upon proper application by the cabinet issue a restraining order or other injunctive relief to prohibit any violation of this chapter, regardless of the existence of any other remedy at law.

KRS 209.050 Immunity from civil or criminal liability.

Anyone acting upon reasonable cause in the making of any report or investigation or participating in the filing of a petition to obtain injunctive relief or emergency protective services for an adult pursuant to this chapter, including representatives of the cabinet in the reasonable performance of their duties in good faith, and within the scope of their authority, shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or investigation and such immunity shall apply to those who render protective services in good faith pursuant either to the consent of the adult or to court order.

KRS 209.060 Privileged relationships not ground for excluding evidence.

Neither the psychiatrist-patient privilege nor the husband-wife privilege shall be a ground for excluding evidence regarding the abuse, neglect, or exploitation of an adult or the cause thereof in any judicial proceeding resulting from a report pursuant to this chapter.

KRS 209.090 Legislative intent.

The General Assembly of the Commonwealth of Kentucky recognizes that some adults of the Commonwealth are unable to manage their own affairs or to protect themselves from abuse, neglect, or exploitation. Often such persons cannot find others able or willing to render assistance. The General Assembly intends, through this chapter, to establish a system of protective services designed to fill this need and to assure their availability to all adults. It is also the intent of the General Assembly to authorize only the least possible restriction on the exercise of personal and civil rights consistent with the person's needs for services, and to require that due process be followed in imposing such restrictions.

KRS 209.100 Emergency protective services.

- (1) If an adult lacks the capacity to consent to receive protective services in an emergency, these services may be ordered by a court on an emergency basis through an order pursuant to KRS 209.110, provided that:
 - (a) The adult is in a state of abuse or neglect and an emergency exists;
 - (b) The adult is in need of protective services;
 - (c) The adult lacks the capacity to consent and refuses to consent to such services; and
 - (d) No person authorized by law or court order to give consent for the adult is available to consent to emergency protective services or such person refuses to give consent.
- (2) In ordering emergency protective services, the court shall authorize only that intervention which it finds to be the least restrictive of the individual's liberty and rights while consistent with his welfare and safety.

KRS 209.140 Confidentiality of information.

All information obtained by the department staff or its delegated representative, as a result of an investigation made pursuant to this chapter, shall not be divulged to anyone except:

- (1) Persons suspected of abuse or neglect or exploitation, provided that in such cases names of informants may be withheld, unless ordered by the court;
- (2) Persons within the department or cabinet with a legitimate interest or responsibility related to the case;
- (3) Other medical, psychological, or social service agencies, or law enforcement agencies that have a legitimate interest in the case;
- (4) Cases where a court orders release of such information; and
- (5) The alleged abused or neglected or exploited person.

KRS 209.150 Who may make criminal complaint.

Any representative of the cabinet acting officially in that capacity, any person with personal knowledge of the abuse or neglect, or exploitation of an adult by a caretaker, or an adult who has been abused or neglected or exploited shall have standing to make a criminal complaint.

KRS 209.990 Penalties.

- (1) Anyone knowingly or wantonly violating the provisions of KRS 209.030(2) shall be guilty of a Class B misdemeanor as designated in KRS 532.090. Each violation shall constitute a separate offense.
- (2) Any person who knowingly abuses or neglects an adult is guilty of a Class C felony.
- (3) Any person who wantonly abuses or neglects an adult is guilty of a Class D felony.
- (4) Any person who recklessly abuses or neglects an adult is guilty of a Class A misdemeanor.
- (5) Any person who knowingly exploits an adult, resulting in a total loss to the adult of more than three hundred dollars (\$300) in financial or other resources, or both, is guilty of a Class C felony.
- (6) Any person who wantonly or recklessly exploits an adult, resulting in a total loss to the adult of more than three hundred dollars (\$300) in financial or other resources, or both, is guilty of a Class D felony.
- (7) Any person who knowingly, wantonly, or recklessly exploits an adult, resulting in a total loss to the adult of three hundred dollars (\$300) or less in financial or other resources, or both, is guilty of a Class A misdemeanor.
- (8) If a defendant is sentenced under subsection (5), (6), or (7) of this section and fails to return the victim's property as defined in KRS 218A.405 within thirty (30) days of an order by the sentencing court to do so, or is thirty (30) days or more delinquent in a court-ordered payment schedule, then the defendant shall be civilly liable to the victim of the offense or the victim's estate for treble damages, plus reasonable attorney fees and court costs. Any interested person or entity, as defined in KRS 387.510, shall have standing to bring a civil action on the victim's

behalf to enforce this section. The sentencing judge shall inform the defendant of the provisions of this subsection at sentencing.

922 KAR 5:070. Adult protective services.

Section 1. Definitions.

- (1) "Abuse" is defined by KRS 209.020(8).
- (2) "Adult" is defined by KRS 209.020(4).
- (3) "Authorized agency" is defined by KRS 209.020(17).
- (4) "Caretaker" is defined by KRS 209.020(6).
- (5) "Emergency" is defined by KRS 209.020(11).
- (6) "Employee" is defined by KRS 209.032(1)(a).
- (7) "Exploitation" is defined by KRS 209.020(9).
- (8) "Investigation" is defined by KRS 209.020(10).
- (9) "Neglect" is defined by KRS 209.020(16).
- (10) "Protective services" is defined by KRS 209.020(5).
- (11) "Records" is defined by KRS 209.020(15).
- (12) "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).
- (13) "Vulnerable adult services provider" is defined by KRS 209.032(1)(c).

Section 2. Receiving a Report.

- (1) An individual suspecting that an adult has suffered abuse, neglect, or exploitation shall:
 - (a) Report to the cabinet in accordance with KRS 209.030(2) and (3); and
 - (b) Provide the information specified in KRS 209.030(4).
- (2) The identity of the reporting individual shall remain confidential in accordance with KRS 209.140.
- (3) The cabinet shall make available a twenty-four (24) hour on-call response system for emergency reporting after normal office hours.
- (4) The cabinet shall investigate an anonymous report that provides sufficient information regarding the alleged abuse, neglect, or exploitation of an adult.
- (5) If a report does not meet criteria for investigation, the cabinet may refer the reporting source to:
 - (a) Community resources;
 - (b) General adult services in accordance with 922 KAR 5:090; or
 - (c) Domestic violence protective services in accordance with 922 KAR 5:102.
- (6) Upon accepting a report for investigation of alleged adult abuse, neglect, or exploitation, the cabinet shall:
 - (a) Conduct an initial assessment and initiate an investigation in accordance with KRS 209.030(5); and
 - (b) Take into consideration the safety of the adult when proceeding with the actions necessary to initiate an investigation.
- (7) The cabinet shall initiate an investigation upon acceptance of a report of:
 - (a) Abuse, as defined in KRS 209.020(8), if the report alleges:
 1. Marks that are or have been observed on an adult that another individual allegedly inflicted;
 2. Physical abuse inflicted upon the adult resulting in pain or injury, including a mental injury;
 3. An adult being hit in a critical area of the body, such as the head, face, neck, genitals, abdomen, and kidney areas; or
 4. An act of sexual abuse;
 - (b) Neglect, as defined in KRS 209.020(16), of an adult that may result in harm to the health and safety of the adult in the following areas:
 1. Hygiene neglect, if the adult has physical symptoms that require treatment due to poor

care as a result of:

- a. An act or omission by a caretaker; or
- b. The absence of a caretaker;
2. Supervision neglect, if the reporting source has observed a physical health and safety risk to an adult resulting from a lack of necessary and appropriate supervision;
3. Food neglect, if an adult shows symptoms of:
 - a. Malnutrition;
 - b. Dehydration;
 - c. Food poisoning; or
 - d. Lack of adequate food for a period of time that:
 - (i) Results in physical symptoms; or
 - (ii) Requires treatment;
4. Environmental neglect, if a serious health and safety hazard is present, and the adult or the adult's caretaker is not taking appropriate action to eliminate the problem; or
5. Medical neglect, if the adult is not receiving treatment for an injury, illness, or disability that:
 - a. Results in an observable decline in the adult's health and welfare;
 - b. May be life threatening; or
 - c. May result in permanent impairment;

(c) Exploitation of an adult, as defined in KRS 209.020(9), if the report alleges:

1. Isolation from friends, relatives, or important information, such as:
 - a. Screening telephone calls;
 - b. Denying visitors; or
 - c. Intercepting mail;
2. Physical or emotional dependency;
3. Manipulation;
4. Acquiescence; and
5. Loss of resources; or

(d) An adult in need of protective services as defined in KRS 209.020(5).

(8) If a report alleging the exploitation of an adult does not meet criteria established in subsection (7)(c) of this section, the report may be referred to an appropriate authorized agency or community resource.

(9) The following criteria shall be used in identifying a report of adult abuse, neglect, or exploitation not requiring an adult protective service investigation:

(a) The report does not meet the statutory definitions of:

1. Adult; and
2. a. Abuse;
- b. Neglect; or
- c. Exploitation; or

(b) There is insufficient information to:

1. Identify or locate the adult; or
2. Explore leads to identify or locate the adult.

(10) For a report accepted for investigation of alleged adult abuse, neglect, or exploitation, designated regional cabinet staff shall provide the information specified in KRS 209.030(4):

- (a) For a determination of investigation assignment by cabinet supervisory staff;
- (b) To the local guardianship office, if the adult is a state guardianship client; and
- (c) To appropriate authorized agencies, as specified in KRS 209.030(5).

Section 3. Adult Protective Service Investigations.

(1) The cabinet shall coordinate its investigation in accordance with KRS 209.030(6).

(2) An adult protective service investigation may include contact with the alleged perpetrator and collaterals, if the contact does not pose a safety concern for the adult or cabinet staff.

- (3) Information obtained as a result of a protective service investigation shall be kept confidential in accordance with KRS 209.140.
- (4) Requests for written information of the protective service investigation, except for court ordered releases, shall be handled through the open records process in accordance with KRS 61.872 and 922 KAR 1:510.
- (5) Designated regional cabinet staff shall initiate the investigation of a report of adult abuse, neglect, or exploitation. If the accepted report of adult abuse, neglect, or exploitation with the expressed permission of the adult indicates:
 - (a) An emergency, the investigation shall be initiated within one (1) hour; or
 - (b) A nonemergency, the investigation shall be initiated within forty-eight (48) hours.
- (6) If permission is granted by the adult, designated regional cabinet staff may take photographs, audio, or video recordings.
- (7) (a) The cabinet shall obtain a written voluntary statement of adult abuse, neglect, or exploitation if the adult, witness, or alleged perpetrator is willing to provide the written statement; and
 - (b) The cabinet shall inform the adult, witness or alleged perpetrator that the:
 1. Statement may be shared with appropriate authorized agencies; and
 2. Individual may be required to testify in a court of law.
- (8) If investigating reports of alleged abuse or neglect of an adult resulting in death, designated regional cabinet staff shall:
 - (a) Examine the coroner's or doctor's report;
 - (b) Obtain a copy of the death certificate for the case record, if possible;
 - (c) Notify the commissioner or designee;
 - (d) Consult with appropriate law enforcement, in accordance with KRS 209.030(6)(a) in completing the investigation, if an adult died allegedly as a result of abuse or neglect; and
 - (e) Determine if another resident in an alternate care facility is at risk of abuse or neglect, if the findings of an investigation suggest that an adult in the alternate care facility died allegedly as a result of abuse or neglect.
- (9) Unless the legal representative is alleged to have abused, neglected, or exploited the adult, a legal representative may act on behalf of an adult for purposes of this administrative regulation.

Section 4. Results of the Investigation.

- (1) Designated regional cabinet staff shall address the following when evaluating the results of the investigation:
 - (a) The adult's account of the situation, if possible;
 - (b) The alleged perpetrator's account of the situation, if available;
 - (c) The information supplied by collateral contact;
 - (d) Records and documents;
 - (e) The assessment information;
 - (f) Previous reports involving the adult or alleged perpetrator; and
 - (g) Other information relevant to the protection of an adult.
- (2) The findings of the adult protective service investigation shall be:
 - (a) Shared with appropriate authorized agencies in accordance with KRS 209.030(5); and
 - (b) Documented on the cabinet's database.
- (3) Designated regional cabinet staff shall maintain a written record, as specified in KRS 209.030(5), to include:
 - (a) Information reported in accordance with KRS 209.030(4); and
 - (b) A narrative documenting:
 1. The investigation; and
 2. Findings of the investigation.
- (4) If an issue or concern identified by the cabinet does not require a protective service case being opened, the cabinet may work with the adult to develop an aftercare plan:

- (a) At the consent of the adult; and
- (b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.

Section 5. Substantiation Criteria and Submission of Findings.

- (1) In determining if an allegation is substantiated, the cabinet shall use the statutory definitions of:
 - (a) Adult; and
 - (b) 1. Abuse;
 - 2. Neglect; or
 - 3. Exploitation.
- (2) If preponderance of evidence exists, designated regional cabinet staff may make a finding of and substantiate abuse, neglect, or exploitation.
- (3) A finding made by cabinet staff shall not be a judicial finding.
- (4) Cabinet supervisory staff shall review and approve a finding of an investigation prior to its finalization.

Section 6. Reports of Adult Abuse, Neglect, or Exploitation Involving an Employee or Compensated Person.

If the cabinet receives a report involving an employee or a person acting with the expectation of compensation, cabinet staff shall provide the alleged perpetrator during the investigative interview:

- (1) Notice of the basic allegations, which shall be void of any specifics that may compromise the investigation;
- (2) Notice that the alleged perpetrator will be provided notification of the findings upon completion of the investigation;
- (3) Due process requirements in accordance with KRS Chapter 13B and KRS 209.032; and
- (4) A statement that a validated substantiated finding shall be reported on the caregiver misconduct registry governed by 922 KAR 5:120.

Section 7. Opening a Case.

- (1) A case may be opened:
 - (a) As a result of a protective service investigation; or
 - (b) Upon identification of an adult through a general adult services assessment as being at risk of abuse, neglect, or exploitation.
- (2) The decision to open a case shall be based on the:
 - (a) Voluntary request for, or acceptance of, services by an adult who needs adult protection or general adult services; or
 - (b) Need for involuntary emergency protective services.
- (3) If it has been determined that an adult is incapable of giving consent to receive protective services, the court may assume jurisdiction and issue an ex parte order in accordance with KRS 209.130.
- (4) Emergency protective services shall be provided in accordance with KRS 209.110.
- (5) The cabinet shall develop an adult's case plan with the adult and, upon consent of the adult, may include consideration of the following:
 - (a) Designated regional cabinet staff;
 - (b) Family members;
 - (c) Family friends;
 - (d) Community partners; or
 - (e) Other individuals requested by the adult.
- (6) Within thirty (30) calendar days of opening a case, designated regional cabinet staff shall:
 - (a) Initiate a case plan with the adult; and
 - (b) Submit the plan to supervisory staff for approval.

Section 8. Referrals for Criminal Prosecution.

The cabinet shall refer substantiated reports of adult abuse, neglect, or exploitation to Commonwealth attorneys and county attorneys for consideration of criminal prosecution in

accordance with KRS 209.180.

Section 9. Restraining Order or Injunctive Relief.

If necessary, designated regional cabinet staff shall contact the cabinet's Office of Legal Services for advice and assistance in obtaining restraining orders or other forms of injunctive relief that may be issued for protection of an adult, in accordance with KRS 209.040.

Section 10. Guardianship or Conservatorship of Disabled Persons.

(1) In an attempt to provide appropriate protective services, designated regional cabinet staff shall assess the need for guardianship if an individual appears unable to make an informed choice to:

- (a) Manage personal affairs;
- (b) Manage financial affairs; or
- (c) Carry out the activities of daily living.

(2) Designated regional cabinet staff may assist in protective service situations in seeking out family, friends, or other interested and qualified individuals who are willing and capable to become guardians.

(3) Upon an order of the court, the cabinet shall file an interdisciplinary evaluation report in accordance with KRS 387.540(1).

Section 11. Involuntary Hospitalization.

(1) Designated regional cabinet staff shall encourage the voluntary hospitalization of an adult who needs to secure mental health treatment to avoid serious physical injury or death.

(2) Designated regional cabinet staff may file a petition for involuntary hospitalization in accordance with KRS 202A.051 and 202B.100 if:

- (a) The adult lacks the capacity to consent or refuses mental health treatment;
- (b) Other resources are not available;
- (c) Another petitioner is absent or unavailable; and
- (d) Prior cabinet supervisory approval is obtained.

Section 12. Reporting.

(1) Reports of adult abuse, neglect, or exploitation shall be maintained in the cabinet's database for:

- (a) Use in future investigations; and
- (b) Annual reporting requirements as specified in KRS 209.030(12).

(2) The cabinet shall submit a report annually to the Governor and Legislative Research Commission in accordance with KRS 209.030(12)(b).

(a) In addition to the information required by KRS 209.030(12)(b), the summary of reports received by the cabinet shall include for each individual who is the subject of a report:

- 1. Age;
- 2. Demographics;
- 3. Type of abuse;
- 4. The number of:
 - a. Accepted reports; and
 - b. Substantiated reports; and
- 5. Other information relevant to the protection of an adult.

(b) The information required in paragraph (a) of this subsection shall only be provided if it does not identify an individual.

Section 13. Case Closure and Aftercare Planning.

(1) The cabinet's decision to close an adult protective service case shall be based upon:

- (a) Evidence that the factors resulting in adult abuse, neglect, or exploitation are resolved to the extent that the adult's needs have been met;
- (b) The request of the adult; or
- (c) A lack of legal authority to obtain court ordered cooperation from the adult.

- (2) An adult shall be:
 - (a) Notified in writing of the decision to close the protective service case; and
 - (b) Advised of the right to request a service appeal in accordance with Section 14 of this administrative regulation.
- (3) If an adult protective service case is appropriate for closure, the cabinet may work with the adult to develop an aftercare plan:
 - (a) At the consent of the adult; and
 - (b) In an effort to prevent a recurrence of adult abuse, neglect, or exploitation.
- (4) If the cabinet closes the protective service case in accordance with this section, aftercare planning may link the adult to community resources for the purpose of continuing preventive measures.

Section 14. Appeal Rights.

- (1) A victim of adult abuse, neglect, or exploitation may request a service appeal in accordance with 922 KAR 1:320, Section 2.
- (2) If the cabinet makes a finding that an individual providing care to an adult as an employee or with the expectation of compensation has committed adult abuse, neglect, or exploitation, the individual shall receive appeals in accordance with 922 KAR 5:120.

922 KAR 5:090. General adult services.

Section 1. Definitions.

- (1) "Abuse" is defined by KRS 209.020(8).
- (2) "Adult" is defined by KRS 209.020(4).
- (3) "Alternate care" means a level of care licensed by the cabinet as follows: (a) Family care home in accordance with 902 KAR 20:041; (b) Intermediate care facility in accordance with 902 KAR 20:051; (c) Intermediate care facility for individuals with an intellectual disability as defined by 907 KAR 1:022; (d) Nursing facility as defined by 907 KAR 1:022; (e) Personal care home as defined by KRS 216.750(2); and (f) Skilled nursing facility as defined by 907 KAR 1:022 as "high intensity nursing care service".
- (4) "Cabinet" is defined by KRS 209.020(2).
- (5) "Caretaker" is defined by KRS 209.020(6).
- (6) "Exploitation" is defined by KRS 209.020(9).
- (7) "Family member" is defined by KRS 403.720(2).
- (8) "General adult services" means a voluntary preventive service aimed at:
 - (a) Assisting an adult to attain and function at the adult's highest level of self-sufficiency and autonomy; and
 - (b) Maintaining the adult in the community.
- (9) "Neglect" is defined by KRS 209.020(16).

Section 2. Criteria for Intake and Assessment.

- (1) If a cabinet worker and the adult agree, an individual eighteen (18) years of age or older shall be eligible for general adult services if the individual:
 - (a) Is:
 1. Mentally or physically dysfunctional and not in an abuse, neglect, or exploitation situation; and
 2. Requesting the service or has directed the request for the service through another individual or agency;
 - (b) Is a victim as defined by KRS 209A.020(6); or
 - (c) Requests a transitioning service from out-of-home care within twelve (12) months of release from the cabinet's commitment.

- (2) An individual sixty-five (65) years of age or older shall be eligible for general adult services if the individual is:
- (a) Not mentally or physically dysfunctional; and
 - (b) Allegedly being abused, neglected, or exploited by a:
 - 1. Family member;
 - 2. Household member; or
 - 3. Caretaker.

Section 3. Time Frame.

An adult services assessment shall be:

- (1) Initiated within three (3) working days of receipt of the request for services; and
- (2) Completed within forty-five (45) working days of initiation unless an extension is granted by the designated cabinet staff in a supervisory role for good cause, such as workload, pending records or collateral contact, or necessary medical evaluation.

Section 4. Service Provision.

Appropriate and necessary service provision shall include:

- (1) Information and referral;
- (2) Assessment; and
- (3) Supportive and on-going services that, if required by the circumstances, include:
 - (a) Services focusing on prevention;
 - (b) Social work counseling;
 - (c) Arranging transportation; or
 - (d) Placement and movement in accordance with Section 5 of this administrative regulation.

Section 5. Placement and Movement.

- (1) Except under a condition pursuant to KRS Chapter 209 or 922 KAR 5:070, the cabinet shall respond to a request for placement and movement service, but shall not make the decision to place or move an adult.
- (2) A cabinet worker shall assist an adult in locating and assisting in placement and movement, if:
 - (a) The request for placement and movement service was made by one (1) of the following:
 - 1. The adult in need of services;
 - 2. The guardian of the adult in need of services;
 - 3. The holder of a durable power of attorney for the adult in need of services;
 - 4. The facility in which the adult in need of services is being treated if no other person is available and willing to assist;
 - 5. Another state agency; or
 - 6. A Court order;
 - (b) The adult in need of services has not been adjudicated mentally disabled;
 - (c) The adult in need of services agrees to the placement and movement service; and
 - (d) All other options have been explored and rejected.
- (3) A cabinet worker shall:
 - (a) Assist a Medicaid recipient in locating placement or assistance in placement and movement; and
 - (b) Consider every available community resource that may assist the adult to remain at home or return home during the placement and movement process.
- (4) A request for a placement and movement service may result from a:
 - (a) Protective services investigation in accordance with 922 KAR 5:070;
 - (b) Change in level of care;
 - (c) Normal movement into or out of an alternate care facility;
 - (d) Dissatisfaction of a resident; or
 - (e) Closure of an alternate care facility.

Section 6. Tracking information on general adult services shall be maintained by the cabinet for administrative purposes.

922 KAR 5:120 Caregiver misconduct registry and appeals.

Section 1. Definitions.

- (1) "Abuse" is defined by KRS 209.020(8).
- (2) "Adult" is defined by KRS 209.020(4).
- (3) "Cabinet" means the Cabinet for Health and Family Services.
- (4) "Employee" is defined by KRS 209.032(1)(a).
- (5) "Exploitation" is defined by KRS 209.020(9).
- (6) "Good cause" means justification for failure to carry forward with a legal obligation related to an appeal, including:
 - (a) An appellant's inability to comprehend the cabinet's written statement describing appeal rights; or
 - (b) A cabinet-sanctioned determination that the appellant or the appellant's legal representative is not at fault for failure to:
 1. Submit a written request for appeal; or
 2. Participate in a proceeding related to an administrative hearing.
- (7) "Investigation" is defined by KRS 209.020(10).
- (8) "Near fatality" means an injury or condition, as certified by a physician, that places an adult in serious or critical condition.
- (9) "Neglect" is defined by KRS 209.020(16).
- (10) "Records" is defined by KRS 209.020(15).
- (11) "Secure methodology" means the deployment of technology to protect the application's authenticity and to keep user communications, browsing, and identity private in accordance with KRS 209.032.
- (12) "Validated substantiated finding of adult abuse, neglect, or exploitation" is defined by KRS 209.032(1)(b).
- (13) "Vulnerable adult services provider" is defined by KRS 209.032(1)(c).

Section 2. Caregiver Misconduct Registry.

- (1) The cabinet shall establish a caregiver misconduct registry that contains an individual:
 - (a) Who was an employee or a person acting with the expectation of compensation;
 - (b) Who was the perpetrator of adult abuse, neglect, or exploitation:
 1. Pursuant to 922 KAR 5:070; and
 2. Substantiated on or after July 15, 2014; and
 - (c) With a validated substantiated finding of adult abuse, neglect, or exploitation.
- (2) An individual with a validated substantiated finding of adult abuse, neglect, or exploitation shall:
 - (a) Remain on the caregiver misconduct registry for a period of at least seven (7) years; and
 - (b) Be removed from the caregiver misconduct registry:
 1. In accordance with the error resolution process described in Section 6 of this administrative regulation if an error is confirmed; or
 2. After a period of seven (7) years if:
 - a. No additional validated substantiated finding of adult abuse, neglect, or exploitation has occurred since the last finding for which the individual's name was placed on the caregiver misconduct registry; and
 - b. Cabinet records indicate that the incident for which the individual's name was placed on the caregiver misconduct registry did not relate to an adult fatality or near fatality related to adult abuse or neglect.
- (3) The caregiver misconduct registry shall be available for a web-based query using a secure methodology by:
 - (a) A vulnerable adult services provider in accordance with KRS 209.032(2); and
 - (b) An individual in accordance with KRS 209.032(3).
- (4) The caregiver misconduct registry shall be accessible through:

- (a) The department's main webpage; or
 - (b) Another cabinet system, such as the Kentucky Applicant Registry and Employment Screening (KARES) Program established in accordance with 906 KAR 1:190.
- (5) If an individual or a vulnerable adult service provider described in KRS 209.032(1)(c)11 does not have access to the internet, the individual or provider shall submit a signed and completed DPP-246, Caregiver Misconduct Registry Self-Query, to conduct a self-query in accordance with KRS 209.032(2) or (3).

Section 3. Notification of Finding.

- (1) If the cabinet finds that an employee or a person acting with the expectation of compensation has committed adult abuse, neglect, or exploitation in accordance with 922 KAR 5:070, the cabinet shall send notice of the finding to the perpetrator by certified mail to the perpetrator's last known address.
- (2) The cabinet's notice of a finding of adult abuse, neglect, or exploitation to an employee or a person acting with the expectation of compensation shall include:
- (a) The factual basis for the finding of adult abuse, neglect, or exploitation;
 - (b) The results of the investigation;
 - (c) The perpetrator's right to appeal the substantiated finding in accordance with KRS 209.032 and this administrative regulation;
 - (d) A statement that a finding shall become a validated substantiated finding of adult abuse, neglect, or exploitation in accordance with KRS 209.032 and Section 5 of this administrative regulation; and
 - (e) A statement that a perpetrator of a validated substantiated finding of adult abuse, neglect, or exploitation shall be added to the caregiver misconduct registry.
- (3) (a) The cabinet shall reserve the right, in its sole discretion, to amend, modify, or reverse its investigative finding of adult abuse, neglect, or exploitation at any time if the finding appears to be improper based upon:
- 1. A review of the cabinet's records; or
 - 2. Subsequent discovery of additional information.
- (b) If amendment, modification, or reversal of an investigative finding results in a substantiated finding of abuse or neglect of an adult, the cabinet shall act in accordance with Section 3(1) and(2) of this administrative regulation.

Section 4. Request for Appeal.

- (1) In accordance with KRS 209.032, if the cabinet makes a finding that an employee or a person acting with the expectation of compensation has committed adult abuse, neglect, or exploitation, the individual shall have the right to appeal the substantiated finding through an administrative hearing.
- (2) A request for appeal shall:
- (a) Be submitted:
 - 1. In writing by the appellant, with the assistance of the cabinet if the appellant is unable to comply without assistance; and
 - 2. To the cabinet no later than thirty (30) calendar days from the individual's receipt of the notice in accordance with Section 3(1) of this administrative regulation;
 - (b) Describe the nature of the investigative finding;
 - (c) Specify the reason the individual disputes the cabinet's substantiated finding; and
 - (d) Include a copy of the notice of a substantiated finding in accordance with Section 3 of this administrative regulation, if available.
- (3) The cabinet shall not dismiss a request for appeal as untimely if an appellant demonstrates good cause.
- (4) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue or an unsubstantiated finding of adult abuse, neglect, or exploitation shall not be subject to review through an administrative hearing.

Section 5. Administrative Hearing.

- (1) An administrative hearing conducted by the cabinet or its designee shall be in accordance with KRS Chapter 13B and 209.032.
- (2) The cabinet's investigative finding shall become a validated substantiated finding of adult abuse, neglect, or exploitation if the:
 - (a) Perpetrator does not request an administrative hearing in accordance with Section 4 of this administrative regulation;
 - (b) Perpetrator fails to:
 1. Participate in any stage of the proceedings after requesting an appeal in accordance with Section 4 of this administrative regulation; and
 2. Demonstrate good cause; or
 - (c) Cabinet's substantiated finding is upheld through the administrative hearing process.
- (3) The secretary or designee shall issue the final order in accordance with KRS 13B.120 and 209.032.
- (4) A party aggrieved by the secretary's decision shall have the right to pursue judicial review in accordance with KRS 13B.140, 13B.150, and 209.032(1)(b).
- (5) The proceedings of the administrative hearing shall be disclosed only in accordance with KRS 194A.060, 205.140, 42 U.S.C. 1320d-1320d-9, 42 U.S.C. 1397-1397e, 1397m-1, 920 KAR 1:060, and 922 KAR 1:510.
- (6) If the matter is not subject to the requirements of this section, the cabinet shall inform the person that the matter may be pursued through:
 - (a) A service complaint process described in 920 KAR 1:030 or 922 KAR 1:320; or
 - (b) The error resolution process in accordance with Section 6 of this administrative regulation.

Section 6. Error Resolution.

- (1) In accordance with KRS 209.032(5)(a), an individual seeking error resolution shall:
 - (a) Submit a written request for record correction to the Commissioner of the Department for Community Based Services, 275 East Main Street (3W-A), Frankfort, Kentucky 40621;
 - (b) Specify the:
 1. Date of the caregiver misconduct registry query which resulted in the error being identified; and
 2. Error contained in the caregiver misconduct registry query results; and
 - (c) Provide documentation that verifies the error, if available.
- (2) Within thirty (30) days of receipt of a request in accordance with subsection (1) of this section, the commissioner or designee shall:
 - (a) Determine whether an error exists; and
 - (b)
 1. If the cabinet confirms an error:
 - a. Correct the records; and
 - b. Notify the requesting individual that the records have been corrected; or
 2. If the cabinet cannot confirm an error:
 - a. Notify the individual that an error cannot be confirmed based upon the information and documentation submitted with the request; and
 - b. Outline information or documentation that may verify an error pursuant to the individual's request, if any.

Section 7. Incorporation by Reference.

- (1) The "DPP-246, Caregiver Misconduct Registry Self-Query", 11/14, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621; Monday through Friday, 8 a.m. to 4:30 p.m.

C. DUTIES TO VICTIMS OF DOMESTIC AND DATING VIOLENCE

KRS 209A.010 Purpose of chapter.

The purpose of this chapter is to identify victims of domestic violence and abuse and dating violence and abuse, to link those victims to services, and to provide protective or therapeutic services for those who choose to accept them.

KRS 209A.020 Definitions for chapter.

As used in this chapter, unless the context otherwise requires:

- (1) "Cabinet" means the Cabinet for Health and Family Services;
- (2) "Dating violence and abuse" has the same meaning as in KRS 456.010;
- (3) "Domestic violence and abuse" has the same meaning as in KRS 403.720;
- (4) "Law enforcement officer" means a member of a lawfully organized police unit or police force of county, city, or metropolitan government who is responsible for the detection of crime and the enforcement of the general criminal laws of the state, as well as a sheriff, sworn deputy sheriff, campus police officer, law enforcement support personnel, public airport authority security officer, other public and federal peace officer responsible for law enforcement, special local peace officer appointed pursuant to KRS 61.360, school resource officer, public school district security officer, and any other enforcement officer as defined by law;
- (5) "Professional" means a physician, osteopathic physician, coroner, medical examiner, medical resident, medical intern, chiropractor, nurse, dentist, optometrist, emergency medical technician, paramedic, licensed mental health professional, therapist, cabinet employee, child-care personnel, teacher, school personnel, ordained minister or the denominational equivalent, victim advocate, or any organization or agency employing any of these professionals;
- (6) "Victim" means an individual who is or has been abused by a spouse or former spouse or an intimate partner who meets the definition of a member of an unmarried couple as defined in KRS 403.720, or a member of a dating relationship as defined in KRS 456.010; and
- (7) "Victim advocate" has the same meaning as in KRS 421.570.

KRS 209A.030 Penalty.

A professional knowingly or wantonly violating the provisions of this chapter shall be guilty of a Class B misdemeanor and penalized in accordance with KRS 532.090. Each violation shall constitute a separate offense.

KRS 209A.050 Immunity from civil or criminal liability for good faith performance of duties.

Anyone acting upon reasonable cause in complying with the provisions of this chapter shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such compliance.

KRS 209A.060 Privileged relationships not ground for excluding evidence.

Neither the psychotherapist-patient privilege nor the husband-wife privilege shall be a ground for excluding evidence regarding the domestic violence and abuse or dating violence and abuse or the cause thereof in any judicial proceeding resulting from a report pursuant to this chapter.

KRS 209A.070 Confidentiality of the identity of domestic violence program clients or former clients.

All information that identifies a current or former client of a domestic violence program is confidential and shall not be disclosed by any person except as provided by law. The cabinet shall have access to client information relating to any domestic violence program for the limited purpose of monitoring the program.

KRS 209A.100 Report by professional of act of domestic violence and abuse or dating violence and abuse to law enforcement.

- (1) Upon the request of a victim, a professional shall report an act of domestic violence and abuse or dating violence and abuse to a law enforcement officer.
- (2) A professional who makes a report under this chapter shall discuss the report with the victim prior to contacting a law enforcement officer.

KRS 209A.110 Report by professional to law enforcement concerning belief that client's or patient's death is related to domestic violence and abuse or dating violence and abuse.

- (1) A professional shall report to a law enforcement officer his or her belief that the death of a victim with whom he or she has had a professional interaction is related to domestic violence and abuse or dating violence and abuse.
- (2) Nothing in this chapter shall relieve a professional of the duty pursuant to KRS 620.030 to report any known or suspected abuse, neglect, or dependency of a child.
- (3) Nothing in this chapter shall relieve a professional of the duty pursuant to KRS 209.030 to report to the cabinet any known or suspected abuse, neglect, or exploitation of a person eighteen (18) years of age or older who because of mental or physical dysfunction is unable to manage his or her own resources, carry out the activity of daily living, or protect himself or herself from neglect, exploitation, or a hazardous or abusive situation without assistance from others.

KRS 209A.120 Duty of law enforcement to provide assistance as required under KRS 403.785 and 456.090 -- Use of JC-3 form.

- (1) If a law enforcement officer receives a report of domestic violence and abuse or dating violence and abuse, the officer shall use all reasonable means to provide assistance as required under KRS 403.785 and 456.090.
- (2) A law enforcement officer who responds to a report of domestic violence and abuse or dating violence and abuse shall use the JC-3 form, or its equivalent replacement, as provided by the Justice and Public Safety Cabinet to document any information or injuries related to the domestic violence and abuse or dating violence and abuse.
- (3) A completed JC-3 form, or its equivalent replacement, shall be kept in the records of the law enforcement officer's agency of employment.
- (4) If the JC-3 form, or its equivalent replacement, includes information that only relates to a victim as defined in KRS 209A.020, the form shall not be forwarded to the cabinet.
- (5) If the JC-3 form, or its equivalent replacement, includes information on known or suspected child abuse or neglect or the abuse or neglect of an elderly or disabled adult, the form shall be forwarded to the cabinet.

KRS 209A.130 Educational materials to be provided suspected victim of domestic violence and abuse or dating violence and abuse -- Availability of online materials.

- (1) If a professional has reasonable cause to believe that a victim with whom he or she has had a professional interaction has experienced domestic violence and abuse or dating violence and abuse, the professional shall provide the victim with educational materials related to domestic violence and abuse or dating violence and abuse including information about how he or she may access regional domestic violence programs under KRS 209A.045 or rape crisis centers under KRS 211.600 and information about how to access protective orders.
- (2) A nonprofit corporation designated by the cabinet pursuant to KRS 209A.045 as a primary service provider for domestic violence shelter, crisis, and advocacy services in the district in which the provider is located shall make the educational materials required under this section available on its Web site or in print form for professionals to provide to possible victims of domestic violence and abuse or dating violence and abuse.

KRS 403.785 Duties of law enforcement officers and agencies.

- (1) A court issuing an order of protection shall direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with.
- (2) When a law enforcement officer has reason to suspect that a person has been the victim of domestic violence and abuse, the officer shall use all reasonable means to prevent further abuse, including but not limited to:
 - (a) Remaining at the location of the call for assistance so long as the officer reasonably suspects there is danger to the physical safety of individuals present without the presence of a law enforcement officer;
 - (b) Assisting the victim in obtaining medical treatment, including transporting the victim to the nearest medical facility capable of providing the necessary treatment; and
 - (c) Advising the victim immediately of the rights available to them, including the provisions of KRS 421.500, including the provisions of this chapter.
- (3) Orders of protection shall be enforced in any county of the Commonwealth.
- (4) Officers acting in good faith under this section shall be immune from criminal and civil liability.

D. DUTY TO WARN OF DANGER OR THREAT

1. Threat by Adult

KRS 202A.011(2) Definitions for chapter “Danger” or “Threat of Danger”.

“Danger” or “threat of danger to self, family, or others” means substantial physical harm or threat of substantial physical harm upon self, family, or others, including actions which deprive self, family, or others of the basic means of survival including provision for reasonable shelter, food, or clothing;

KRS 202A.400 Duty of mental health professional to warn intended victim of patient’s threat of violence.

- (1) No monetary liability and no cause of action shall arise against any mental health professional for failing to predict, warn of or take precautions to provide protection from a patient’s violent behavior, unless the patient has communicated to the mental health professional an actual threat of physical violence against a clearly identified or reasonably identifiable victim, or unless the patient has communicated to the mental health professional an actual threat of some specific violent act.
- (2) The duty to warn of or to take reasonable precautions to provide protection from violent behavior arises only under the limited circumstances specified in subsection (1) of this section. The duty to warn a clearly or reasonably identifiable victim shall be discharged by the mental health professional if reasonable efforts are made to communicate the threat to the victim, and to notify the police department closest to the patient’s and the victim’s residence of the threat of violence. When the patient has communicated to the mental health professional an actual threat of some specific violent act and no particular victim is identifiable, the duty to warn has been discharged if reasonable efforts are made to communicate the threat to law enforcement authorities. The duty to take reasonable precaution to provide protection from violent behavior shall be satisfied if reasonable efforts are made to seek civil commitment of the patient under this chapter.
- (3) No monetary liability and no cause of action shall arise against any mental health professional for confidences disclosed to third parties in an effort to discharge a duty arising under subsection (1) of this section according to the provisions of subsection (2) of this section.

(4) For purposes of this section:

(a) "Mental health professional" means:

1. A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in conducting mental health services;
2. A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States engaged in conducting mental health services;
3. A psychologist, a psychological practitioner, a certified psychologist, or a psychological associate, licensed under the provisions of KRS Chapter 319;
4. A registered nurse licensed under the provisions of KRS Chapter 314 engaged in providing mental health services;
5. A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 engaged in providing mental health services;
6. A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 engaged in providing mental health services;
7. A professional counselor credentialed under the provisions of KRS Chapter 335.500 to 335.599 engaged in providing mental health services;
8. An art therapist certified under KRS 309.130 engaged in providing mental health services; or
9. A pastoral counselor licensed under the provisions of KRS 335.600 to 335.699 engaged in providing mental health services; and

(b) "Patient" has the same meaning as in KRS 202A.011, except that it also includes a person currently under the outpatient care or treatment of a mental health professional.

KRS 202A.410 Duty of administrator to warn law enforcement agency, prosecutor, and Department of Corrections upon discharge, transfer, or escape of involuntarily committed patient charged or convicted of a violent crime - Immunity for acting in good faith - Notification of victim - Administrative regulations.

- (1) When a patient who has been involuntarily committed to a psychiatric facility or forensic psychiatric facility and who has been charged with or convicted of a violent crime as defined in KRS 439.3401 is discharged or transferred from the facility, the administrator shall notify the law enforcement agency in the county to which the person is to be released, the prosecutor in the county where the violent crime was committed, and the Department of Corrections.
- (2) If a patient who has been involuntarily committed to a psychiatric facility or forensic psychiatric facility and who has been charged with or convicted of a violent crime as defined in KRS 439.3401 escapes from the facility, the administrator shall notify the law enforcement agency in the county in which the facility is located, the prosecutor in the county where the violent crime was committed, and the Department of Corrections.
- (3) The administrator of a psychiatric facility or forensic psychiatric facility, or the administrator's designee, who acts in good faith in making the notifications required in this section or is unable to provide the release information required, is immune from any civil liability.
- (4) The Department of Corrections shall notify, or contract with a private entity to notify, victims of crime, judges, and witnesses involved in the hearing that resulted in the involuntary commitment who have made a notification request of the discharge or escape of a patient from a psychiatric facility or forensic psychiatric facility.
- (5) The Department of Corrections and the Cabinet for Health and Family Services shall each promulgate administrative regulations under KRS Chapter 13A to carry out the duties set forth in this statute

2. Threat by Juvenile

KRS 645.020(2) Definition for chapter “danger to self or others”.

“Danger to self or others” means that it is shown by substantial proof that in the near future the child may attempt suicide or may cause substantial physical harm or threat of substantial physical harm to self or others, as evidenced by recent threats or overt acts, including acts by which the child deprives self or others of the basic means of survival, including reasonable shelter, food or clothing. In determining whether a child presents a danger to self, factors to be considered shall include, but shall not be limited to, an established pattern of past dangerous behavior

KRS 645.020(7) Definitions for chapter “mental health professional”.

“Mental health professional” means:

- (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in conducting mental health services;
- (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States engaged in conducting mental health services;
- (c) A psychologist, a psychological practitioner, a certified psychologist, or a psychological associate, licensed under the provisions of KRS Chapter 319;
- (d) A registered nurse licensed under the provisions of KRS Chapter 314 engaged in providing mental health services;
- (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 engaged in providing mental health services;
- (f) A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 engaged in providing mental health services;
- (g) A professional counselor credentialed under the provisions of KRS Chapter 335.500 to 335.599 engaged in providing mental health services;
- (h) An art therapist certified under KRS 309.130 engaged in providing mental health services;
or
- (i) A pastoral counselor licensed under the provisions of KRS 335.600 to 335.699 engaged in providing mental health services;

KRS 645.270 Duty of mental health professional to warn intended victim of patient’s threat of violence.

- (1) No monetary liability and no cause of action shall arise against any mental health professional or person serving in a counselor role for failing to predict, warn or take precautions to provide protection from a patient’s violent behavior, unless the patient has communicated to the mental health professional or person serving in a counselor role an actual threat of physical violence against a clearly identified or reasonably identified victim, or unless the patient has communicated to the mental health professional or other person serving in a counselor role an actual threat of some specific violent act.
- (2) The duty to warn or to take reasonable precautions to provide protection from violent behavior arises only under limited circumstances specified in subsection (1) of this section. The duty to warn a clearly or reasonably identifiable victim shall be discharged by the mental health professional or person serving in a counselor role if reasonable efforts are made to communicate the threat to the victim and to notify the law enforcement office closest to the patient’s and the victim’s residence of the threat of violence. If the patient has communicated to the mental health professional or person serving in a counselor role an actual threat of some specific violent act and no particular victim is identifiable, the duty to warn has been discharged

if reasonable efforts are made to communicate the threat to law enforcement authorities. The duty to take reasonable precautions to provide protection from violent behavior shall be satisfied if reasonable efforts are made to seek civil commitment of the child under KRS Chapter 645.

- (3) No monetary liability and no cause of action shall arise against any mental health professional or person serving in a counselor role for confidences disclosed to third parties in an effort to discharge a duty arising under this section.

E. SCHOOL REQUIREMENTS

1. Primary & Secondary Institutions

a. Bullying and Reporting Violent Behavior

KRS 158.148 Definition of "bullying" -- discipline guidelines and model policy -- Local code of acceptable behavior and discipline -- Required contents of code.

- (1)
- (a) As used in this section, "bullying" means any unwanted verbal, physical, or social behavior among students that involves a real or perceived power imbalance and is repeated or has the potential to be repeated:
 - 1. That occurs on school premises, on school-sponsored transportation, or at a school-sponsored event; or
 - 2. That disrupts the education process.
 - (b) This definition shall not be interpreted to prohibit civil exchange of opinions or debate or cultural practices protected under the state or federal Constitution where the opinion expressed does not otherwise materially or substantially disrupt the education process.
- (2) In cooperation with the Kentucky Education Association, the Kentucky School Boards Association, the Kentucky Association of School Administrators, the Kentucky Association of Professional Educators, the Kentucky Association of School Superintendents, the Parent-Teachers Association, the Kentucky Chamber of Commerce, the Farm Bureau, members of the Interim Joint Committee on Education, and other interested groups, and in collaboration with the Center for School Safety, the Department of Education shall develop or update as needed and distribute to all districts by August 31 of each even-numbered year, beginning August 31, 2008:
- (a) Statewide student discipline guidelines to ensure safe schools, including the definition of serious incident for the reporting purposes as identified in KRS 158.444;
 - (b) Recommendations designed to improve the learning environment and school climate, parental and community involvement in the schools, and student achievement; and
 - (c) A model policy to implement the provisions of this section and KRS 158.156, 158.444, 525.070, and 525.080.
- (3) The department shall obtain statewide data on major discipline problems and reasons why students drop out of school. In addition, the department, in collaboration with the Center for School Safety, shall identify successful strategies currently being used in programs in Kentucky and in other states and shall incorporate those strategies into the statewide guidelines and the recommendations under subsection (2) of this section.
- (4) Copies of the discipline guidelines shall be distributed to all school districts. The statewide guidelines shall contain broad principles and legal requirements to guide local districts in developing their own discipline code and school councils in the selection of discipline and classroom management techniques under KRS 158.154; and in the development of the district-wide safety plan.

- (5) (a) Each local board of education shall be responsible for formulating a code of acceptable behavior and discipline to apply to the students in each school operated by the board. The code shall be updated no less frequently than every two (2) years, with the first update being completed by November 30, 2008.
- (b) The superintendent, or designee, shall be responsible for overall implementation and supervision, and each school principal shall be responsible for administration and implementation within each school. Each school council shall select and implement the appropriate discipline and classroom management techniques necessary to carry out the code. The board shall establish a process for a two-way communication system for teachers and other employees to notify a principal, supervisor, or other administrator of an existing emergency.
- (c) The code shall prohibit bullying.
- (d) The code shall contain the type of behavior expected from each student, the consequences of failure to obey the standards, and the importance of the standards to the maintenance of a safe learning environment where orderly learning is possible and encouraged.
- (e) The code shall contain:
1. Procedures for identifying, documenting, and reporting incidents of bullying, incidents of violations of the code, and incidents for which reporting is required under KRS 158.156;
 2. Procedures for investigating and responding to a complaint or a report of bullying or a violation of the code, or of an incident for which reporting is required under KRS 158.156, including reporting incidents to the parents, legal guardians, or other persons exercising custodial control or supervision of the students involved;
 3. A strategy or method of protecting from retaliation a complainant or person reporting an incident of bullying, a violation of the code, or an incident for which reporting is required under KRS 158.156;
 4. A process for informing students, parents, legal guardians, or other persons exercising custodial control or supervision, and school employees of the requirements of the code and the provisions of this section and KRS 158.156, 158.444, 525.070, and 525.080, including training for school employees; and
 5. Information regarding the consequences of bullying and violating the code and violations reportable under KRS 158.154, 158.156, or 158.444.
- (f) The principal of each school shall apply the code of behavior and discipline uniformly and fairly to each student at the school without partiality or discrimination.
- (g) A copy of the code of behavior and discipline adopted by the board of education shall be posted at each school. Guidance counselors shall be provided copies for discussion with students. The code shall be referenced in all school handbooks. All school employees and parents, legal guardians, or other persons exercising custodial control or supervision shall be provided copies of the code.

KRS 158.154 Principal's duty to report certain acts to local law enforcement agency.

When the principal has a reasonable belief that an act has occurred on school property or at a school-sponsored function involving assault resulting in serious physical injury, a sexual offense, kidnapping, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a controlled substance in violation of the law, or damage to the property, the principal shall immediately report the act to the appropriate local law enforcement agency. For purposes of this section, "school property" means any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal.

KRS 158.155 Reporting of specified incidents of student conduct - Notation on school records - Report to law enforcement of certain student conduct - Immunity.

- (1) If a student has been adjudicated guilty of an offense specified in this subsection or has been expelled from school for an offense specified in this subsection, prior to a student's admission to any school, the parent, guardian, principal, or other person or agency responsible for a student shall provide to the school a sworn statement or affirmation indicating on a form provided by the Kentucky Board of Education that the student has been adjudicated guilty or expelled from school attendance at a public or private school in this state or another state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs. The sworn statement or affirmation shall be sent to the receiving school within five (5) working days of the time when the student requests enrollment in the new school.
- (2) If any student who has been expelled from attendance at a public or private school in this state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs requests transfer of his records, those records shall reflect the charges and final disposition of the expulsion proceedings.
- (3) If any student who is subject to an expulsion proceeding at a public or private school in this state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs requests transfer of his records to a new school, the records shall not be transferred until that proceeding has been terminated and shall reflect the charges and any final disposition of the expulsion proceedings.
- (4) A person who is an administrator, teacher, or other employee of a public or private school shall promptly make a report to the local police department, sheriff, or the Department of Kentucky State Police, by telephone or otherwise, if:
 - (a) The person knows or has reasonable cause to believe that conduct has occurred which constitutes:
 1. A misdemeanor or violation offense under the laws of this Commonwealth and relates to:
 - a. Carrying, possession, or use of a deadly weapon; or
 - b. Use, possession, or sale of controlled substances; or
 2. Any felony offense under the laws of this Commonwealth; and
 - (b) The conduct occurred on the school premises or within one thousand (1,000) feet of school premises, on a school bus, or at a school-sponsored or sanctioned event.
- (5) A person who is an administrator, teacher, supervisor, or other employee of a public or private school who receives information from a student or other person of conduct which is required to be reported under subsection (1) of this section shall report the conduct in the same manner as required by that subsection.
- (6) Neither the husband-wife privilege of KRE 504 nor any professional-client privilege, including those set forth in KRE 506 and 507, shall be a ground for refusing to make a report required under this section or for excluding evidence in a judicial proceeding of the making of a report and of the conduct giving rise to the making of a report. However, the attorney-client privilege of KRE 503 and the religious privilege of KRE 505 are grounds for refusing to make a report or for excluding evidence as to the report and the underlying conduct.
- (7) Nothing in this section shall be construed as to require self-incrimination.
- (8) A person acting upon reasonable cause in the making of a report under this section in good faith shall be immune from any civil or criminal liability that might otherwise be incurred or imposed from:
 - (a) Making the report; and
 - (b) Participating in any judicial proceeding that resulted from the report.

KRS 158.156 Reporting of commission of felony KRS 508 (Assault) offense against a student - Investigation - Immunity from liability for reporting - Privileges no bar to reporting.

- (1) Any employee of a school or a local board of education who knows or has reasonable cause to believe that a school student has been the victim of a violation of any felony offense specified in KRS Chapter 508 committed by another student while on school premises, on school-sponsored transportation, or at a school-sponsored event shall immediately cause an oral or written report to be made to the principal of the school attended by the victim. The principal shall notify the parents, legal guardians, or other persons exercising custodial control or supervision of the student when the student is involved in an incident reportable under this section. The principal shall file with the local school board and the local law enforcement agency or the Department of Kentucky State Police or the county attorney within forty-eight (48) hours of the original report a written report containing:
 - (a) The names and addresses of the student and his or her parents, legal guardians, or other persons exercising custodial control or supervision;
 - (b) The student's age;
 - (c) The nature and extent of the violation;
 - (d) The name and address of the student allegedly responsible for the violation; and
 - (e) Any other information that the principal making the report believes may be helpful in the furtherance of the purpose of this section.
- (2) An agency receiving a report under subsection (1) of this section shall investigate the matter referred to it. The school board and school personnel shall participate in the investigation at the request of the agency.
- (3) Anyone acting upon reasonable cause in the making of a report required under this section in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action.
- (4) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding student harassment, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding student harassment.

KRS 158.444 - Administrative Regulations - Role of Department of Education.

- (1) The Kentucky Board of Education shall promulgate appropriate administrative regulations relating to school safety, student discipline, and related matters.
- (2) The Kentucky Department of Education shall:
 - (a) Collaborate with the Center for School Safety in carrying out the center's mission;
 - (b) Establish and maintain a statewide data collection system by which school districts shall report by sex, race, and grade level:
 1.
 - a. All incidents of violence and assault against school employees and students;
 - b. All incidents of possession of guns or other deadly weapons on school property or at school functions;
 - c. All incidents of the possession or use of alcohol, prescription drugs, or controlled substances on school property or at school functions; and
 - d. All incidents in which a student has been disciplined by the school for a serious incident, including the nature of the discipline, or charged criminally for conduct constituting a violation of any offense specified in KRS Chapter 508, or KRS 525.070 occurring on school premises, on school-sponsored transportation, or at school functions, or KRS 525.080;
 2. The number of arrests, the charges, and whether civil damages were pursued by the injured party;

3. The number of suspensions, expulsions, and corporal punishments; and
 4. Data required during the assessment process under KRS 158.445; and
- (c) Provide all data collected relating to this subsection to the Center for School Safety according to timelines established by the center.
- (3) The Department of Education shall provide the Office of Education Accountability and the Education Assessment and Accountability Review Subcommittee with an annual statistical report of the number and types of incidents reported under subsection (2)(b) of this section. The report shall include all monthly data and cumulative data for each reporting year. Reportable incidents shall be grouped in the report in the same manner that the reportable incidents are grouped in subsection (2)(b)1. of this section. Data in the report shall be sorted by individual school district, then by individual schools within that district, and then by individual grades within each school. The report shall not contain information personally identifying any student. The reporting period shall be for an academic year, and shall be delivered no later than August 31 of each year.
 - (4) All personally identifiable student data collected pursuant to subsection (2)(b) of this section shall be subject to the confidentiality provisions of the Kentucky Family Education Rights and Privacy Act, KRS 160.700 to 160.730, and to the federal Family Educational Rights and Privacy Act, 20 U.S.C. sec. 1232g, and its implementing regulations.
 - (5) Parents, legal guardians, or other persons exercising custodial control or supervision shall have the right to inspect or challenge the personally identifiable student records as permitted under the Kentucky Family Education Rights and Privacy Act and the federal Family Educational Rights and Privacy Act and implementing regulations.
 - (6) Data collected under this section on an individual student committing an incident reportable under subsection (2)(b)1. of this section shall be placed in the student's disciplinary record.

Note: The following Criminal Statutes also specifically address Bullying:

KRS 525.070 Harassment - Text included in Chapter V, Section A., 6

KRS 525.080 Harassing Communications - Text included in Chapter V, Section A., 6

b. Restrictions Related to Registered Sex Offenders

KRS 17.545 Registrant prohibited from residing or being present in certain areas - Violations - Exception.

- (1) No registrant, as defined in KRS 17.500, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility. The measurement shall be taken in a straight line from the nearest property line of the school to the nearest property line of the registrant's place of residence.
- (2) No registrant, as defined in KRS 17.500, nor any person residing outside of Kentucky who would be required to register under KRS 17.510 if the person resided in Kentucky, shall be on the clearly defined grounds of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility, except with the advance written permission of the school principal, the school board, the local legislative body with jurisdiction over the publicly owned playground, or the day care director that has been given after full disclosure of the person's status as a registrant or sex offender from another state and all registrant information as required in KRS 17.500. As used in this subsection, "local legislative body" means the chief governing body of a city, county, urban-county government, consolidated local government, charter county government, or unified local government that has legislative powers.

- (3) For purposes of this section:
- (a) The registrant shall have the duty to ascertain whether any property listed in subsection (1) of this section is within one thousand (1,000) feet of the registrant's residence; and
 - (b) If a new facility opens, the registrant shall be presumed to know and, within ninety (90) days, shall comply with this section.
- (4) (a) Except as provided in paragraph (b) of this subsection, no registrant who is eighteen (18) years of age or older and has committed a criminal offense against a victim who is a minor shall have the same residence as a minor.
- (b) A registrant who is eighteen (18) years of age or older and has committed a criminal offense against a victim who is a minor may have the same residence as a minor if the registrant is the spouse, parent, grandparent, stepparent, sibling, stepsibling, or court-appointed guardian of the minor, unless the spouse, child, grandchild, stepchild, sibling, stepsibling, or ward was a victim of the registrant.
- (c) This subsection shall not operate retroactively and shall apply only to a registrant that committed a criminal offense against a victim who is a minor after July 14, 2018.
- (5) Any person who violates subsection (1) or (4) of this section shall be guilty of: (a) A Class A misdemeanor for a first offense; and (b) A Class D felony for the second and each subsequent offense.
- (6) Any registrant residing within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility on July 12, 2006, shall move and comply with this section within ninety (90) days of July 12, 2006, and thereafter, shall be subject to the penalties set forth under subsection (5) of this section.
- (7) This section shall not apply to a youthful offender probated or paroled during his or her minority or while enrolled in an elementary or secondary education program.

KRS 160.151 Criminal background check and letter verifying no finding of abuse or neglect for certified employees and student teachers in private, parochial, and church schools -- New criminal checks permitted every five years -- Fingerprinting -- Disclosure -- Contractors, volunteers, and visitors subject to check -- Employment of offenders by nonpublic schools.

- (1)(a)
1. A private, parochial, or church school that has voluntarily been certified by the Kentucky Board of Education in accordance with KRS 156.160(3) may require a national and state criminal background check and require a letter from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services on all new certified hires in the school and student teachers assigned to the school and may require a new national and state criminal background check and require a letter from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services on each certified teacher once every five (5) years of employment.
 2. Certified individuals who were employed in another certified position in a Kentucky school within six (6) months of the date of the hire and who had previously submitted to a national and state criminal background check and require a letter from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services for previous employment may be excluded from the initial national or state criminal background checks.
- (b) The national criminal history background check shall be conducted by the Federal Bureau of Investigation. The state criminal history background check shall be conducted by the

Department of Kentucky State Police or the Administrative Office of the Courts.

- (c) All fingerprints requested under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation by the Department of Kentucky State Police after a state criminal background check has been conducted. Any fee charged by the Department of Kentucky State Police, the Administrative Office of the Courts, or the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (2) If a school requires a criminal background check or requires a letter from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services for a new hire, the school shall conspicuously include the following disclosure statement on each application or renewal form provided by the employer to an applicant for a certified position: "STATE LAW AUTHORIZES THIS SCHOOL TO REQUIRE A CRIMINAL HISTORY BACKGROUND CHECK AND A LETTER FROM THE CABINET FOR HEALTH AND FAMILY SERVICES STATING THE EMPLOYEE IS CLEAR TO HIRE BASED ON NO FINDINGS OF SUBSTANTIATED CHILD ABUSE OR NEGLECT FOUND THROUGH A BACKGROUND CHECK OF CHILD ABUSE AND NEGLECT RECORDS AS A CONDITION OF EMPLOYMENT FOR THIS TYPE OF POSITION."
- (a) For purposes of this subsection, "contractor" means an adult who is permitted access to school grounds pursuant to a current or prospective contractual agreement with the school, school board, school district, or school-affiliated entity, at times when students are present. The term "contractor" includes an employee of a contractor.
- (b)
1. The school or school board may require a contractor who works on school premises during school hours and may require a contractor who does not have contact with students, a volunteer, or a visitor to submit to a national criminal history check by the Federal Bureau of Investigation and state criminal history background check by the Department of Kentucky State Police or Administrative Office of the Courts and require a letter from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
 2. Any request for records under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police if required. The results of the state criminal background check and the results of the national criminal history background check, if requested, shall be sent to the hiring superintendent. If a background check of child abuse and neglect records is requested, the person seeking employment shall provide to the hiring superintendent a letter from the Cabinet for Health and Family Services stating the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
 3. Any fee charged by the Department of Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (3) (a) A nonpublic school voluntarily implementing the provisions of this chapter may choose not to employ any person who is a violent offender as defined by KRS 17.165(2), has been convicted of a sex crime which is classified as a felony as defined by KRS 17.165(1), or has committed a violent crime as defined in KRS 17.165(3) or persons with a substantiated finding of child abuse or neglect in records maintained by the Cabinet for Health and Family Services. A nonpublic school may employ, at its discretion, persons convicted of sex crimes classified as a misdemeanor.
- (b) If a school term has begun and a certified position remains unfilled or if a vacancy occurs

during a school term, a nonpublic school implementing this chapter may employ an individual who will have supervisory or disciplinary authority over minors on probationary status pending receipt of a criminal history background check or the receipt of a letter, provided by the individual, from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.

(c) Employment at a nonpublic school implementing this chapter may be contingent on the receipt of a criminal history background check documenting a record as a violent offender, of a sex crime, or of a violent crime as defined in KRS 17.165 or the receipt of a letter, provided by the individual, from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.

(d) Nonpublic schools implementing this chapter may terminate probationary employment under this section upon receipt of a criminal history background check documenting a record as a violent offender, of a sex crime, or of a violent crime as defined in KRS 17.165 or the receipt of a letter, provided by the individual, from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.

(4) The form for requesting a letter, required by this section, stating an employee is clear to hire based on a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services shall be made available on the Cabinet for Health and Family Services Web site.

KRS 160.380 (4-14) School employees -- Restrictions on appointment of relatives, violent offenders, and persons convicted of sex crimes -- Restriction on assignment to alternative education program as disciplinary action -- National and state criminal history background checks and letter verifying no finding of abuse or neglect for applicants, new hires, and school-based decision-making council parent members -- Application and renewal forms -- Employees charged with felony offenses.

...

(4) No superintendent shall employ in any position in the district any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony or persons with a substantiated finding of child abuse or neglect in records maintained by the Cabinet for Health and Family Services. The superintendent may employ, at his discretion, except at a Kentucky Educational Collaborative for State Agency Children program, persons convicted of sex crimes classified as a misdemeanor.

(5)

(a) A superintendent shall require a national and state criminal background check and require a letter, provided by the individual, from the Cabinet for Health and Family Services indicating the individual is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services on all new certified hires in the school district and student teachers assigned within the district. Excluded are certified individuals who were employed in another certified position in a Kentucky school district within six (6) months of the date of hire and who had previously submitted to a national and state criminal background check and who have a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect records maintained by the Cabinet for

Health and Family Services for the previous employment.

- (b) The superintendent shall require that each new certified hire and student teacher, as set forth in paragraph (a) of this subsection, submit to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- (c) All fingerprints requested under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation from the Department of Kentucky State Police after a state criminal background check is conducted. The results of the state and federal criminal background check shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police, the Federal Bureau of Investigation, and the Cabinet for Health and Family Services shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (d) The Education Professional Standards Board may promulgate administrative regulations to impose additional qualifications to meet the requirements of Public Law 92-544.

(6)

- (a) A superintendent shall require a national and state criminal background check and require a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services on all classified initial hires.
- (b) The superintendent shall require that each classified initial hire submit to a national and state criminal history background check by the Department of Kentucky State Police and require a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- (c) Any request for any criminal background records under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The results of the state criminal background check and the results of the national criminal history background check, if requested under paragraph (b) of this subsection, shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police and the Cabinet for Health and Family Services shall be an amount no greater than the actual cost of processing the request and conducting the search.

(7)

- (a) The superintendent shall require a contractor who works on school premises during school hours and may require a contractor who does not have contact with students, a volunteer, or a visitor to submit to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- (b) Any request for records under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. If requested, the results of the state criminal background check and the results of the national criminal history background check and a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child

abuse or neglect found through the results of a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police and the Cabinet for Health and Family Services shall be an amount no greater than the actual cost of processing the request and conducting the search.

(8)

- (a) If a school term has begun and a certified or classified position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the criminal history background check and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services. Application for the criminal record and a request for a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services of a probationary employee shall be made no later than the date probationary employment begins.
- (b) Employment shall be contingent on the receipt of the criminal history background check documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165 and receipt of a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the school district of a criminal history background check documenting a record of a sex crime or as a violent offender as defined in KRS 17.165 and no further procedures shall be required.
- (d) The provisions of KRS 161.790 shall apply to terminate employment of a certified employee on the basis of a criminal record other than a record of a sex crime or as a violent offender as defined in KRS 17.165.

(9)

- (a) Each application or renewal form, provided by the employer to an applicant for a classified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE CRIMINAL HISTORY BACKGROUND CHECK AND HAVE A LETTER, PROVIDED BY THE INDIVIDUAL, FROM THE CABINET FOR HEALTH AND FAMILY SERVICES STATING THE EMPLOYEE IS CLEAR TO HIRE BASED ON NO FINDINGS OF SUBSTANTIATED CHILD ABUSE OR NEGLECT FOUND THROUGH A BACKGROUND CHECK OF CHILD ABUSE AND NEGLECT RECORDS MAINTAINED BY THE CABINET FOR HEALTH AND FAMILY SERVICES AS A CONDITION OF EMPLOYMENT. UNDER CERTAIN CIRCUMSTANCES, A NATIONAL CRIMINAL HISTORY BACKGROUND CHECK MAY BE REQUIRED AS A CONDITION OF EMPLOYMENT."
- (b) Each application or renewal form, provided by the employer to an applicant for a certified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND STATE CRIMINAL HISTORY BACKGROUND CHECK AND HAVE A LETTER, PROVIDED BY THE INDIVIDUAL, FROM THE CABINET FOR HEALTH AND FAMILY SERVICES STATING THE EMPLOYEE IS CLEAR TO HIRE BASED ON NO FINDINGS OF SUBSTANTIATED CHILD ABUSE OR NEGLECT FOUND THROUGH A BACKGROUND CHECK OF CHILD ABUSE AND NEGLECT RECORDS MAINTAINED BY THE CABINET FOR HEALTH AND FAMILY SERVICES AS A CONDITION OF EMPLOYMENT."

- (c) Each application form for a district position shall require the applicant to:
 - 1. Identify the states in which he or she has maintained residency, including the dates of residency; and
 - 2. Provide picture identification.
- (10) The provisions of subsections (5), (6), (7), (8) and (9) of this section shall apply to a nonfaculty coach or nonfaculty assistant as defined under KRS 161.185.
- (11)
 - (a) A school-based decision-making council parent member, as defined under KRS 160.345, shall submit to a state and national fingerprint-supported criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
 - (b) The results of the state criminal history background check and the results of the national criminal history background check, if requested, and a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through the results of a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services shall be sent to the district superintendent. Any fee charged by the Department of Kentucky State Police and the Cabinet for Health and Family Services shall be an amount no greater than the actual cost of processing the request and conducting the search. A parent member may serve prior to the receipt of the criminal history background check report but shall be removed from the council on receipt by the school district of a report documenting a record of a sex crime or criminal offense against a victim who is a minor as defined in KRS 17.500 or as a violent offender as defined in KRS 17.165, and no further procedures shall be required.
- (12) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, when an employee of the school district is charged with any offense which is classified as a felony, the superintendent may transfer the employee to a second position until such time as the employee is found not guilty, the charges are dismissed, the employee is terminated, or the superintendent determines that further personnel action is not required. The employee shall continue to be paid at the same rate of pay he or she received prior to the transfer. If an employee is charged with an offense outside of the Commonwealth, this provision may also be applied if the charge would have been treated as a felony if committed within the Commonwealth. Transfers shall be made to prevent disruption of the educational process and district operations and in the interest of students and staff and shall not be construed as evidence of misconduct.
- (13) Notwithstanding any law to the contrary, each certified and classified employee of the school district shall notify the superintendent if he or she has been found by the Cabinet for Health and Family Services to have abused or neglected a child, and if he or she has waived the right to appeal a substantiated finding of child abuse or neglect or if the substantiated incident was upheld upon appeal. Any failure to report this finding shall result in the certified or classified employee being subject to dismissal or termination.
- (14) The form for requesting a letter, required by this section, stating an employee is clear to hire based on a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services shall be made available on the Cabinet for Health and Family Services Web site.

KRS 161.148 Use of volunteer personnel - Criminal records check -- Orientation - Exception.

- (1) As used in this section, “volunteers” means adults who assist teachers, administrators, or other staff in public school classrooms, schools, or school district programs, and who do not receive compensation for their work.
- (2) Local school districts may utilize adult volunteers in supplementary instructional and noninstructional activities with pupils under the direction and supervision of the professional administrative and teaching staff.
- (3) Each board of education shall develop policies and procedures that encourage volunteers to assist in school or district programs.
- (4) Each local board of education shall develop and adopt a policy requiring a state criminal records check on all volunteers who have contact with students on a regularly scheduled or continuing basis, or who have supervisory responsibility for children at a school site or on school-sponsored trips. The request for records may be from the Justice and Public Safety Cabinet or the Administrative Office of the Courts, or both, and shall include records of all available convictions as described in KRS 17.160(1). Any request for a criminal records check of a volunteer under this subsection shall be on a form or through a process approved by the Justice and Public Safety Cabinet or the Administrative Office of the Courts. If the cabinet or the Administrative Office of the Courts charges fees, the local board of education shall arrange to pay the cost which may be from local funds or donations from any source including volunteers.
- (5) The local board of education shall provide orientation material to all volunteers who have contact with students on a regularly scheduled or continuing basis, including school policies, safety and emergency procedures, and other information deemed appropriate by the local board of education.
- (6) The provisions of this section shall not apply to students enrolled in an educational institution and who participate in observations and educational activities under direct supervision of a local school teacher or administrator in a public school.

c. Human Sexuality Instruction

KRS 158.1415 Curriculum for instruction on human sexuality or sexually transmitted diseases.

If a school council or, if none exists, the principal adopts a curriculum for human sexuality or sexually transmitted diseases, instruction shall include but not be limited to the following content:

- (1) Abstinence from sexual activity is the desirable goal for all school-age children;
- (2) Abstinence from sexual activity is the only certain way to avoid unintended pregnancy, sexually transmitted diseases, and other associated health problems; and
- (3) The best way to avoid sexually transmitted diseases and other associated health problems is to establish a permanent mutually faithful monogamous relationship.

2. Post-Secondary Institutions

a. Tracking and Reporting Crimes

KRS 164.9489 Short title for KRS 164.948 to 164.9489 and KRS 164.993.

KRS 164.948 to 164.9489 and KRS 164.993 may be cited as the Michael Minger Act Safety Act.

KRS 164.948 Definitions for KRS 164.9481, 164.9483, and 164.9485.

As used in KRS 164.9481, 164.9483, and 164.9485, unless the context requires otherwise:

- (1) “Campus” has the same meaning as in 20 U.S.C. sec. 1092(f)(6)(A)(ii) as amended;
- (2) “Campus security authority” means campus police, security officers, and any official at a postsecondary education institution who has significant responsibility for student and campus activities, including student discipline, student housing, student judicial affairs, and student

life administration. Professional mental health, pastoral, and other licensed counselors when functioning in that capacity are not considered campus security authorities;

- (3) "Crime" means any crime listed in 20 U.S.C. sec. 1092(f)(1)(F) as amended;
- (4) "Immediately" means before the last fire unit has left the scene in order for the state fire marshal to have the opportunity to speak with fire unit personnel before they leave the scene, but no later than two (2) hours following the time the fire or threat of fire is discovered. In the event of a minor fire to which the local fire officials are not called or do not respond, "immediately" means no later than one (1) hour following the discovery of the fire;
- (5) "Noncampus building or property" has the same meaning as in 20 U.S.C. sec. 1092(f)(6)(A)(iii) as amended;
- (6) "Postsecondary education institution" means any Kentucky public four (4) year institution or two (2) year community college or technical college that grants a postsecondary education credential, and any private college or university that is licensed by the Council on Postsecondary Education under KRS 164.945 to 164.947; and
- (7) "Public property" has the same meaning as in 20 U.S.C. sec. 1092(f)(6)(A)(iv) as amended.

KRS 164.9481 Duty of postsecondary institution to maintain crime log - Duty to report to campus community on crimes and threats to safety or security of students and employees.

(1) Crime log:

- (a) Each postsecondary education institution shall make, keep, and maintain a daily log, written in a form approved by the Council on Postsecondary Education that can be easily understood, recording all crimes occurring on campus and reported to campus security authorities or local law enforcement agencies, including:
 1. The category of crime, and a description of the incident, date, time, and general location of each crime; and
 2. The disposition of the complaint if known, including referral for prosecution, institutional disciplinary proceedings, or investigation by another state agency. The disposition shall include a reference to an investigation or incident report number.
- (b) All entries in the campus crime log shall be made available for public inspection within twenty-four (24) hours after the first report of an incident was made to any campus security authority or local law enforcement officials.
 1. If there is clear and convincing evidence that the release of the information would cause a suspect to flee or evade detection, would result in the destruction of evidence, or is prohibited from release by law, the information may be withheld until that damage is no longer likely to occur from the release of the information. Only the information that is absolutely necessary to withhold for the reasons stated in this paragraph may be withheld; all other information shall be released.
 2. In the event information is withheld under the provisions of paragraph (a) of this subsection, the crime shall still be reported and made available for public inspection.
- (c) The campus crime log required by this section shall be readily accessible and open for public inspection at all times and shall be made available on campus computer networks to which students, employees, and other campus community members have access. Each semester the institution shall notify currently enrolled students, students applying to the institution, and employees of the availability of the campus crime log, where it can be accessed, and the exact electronic address on the computer network.

- (2) Special reports: In addition to the campus crime log, each postsecondary education institution shall make timely reports to the campus community on crimes reported to campus security authorities or local law enforcement authorities determined by those authorities to present a safety or security threat to students or employees.

- (a) The reports shall be made available to students and employees within twenty-four (24)

hours after an incident is first reported.

- (b) The information shall be reported in a manner that will aid in the prevention of similar occurrences.
- (c) Institutions shall use computer networks and post the reports in each residential facility. The institution may also use flyers and other campus publications including newspapers, and other media.
- (d) Each institution shall adopt a policy to comply with this requirement and the policy shall be included in the postsecondary education institution's annual campus safety and security report published in compliance with KRS 164.9485.

KRS 164.9485 Duty of postsecondary institution to submit statement of policies concerning campus safety and security.

Effective September 1, 2000, and each year thereafter, each postsecondary education institution shall submit to the Council on Postsecondary Education a statement of current policies concerning campus safety and security including, but not limited to:

- (1) The enforcement authority of security personnel, including their working relationship with state and local police agencies;
- (2) A description of programs designed to inform students and employees about the campus safety and security procedures and practices, how to report crimes, and how to prevent crimes; and
- (3) Statistics concerning the occurrence of crimes on campus during the most recent calendar year. The statistical data shall be reported by the number of occurrences based on:
 - (a) Location, broken down in the following classifications:
 - 1. Total number on campus;
 - 2. On public property; and
 - 3. Noncampus buildings and property
 - (b) Category of crime committed:
 - 1. As defined in KRS 164.948; and
 - 2. By category of prejudice, as described in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. sec. 1092(f)(1)(F)(ii) as amended.

KRS 164.9487 Duty of postsecondary institution to obtain statistics and crime reports - Limitation of liability - Reporting formats.

- (1) In complying with the statistical and reporting requirements mandated in KRS 164.948 to 164.9489 and KRS 164.993, an institution shall make a reasonable, good-faith effort to obtain statistics and crime reports from outside agencies. An institution that makes such an effort is not responsible for an outside agency's failure to provide statistics or crime reports or for verifying the accuracy of the statistics or reports that are provided.
- (2) The Council on Postsecondary Education shall specify formats for reporting to ensure uniformity.

13 KAR 1:030 Campus security, private institutions.

Section 1. Definitions.

- (1) "Annual report" means the report submitted by an institution to the council that satisfies the requirements of KRS 164.9485.
- (2) "Campus" is defined in KRS 164.948(1).
- (3) "Campus crime log" means the daily log maintained by an institution and developed by the council consistent with the provisions of KRS 164.9481(1).
- (4) "Campus security authority" is defined in KRS 164.948(2).
- (5) "Clery Act" means the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 USC 1092(f) and as implemented in 34 CFR 668.46.

- (6) "Council" means the Council on Postsecondary Education as established by KRS 164.011.
- (7) "Crime" is defined in KRS 164.948(3).
- (8) "Fire scene" means the immediate area necessary for a local fire department or the State Fire Marshal's Office to investigate an actual fire.
- (9) "Immediately" is defined in KRS 164.948(4).
- (10) "Institution" means a postsecondary education institution as defined in KRS 164.948(5).
- (11) "State Fire Marshal" means the officer described in KRS 227.220.

Section 2. Property Subject to Reporting.

- (1) An institution shall establish a list of all property the institution:
 - (a) Owns; or
 - (b) Manages or controls.
- (2) The list of property shall include the areas described in KRS 164.948(1) and in 34 CFR 668.46(a), "Campus:" (1) and (2) and "Noncampus Building or Property:" (1) and (2).
- (3) The list shall be updated as necessary but not less than annually.
- (4) An institution shall provide the property list to the council upon the council's request.

Section 3. Campus Crime Log.

- (1) An institution shall maintain a campus crime log as required by KRS 164.9481(1).
- (2) The campus crime log shall include each data element required by KRS 164.9481(1).
- (3) An institution shall develop and maintain a written policy that:
 - (a) Ensures crime log information is available to the public as soon as possible, but no later than the time frame specified in KRS 164.9481(1)(b); and
 - (b) Is subject to the limitations established in KRS 164.9481(1).
- (4) The policy shall state that the institution shall not withhold information except as provided in KRS 164.9481(1).
- (5) (a) An institution may archive campus crime log entries after sixty (60) days have elapsed from the date when an incident report was reported.
 - (b) An institution that elects to archive campus crime log entries shall respond, within two (2) business days, to a request for material that has been archived.

Section 4. Special Reports.

An institution shall report, in writing, to the council on how it shall comply with the provisions of KRS 164.9481(2).

Section 5. Crime.

The meaning of a crime listed in KRS 164.948(3) shall be consistent, to the extent possible, with the definitions and standards established in the Uniform Crime Reporting System of the federal government, and with the Kentucky Revised Statutes, where appropriate.

Section 6. State Fire Marshal and Threat of Fire.

- (1) A threat of fire includes:
 - (a) A fire alarm, except as provided in subsection (2) of this section; and
 - (b) An expression of an intention by a person to engage in destructive burning or explosion.
- (2) A threat of fire does not include an alarm triggered for the purpose of:
 - (a) Maintenance testing; or
 - (b) Fire drill.
- (3) A threat of fire or fire shall be reported immediately by the campus security authority designated pursuant to KRS 164.9483(4) to:
 - (a) The State Fire Marshal; and
 - (b) The local fire department.
- (4) An institution shall maintain a fire scene until cleared by the State Fire Marshal's Office in accordance with KRS 164.9483(4).

Section 7. Annual Report.

Each institution shall file an annual report, as required by KRS 164.9485, using Form MMA1.

Section 8. Enforcement.

- (1) KRS 164.993 provides civil and criminal penalties for a violation of KRS 164.9481 and 164.9483.
- (2) (a) A person, including campus personnel, who has reason to believe that any person has violated, or knowingly induced another person, directly or indirectly, to violate KRS 164.9481 or 164.9483 may register a complaint with the State Fire Marshal's Office.
(b) A person who has reason to believe that any person has violated KRS 164.9481 or 164.9483 may register a complaint with the county attorney in the county where the institution is located.

Section 9. Incorporation by Reference.

- (1) "MMA1, 1/2001" is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

13 KAR 2:100. Campus security, public institutions.**Section 1. Definitions.**

- (1) "Annual report" means the report submitted by an institution to the council that satisfies the requirements of KRS 164.9485.
- (2) "Campus" is defined in KRS 164.948(1).
- (3) "Campus crime log" means the daily log maintained by an institution and developed by the council consistent with the provisions of KRS 164.9481(1).
- (4) "Campus security authority" is defined in KRS 164.948(2).
- (5) "Clery Act" means the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Acts, 20 USC 1092(f) and as implemented in 34 CFR 668.46.
- (6) "Council" means the Council on Postsecondary Education as established by KRS 164.011.
- (7) "Crime" is defined in KRS 164.948(3).
- (8) "Fire scene" means the immediate area necessary for a local fire department or the State Fire Marshal's Office to investigate an actual fire.
- (9) "Immediately" is defined in KRS 164.948(4).
- (10) "Institution" means a postsecondary education institution as defined in KRS 164.948(5).
- (11) "State Fire Marshal" means the officer described in KRS 227.220.

Section 2. Property Subject to Reporting.

- (1) An institution shall establish a list of all property the institution:
 - (a) Owns; or
 - (b) Manages or controls.
- (2) The list of property shall include the areas described in KRS 164.948(1) and in 34 CFR 668.46(a), "Campus:" (1) and (2) and "Noncampus Building or Property:" (1) and (2).
- (3) The list shall be updated as necessary but not less than annually.
- (4) An institution shall provide the property list to the council upon the council's request.

Section 3. Campus Crime Log.

- (1) An institution shall maintain a campus crime log as required by KRS 164.9481(1).
- (2) The campus crime log shall include each data element required by KRS 164.9481(1).
- (3) An institution shall develop and maintain a written policy that:
 - (a) Ensures crime log information is available to the public as soon as possible, but no later than the time frame specified in KRS 164.9481(1)(b); and
 - (b) Is subject to the limitations established in KRS 164.9481(1).
- (4) The policy shall state that the institution shall not withhold information except as provided in KRS 164.9481(1).

- (5) (a) An institution may archive campus crime log entries after sixty (60) days have elapsed from the date when an incident was reported.
- (b) An institution that elects to archive campus crime log entries shall respond, within two (2) business days, to a request for material that has been archived.

Section 4. Special Reports.

An institution shall report, in writing, to the council on how it shall comply with the provisions of KRS 164.9481(2).

Section 5. Crime.

The meaning of a crime listed in KRS 164.948(3) shall be consistent, to the extent possible, with the definitions and standards established in the Uniform Crime Reporting System of the federal government, and with the Kentucky Revised Statutes, where appropriate.

Section 6. State Fire Marshal and Threat of Fire.

- (1) A threat of fire includes:
 - (a) A fire alarm, except as provided in subsection (2) of this section; and
 - (b) An expression of an intention by a person to engage in destructive burning or explosion.
- (2) A threat of fire does not include an alarm triggered for the purpose of:
 - (a) Maintenance testing; or
 - (b) Fire drill.
- (3) A threat of fire or fire shall be reported immediately by the campus security authority designated pursuant to KRS 164.9483(4) to:
 - (a) The State Fire Marshal; and
 - (b) The local fire department.
- (4) An institution shall maintain a fire scene until cleared by the State Fire Marshal's Office in accordance with KRS 164.9483(4).

Section 7. Annual Report.

Each institution shall file an annual report, as required by KRS 164.9485, using Form MMA1.

Section 8. Enforcement.

- (1) KRS 164.993 provides civil and criminal penalties for a violation of KRS 164.9481 and 164.9483.
- (2) (a) A person, including campus personnel who has reason to believe that any person has violated, or knowingly induced another person, directly or indirectly, to violate KRS 164.9481 or 164.9483 may register a complaint with the State Fire Marshal's Office.
- (b) A person who has reason to believe that any person has violated KRS 164.9481 or 164.9483 may register a complaint with the county attorney in the county where the institution is located.

Section 9. Incorporation by Reference.

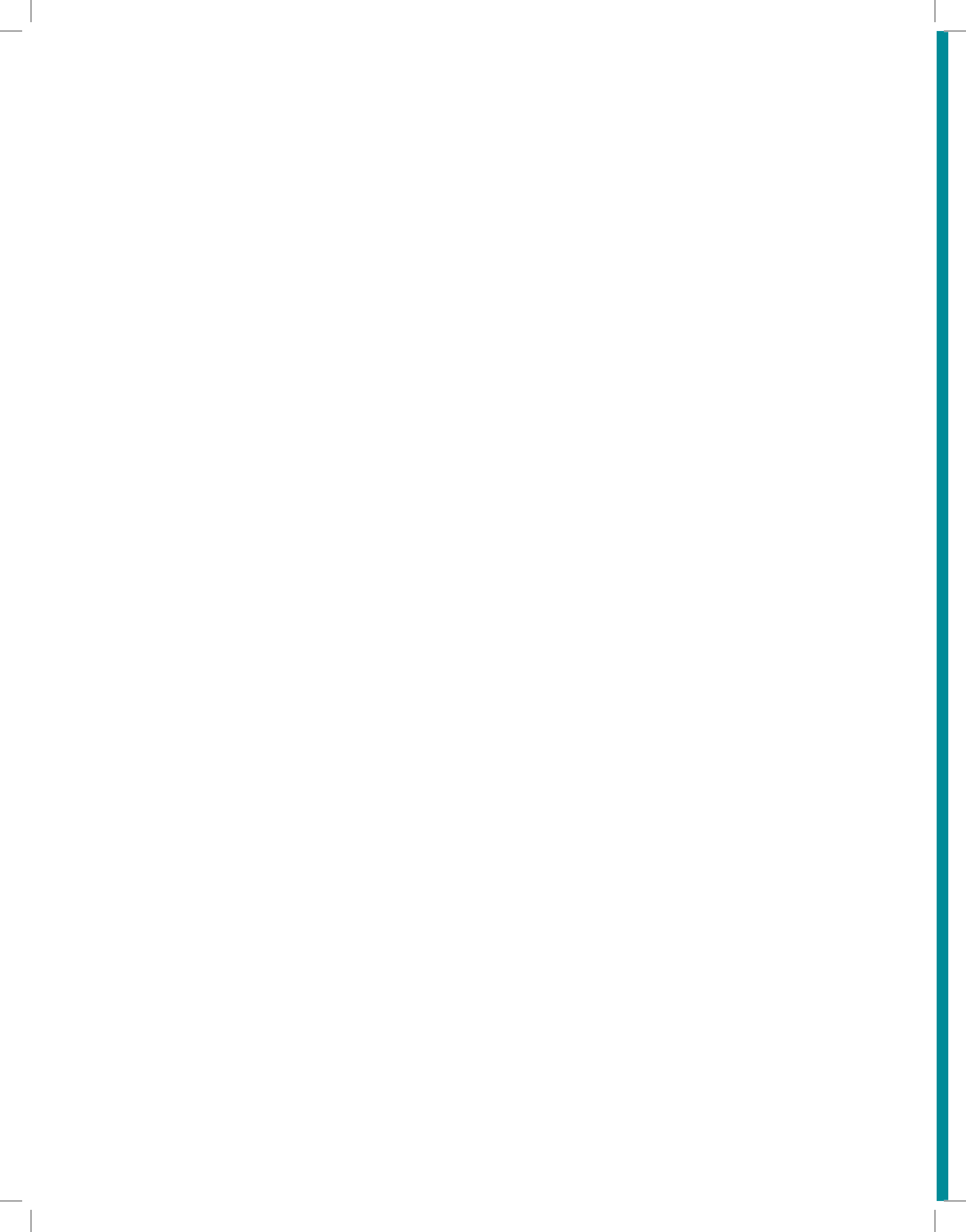
- (1) "MMA1, 1/2001" is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

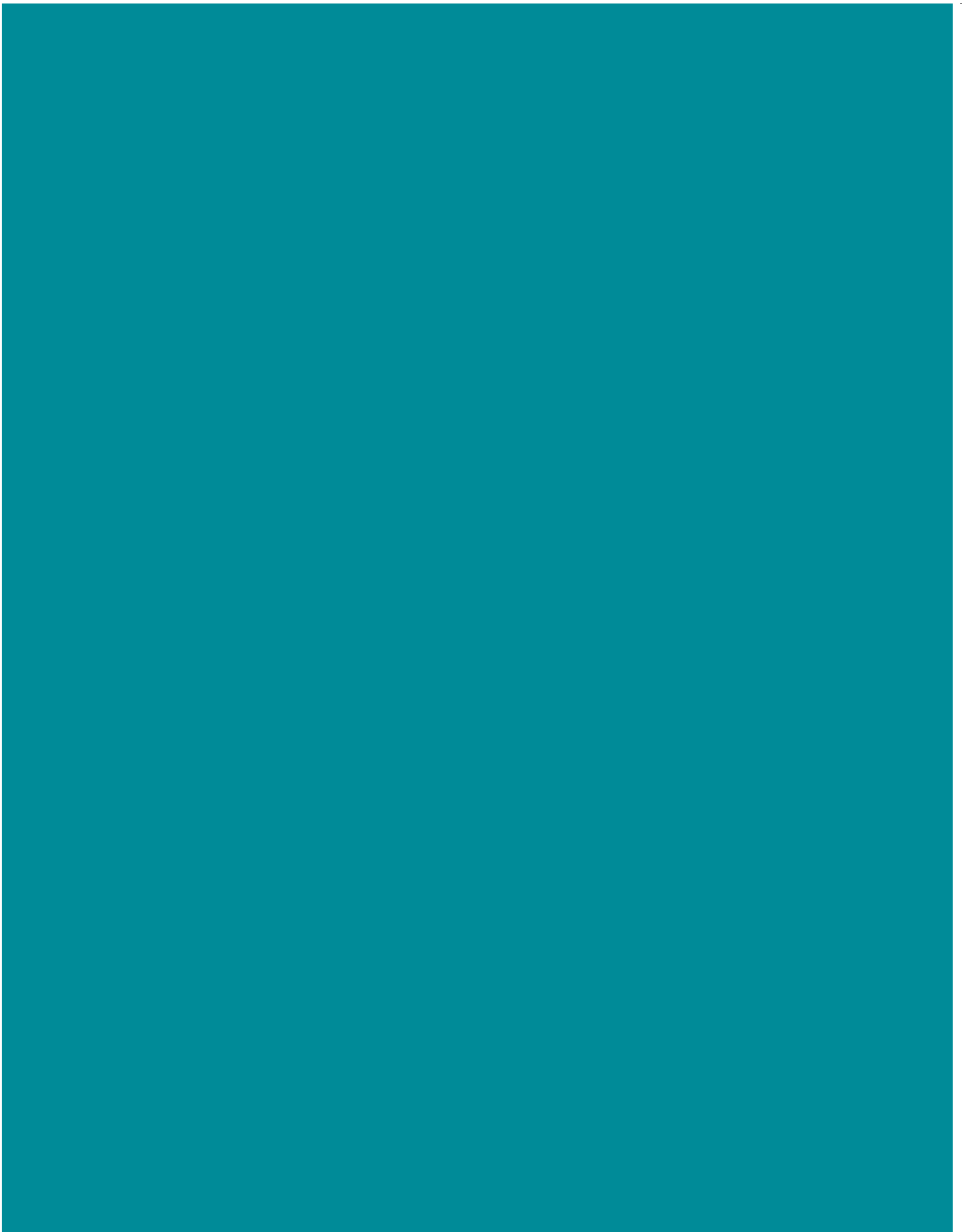
b. Restrictions related to registered sex offenders

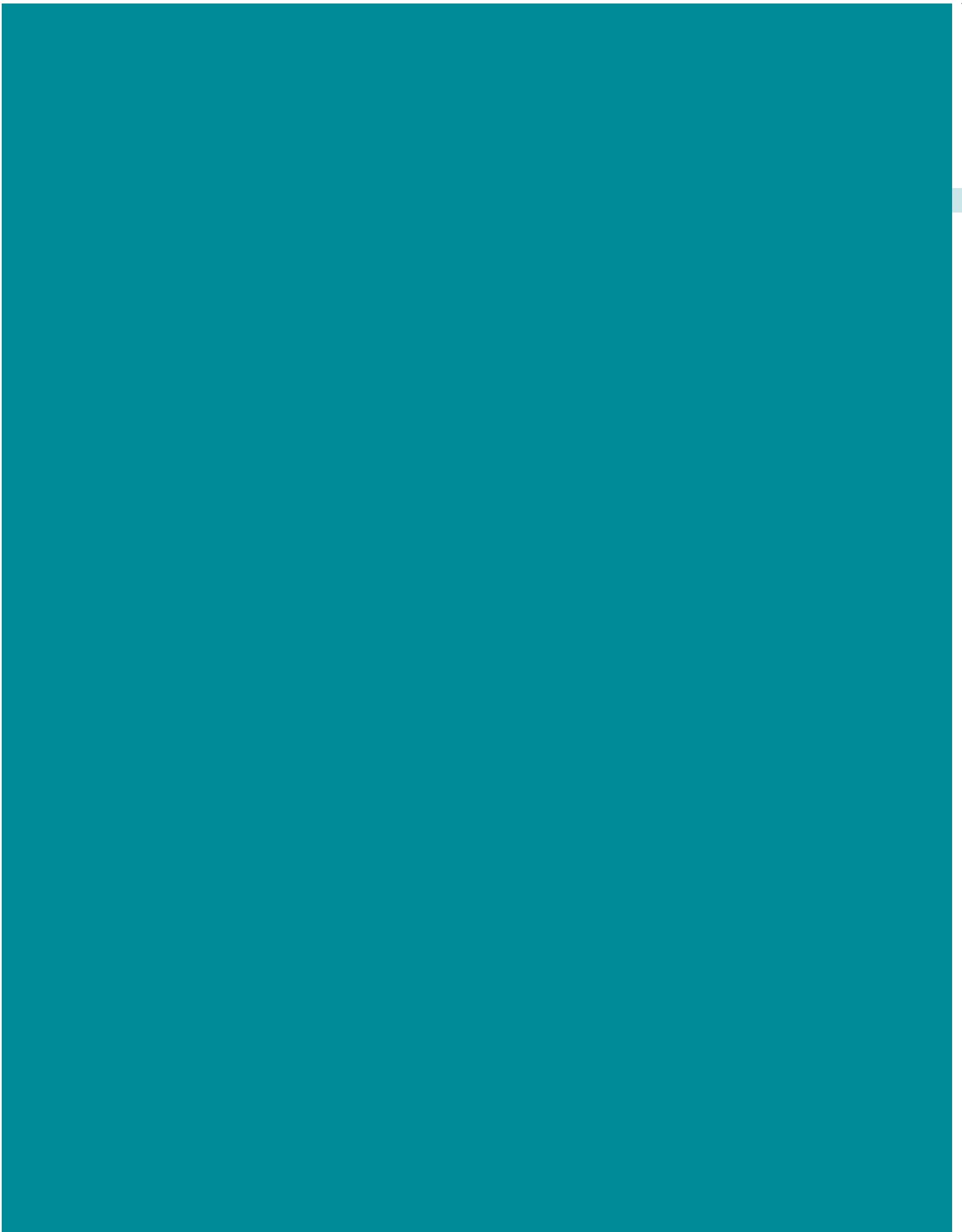
KRS 164.281 Public institution of postsecondary education criminal history background checks - Initial hires, contractors, employees, volunteers, visitors - Disclosures - Termination.

- (1) Each public institution of postsecondary education shall require a criminal history background check on all initial hires.
 - (a) The background check shall consist of a state criminal history background check and a national criminal history background check.
 - (b) Applications shall authorize the appropriate agency to search police records for convictions and make results known to the institution, and the institution may require the applicant to bear the cost of the criminal history background check.

- (2) Each public institution of postsecondary education may require a criminal history background check on a contractor, employee of a contractor, volunteer for the institution or a program of the institution, or visitor, subject to the same terms and conditions as in subsection (1) of this section.
- (3) If, upon review of the results of the criminal history background check, a public institution of postsecondary education finds that the applicant, contractor, employee of a contractor, volunteer, or visitor has been convicted of, pled guilty to, or entered an Alford plea to a sex crime as specified in KRS 17.500 or a violent offense as specified in KRS 439.3401, the institution may:
 - (a) Deny employment or modify the conditions of employment to provide for appropriate supervision;
 - (b) Deny a contractor or a contractor's employee a permit to enter the institution or its grounds, or modify the contract to provide for appropriate supervision;
 - (c) Prohibit a person from volunteering or require the person to agree to appropriate supervision; or
 - (d) Prohibit a person from visiting the institution or its grounds, or require that person to agree to appropriate supervision.
- (4) Each application or renewal form, provided by the institution to an applicant for employment, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE AND NATIONAL CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT."
- (5) If the institution requires a criminal history background check for contractors, employees of contractors, volunteers, or visitors, the institution shall provide to the prospective person or organization the following statement: "FOR THIS TYPE OF CONTRACT OR FOR BEING AN EMPLOYEE OF A CONTRACTOR, A VOLUNTEER FOR THE INSTITUTION OR AN INSTITUTIONAL PROGRAM, OR A VISITOR OF THE INSTITUTION, THIS INSTITUTION REQUIRES A STATE AND NATIONAL CRIMINAL HISTORY BACKGROUND CHECK."
- (6) If an employee of the public institution of postsecondary education is convicted of, pleads guilty to, enters an Alford plea to, or is adjudicated guilty of an offense specified in subsection (3) of this section, the employment of that person may, at the discretion of the institution, be terminated as of the date of the conviction.
- (7) A private college or university located in the Commonwealth may utilize at its discretion any of the provisions of this section, providing that it does so in a written institutional document.







CHAPTER 5 CRIMINAL LAW

A. LAW ENFORCEMENT REQUIRED SEXUAL ASSAULT TRAINING

KRS 15.334 Mandatory training courses for law enforcement students and certified peace officers -- Administrative regulations -- Annual report.

- (1) The Kentucky Law Enforcement Council shall approve mandatory training subjects to be taught to all students attending a law enforcement basic training course that include but are not limited to:
- (a) Abuse, neglect, and exploitation of the elderly and other crimes against the elderly, including the use of multidisciplinary teams in the investigation and prosecution of crimes against the elderly;
 - (b) The dynamics of domestic violence, pediatric abusive head trauma, as defined in KRS 620.020, child physical and sexual abuse, and rape; child development; the effects of abuse and crime on adult and child victims, including the impact of abuse and violence on child development; legal remedies for protection; lethality and risk issues; profiles of offenders and offender treatment; model protocols for addressing domestic violence, rape, pediatric abusive head trauma, as defined in KRS 620.020, and child abuse; available community resources and victim services; and reporting requirements. This training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with expertise in domestic violence, child abuse, and rape. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services;
 - (c) Human immunodeficiency virus infection and acquired immunodeficiency virus syndrome;
 - (d) Identification and investigation of, responding to, and reporting bias-related crime, victimization, or intimidation that is a result of or reasonably related to race, color, religion, sex, or national origin;
 - (e) The characteristics and dynamics of human trafficking, state and federal laws relating to human trafficking, the investigation of cases involving human trafficking, including but not limited to screening for human trafficking, and resources for assistance to the victims of human trafficking; and
 - (f) Beginning January 1, 2017, the council shall require that a law enforcement basic training course include at least eight (8) hours of training relevant to sexual assault.
- (2)
- (a) The council shall develop and approve mandatory professional development training courses to be presented to all certified peace officers. A mandatory professional development training course shall be first taken by a certified peace officer in the training year following its approval by the council and biennially thereafter. A certified peace officer shall be required to take these courses no more than two (2) times in eight (8) years.
 - (b) Beginning January 1, 2011, the council shall require that one and one-half (1.5) hours of professional development covering the recognition and prevention of pediatric abusive head trauma be included in the curriculum of all mandatory professional development training courses such that all officers shall receive this training at least once by December 31, 2013. The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours.

- (c) Beginning January 1, 2017, the council shall establish a forty (40) hour sexual assault investigation training course. By January 1, 2019, agencies shall have one (1) or more officers trained in this curriculum, as follows:
1. Agencies with five (5) or fewer officers shall have at least one (1) officer trained in sexual assault investigation;
 2. Agencies with more than five (5) officers but fewer than thirty (30) officers shall have at least two (2) officers trained in sexual assault investigation; and
 3. Agencies with thirty (30) or more officers shall have at least four (4) officers trained in sexual assault investigation.
- (3) The Justice and Public Safety Cabinet shall provide training on the subjects of domestic violence and abuse and may do so utilizing currently available technology. All certified peace officers shall be required to complete this training at least once every two (2) years.
- (4) The council shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish mandatory basic training and professional development training courses.
- (5) The council shall make an annual report by December 31 each year to the Legislative Research Commission that details the subjects and content of mandatory professional development training courses established during the past year and the subjects under consideration for future mandatory training.

B. OFFENSES

1. Statutes of Limitations

KRS 500.050 Time Limitation. (on bringing criminal charges)

- (1) Except as otherwise expressly provided, the prosecution of a felony is not subject to a period of limitation and may be commenced at any time.
- (2) Except as otherwise expressly provided, the prosecution of an offense other than a felony must be commenced within one (1) year after it is committed.
- (3) For a misdemeanor offense under KRS Chapter 510 when the victim is under the age of eighteen (18) at the time of the offense, the prosecution of the offense shall be commenced within five (5) years after the victim attains the age of eighteen (18) years.
- (4) For purposes of this section, an offense is committed either when every element occurs, or if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated.

Note: A chart including the elements of Kentucky sex crimes and related offenses is included in Chapter 7.

2. Continuing Course of Conduct

KRS 501.100 Offense against a vulnerable victim.

- (1) As used in this section, "offense against a vulnerable victim" means any violation of:
 - (a) KRS 508.100;
 - (b) KRS 508.110;
 - (c) KRS 508.120;
 - (d) KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, or 530.020, if the victim is under the age of fourteen (14), or if the victim is an individual with an intellectual disability, physically helpless, or mentally incapacitated, as those terms are defined in KRS 510.010;

- (e) KRS 529.100 or 529.110 if the victim is a minor;
 - (f) KRS 530.064(1)(a);
 - (g) KRS 531.310;
 - (h) KRS 531.320; or
 - (i) Any felony in KRS Chapter 209.
- (2) A person may be charged with committing an offense against a vulnerable victim in a continuing course of conduct if the unlawful act was committed against the same person two (2) or more times over a specified period of time.
 - (3) If a person is charged as committing the crime in a continuing course of conduct, the indictment shall clearly charge that the crime was committed in a continuing course of conduct.
 - (4) To convict a person of an offense against a vulnerable victim in a continuing course of conduct, the jury shall unanimously agree that two (2) or more acts in violation of the same statute occurred during the specified period of time. The jury need not agree on which specific acts occurred.
 - (5) If a person is convicted of an offense against a vulnerable victim in a continuing course of conduct, that person may not also be convicted of charges based on the individual unlawful acts that were part of the continuing course of conduct.
 - (6) The penalty, probation and parole eligibility, and other consequences of an offense charged under this section shall be the same as for the offense when charged based on an individual act.
 - (7) The applicability of this section shall be governed by the age of the victim at the time of the offense.

3. "Sex Offenses" (KRS 510)

KRS 510.010 Definitions for chapter.

NOTE: Effective July 14, 2018 -- Amended definitions of "deviate sexual intercourse" and "sexual intercourse" to include the language "any body part". i.e. penetration of the vagina or anus with a finger or hand.

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "Deviate sexual intercourse" means any act of sexual gratification involving the sex organs of one person and the mouth or anus of another; or penetration of the anus of one person by any body part or a foreign object manipulated by another person. "Deviate sexual intercourse" does not include penetration of the anus by any body part or a foreign object in the course of the performance of generally recognized health-care practices;
- (2) "Forcible compulsion" means physical force or threat of physical force, express or implied, which places a person in fear of immediate death, physical injury to self or another person, fear of the immediate kidnap of self or another person, or fear of any offense under this chapter. Physical resistance on the part of the victim shall not be necessary to meet this definition;
- (3) "Mental illness" means a diagnostic term that covers many clinical categories, typically including behavioral or psychological symptoms, or both, along with impairment of personal and social function, and specifically defined and clinically interpreted through reference to criteria contained in the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) and any subsequent revision thereto, of the American Psychiatric Association;
- (4) "Individual with an intellectual disability" means a person with significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, as defined in KRS Chapter 202B;
- (5) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct as a result of the influence of an intoxicating substance administered to him without his consent or as a result of any other act committed upon him without his consent;

- (6) "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. "Physically helpless" also includes a person who has been rendered unconscious or for any other reason is physically unable to communicate an unwillingness to an act as a result of the influence of a controlled substance or legend drug;
- (7) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party;
- (8) "Sexual intercourse" means sexual intercourse in its ordinary sense and includes penetration of the sex organs of one person by any body part or a foreign object manipulated by another person. Sexual intercourse occurs upon any penetration, however slight; emission is not required. "Sexual intercourse" does not include penetration of the sex organ by any body part or a foreign object in the course of the performance of generally recognized health-care practices; and
- (9) "Foreign object" means anything used in commission of a sexual act other than the person of the actor.

Note: KRS 532.045 includes definitions of "Position of Authority" and "Position of Special Trust" - Text is included in Chapter 5, Section E, 3.

KRS 510.015 Treatment of third or subsequent misdemeanor under KRS Chapter 510 as Class D felony.

Unless a higher penalty is otherwise prescribed and notwithstanding any provision of this chapter to the contrary, a person who commits a third or subsequent misdemeanor offense under this chapter, except for violations of KRS 510.150, may be convicted of a Class D felony. If the Commonwealth desires to utilize the provisions of this section, the Commonwealth shall indict the defendant and the case shall be tried in the Circuit Court as a felony case. The jury, or judge if the trial is without a jury, may decline to assess a felony penalty in a case under this section and may convict the defendant of a misdemeanor.

KRS 510.020 Lack of consent.

NOTE: Effective July 14, 2018 -- Amended to include victims age 16 and 17.

- (1) Whether or not specifically stated, it is an element of every offense defined in this chapter that the sexual act was committed without consent of the victim.
- (2) Lack of consent results from:
 - (a) Forcible compulsion;
 - (b) Incapacity to consent; or
 - (c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.
- (3) A person is deemed incapable of consent when he or she is:
 - (a) Less than sixteen (16) years old;
 - (b) Sixteen (16) or seventeen (17) years old and the actor is at least ten (10) years older than the victim at the time of the sexual act;
 - (c) An individual unable to communicate consent or lack of consent, or unable to understand the nature of the act or its consequences, due to an intellectual disability or a mental illness;
 - (d) Mentally incapacitated;
 - (e) Physically helpless; or
 - (f) Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.

- (4) The provisions of subsection (3)(f) of this section shall not apply to persons who are lawfully married to each other and no court order is in effect prohibiting contact between the parties.

KRS 510.030 Defenses to prosecution based on victim's lack of consent.

In any prosecution under this chapter in which the victim's lack of consent is based solely on his incapacity to consent because he was less than sixteen (16) years old, an individual with an intellectual disability, mentally incapacitated, or physically helpless, the defendant may prove in exculpation that at the time he engaged in the conduct constituting the offense he did not know of the facts or conditions responsible for such incapacity to consent.

KRS 510.035 Exception to KRS 510.020.

A person who engages in sexual intercourse or deviate sexual intercourse with another person to whom the person is married, or subjects another person to whom the person is married to sexual contact, does not commit an offense under this chapter regardless of the person's age solely because the other person is less than sixteen (16) years old or an individual with an intellectual disability.

KRS 510.037 Conviction for rape, sodomy, or sexual abuse triggers application for interpersonal protective order.

The entering of a judgment of conviction for any degree of rape, sodomy, or sexual abuse under this chapter shall operate as an application for an interpersonal protective order issued under KRS Chapter 456, unless the victim requests otherwise. Notwithstanding the provisions of KRS Chapter 456:

- (1) An interpersonal protective order requested under this subsection may be issued by the court that entered the judgment of conviction;
- (2) The judgment of conviction shall constitute sufficient cause for the entry of the order without the necessity of further proof being taken; and
- (3) The order may be effective for up to ten (10) years, with further renewals in increments of up to ten (10) years.

KRS 510.040 Rape in the first degree.

- (1) A person is guilty of rape in the first degree when:
 - (a) He engages in sexual intercourse with another person by forcible compulsion; or
 - (b) He engages in sexual intercourse with another person who is incapable of consent because he:
 1. Is physically helpless; or
 2. Is less than twelve (12) years old.
- (2) Rape in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

KRS 510.050 Rape in the second degree.

NOTE: Amended, effective July 14, 2018.

- (1) A person is guilty of rape in the second degree when:
 - (a) Being eighteen (18) years old or more, he or she engages in sexual intercourse with another person less than fourteen (14) years old; or
 - (b) He or she engages in sexual intercourse with another person who is mentally incapacitated or who is incapable of consent because he or she is an individual with an intellectual disability.
- (2) Rape in the second degree is a Class C felony.

KRS 510.060 Rape in the third degree.

NOTE: Effective July 14, 2018 -- Amended to include victims age 16 and 17.

- (1) A person is guilty of rape in the third degree when:
- (a) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than sixteen (16) years old;
 - (b) Being at least ten (10) years older than a person who is sixteen (16) or seventeen (17) years old at the time of sexual intercourse, he or she engages in sexual intercourse with the person;
 - (c) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020;
 - (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in sexual intercourse with a minor under eighteen (18) years old with whom he or she comes into contact as a result of that position; or
 - (e) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual intercourse.
- (2) Rape in the third degree is a Class D felony.

KRS 510.070 Sodomy in the first degree.

- (1) A person is guilty of sodomy in the first degree when:
- (a) He engages in deviate sexual intercourse with another person by forcible compulsion; or
 - (b) He engages in deviate sexual intercourse with another person who is incapable of consent because he:
 - 1. Is physically helpless; or
 - 2. Is less than twelve (12) years old.
- (2) Sodomy in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

KRS 510.080 Sodomy in the second degree.

- (1) A person is guilty of sodomy in the second degree when:
- (a) Being eighteen (18) years old or more, he engages in deviate sexual intercourse with another person less than fourteen (14) years old; or
 - (b) He engages in deviate sexual intercourse with another person who is mentally incapacitated or who is incapable of consent because he or she is an individual with an intellectual disability.
- (2) Sodomy in the second degree is a Class C felony.

KRS 510.090 Sodomy in the third degree.

NOTE: Effective July 14, 2018 -- Amended to include victims age 16 and 17.

- (1) A person is guilty of sodomy in the third degree when:
- (a) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than sixteen (16) years old;
 - (b) Being at least ten (10) years older than a person who is sixteen (16) or seventeen (17) years old at the time of deviate sexual intercourse, he or she engages in deviate sexual intercourse with the person;

- (c) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020;
 - (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in deviate sexual intercourse with a minor less than eighteen (18) years old with whom he or she comes into contact as a result of that position; or
 - (e) Being a jailer, or an employee, contractor, vendor, or volunteer of the Dept of Corrections, Dept of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either dept or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Dept of Corrections, Dept of Juvenile Justice, detention facility, or contracting entity, to deviate sexual intercourse.
- (2) Sodomy in the third degree is a Class D felony.

KRS 510.110 Sexual abuse in the first degree.

- (1) A person is guilty of sexual abuse in the first degree when:
- (a) He or she subjects another person to sexual contact by forcible compulsion; or
 - (b) He or she subjects another person to sexual contact who is incapable of consent because he or she:
 - 1. Is physically helpless;
 - 2. Is less than twelve (12) years old;
 - 3. Is mentally incapacitated; or
 - 4. Is an individual with an intellectual disability; or
 - (c) Being twenty-one (21) years old or more, he or she:
 - 1. Subjects another person who is less than sixteen (16) years old to sexual contact;
 - 2. Engages in masturbation in the presence of another person who is less than sixteen (16) years old and knows or has reason to know the other person is present; or
 - 3. Engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate; or
 - (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she comes into contact as a result of that position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present or engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate.
- (2) Sexual abuse in the first degree is a Class D felony, unless the victim is less than twelve (12) years old, in which case the offense shall be a Class C felony.

KRS 510.120 Sexual abuse in the second degree.

- (1) A person is guilty of sexual abuse in the second degree when:
- (a) He or she is at least eighteen (18) years old but less than twenty-one (21) years old and subjects another person who is less than sixteen (16) years old to sexual contact; or
 - (b) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who is at least eighteen (18) years old and who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice,

detention facility, or contracting entity, to sexual contact.

- (2) In any prosecution under subsection (1)(a) of this section, it is a defense that:
 - (a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and
 - (b) The other person was at least fourteen (14) years old; and
 - (c) The actor was less than five (5) years older than the other person.
- (3) Sexual abuse in the second degree is a Class A misdemeanor.

KRS 510.130 Sexual abuse in the third degree.

- (1) A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent.
- (2) In any prosecution under this section, it is a defense that:
 - (a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and
 - (b) The other person was at least fourteen (14) years old; and
 - (c) The actor was less than eighteen (18) years old.
- (3) Sexual abuse in the third degree is a Class B misdemeanor.

KRS 510.140 Sexual misconduct.

- (1) A person is guilty of sexual misconduct when he engages in sexual intercourse or deviate sexual intercourse with another person without the latter's consent.
- (2) Sexual misconduct is a Class A misdemeanor.

KRS 510.148 Indecent exposure in the first degree.

- (1) A person is guilty of indecent exposure in the first degree when he intentionally exposes his genitals under circumstances in which he knows or should know that his conduct is likely to cause affront or alarm to a person under the age of eighteen (18) years.
- (2) Indecent exposure in the first degree is a:
 - (a) Class B misdemeanor for the first offense;
 - (b) Class A misdemeanor for the second offense, if it was committed within three (3) years of the first conviction;
 - (c) Class D felony for the third offense, if it was committed within three (3) years of the second conviction; and
 - (d) Class D felony for any subsequent offense, if it was committed within three (3) years of the prior conviction.

KRS 510.150 Indecent exposure in the second degree.

- (1) A person is guilty of indecent exposure in the second degree when he intentionally exposes his genitals under circumstances in which he knows or should know that his conduct is likely to cause affront or alarm to a person eighteen (18) years of age or older.
- (2) Indecent exposure in the second degree is a Class B misdemeanor.

KRS 510.155 Unlawful use of electronic means originating or received within the Commonwealth to induce a minor to engage in sexual or other prohibited activities -- Prohibition of multiple convictions arising from single course of conduct -- Solicitation as evidence of intent.

- (1) It shall be unlawful for any person to knowingly use a communications system, including computers, computer networks, computer bulletin boards, cellular telephones, or any other electronic means, for the purpose of procuring or promoting the use of a minor, or a peace officer posing as a minor if the person believes that the peace officer is a minor or is wanton or reckless in that belief, for any activity in violation of KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 529.100 where that offense involves commercial sexual activity, or

530.064(1)(a), or KRS Chapter 531.

- (2) No person shall be convicted of this offense and an offense specified in KRS 506.010, 506.030, 506.040, or 506.080 for a single course of conduct intended to consummate in the commission of the same offense with the same minor or peace officer.
- (3) The solicitation of a minor through electronic communication under subsection (1) of this section shall be prima facie evidence of the person's intent to commit the offense, and the offense is complete at that point without regard to whether the person met or attempted to meet the minor.
- (4) This section shall apply to electronic communications originating within or received within the Commonwealth.
- (5) A violation of this section is punishable as a Class D felony.

KRS 510.300 Expungement of record.

- (1) The arrest record of anyone accused by his spouse of an offense under this chapter shall be expunged if said charge was either dismissed with prejudice or a verdict of not guilty on said charge was entered.
- (2) If the charges brought against a defendant under this chapter are dismissed with prejudice or the defendant is found not guilty, the court shall order all law enforcement and other public agencies holding records of the offense to expunge the records.
- (3) No person whose records have been expunged pursuant to this section shall have to answer "Yes" and may answer "No" to the question "Have you ever been arrested?" or any similar question with regard to the offense for which the records were expunged

4. Sexual Exploitation of Minors

KRS 531.300 Definitions for KRS 531.080 and 531.310 to 531.370.

As used in KRS 531.080 and 531.310 to 531.370:

- (1) "Distribute" means to transfer possession of, whether with or without consideration;
- (2) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, live image transmitted over the Internet or other electronic network, or other pictorial representation or any statue or other figure, or any recording transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines, or materials;
- (3) "Obscene" means the predominate appeal of the matter taken as a whole is to a prurient interest in sexual conduct involving minors;
- (4) "Sexual conduct by a minor" means:
 - (a) Acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse, actual or simulated;
 - (b) Physical contact with, or willful or intentional exhibition of the genitals;
 - (c) Flagellation or excretion for the purpose of sexual stimulation or gratification; or
 - (d) The exposure, in an obscene manner, of the unclothed or apparently unclothed human male or female genitals, pubic area or buttocks, or the female breast, whether or not subsequently obscured by a mark placed thereon, or otherwise altered, in any resulting motion picture, photograph or other visual representation, exclusive of exposure portrayed in matter of a private, family nature not intended for distribution outside the family;
- (5) "Performance" means any play, motion picture, photograph or dance. Performance also means any other visual representation exhibited before an audience;
- (6) "Sexual performance" means any performance or part thereof which includes sexual conduct by a minor; and
- (7) "Promote" means to prepare, publish, print, procure or manufacture, or to offer or agree to do the same.

KRS 531.305 Treatment in criminal or civil proceeding of property or material portraying child pornography or a sexual performance by a minor.

- (1) In a criminal or civil proceeding, any property or material that portrays child pornography or a sexual performance by a minor as defined in this chapter shall remain secured or locked in the care, custody, and control of a law enforcement agency, or the prosecutor. Any property or material that portrays child pornography or a sexual performance by a minor shall not be filed with or stored by the court unless introduced as an exhibit for trial. Storage of trial court exhibits portraying child pornography or a sexual performance by a minor shall be in accordance with a court order.
- (2) Notwithstanding any other law or rule of court, a court shall deny, in any proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that portrays a sexual performance by a minor or constitutes child pornography so long as law enforcement, the prosecutor, or the court, if the matter was introduced as an exhibit at trial, makes the property or material reasonably available to the defendant.
- (3) For the purposes of this section, property or material shall be deemed reasonably available to the defendant if the prosecutor provides ample opportunity at a designated facility for the inspection, viewing, and examination of the property or material that portrays a sexual performance by a child or constitutes child pornography by the defendant, his or her attorney, or any individual whom the defendant uses as an expert during either the discovery process or a court proceeding.

KRS 531.310 Use of a minor in a sexual performance.

- (1) A person is guilty of the use of a minor in a sexual performance if he employs, consents to, authorizes or induces a minor to engage in a sexual performance.
- (2) Use of a minor in a sexual performance is:
 - (a) A Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity;
 - (b) A Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and
 - (c) A Class A felony if the minor so used incurs physical injury thereby.

KRS 531.320 Promoting a sexual performance by a minor.

- (1) A person is guilty of promoting a sexual performance by a minor when, knowing the character and content thereof, he produces, directs or promotes any performance which includes sexual conduct by a minor.
- (2) Promoting a sexual performance by a minor is:
 - (a) A Class C felony if the minor involved in the sexual performance is less than eighteen (18) years old at the time the minor engages in the prohibited activity;
 - (b) A Class B felony if the minor involved in the sexual performance is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and
 - (c) A Class A felony if the minor involved in the sexual performance incurs physical injury thereby.

KRS 531.330 Presumption as to minority.

- (1) For purposes of KRS 529.040 where the offense involves commercial sexual activity and for the purposes of KRS 530.070, 531.080, and 531.300 to 531.370, any person who appears to be under the age of eighteen (18), or under the age of sixteen (16), shall be presumed to be under the age of eighteen (18), or under the age of sixteen (16), as the case may be.
- (2) In any prosecution under KRS 529.040 where the offense involves commercial sexual activity by a minor and in any prosecution under KRS 530.070, 531.080, and 531.300 to 531.370, the

defendant may prove in exculpation that he in good faith reasonably believed that the person involved in the performance was not a minor.

- (3) The presumption raised in subsection (1) of this section may be rebutted by any competent evidence.

KRS 531.335 Possession or viewing of matter portraying a sexual performance by a minor -- Applicability.

- (1) A person is guilty of possession or viewing of matter portraying a sexual performance by a minor when, having knowledge of its content, character, and that the sexual performance is by a minor, he or she:
- (a) Knowingly has in his or her possession or control any matter which visually depicts an actual sexual performance by a minor person; or
 - (b) Intentionally views any matter which visually depicts an actual sexual performance by a minor person.
- (2) The provisions of subsection (1)(b) of this section:
- (a) Shall only apply to the deliberate, purposeful, and voluntary viewing of matter depicting sexual conduct by a minor person and not to the accidental or inadvertent viewing of such matter;
 - (b) Shall not apply to persons viewing the matter in the course of a law enforcement investigation or criminal or civil litigation involving the matter; and
 - (c) Shall not apply to viewing the matter by a minor or the minor's parents or guardians, or to school administrators investigating violations of subsection (1)(b) of this section.
- (3) Possession or viewing of matter portraying a sexual performance by a minor is a Class D felony.

KRS 531.340 Distribution of matter portraying a sexual performance by a minor.

- (1) A person is guilty of distribution of matter portraying a sexual performance by a minor when, having knowledge of its content and character, he or she:
- (a) Sends or causes to be sent into this state for sale or distribution; or
 - (b) Brings or causes to be brought into this state for sale or distribution; or
 - (c) In this state, he or she:
 - 1. Exhibits for profit or gain; or
 - 2. Distributes; or
 - 3. Offers to distribute; or
 - 4. Has in his or her possession with intent to distribute, exhibit for profit or gain or offer to distribute, any matter portraying a sexual performance by a minor.
- (2) Any person who has in his or her possession more than one (1) unit of material coming within the provision of KRS 531.300(2) shall be rebuttably presumed to have such material in his or her possession with the intent to distribute it.
- (3) Distribution of matter portraying a sexual performance by a minor is a Class D felony for the first offense and a Class C felony for each subsequent offense.

KRS 531.350 Promoting sale of material portraying a sexual performance by a minor.

- (1) A person is guilty of promoting sale of material portraying a sexual performance by a minor when he knowingly, as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication or other merchandise, requires that the purchaser or consignee receive any matter portraying a sexual performance by a minor, or he denies or threatens to deny a franchise, revokes or threatens to revoke, or imposes any penalty, financial or otherwise, by reason of the failure of any person to accept such matter, or by reason of the return of such matter.

- (2) Promoting sale of matter portraying a sexual performance by a minor is a Class A misdemeanor for the first offense, a Class D felony for the second offense, and a Class C felony for each subsequent offense.

KRS 531.360 Advertising material portraying a sexual performance by a minor.

- (1) A person is guilty of advertising material portraying a sexual performance by a minor when, having knowledge of its content and character thereof, he or she writes or creates advertising or solicits anyone to publish such advertising or otherwise promotes the sale or distribution of matter portraying a sexual performance by a minor.
- (2) Advertising material portraying a sexual performance by a minor is a Class D felony for the first offense and a Class C felony for each subsequent offense.

KRS 531.370 Using minors to distribute material portraying a sexual performance by a minor.

- (1) A person is guilty of using minors to distribute material portraying a sexual performance by a minor when knowing a person to be a minor, or having possession of such facts that he should reasonably know such person is a minor, and knowing of the content and character of the material, he knowingly:
- (a) Hires; or
 - (b) Employs; or
 - (c) Uses,
- a minor to do or assist in doing any of the acts prohibited by KRS 531.340.
- (2) Using minors to distribute material portraying a sexual performance by a minor is a Class D felony unless the defendant has previously been convicted of violation of this section or KRS 531.030, in which case it shall be a Class C felony.

5. Other Offenses Involving Sexual Contact and/or Gratification

KRS 530.020 Incest.

- (1) A person is guilty of incest when he or she has sexual intercourse or deviate sexual intercourse, as defined in KRS 510.010, with a person whom he or she knows to be an ancestor, descendant, uncle, aunt, brother, or sister. The relationships referred to herein include blood relationships of either the whole or half-blood without regard to legitimacy, relationship of parent and child by adoption, relationship of stepparent and stepchild, and relationship of step-grandparent and step-grandchild.
- (2) (a) Incest is a Class C felony if the act is committed by consenting adults.
- (b) Incest is a Class B felony if committed:
- 1. By forcible compulsion as defined in KRS 510.010(2); or
 - 2. On a victim who is:
 - a. Less than eighteen (18) years of age; or
 - b. Incapable of consent because he or she is physically helpless or mentally incapacitated.
- (c) Incest is a Class A felony if:
- 1. Committed on a victim less than twelve (12) years of age; or
 - 2. The victim receives serious physical injury.

KRS 530.064 Unlawful transaction with a minor in the first degree.

- (1) A person is guilty of unlawful transaction with a minor in the first degree when he or she knowingly induces, assists, or causes a minor to engage in:
- (a) Illegal sexual activity; or
 - (b) Illegal controlled substances activity other than activity involving marijuana or salvia, as defined in KRS 218A.010;

Except those offenses involving minors in KRS Chapter 531 and in KRS 529.100 where that offense involves commercial sexual activity.

- (2) Unlawful transaction with a minor in the first degree is a:
- (a) Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity;
 - (b) Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and
 - (c) Class A felony if the minor so used incurs physical injury thereby.

KRS 530.080 Endangering the welfare of an incompetent person.

- (1) A person is guilty of endangering the welfare of an incompetent person when he knowingly acts in a manner which results in an injury to the physical or mental welfare of a person who is unable to care for himself because of mental illness or intellectual disability.
- (2) Endangering the welfare of an incompetent person is a Class A misdemeanor.

KRS 531.090 Voyeurism.

- (1) A person is guilty of voyeurism when:
- (a) He or she intentionally:
 - 1. Uses or causes the use of any camera, videotape, photo-optical, photoelectric, or other image recording device for the purpose of observing, viewing, photographing, filming, or videotaping the sexual conduct, genitals, an undergarment worn without being publicly visible, or nipple of the female breast of another person without that person's consent; or
 - 2. Uses the unaided eye or any device designed to improve visual acuity for the purpose of observing or viewing the sexual conduct, genitals, an undergarment worn without being publicly visible, or nipple of the female breast of another person without that person's consent; or
 - 3. Enters or remains unlawfully in or upon the premises of another for the purpose of observing or viewing the sexual conduct, genitals, an undergarment worn without being publicly visible, or nipple of the female breast of another person without the person's consent; and
 - (b) The other person is in a place where a reasonable person would believe that his or her sexual conduct, genitals, undergarments, or nipple of the female breast will not be observed, viewed, photographed, filmed, or videotaped without his or her knowledge.
- (2) The provisions of subsection (1) of this section shall not apply to:
- (a) A law enforcement officer during a lawful criminal investigation; or
 - (b) An employee of the Department of Corrections, the Department of Juvenile Justice, a private prison, a local jail, or a local correctional facility whose actions have been authorized for security or investigative purposes.
- (3) Unless objected to by the victim or victims of voyeurism, the court on its own motion or on motion of the Commonwealth's attorney shall:
- (a) Order the sealing of all photographs, film, videotapes, or other images that are introduced into evidence during a prosecution under this section or are in the possession of law enforcement, the prosecution, or the court as the result of a prosecution under this section; and
 - (b) At the conclusion of a prosecution under this section, unless required for additional prosecutions, order the destruction of all of the photographs, film, videotapes, or other images that are in possession of law enforcement, the prosecution, or the court.
- (4) Voyeurism is a Class A misdemeanor.

KRS 531.100 Video voyeurism.

- (1) A person is guilty of video voyeurism when he or she intentionally:
 - (a) Uses or causes the use of any camera, videotape, photo-optical, photoelectric, or other image recording device for the purpose of observing, viewing, photographing, filming, or videotaping the sexual conduct, genitals, or nipple of the female breast of another person without that person's consent; and
 - (b) Uses or divulges any image so obtained for consideration; or
 - (c) Distributes any image so obtained by live or recorded visual medium, electronic mail, the Internet, or a commercial on-line service.
- (2) Video voyeurism is a Class D felony.

KRS 531.105 Application of KRS 531.100.

The provisions of KRS 531.100 shall not apply to the transference of prohibited images by a telephone company, a cable television company or any of its affiliates, an Internet provider, or a commercial on-line service provider, or to the carrying, broadcasting, or performing of related activities in providing telephone, cable television, Internet, or commercial on-line services.

KRS 531.110 Sealing and destruction of images in cases of video voyeurism.

Unless objected to by the victim or victims of the video voyeurism, the court, on its own motion, or on motion of the attorney for the Commonwealth shall:

- (1) Order all photographs, film, videotapes, or other images that are introduced into evidence or are in the possession of law enforcement, the prosecution, or the court to be sealed; and
- (2) At the conclusion of the case, unless required for additional prosecutions, order all of the photographs, film, videotapes, or other images that are in the possession of law enforcement, the prosecution, or the court to be destroyed.

KRS 531.120 Distribution of sexually explicit images without consent.

NOTE: Effective: July 14, 2018

- (1) A person is guilty of distribution of sexually explicit images without consent when:
 - (a) He or she intentionally distributes to any third party private erotic matter without the written consent of the person depicted, and does so with the intent to profit, or to harm, harass, intimidate, threaten, or coerce the person depicted; and
 - (b) The disclosure would cause a reasonable person to suffer harm.
- (2) This section shall not apply to:
 - (a) Images involving voluntary nudity or sexual conduct in public, commercial settings, or in a place where a person does not have a reasonable expectation of privacy;
 - (b) Disclosures made in the public interest, including the reporting of unlawful conduct, or lawful and common practices of law enforcement, criminal reporting, corrections, legal proceedings, or medical treatment;
 - (c) Disclosures of materials that constitute a matter of public concern; or
 - (d) Internet service providers or telecommunications services, or interactive computer services, as defined in 47 U.S.C. sec. 230(f)(2), for content solely provided by another person.
- (3) A person who maintains an Internet Web site, online service, online application, or mobile application that distributes private erotic matter shall remove any such image if requested by a person depicted, and shall not solicit or accept a fee or other consideration to remove the visual image.
- (4) Distribution of sexually explicit images without consent is a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense, unless the person distributes the private erotic matter for profit or gain, in which case it is a Class D felony for the first offense and a Class C felony for each subsequent offense.

- (5) In this section, "consent" means the consent to transmission of images to a specific recipient or recipients. Consent to the creation of the visual image does not, by itself, constitute consent to the distribution of the visual image.
- (6) Notwithstanding KRS 17.500 to 17.580, a conviction under this section shall not result in the offender being deemed a registrant or being required to register as a sex offender.

KRS 525.120 Abuse of corpse.

- (1) A person is guilty of abuse of a corpse when except as authorized by law he intentionally treats a corpse in a way that would outrage ordinary family sensibilities. A person shall also be guilty of abuse of a corpse if that person enters into a contract and accepts remuneration for the preparation of a corpse for burial or the burial or cremation of a corpse and then deliberately fails to prepare, bury, or cremate that corpse in accordance with that contract.
- (2) Abuse of a corpse is a Class A misdemeanor, unless the act attempted or committed involved sexual intercourse or deviate sexual intercourse with the corpse or the deliberate failure to prepare, bury, or cremate a corpse after the acceptance of remuneration in accordance with any contract negotiated, in which case it is a Class D felony.

6. Stalking and Harassment

KRS 508.130 Definitions for KRS 508.130 to 508.150.

As used in KRS 508.130 to 508.150, unless the context requires otherwise:

- (1) (a) To "stalk" means to engage in an intentional course of conduct:
 1. Directed at a specific person or persons;
 2. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and
 3. Which serves no legitimate purpose.(b) The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.
- (2) "Course of conduct" means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. One (1) or more of these acts may include the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device. Constitutionally protected activity is not included within the meaning of "course of conduct." If the defendant claims that he was engaged in constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence.
- (3) "Protective order" means:
 - (a) An emergency protective order or domestic violence order issued under KRS 403.715 to 403.785;
 - (b) A foreign protective order, as defined in KRS 403.720 and 456.010;
 - (c) An order issued under KRS 431.064;
 - (d) A restraining order issued in accordance with KRS 508.155;
 - (e) An order of protection as defined in KRS 403.720 and 456.010; and
 - (f) Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender.

KRS 508.140 Stalking in the first degree.

- (1) A person is guilty of stalking in the first degree,
- (a) When he intentionally:
 - 1. Stalks another person; and
 - 2. Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:
 - a. Sexual contact as defined in KRS 510.010;
 - b. Serious physical injury; or
 - c. Death; and
 - (b)
 - 1. A protective order has been issued by the court to protect the same victim or victims and the defendant has been served with the summons or order or has been given actual notice; or
 - 2. A criminal complaint is currently pending with a court, law enforcement agency, or prosecutor by the same victim or victims and the defendant has been served with a summons or warrant or has been given actual notice; or
 - 3. The defendant has been convicted of or pled guilty within the previous five (5) years to a felony or to a Class A misdemeanor against the same victim or victims; or
 - 4. The act or acts were committed while the defendant had a deadly weapon on or about his person.
- (2) Stalking in the first degree is a Class D felony.

KRS 508.150 Stalking in the second degree.

- (1) A person is guilty of stalking in the second degree when he intentionally:
- (a) Stalks another person; and
 - (b) Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:
 - 1. Sexual contact as defined in KRS 510.010;
 - 2. Physical injury; or
 - 3. Death.
- (2) Stalking in the second degree is a Class A misdemeanor.

KRS 508.155 Restraining order or interpersonal protective order to be issued upon violation of KRS 508.140 or 508.150.

- (1)
- (a) Before January 1, 2016, a verdict of guilty or a plea of guilty to KRS 508.140 (stalking 1st) or 508.150 (stalking 2nd) shall operate as an application for a restraining order utilizing the provisions of this section and limiting the contact of the defendant and the victim who was stalked, unless the victim requests otherwise.
 - (b) Beginning January 1, 2016, a verdict of guilty or a plea of guilty to KRS 508.140 (stalking 1st) or 508.150 (stalking 2nd) shall operate as an application for an interpersonal protective order issued under KRS Chapter 456, unless the victim requests otherwise. Notwithstanding the provisions of KRS Chapter 456:
 - 1. An interpersonal protective order requested under this subsection may be issued by the court that entered the judgment of conviction;
 - 2. The judgment of conviction shall constitute sufficient cause for the entry of the order without the necessity of further proof being taken; and
 - 3. The order may be effective for up to ten (10) years, with further renewals in increments of up to ten (10) years.
- (2) The court shall give the defendant notice of his or her right to request a hearing on the application for a restraining order. If the defendant waives his or her right to a hearing on this matter, then the court may issue the restraining order without a hearing.
- (3) If the defendant requests a hearing, it shall be held at the time of the verdict or plea of guilty,

unless the victim or defendant requests otherwise. The hearing shall be held in the court where the verdict or plea of guilty was entered.

- (4) A restraining order may grant the following specific relief:
 - (a) An order restraining the defendant from entering the residence, property, school, or place of employment of the victim; or
 - (b) An order restraining the defendant from making contact with the victim, including an order forbidding the defendant from personally, or through an agent, initiating any communication likely to cause serious alarm, annoyance, intimidation, or harassment, including but not limited to personal, written, telephonic, or any other form of written or electronic communication or contact with the victim. An order issued pursuant to this subsection relating to a school, place of business, or similar nonresidential location shall be sufficiently limited to protect the stalking victim but shall also protect the defendant's right to employment, education, or the right to do legitimate business with the employer of a stalking victim as long as the defendant does not have contact with the stalking victim. The provisions of this subsection shall not apply to a contact by an attorney regarding a legal matter.
- (5) A restraining order issued pursuant to this section shall be valid for a period of not more than ten (10) years, the specific duration of which shall be determined by the court. Any restraining order shall be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim, his or her immediate family, or both.
- (6) Unless the defendant has been convicted of a felony, or is otherwise ineligible to purchase or possess a firearm under federal law, a restraining order issued pursuant to this section shall not operate as a ban on the purchase or possession of firearms or ammunition by the defendant.
- (7) The restraining order shall be issued on a form prescribed by the Administrative Office of the Courts and may be lifted upon application of the stalking victim to the court which granted the order.
- (8) Within twenty-four (24) hours of entry of a restraining order or entry of an order rescinding a restraining order, the circuit clerk shall forward a copy of the order to the Law Information Network of Kentucky (LINK).
- (9) A restraining order issued under this section shall be enforced in any county of the Commonwealth. Law enforcement officers acting in good faith in enforcing a restraining order shall be immune from criminal and civil liability.
- (10) A violation by the defendant of an order issued pursuant to this section shall be a Class A misdemeanor. Nothing in this section shall preclude the filing of a criminal complaint for stalking based on the same act which is the basis for the violation of the restraining order.

KRS 525.070 Harassment.

- (1) A person is guilty of harassment when, with intent to intimidate, harass, annoy, or alarm another person, he or she:
 - (a) Strikes, shoves, kicks, or otherwise subjects him to physical contact;
 - (b) Attempts or threatens to strike, shove, kick, or otherwise subject the person to physical contact;
 - (c) In a public place, makes an offensively coarse utterance, gesture, or display, or addresses abusive language to any person present;
 - (d) Follows a person in or about a public place or places;
 - (e) Engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose; or
 - (f) Being enrolled as a student in a local school district, and while on school premises, on school-sponsored transportation, or at a school-sponsored event:
 1. Damages or commits a theft of the property of another student;
 2. Substantially disrupts the operation of the school; or

3. Creates a hostile environment by means of any gestures, written communications, oral statements, or physical acts that a reasonable person under the circumstances should know would cause another student to suffer fear of physical harm, intimidation, humiliation, or embarrassment.
- (2) (a) Except as provided in paragraph (b) of this subsection, harassment is a violation.
 - (b) Harassment, as defined in paragraph (a) of subsection (1) of this section, is a Class B misdemeanor.

KRS 525.080 Harassing communications.

- (1) A person is guilty of harassing communications when, with intent to intimidate, harass, annoy, or alarm another person, he or she:
 - (a) Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, or any other form of electronic or written communication in a manner which causes annoyance or alarm and serves no purpose of legitimate communication;
 - (b) Makes a telephone call, whether or not conversation ensues, with no purpose of legitimate communication; or
 - (c) Communicates, while enrolled as a student in a local school district, with or about another school student, anonymously or otherwise, by telephone, the Internet, telegraph, mail, or any other form of electronic or written communication in a manner which a reasonable person under the circumstances should know would cause the other student to suffer fear of physical harm, intimidation, humiliation, or embarrassment and which serves no purpose of legitimate communication.
- (2) Harassing communications is a Class B misdemeanor.

7. Human Trafficking

a. Criminal Statutes Addressing Trafficking

KRS 16.173 Unit of department to receive and investigate complaints of human trafficking.

The Department of Kentucky State Police shall designate a unit within the department to receive and investigate complaints of human trafficking. The unit shall cooperate with and assist prosecutorial agencies and local and federal law enforcement, as well as law enforcement from other states, in the receipt and investigation of complaints of human trafficking.

KRS 506.120 Engaging in organized crime.

- (1) A person, with the purpose to establish or maintain a criminal syndicate or to facilitate any of its activities, shall not do any of the following:
 - (a) Organize or participate in organizing a criminal syndicate or any of its activities;
 - (b) Provide material aid to a criminal syndicate or any of its activities, whether such aid is in the form of money or other property, or credit;
 - (c) Manage, supervise, or direct any of the activities of a criminal syndicate, at any level of responsibility;
 - (d) Knowingly furnish legal, accounting, or other managerial services to a criminal syndicate;
 - (e) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of, any offense of a type in which a criminal syndicate engages on a continuing basis;
 - (f) Commit, or conspire or attempt to commit or act as an accomplice in the commission of, any offense of violence;
 - (g) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of bribery in violation of KRS Chapters 518 or 521, or KRS 119.205, 121.025, 121.055, 524.070, 156.465, 45A.340, 63.090, 6.080, 18A.145, or 244.600.
 - (h) Commit, or conspire or attempt to commit, or act as an accomplice in the commission

- of more than one (1) theft of retail merchandise with the intent to resell the stolen merchandise; or
- (i) Acquire stolen retail merchandise for the purpose of reselling it where the person knew or should have known that the merchandise had been stolen.
- (2) Whoever violates this section is guilty of engaging in organized crime, which shall be a Class B felony, unless the offense involves only the theft or acquisition of retail merchandise for the purpose of reselling it, in which case it shall be a Class C felony.
- (3) As used in this section "criminal syndicate" means three (3) or more persons, or, in cases of merchandise theft from a retail store for the purpose of reselling the stolen merchandise, two (2) or more persons, collaborating to promote or engage in any of the criminal acts provided in subsection (4)(a) to (f) of this section on a continuing basis.
- (4) As used in this section, "criminal gang syndicate" means three (3) or more persons acting as a part of or members of a criminal gang and collaborating to promote or engage in any of the following on a continuing basis:
- (a) Extortion or coercion in violation of KRS 514.080 or 521.020;
 - (b) Engaging in, promoting, or permitting prostitution or human trafficking in violation of KRS Chapter 529;
 - (c) Any theft offense as defined in KRS Chapter 514;
 - (d) Any gambling offense as defined in KRS 411.090, KRS Chapter 528, or Section 226 of the Constitution;
 - (e) Illegal trafficking in controlled substances as prohibited by KRS Chapter 218A, in intoxicating or spirituous liquor as defined in KRS Chapters 242 or 244, or in destructive devices or booby traps as defined in KRS Chapter 237; or
 - (f) Lending at usurious interest, and enforcing repayment by illegal means in violation of KRS Chapter 360.
- (5) Any person found to have been a member of a criminal gang syndicate while engaging in the criminal acts listed in subsection (4) of this section shall not be released on probation or parole until he or she has served at least eighty-five percent (85%) of the sentence imposed

KRS 529.010 Definitions.

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "Advancing prostitution" -- A person "advances prostitution" when acting other than as a prostitute or as a patron thereof, he or she knowingly causes or aids a person to engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any conduct designed to institute, aid or facilitate an act or enterprise of prostitution;
- (2) "Commercial sexual activity" means prostitution, regardless of whether the trafficked person can be charged with prostitution, participation in the production of obscene material as set out in KRS Chapter 531, or engaging in a sexually explicit performance;
- (3) "Forced labor or services" means labor or services that are performed or provided by another person and that are obtained through force, fraud, or coercion;
- (4) "Force, fraud, or coercion" may only be accomplished by the same means and methods as a person may be restrained under KRS 509.010;
- (5) "Human trafficking" refers to criminal activity whereby one (1) or more persons are subjected to engaging in:
- (a) Forced labor or services; or
 - (b) Commercial sexual activity through the use of force, fraud, or coercion, except that if the trafficked person is under the age of eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion;
- (6) "Human trafficking victims fund" is the fund created in KRS 529.140;

- (7) "Labor" means work of economic or financial value;
- (8) "Minor" means a person under the age of eighteen (18) years;
- (9) "Profiting from prostitution" -- A person "profits from prostitution" when acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she knowingly accepts or receives or agrees to accept or receive money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in proceeds of prostitution activity;
- (10) "Services" means an ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor;
- (11) "Sexual conduct" means sexual intercourse or any act of sexual gratification involving the sex organs; and
- (12) "Sexually explicit performance" means a performance of sexual conduct involving:
 - (a) Acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse, actual or simulated;
 - (b) Physical contact with, or willful or intentional exhibition of, the genitals;
 - (c) Flagellation or excretion for the purpose of sexual stimulation or gratification; or
 - (d) The exposure, in an obscene manner, of the unclothed or apparently unclothed human male or female genitals, pubic area, or buttocks, or the female breast, whether or not subsequently obscured by a mark placed thereon, or otherwise altered, in any resulting motion picture, photograph, or other visual representation, exclusive of exposure portrayed in matter of a private, family nature not intended for distribution outside the family.
- (13) "Victim of human trafficking" is a person who has been subjected to human trafficking.

KRS 529.020 Prostitution.

- (1) Except as provided in KRS 529.120, a person is guilty of prostitution when he engages or agrees or offers to engage in sexual conduct with another person in return for a fee.
- (2) Prostitution is a Class B misdemeanor.

KRS 529.040 Promoting prostitution.

- (1) A person is guilty of promoting prostitution when he knowingly advances or profits from prostitution.
- (2) Promoting prostitution is a Class A misdemeanor unless the person managed, supervised, controlled, or owned, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two (2) or more prostitutes, in which case it is a Class D felony.

KRS 529.070 Permitting prostitution.

- (1) A person is guilty of permitting prostitution when, having possession or control of premises which he knows or has reasonable cause to know are being used for prostitution purposes, he fails to make reasonable and timely effort to halt or abate such use.
- (2) Permitting prostitution is a Class B misdemeanor.

KRS 529.080 Loitering for prostitution purposes.

- (1) Except as provided in KRS 529.120, a person is guilty of loitering for prostitution purposes when he loiters or remains in a public place for the purpose of engaging or agreeing or offering to engage in prostitution.
- (2) Loitering for prostitution purposes is a:
 - (a) Violation for the first offense;
 - (b) Class B misdemeanor for the second offense and for each subsequent offense.

KRS 529.100 Human trafficking.

- (1) A person is guilty of human trafficking when the person intentionally subjects one (1) or more persons to human trafficking.
- (2) (a) Human trafficking is a Class C felony unless it involves serious physical injury to a trafficked person, in which case it is a Class B felony.
(b) If the victim of human trafficking is under eighteen (18) years of age, the penalty for the offense shall be one (1) level higher than the level otherwise specified in this section.

KRS 529.110 Promoting human trafficking.

- (1) A person is guilty of promoting human trafficking when the person intentionally:
 - (a) Benefits financially or receives anything of value from knowing participation in human trafficking; or
 - (b) Recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit entice, harbor, transport, provide, or obtain by any means, another person, knowing that the person will be subject to human trafficking.
- (2) Promoting human trafficking is a Class D felony unless a victim of the trafficking is under eighteen (18), in which case it is a Class C felony.

KRS 529.120 Treatment of minor suspected of prostitution offense.

- (1) Notwithstanding KRS 529.020 or 529.080, if it is determined after a reasonable period of custody for investigative purposes, that the person suspected of prostitution or loitering for prostitution is under the age of eighteen (18), then the minor shall not be prosecuted for an offense under KRS 529.020 or 529.080.
- (2) A law enforcement officer who takes a minor into custody under subsection (1) of this section shall immediately make a report to the Cabinet for Health and Family Services pursuant to KRS 620.030. Pursuant to KRS 620.040, the officer may take the minor into protective custody.
- (3) The Cabinet for Health and Family Services shall commence an investigation into child dependency, neglect, or abuse pursuant to KRS 620.029.

KRS 529.130 Human trafficking victims service fee.

Any person convicted of an offense in KRS 529.100 or 529.110 shall be ordered to pay, in addition to any other fines, penalties, or applicable forfeitures, a human trafficking victims service fee of ten thousand dollars (\$10,000) to be remitted to the fund created in KRS 529.140 (Human Trafficking Victims Fund).

KRS 529.140 Human trafficking victims fund.

- (1) The "human trafficking victims fund," referred to in this section as the "fund," is created as a separate revolving fund within the Justice and Public Safety Cabinet.
- (2) The fund shall consist of proceeds from assets seized and forfeited pursuant to KRS 529.150, proceeds from the fee in KRS 529.130, grants, contributions, appropriations, and any other moneys that may be made available for purposes of the fund.
- (3) Moneys in the fund shall be distributed to agencies serving victims of human trafficking, including but not limited to law enforcement agencies, prosecutorial agencies, and victim service agencies in accordance with procedures developed by the Justice and Public Safety Cabinet pursuant to administrative regulation. The administrative regulation shall require that the Cabinet for Health and Family Services receive adequate funding allocation under this subsection to meet the responsibilities imposed upon it to serve minor victims of human trafficking under KRS 620.029.
- (4) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this section.

- (5) Any interest earnings on moneys in the fund shall become a part of the fund and shall not lapse to the general fund.
- (6) Moneys in the fund are hereby appropriated for the purposes set forth in this section.

KRS 529.150 Forfeiture of property used in connection with human trafficking -- Distribution of proceeds.

- (1) All property used in connection with or acquired as a result of a violation of KRS 529.100 or 529.110 shall be subject to forfeiture under the same terms, conditions, and defenses and using the same process as set out in KRS 218A.405 to 218A.460, with the exception of the distribution of proceeds, which shall be distributed as required in this section.
- (2) Proceeds from the assets seized and forfeited shall be distributed as follows:
- (a) Fifty percent (50%) shall be paid to the human trafficking victims fund;
 - (b) Forty-two and one-half percent (42.5%) shall be paid to the law enforcement agency or agencies that seized the property, to be used for direct law enforcement purposes; and
 - (c) Seven and one-half percent (7.5%) shall be paid to the Office of the Attorney General or, in the alternative, to the Prosecutors Advisory Council for deposit on behalf of the Commonwealth's attorney or county attorney who has participated in the forfeiture proceeding, as determined by the court pursuant to KRS 218A.420(9). Notwithstanding KRS Chapter 48, these funds shall be exempt from any state budget reduction acts.
- The moneys identified in this subsection are intended to supplement any funds otherwise appropriated to the recipient and shall not supplant other funding of any recipient.

KRS 529.170 Being victim of human trafficking is affirmative defense to violation of chapter.

A person charged under this chapter, or charged with an offense which is not a violent crime as defined in KRS 17.165, may assert being a victim of human trafficking as an affirmative defense to the charge.

KRS 529.180 Ignorance of human trafficking minor victim's actual age not a defense.

In any prosecution under KRS 529.100 or 529.110 involving commercial sexual activity with a minor, it shall not be a defense that the defendant was unaware of the minor's actual age.

b. Rights of Trafficking Victims

KRS 529.160 Expungement of records relating to violation of chapter when person charged or convicted was a victim of human trafficking at time of offense -- Motion -- Finding -- Presumption.

- Text included in Chapter 1, Section B, 4.

KRS 422.295 Confidentiality of communications between human trafficking victim and caseworker. *- Text included in Chapter 1, Section B, 4.*

KRS 431.063 Human Trafficking victim not to be incarcerated pending trial-exceptions. *- Text included in Chapter 1, Section B, 4.*

KRS 630.125 Child not to be charged with or found guilty of status offense related to human trafficking. *- Text included in Chapter 1, Section B, 4.*

8. Kidnapping and Related Offenses

KRS 509.010 Definitions.

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "Relative" means a parent, ancestor, brother, sister, uncle or aunt.
- (2) "Restrain" means to restrict another person's movements in such a manner as to cause a substantial interference with his liberty by moving him from one place to another or by confining him either in the place where the restriction commences or in a place to which he has been moved without consent. A person is moved or confined "without consent" when the movement or confinement is accomplished by physical force, intimidation, or deception, or by any means, including acquiescence of a victim, if he is under the age of sixteen (16) years, or is substantially incapable of appraising or controlling his own behavior.

KRS 509.020 Unlawful imprisonment in the first degree.

- (1) A person is guilty of unlawful imprisonment in the first degree when he knowingly and unlawfully restrains another person under circumstances which expose that person to a risk of serious physical injury.
- (2) Unlawful imprisonment in the first degree is a Class D felony.

KRS 509.030 Unlawful imprisonment in the second degree.

- (1) A person is guilty of unlawful imprisonment in the second degree when he knowingly and unlawfully restrains another person.
- (2) Unlawful imprisonment in the second degree is a Class A misdemeanor.

KRS 509.040 Kidnapping.

- (1) A person is guilty of kidnapping when he unlawfully restrains another person and when his intent is:
 - (a) To hold him for ransom or reward; or
 - (b) To accomplish or to advance the commission of a felony; or
 - (c) To inflict bodily injury or to terrorize the victim or another; or
 - (d) To interfere with the performance of a governmental or political function; or
 - (e) To use him as a shield or hostage; or
 - (f) To deprive the parents or guardian of the custody of a minor, when the person taking the minor is not a person exercising custodial control or supervision of the minor as the term "person exercising custodial control or supervision" is defined in KRS 600.020.
- (2) Kidnapping is a Class B felony when the victim is released alive and in a safe place prior to trial, except as provided in this section. Kidnapping is a Class A felony when the victim is released alive but the victim has suffered serious physical injury during the kidnapping, or as a result of not being released in a safe place, or as a result of being released in any circumstances which are intended, known or should have been known to cause or lead to serious physical injury. Kidnapping is a capital offense when the victim is not released alive or when the victim is released alive but subsequently dies as a result of:
 - (a) Serious physical injuries suffered during the kidnapping; or
 - (b) Not being released in a safe place; or
 - (c) Being released in any circumstances which are intended, known or should have been known to cause or lead to the victim's death.

KRS 509.050 Exemption.

A person may not be convicted of unlawful imprisonment in the first degree, unlawful imprisonment in the second degree, or kidnapping when his criminal purpose is the commission of an offense defined outside this chapter and his interference with the victim's liberty occurs immediately with and incidental to the commission of that offense, unless the interference exceeds that which is ordinarily incident to commission of the offense which is the objective of his criminal purpose. The exemption provided by this section is not applicable to a charge of kidnapping that arises from an interference with another's liberty that occurs incidental to the commission of a criminal escape.

KRS 509.060 Defense.

In any prosecution for unlawful imprisonment or kidnapping it is a defense that the defendant was a relative of the victim and his sole purpose was to assume custody of the victim.

KRS 509.070 Custodial Interference.

- (1) A person is guilty of custodial interference when, knowing that he has no legal right to do so, he takes, entices or keeps from lawful custody any mentally disabled or other person entrusted by authority of law to the custody of another person or to an institution.
- (2) It is a defense to custodial interference that the person taken from lawful custody was returned by the defendant voluntarily and before arrest or the issuance of a warrant for arrest.
- (3) Custodial interference is a Class D felony unless the person taken from lawful custody is returned voluntarily by the defendant.

KRS 509.080 Criminal coercion.

- (1) A person is guilty of criminal coercion when with intent to compel another person to engage in or refrain from conduct, he unlawfully threatens to:
 - (a) Commit any crime; or
 - (b) Accuse anyone of a crime; or
 - (c) Expose any secret tending to subject any person to hatred, contempt or ridicule or to impair another's credit or business repute; or
 - (d) Take or withhold action as an official or cause an official to take or withhold action.
- (2) A defendant may prove in exculpation of criminal coercion committed under subsection (1) (b), (c) or (d) that he believed the accusation or secret to be true or the proposed official action justified and that his sole purpose was to compel or induce the victim to desist from misbehavior or to make good a wrong done by him.
- (3) Criminal coercion is a Class A misdemeanor.

9. Assault and Related Offenses

KRS. 508.010 Assault in the first degree.

- (1) A person is guilty of assault in the first degree when:
 - (a) He intentionally causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or
 - (b) Under circumstances manifesting extreme indifference to the value of human life he wantonly engages in conduct which creates a grave risk of death to another and thereby causes serious physical injury to another person.
- (2) Assault in the first degree is a Class B felony.

KRS 508.020 Assault in the second degree.

- (1) A person is guilty of assault in the second degree when:
- (a) He intentionally causes serious physical injury to another person; or
 - (b) He intentionally causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or
 - (c) He wantonly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument.
- (2) Assault in the second degree is a Class C felony.

KRS 508.025 Assault in the third degree.

- (1) A person is guilty of assault in the third degree when the actor:
- (a) Recklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury to:
 - 1. A state, county, city, or federal peace officer;
 - 2. An employee of a detention facility, or state residential treatment facility or state staff secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender;
 - 3. An employee of the Department for Community Based Services employed as a social worker to provide direct client services, if the event occurs while the worker is performing job-related duties;
 - 4. Paid or volunteer emergency medical services personnel certified or licensed pursuant to KRS Chapter 311A, if the event occurs while personnel are performing job-related duties;
 - 5. A paid or volunteer member of an organized fire department, if the event occurs while the member is performing job-related duties;
 - 6. Paid or volunteer rescue squad personnel affiliated with the Division of Emergency Management of the Department of Military Affairs or a local disaster and emergency services organization pursuant to KRS Chapter 39F, if the event occurs while personnel are performing job-related duties;
 - 7. A probation and parole officer;
 - 8. A transportation officer appointed by a county fiscal court or legislative body of a consolidated local government, urban-county government, or charter government to transport inmates when the county jail or county correctional facility is closed while the transportation officer is performing job-related duties;
 - 9. A public or private elementary or secondary school or school district classified or certified employee, school bus driver, or other school employee acting in the course and scope of the employee's employment; or
 - 10. A public or private elementary or secondary school or school district volunteer acting in the course and scope of that person's volunteer service for the school or school district;or
 - (b) Being a person confined in a detention facility, or a juvenile in a state residential treatment facility or state staff secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender, inflicts physical injury upon or throws or causes feces, or urine, or other bodily fluid to be thrown upon an employee of the facility.
 - (c) Intentionally causes a person, whom the actor knows or reasonably should know to be a peace officer discharging official duties, to come into contact with saliva, vomit, mucus, blood, seminal fluid, urine, or feces without the consent of the peace officer.
- (2) (a) For violations of subsection (1)(a) and (b) of this section, assault in the third degree is a Class D felony.

- (b) For violations of subsection (1)(c) of this section, assault in the third degree is a Class B misdemeanor, unless the assault is with saliva, vomit, mucus, blood, seminal fluid, urine, or feces from an adult who knows that he or she has a serious communicable disease and competent medical or epidemiological evidence demonstrates that the specific type of contact caused by the actor is likely to cause transmission of the disease or condition, in which case it is a Class A misdemeanor.
- (c) As used in paragraph (b) of this subsection, "serious communicable disease" means a non-airborne disease that is transmitted from person to person and determined to have significant, long-term consequences on the physical health or life activities of the person infected.

KRS 508.030 Assault in the fourth degree.

- (1) A person is guilty of assault in the fourth degree when:
 - (a) He intentionally or wantonly causes physical injury to another person; or
 - (b) With recklessness he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.
- (2) Assault in the fourth degree is a Class A misdemeanor.

KRS 508.032 Assault of family member or member of an unmarried couple -- Enhancement of penalty.

- (1) If a person commits a third or subsequent offense of assault in the fourth degree under KRS 508.030 within five (5) years, and the relationship between the perpetrator and the victim in each of the offenses meets the definition of family member or member of an unmarried couple, as defined in KRS 403.720, then the person may be convicted of a Class D felony. If the Commonwealth desires to utilize the provisions of this section, the Commonwealth shall indict the defendant and the case shall be tried in the Circuit Court as a felony case. The jury, or judge if the trial is without a jury, may decline to assess a felony penalty in a case under this section and may convict the defendant of a misdemeanor. The victim in the second or subsequent offense is not required to be the same person who was assaulted in the prior offenses in order for the provisions of this section to apply.
- (2) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered by a court of competent jurisdiction.

KRS 508.040 Assault under extreme emotional disturbance.

- (1) In any prosecution under KRS 508.010, 508.020 or 508.030 in which intentionally causing physical injury or serious physical injury is an element of the offense, the defendant may establish in mitigation that he acted under the influence of extreme emotional disturbance, as defined in subsection (1)(a) of KRS 507.020.
- (2) An assault committed under the influence of extreme emotional disturbance is:
 - (a) A Class D felony when it would constitute an assault in the first degree or an assault in the second degree if not committed under the influence of an extreme emotional disturbance; or
 - (b) A Class B misdemeanor when it would constitute an assault in the fourth degree if not committed under the influence of an extreme emotional disturbance.

KRS 508.050 Menacing.

- (1) A person is guilty of menacing when he intentionally places another person in reasonable apprehension of imminent physical injury.
- (2) Menacing is a Class B misdemeanor.

KRS 508.060 Wanton endangerment in the first degree.

- (1) A person is guilty of wanton endangerment in the first degree when, under circumstances manifesting extreme indifference to the value of human life, he wantonly engages in conduct which creates a substantial danger of death or serious physical injury to another person.
- (2) Wanton endangerment in the first degree is a Class D felony.

KRS 508.070 Wanton endangerment in the second degree.

- (1) A person is guilty of wanton endangerment in the second degree when he wantonly engages in conduct which creates a substantial danger of physical injury to another person.
- (2) Wanton endangerment in the second degree is a Class A misdemeanor.

KRS 508.080 Terroristic threatening in the third degree.

- (1) Except as provided in KRS 508.075 or 508.078, a person is guilty of terroristic threatening in the third degree when:
 - (a) He threatens to commit any crime likely to result in death or serious physical injury to another person or likely to result in substantial property damage to another person; or
 - (b) He intentionally makes false statements for the purpose of causing evacuation of a building, place of assembly, or facility of public transportation.
- (2) Terroristic threatening in the third degree is a Class A misdemeanor

KRS 508.090 Definitions for KRS 508.100 to 508.120.

The following definitions apply in KRS 508.100 to 508.120 unless the context otherwise requires:

- (1) "Abuse" means the infliction of physical pain, injury, or mental injury, or the deprivation of services by a person which are necessary to maintain the health and welfare of a person, or a situation in which an adult, living alone, is unable to provide or obtain for himself the services which are necessary to maintain his health or welfare.
- (2) "Physically helpless" and "mentally helpless" means a person who lacks substantial capacity to defend himself or solicit protection from law enforcement agencies.

KRS 508.100 Criminal abuse in the first degree.

- (1) A person is guilty of criminal abuse in the first degree when he intentionally abuses another person or permits another person of whom he has actual custody to be abused and thereby:
 - (a) Causes serious physical injury; or
 - (b) Places him in a situation that may cause him serious physical injury; or
 - (c) Causes torture, cruel confinement or cruel punishment; to a person twelve (12) years of age or less, or who is physically helpless or mentally helpless.
- (2) Criminal abuse in the first degree is a Class C felony.

KRS 508.110 Criminal abuse in the second degree.

- (1) A person is guilty of criminal abuse in the second degree when he wantonly abuses another person or permits another person of whom he has actual custody to be abused and thereby:
 - (a) Causes serious physical injury; or
 - (b) Places him in a situation that may cause him serious physical injury; or
 - (c) Causes torture, cruel confinement or cruel punishment; to a person twelve (12) years of age or less, or who is physically helpless or mentally helpless.
- (2) Criminal abuse in the second degree is a Class D felony.

KRS 508.120 Criminal abuse in the third degree.

- (1) A person is guilty of criminal abuse in the third degree when he recklessly abuses another person or permits another person of whom he has actual custody to be abused and thereby:
 - (a) Causes serious physical injury; or

- (b) Places him in a situation that may cause him serious physical injury; or
 - (c) Causes torture, cruel confinement or cruel punishment; to a person twelve (12) years of age or less, or who is physically helpless or mentally helpless.
- (2) Criminal abuse in the third degree is a Class A misdemeanor.

10. Other 'Non-Sex-Specific' Offenses

KRS 502.020 Liability for conduct of another - Complicity.

- (1) A person is guilty of an offense committed by another person when, with the intention of promoting or facilitating the commission of the offense, he:
- (a) Solicits, commands, or engages in a conspiracy with such other person to commit the offense; or
 - (b) Aids, counsels, or attempts to aid such person in planning or committing the offense; or
 - (c) Having a legal duty to prevent the commission of the offense, fails to make a proper effort to do so.
- (2) When causing a particular result is an element of an offense, a person who acts with the kind of culpability with respect to the result that is sufficient for the commission of the offense is guilty of that offense when he:
- (a) Solicits or engages in a conspiracy with another person to engage in the conduct causing such result; or
 - (b) Aids, counsels, or attempts to aid another person in planning, or engaging in the conduct causing such result; or
 - (c) Having a legal duty to prevent the conduct causing the result, fails to make a proper effort to do so.

KRS 511.020 Burglary in the first degree.

- (1) A person is guilty of burglary in the first degree when, with the intent to commit a crime, he knowingly enters or remains unlawfully in a building, and when in effecting entry or while in the building or in the immediate flight therefrom, he or another participant in the crime:
- (a) Is armed with explosives or a deadly weapon; or
 - (b) Causes physical injury to any person who is not a participant in the crime; or
 - (c) Uses or threatens the use of a dangerous instrument against any person who is not a participant in the crime.
- (2) Burglary in the first degree is a Class B felony.

KRS 511.030 Burglary in the second degree.

- (1) A person is guilty of burglary in the second degree when, with the intent to commit a crime, he knowingly enters or remains unlawfully in a dwelling.
- (2) Burglary in the second degree is a Class C felony.

KRS 511.040 Burglary in the third degree.

- (1) A person is guilty of burglary in the third degree when, with the intent to commit a crime, he knowingly enters or remains unlawfully in a building.
- (2) Burglary in the third degree is a Class D felony.

KRS 511.085 Domestic violence shelter trespass.

- (1) As used in this section, "domestic violence shelter" means a residential facility providing protective shelter services for domestic violence victims.
- (2) A person is guilty of domestic violence shelter trespass when:
- (a) The person enters the buildings or premises of a domestic violence shelter that the person knows or should know is a domestic violence shelter or which is clearly marked on the

- building or premises as being a domestic violence shelter; and
- (b) At the time of the entering, the person is the subject of an order of protection as defined in KRS 403.720 and 456.010.
- (3) It shall be a defense to a prosecution under this section that the person entered the shelter with the permission of the operator of the shelter after disclosing to the operator that the person is the subject of an order of protection or a foreign protective order. Authority to enter under this subsection may not be granted by a person taking shelter at the facility.
- (4) A person shall not be convicted of a violation of this section and a violation of KRS 511.060, 511.070, or 511.080 arising from the same act of trespass.
- (5) Domestic violence shelter trespass is a Class A misdemeanor.

KRS 519.040 Falsely reporting an incident.

- (1) A person is guilty of falsely reporting an incident when he:
- (a) Knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, that deals with emergencies involving danger to life or property; or
- (b) Reports to law enforcement authorities an offense or incident within their official concern knowing that it did not occur; or
- (c) Furnishes law enforcement authorities with information allegedly relating to an offense or incident within their official concern when he knows he has no information relating to such offense or incident; or
- (d) Knowingly gives false information to any law enforcement officer with intent to implicate another; or
- (e) Initiates or circulates a report or warning of an alleged occurrence or impending occurrence of a fire or other emergency under circumstances likely to cause public inconvenience or alarm when he knows the information reported, conveyed or circulated is false or baseless.
- (2) Falsely reporting an incident is a Class A misdemeanor.

11. Violence Toward Animals

525.125 Cruelty to animals in the first degree.

- (1) As used in this section:
- (a) "Dog" means a domesticated canid of the genus *canis lupus familiaris*; and
- (b) "Dog fight" or "dog fighting" means any event that involves a fight conducted or to be conducted between at least two (2) dogs for purposes of sport, wagering, or entertainment, except that the term "dog fight" or "dog fighting" shall not be deemed to include any activity the purpose of which involves the use of one (1) or more dogs in hunting or taking another animal.
- (2) The following persons are guilty of cruelty to animals in the first degree:
- (a) Whenever a dog is knowingly caused to dog fight for pleasure or profit:
1. The owner of the dog;
 2. The owner of the property on which the fight is conducted if the owner knows of the dog fight; and
 3. Anyone who participates in the organization of the dog fight; and
- (b) Any person who knowingly owns, possesses, keeps, trains, sells, or otherwise transfers a dog for the purpose of dog fighting.
- (3) Activities of dogs engaged in hunting, field trials, dog training, and other activities authorized either by a hunting license or by the Department of Fish and Wildlife Resources shall not constitute a violation of this section.

- (4) Activities of dogs engaged in working or guarding livestock shall not constitute a violation of this section.
- (5) Cruelty to animals in the first degree is a Class D felony.

KRS 525.135 Torture of dog or cat.

- (1) As used in this section, unless the context otherwise requires, "torture" means the intentional infliction of or subjection to extreme physical pain or injury, motivated by an intent to increase or prolong the pain of the animal.
- (2) A person is guilty of torture of a dog or cat when he or she without legal justification intentionally tortures a domestic dog or cat.
- (3) Torture of a dog or cat is a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense if the dog or cat suffers physical injury as a result of the torture, and a Class D felony if the dog or cat suffers serious physical injury or death as a result of the torture.
- (4) Nothing in this section shall apply to the killing or injuring of a dog or cat:
 - (a) In accordance with a license to hunt, fish, or trap;
 - (b) For humane purposes;
 - (c) For veterinary, agricultural, spaying or neutering, or cosmetic purposes;
 - (d) For purposes relating to sporting activities including but not limited to training for organized dog or cat shows, or other animal shows in which a dog or a cat, or both, participate;
 - (e) For bona fide animal research activities, using dogs or cats, of institutions of higher education; or a business entity registered with the United States Department of Agriculture under the Animal Welfare Act or subject to other federal laws governing animal research;
 - (f) In defense of self or another person against an aggressive or diseased dog or cat;
 - (g) In defense of a domestic animal against an aggressive or diseased dog or cat;
 - (h) For animal or pest control; or
 - (i) For any other purpose authorized by law.
- (5) Activities of animals engaged in hunting, field trials, dog training other than training a dog to fight for pleasure or profit, and other activities authorized either by a hunting license or by the Department of Fish and Wildlife Resources shall not constitute a violation of this section.
- (6) The acts specified in this section shall not constitute cruelty to animals under KRS 525.125 or 525.130.

C. TRIAL PROCEDURE AND RELATED ISSUES

1. Rules of Criminal Procedure (RCr)

RCr 3.10 Preliminary Hearing: waiver.

- (1) The defendant may waive a preliminary hearing.
- (2) If the defendant does not waive the preliminary hearing, such hearing shall be held within a reasonable time but no later than 10 days following the initial appearance if the defendant is in custody and no later than 20 days if the defendant is not in custody, provided, however, that the preliminary hearing shall not be held if the defendant is indicted before the date set for the hearing. In the event the preliminary hearing is not held within the above time period, the defendant shall be discharged from custody, and he or she shall thereafter be proceeded against on that charge by indictment only. Unless the defendant consents to an extension, time limits may be extended by the court only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

- (3) Notwithstanding waiver of the preliminary hearing, at any time before the defendant has been indicted the attorney for the Commonwealth shall, upon demand, be entitled to a preliminary hearing for the purpose of examining witnesses. The defendant may cross-examine the witnesses offered by the Commonwealth.

RCr 3.14 Probable Cause finding.

- (1) If the defendant waives the preliminary hearing or if from the evidence it appears to the judge that there is probable cause to believe that an offense required to be prosecuted by indictment pursuant to Section 12 of the Kentucky Constitution has been committed and that the defendant committed it, the judge shall hold the defendant to answer in the circuit court and commit the defendant to jail, release the defendant on personal recognizance or admit the defendant to bail if the offense is bailable; otherwise the defendant shall be discharged.
- (2) The finding of probable cause may be based upon hearsay evidence in whole or in part. The defendant may cross-examine witnesses against him or her and may introduce evidence in his or her own behalf.
- (3) Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary hearing. Motions to suppress must be made to the trial court as provided in Rule 9.78.

RCr 4.02 Bailable offenses; eligibility for pretrial release.

- (1) All persons shall be bailable before conviction, except when death is a possible punishment for the offense or offenses charged and the proof is evident or the presumption is great that the defendant is guilty.
- (2) All defendants charged with bailable offenses shall be considered for pre-trial release without making formal application except when a capital offense is charged. A person charged with a capital offense must make an application for pre-trial release.
- (3) On the hearing of an application for admission to pre-trial release made before or after indictment for a capital offense, the burden of showing that the proof is evident or the presumption is great that the defendant is guilty is on the Commonwealth.

RCr 4.10 Release on personal recognizance; unsecured bail bond.

A defendant shall be released on personal recognizance or upon an unsecured bail bond unless the court determines, in the exercise of its discretion, that such release will not reasonably assure the appearance of the defendant as required. In the exercise of such discretion the court shall give due consideration to recommendations of the local pre-trial services agency when made as authorized by order of the Supreme Court.

RCr 4.12 Release on nonfinancial conditions.

If a defendant's promise to appear or his or her execution of an unsecured bail bond alone is not deemed sufficient to insure his or her appearance when required, the court shall impose the least onerous conditions reasonably likely to insure the defendant's appearance as required. Such conditions of release may include but are not limited to placing the defendant in the custody of a designated person or organization agreeing to supervise the defendant or to placing restrictions on the defendant's travel, association or place of abode during the period of release. Commensurate with the risk of nonappearance the court may impose any other condition including a condition requiring the defendant to return to custody after specified hours.

RCr 4.14 Nonfinancial conditions on release.

The court shall cause the issuance of an order containing a statement of any conditions imposed upon the defendant for his or her release. The defendant shall sign the statement of conditions and receive a copy thereof. The order shall inform the defendant of penalties applicable to violation of conditions and advise that a warrant for the defendant's arrest will be issued if conditions are violated. The court shall also inform the local pre-trial services agency of the conditions of release.

RCr 4.16 Amount of bail.

- (1) The amount of bail shall be sufficient to insure compliance with the conditions of release set by the court. It shall not be oppressive and shall be commensurate with the gravity of the offense charged. In determining such amount the court shall consider the defendant's past criminal acts, if any, the defendant's reasonably anticipated conduct if released and the defendant's financial ability to give bail.
- (2) If a defendant is charged with an offense punishable by fine only, the amount of bail shall not exceed the amount of the maximum penalty and costs.
- (3) Amount of bail may also be set in accordance with the uniform schedule of bail prescribed for designated misdemeanors and violations in Appendix A - Uniform Schedule of Bail, of these rules.

a. The Grand Jury

RCr 5.02 Charge to grand jury.

The court shall swear the grand jurors and charge them to inquire into every offense for which any person has been held to answer and for which an indictment or information has not been filed, or other offenses which come to their attention or of which any of them has knowledge. The court shall further instruct the grand jurors concerning (a) their right to exclude the attorney for the Commonwealth while questioning witnesses, (b) their rights and duties to juvenile cases as provided in KRS 640.010, and (c) any other matter affecting their rights and duties as grand jurors which the court believes will assist them in the conduct of their business.

RCr 5.06 Attendance of witnesses before the Grand Jury.

The Clerk, upon request of the foreperson of the Grand Jury or of the attorney for the Commonwealth, shall issue subpoenas for witnesses. The attendance of witnesses may be coerced as in other judicial proceedings, unless, and until, excused, or modified, by the requesting party. RCr 7.02 shall apply to Grand Jury subpoenas except that a subpoena issued pursuant to this rule may command the person to whom it is directed to produce the books, papers, documents or other objects designated therein to the foreperson of the Grand Jury or the Commonwealth's Attorney or his/her agent, without requiring the personal appearance of the witness before the Grand Jury.

RCr 5.08 Evidence for defendant.

If the defendant notifies the attorney for the Commonwealth in writing of his or her desire to present evidence before the grand jury, the attorney for the Commonwealth shall so inform the grand jury. The grand jurors may hear evidence for the defendant, but are not required to do so.

RCr 5.10 Evidence supporting indictment.

The grand jurors shall find an indictment where they have received what they believe to be sufficient evidence to support it, but no indictment shall be quashed or judgment of conviction reversed on the ground that there was not sufficient evidence before the grand jury to support the indictment.

RCr 5.12 Compelling testimony.

When a witness before the grand jury refuses to testify or to answer a question put to him or her, the foreperson shall state the refusal to the court in the presence of the witness. After hearing the witness, if the court decides that the witness is bound to testify or answer and the witness persists in his or her refusal, the court shall proceed against the witness as in cases of similar refusal in open court.

RCr 5.14 Duties of the prosecuting attorney.

- (1) The attorney for the Commonwealth, or an assistant, designated by the attorney for the Commonwealth, shall attend the grand jurors when requested by them, and he or she may do so on his or her own initiative, for the purpose of examining witnesses in their presence, or of giving the grand jurors legal advice regarding any matter cognizable by them. The attorney for the Commonwealth or designated assistant shall also, when requested by them, draft indictments.
- (2) At the time of the return of the indictment of a defendant the attorney for the Commonwealth shall inform the court of the defendant's status with respect to bail.

RCr 5.18 Presence of other persons with grand jury.

No person except the attorney or attorneys for the Commonwealth, a stenographer or operator of a recording device appointed by the attorney for the Commonwealth, the witness under examination, an interpreter, if needed, a parent, guardian or custodian of a minor witness or other person under disability, and the grand jurors shall be present while the grand jury is in session. No person other than the grand jurors shall be present while the grand jury is deliberating or voting. Any person violating this Rule may be held in contempt of court.

RCr 5.22 Procedure upon failure to indict.

- (1) If the defendant has been held to answer pursuant to RCr 3.14(1) and the votes of the grand jurors are insufficient in number to find an indictment as to any one or more charges or counts presented to the grand jury, the foreperson shall forthwith so report in writing to the circuit court. The circuit court shall thereupon make an order dismissing any such charges or counts without prejudice, discharging the defendant from custody as to any such charges or counts, exonerating the defendant's bail and any conditions thereon as to any such charges or counts or directing a refund of any money or bonds deposited as bail as to any such charges or counts, as the case may be.
- (2) If the defendant has been held to answer pursuant to RCr 3.14(1), and the grand jury finally adjourns without having either indicted such defendant or referred the matter to the next grand jury by a writing filed with the circuit court, the circuit court shall thereupon make an order dismissing all charges or counts against such defendant without prejudice, discharging such defendant from custody as to any such charges or counts; or, if such defendant is free on bail that has not been forfeited, exonerating such defendant's bail and any conditions thereon as to any such charges or counts or directing a refund of any money or bonds deposited as bail as to any such charges or counts, as the case may be.
- (3) In any event, if a defendant has been held to answer, without being indicted, for longer than 60 days from the finding of probable cause pursuant to RCr 3.14(1), the circuit court shall, upon motion, thereupon make an order discharging such defendant from custody; or, if such defendant is free on bail that has not been forfeited, exonerating such defendant's bail and any conditions thereon or directing a refund of any money or bonds deposited as bail, as the case may be.
- (4) Failure of the grand jury to return an indictment against a defendant does not prevent any charge against such defendant from being submitted to another grand jury.

RCr 5.24 Secrecy of proceedings; disclosure.

- (1) Subject to the right of a person indicted to procure a transcript or recording as provided by Rule 5.16(3), and subject to the authority of the court at any time to direct otherwise, all persons present during any part of the proceedings of a grand jury shall keep its proceedings and the testimony given before it secret, except that counsel may divulge such information as may be necessary in preparing the case for trial or other disposition.
- (2) The court may direct that an indictment be kept secret until the defendant is in custody or has given bail, in which event the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.
- (3) A violation of this Rule 5.24 shall be punishable as a contempt of court.

b. Arraignment and other pre-trial matters

RCr 8.02 Arraignment.

Arraignment shall be conducted in open court and shall consist of reading or stating to the defendant the substance of the charge and calling upon the defendant to plead in response to it. Defendants who are jointly charged may be arraigned separately or together, in the discretion of the court.

RCr 8.06 Incapacity to stand trial.

If upon arraignment or during the proceedings there are reasonable grounds to believe that the defendant lacks the capacity to appreciate the nature and consequences of the proceedings against him or her, or to participate rationally in his or her defense, all proceedings shall be postponed until the issue of incapacity is determined as provided by KRS 504.100.

RCr 8.08 Pleas.

A defendant may plead not guilty, guilty or guilty but mentally ill. The court may refuse to accept a plea of guilty or guilty but mentally ill, and shall not accept the plea without first determining that the plea is made voluntarily with understanding of the nature of the charge. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or guilty but mentally ill or if a defendant corporation fails to appear, the court shall enter a plea of not guilty

RCr 9.42 Order of Proceeding (at Trial).

The jury shall be sworn to try the issue after which the trial shall proceed in the following order, unless the court for special reasons otherwise directs:

- (1) The attorney for the Commonwealth shall state to the jury the nature of the charge and the evidence upon which the Commonwealth relies to support it;
- (2) The defendant or the defendant's attorney may state the defense and the evidence upon which the defendant relies to support it or the defendant may reserve opening statement until the conclusion of the evidence for the Commonwealth;
- (3) The attorney for the Commonwealth must offer the evidence in support of the charge;
- (4) The defendant or the defendant's attorney may make opening statement, if reserved, and offer evidence in support of the defense;
- (5) The parties respectively may offer rebutting evidence, unless the court, for good reason in furtherance of justice, permits them to offer evidence-in-chief;
- (6) The parties may submit or argue the case to the jury. In the argument, the attorney for the Commonwealth shall have the conclusion and the defendant or the defendant's attorney the opening. If more than one (1) counsel is to take part in the closing argument on either side, or if several defendants have separate defenses and appear by different counsel, the court shall arrange the order of argument, always giving the attorney for the Commonwealth the closing argument.

RCr 9.56 Reasonable Doubt.

- (1) In every case the jury shall be instructed substantially as follows: “The law presumes a defendant to be innocent of a crime, and the indictment shall not be considered as evidence or as having any weight against him or her. You shall find the defendant not guilty unless you are satisfied from the evidence alone, and beyond a reasonable doubt, that he or she is guilty. If upon the whole case you have a reasonable doubt that he or she is guilty, you shall find him or her not guilty.”
- (2) The instructions should not attempt to define the term “reasonable doubt.”

2. Additional Procedures for Juvenile Offenders

a. Confidentiality of Court Proceedings & Required Disclosures

KRS 610.060 Duty of court upon formal proceeding-Right to attend proceeding-Payment for counsel (requires victim to be notified and be allowed to be present).

- (1) If the Circuit or District Court determines that a formal proceeding is required in the interest of the child or to determine the truth or falsity of the allegations against the child, a petition shall be required pursuant to KRS 610.020, and the court shall, when the child is brought before the court:
 - (a) Explain to the child and his parents, guardian, or person exercising custodial control their respective rights to counsel and, if the child and his parents, guardian, or person exercising custodial control are unable to obtain counsel, shall appoint counsel for the child, as provided in subsection (2) of this section, and, unless specified to the contrary by other provisions of KRS Chapters 600 to 645, may appoint counsel for the parents, guardian, or person exercising custodial control;
 - (b) Explain the right against self-incrimination by saying that the child, parents, relative, guardian, or custodian may remain silent concerning the charges against the child, and that anything said may be used against the child;
 - (c) Unless limited by statute, explain the right to confront anyone who has accused the child and to cross-examine that person on the allegations made against the child;
 - (d) Advise the child and his parents, guardian, or person exercising custodial control of the right to appeal from a determination of the court; and
 - (e) Advise the child that these rights belong to him and may not be waived by his parents, guardian, or person exercising custodial control.
- (2)
 - (a) No court shall accept a plea or admission or conduct an adjudication hearing involving a child accused of committing any felony offense, any offense under KRS Chapter 510, or any offense for which the court intends to impose detention or commitment as a disposition unless that child is represented by counsel
 - (b) For a child accused of committing any other offense, before a court permits the child to proceed beyond notification of the right to counsel required by paragraph (a) of subsection (1) of this subsection without representation, the court shall:
 1. Conduct a hearing about the child’s waiver of counsel; and
 2. Make specific findings of fact that the child knowingly, intelligently and voluntarily waived his right to counsel.
- (3) Unless otherwise exempted in KRS Chapters 600 to 645, a child and his parents or person exercising custodial control shall have a right to attend the hearing if such attendance will not unnecessarily delay the hearing.
- (4) Subject to the provisions of KRS 31.125, the court may order a parent to pay for counsel for the child if the court determines that the parent has the ability to pay for such counsel. The fact that a child is committed to a state agency shall not be cause for the court to order that agency to

pay for counsel.

- (5) Subject to Rule 43.09 of the Rules of Civil Procedure, the court shall permit the victim, the victim's parents or legal guardian, or, if emancipated, the victim's spouse, or the legal representative of any of these, to attend all proceedings under this section.
- (6) An attempt shall be made to notify the persons specified in subsection (5) of this section of the time, date, and place of all proceedings under this section. Each District Court shall, by rule, establish the means of notification and the person or agency responsible for making the notifications. The failure of a victim or other person specified in subsection (5) of this section to receive notice shall not delay the proceedings in the case.

KRS 610.070 Hearings (authorizes victim to be present).

- (1) All cases involving children brought before the court whose cases are under the jurisdiction of the court shall be granted a speedy hearing and shall be dealt with by the court without a jury.
- (2) The hearings shall be conducted in a formal manner, unless specified to the contrary by other provisions of KRS Chapters 600 to 645.
- (3) The general public shall be excluded and only the immediate families or guardians of the parties before the court, witnesses necessary for the prosecution and defense of the case, the probation worker with direct interest in the case, a representative from the Department of Juvenile Justice, the victim, his parent or legal guardian, or if emancipated, his spouse, or a legal representative of either, such persons admitted as the judge shall find have a direct interest in the case or in the work of the court, and such other persons as agreed to by the child and his attorney may be admitted to the hearing. A parent, legal guardian, or spouse if a witness shall be admitted to the hearing only during and after his testimony at the hearing, and witnesses shall be admitted to the hearing only for the duration of their testimony. The court may order the exclusion of a parent, legal guardian, or spouse, if it is shown to the satisfaction of the court that the parent, legal guardian, or spouse may physically disrupt the proceedings or may do violence to any participant therein. The mere presence of a parent, legal guardian, or spouse shall not be deemed to be a disruption of the proceedings merely because their presence may make the defendant uncomfortable; the court shall find a potential for actual physical disruption of the proceedings before an exclusion may be granted for this reason.
- (4) The court may order the parents, guardians, or persons exercising custodial control over the child to be present at any hearing or other proceeding involving the child.

KRS 610.320 Juvenile record and juvenile docket -- Disclosure of information in court and police records concerning juvenile prohibited -- Exceptions -- Use of juvenile records in court.

- (1) A special record book shall be kept by the court for all cases, to be known as the "juvenile record," and the docket or calendar of such cases shall be called the "juvenile docket."
- (2) No probation officer, nor employee of a probation officer, shall, without the consent of the District Judge sitting in juvenile session, divulge or communicate to any persons other than the court, law enforcement, the Department of Juvenile Justice, an officer of the court interested in the case, a member of the advisory board of the court, or a representative of the cabinet, any information obtained pursuant to the discharge of his duties, nor shall any record of the action of the probation officer be made public except by leave of the District Judge; provided, that nothing in this subsection shall prohibit the probation officer from divulging or communicating such information to the court, to his colleagues or superiors in his own department, or to another probation officer having a direct interest in the record or social history of the child.
- (3) All law enforcement and court records regarding children who have not reached their eighteenth birthday shall not be opened to scrutiny by the public, except that a separate public record shall be kept by the clerk of the court which shall be accessible to the public for court records, limited to the petition, order of the adjudication, and disposition in juvenile delinquency proceedings concerning a child who is fourteen (14) years of age or older at the

time of the commission of the offense, and who is adjudicated a juvenile delinquent for the commission of an offense that would constitute a capital offense or a Class A, B, or C felony if the juvenile were an adult, or any offense involving a deadly weapon, or an offense wherein a deadly weapon is used or displayed.

- (4) Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act is also prohibited. Otherwise, the law enforcement records shall be made available to the child, family, guardian, or legal representative of the child involved. The records shall also be made available to the court, probation officers, prosecutors, the Department of Juvenile Justice, and law enforcement agencies or representatives of the cabinet. Records, limited to the child's adjudication of delinquency, and disposition of a criminal activity covered by KRS 610.345, shall also be made available to public or private elementary and secondary school administrative, transportation, and counseling personnel, and to any teacher to whose class the student has been assigned for instruction, subject to the provisions of KRS 610.340 and 610.345.
- (5) Subject to the Kentucky Rules of Evidence, juvenile court records of adjudications of guilt of a child for an offense which would be a felony if committed by an adult shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial, and may be used during the sentencing phase of a criminal trial. However, the fact that a juvenile has been adjudicated delinquent of an offense which would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication.
- (6) This section shall not relieve the probation officer or peace officer from divulging such facts as a witness in a trial or hearing involving any cases falling under KRS Chapters 600 to 645 or the production of juvenile records for use in the trial or proceedings.
- (7) This section shall not prohibit release of information regarding juvenile proceedings in the District Court which do not reveal the identity of the child or its parents or guardians, or which relate to the child's eligibility for services under Title IV-E or IV-B of the Federal Social Security Act. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court.

KRS 610.340 Confidentiality of juvenile court records.

- (1)
 - (a) Unless a specific provision of KRS Chapters 600 to 645 specifies otherwise, all juvenile court records of any nature generated pursuant to KRS Chapters 600 to 645 by any agency or instrumentality, public or private, shall be deemed to be confidential and shall not be disclosed except to the child, parent, victims, or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070 unless ordered by the court for good cause.
 - (b) Juvenile court records which contain information pertaining to arrests, petitions, adjudications, and dispositions of a child may be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.
 - (c) Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV- B of the Federal Social Security Act shall not be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.
 - (d) Victim access under this subsection to juvenile court records shall include access to records of adjudications that occurred prior to July 15, 1998.

- (2) The provisions of this section shall not apply to public officers or employees engaged in the investigation of and in the prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes. Any record obtained pursuant to this subsection shall be used for official use only, shall not be disclosed publicly, and shall be exempt from disclosure under the Open Records Act, KRS 61.870 to 61.884.
- (3) The provisions of this section shall not apply to any peace officer, as defined in KRS 446.010, who is engaged in the investigation or prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes. Any record obtained pursuant to this subsection shall be used for official use only, shall not be disclosed publicly, and shall be exempt from disclosure under the Open Records Act, KRS 61.870 to 61.884.
- (4) The provisions of this section shall not apply to employees of the Department of Juvenile Justice or cabinet or its designees responsible for any services under KRS Chapters 600 to 645 or to attorneys for parties involved in actions relating to KRS Chapters 600 to 645 or other prosecutions authorized by the Kentucky Revised Statutes.
- (5) The provisions of this section shall not apply to records disclosed pursuant to KRS 610.320 or to public or private elementary and secondary school administrative, transportation, and counseling personnel, to any teacher or school employee with whom the student may come in contact, or to persons entitled to have juvenile records under KRS 610.345, if the possession and use of the records is in compliance with the provisions of KRS 610.345 and this section.
- (6) No person, including school personnel, shall disclose any confidential record or any information contained therein except as permitted by this section or other specific section of KRS Chapters 600 to 645, or except as permitted by specific order of the court.
- (7) No person, including school personnel, authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain confidential records to which he is not entitled or for purposes for which he is not permitted to obtain them pursuant to KRS Chapters 600 to 645.
- (8) No person, including school personnel, not authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records which are made confidential pursuant to KRS Chapters 600 to 645 except upon proper motion to a court of competent jurisdiction.
- (9) No person shall destroy or attempt to destroy any record required to be kept pursuant to KRS Chapters 600 to 645 unless the destruction is permitted pursuant to KRS Chapters 600 to 645 and is authorized by the court upon proper motion and good cause for the destruction being shown.
- (10) As used in this section the term "KRS Chapters 600 to 645" includes any administrative regulations which are lawfully promulgated pursuant to KRS Chapters 600 to 645.
- (11) Nothing in this section shall be construed to prohibit a crime victim from speaking publicly after the adjudication about his or her case on matters within his or her knowledge or on matters disclosed to the victim during any aspect of a juvenile court proceeding.

KRS 610.345 School superintendent or principal to be notified when child found guilty or when petition is filed -- Disclosure of records -- Provision of offense history to school superintendent.

- (1) When a child is adjudicated guilty of an offense which classifies him or her as a youthful offender, the judge in the court in which the matter was tried shall direct the clerk to notify the superintendent of the public school district in which the child is enrolled or the principal of any private elementary or secondary school which the child attends of the adjudication and the petition and disposition of the case. The name of the complainant shall be deleted. The court shall direct the appropriate prosecuting entity to give the school district or the school a statement of facts in the case. The superintendent shall notify the principal of the school in which the child is enrolled.
- (2) When a child is adjudicated guilty of an offense which would classify him or her as a violent offender under KRS 439.3401, or be a felony under KRS Chapter 218A, 508, 510, or 527 if

committed by an adult, but which would not classify him or her as a youthful offender, the judge in the court in which the matter was tried shall direct the clerk to notify within five (5) days of the order the superintendent of the public school district in which the child is enrolled or the principal of any private elementary or secondary school which the child attends of the charge, the adjudication, and the disposition of the case. The name of the complainant shall be deleted. The court shall authorize the county attorney to give the school district or the school a statement of facts in the case. The superintendent shall notify the principal of the school in which the child is enrolled.

- (3) When a petition is filed against a child, or a child is adjudicated guilty of an offense that would be a felony or misdemeanor if committed by an adult, and the misdemeanor involves a controlled substance or the possession, carrying, or use of a deadly weapon, or physical injury to another person, the judge in the court in which the matter is considered shall direct the clerk to notify the superintendent of the public school district in which the child is enrolled or the principal of any private elementary or secondary school that the child attends of the charge, the adjudication, and the disposition of the case. The notification shall be made within twenty-four (24) hours of the time when the petition is filed. The name of the complainant shall be deleted. The court shall authorize the county attorney to give the school district or the school a statement of the facts in the case, not to include the complainant's name. If the petition is dismissed, all records of the incident or notification created in the school district or the school under this subsection shall be destroyed, and shall not be included in the child's school records.
- (4) Notice of adjudication to a district superintendent referenced in subsections (2) and (3) of this section shall be released by the superintendent to the principal. A principal of a public or private school receiving notice of adjudication shall release the information to employees of the school having responsibility for classroom instruction or counseling of the child and may release it to other school personnel as described in subsection (5) of this section, but the information shall otherwise be confidential and shall not be shared by school personnel with any other person or agency except as may otherwise be required by law. The notification in writing of the nature of the offense committed by the child and any probation requirements shall not become a part of the child's student record.
- (5) Records or information disclosed pursuant to this section shall be limited to records of that student's criminal petition and the disposition thereof covered by this section, shall be subject to the provisions of KRS 610.320 and 610.340, and shall not be disclosed to any other person, including school personnel, except to a district superintendent, public or private elementary and secondary school administrative, transportation, and counseling personnel, and to any teacher or school employee with whom the student may come in contact. This section shall not authorize the disclosure of any other juvenile record or information relating to the child.
- (6) The Department of Juvenile Justice shall provide a child's offense history information pursuant to this section to the superintendent of the local school district in which the child, who is committed to the department, is placed.
- (7) Records or information received by the school pursuant to this section shall be kept in a locked file, when not in use, to be opened only on permission of the administrator.

b. Placement of Juvenile Sex Offenders and Required Disclosures

KRS 605.090 Alternative treatment for committed children - Notice of inappropriate behavior of child - Procedures for removal of child committed as dependent, neglected, or abused - Reports - Written transfer summary - Placement of public offenders. - Text included in Chapter 4, Section A, 2.

KRS 620.090 Temporary custody orders. - Text included in Chapter 4, Section A, 2.

KRS 620.230 Case permanency plans. - Text included in Chapter 4, Section A, 2.

c. Trying a Minor as Youthful Offender, i.e. subject to same penalties as an adult

KRS 610.015 Procedure when child tried as an adult-Matters to be tried by Circuit Court-Release of Records.

- (1) A child who is charged with an offense which classifies him for trial as an adult in the Circuit Court or the adult session of the District Court shall, at the time the decision is made by the court to try the child as an adult, be subject to the arrest, post-arrest, and criminal procedures that apply to an adult, except for the place of confinement, as provided in the Kentucky Revised Statutes and the Rules of Criminal Procedure.
- (2) The Circuit Court shall try all misdemeanor, violation, traffic offense, and status offense matters included in or which arise from the act or series of acts which result in the trial of a child as an adult in the Circuit Court.
- (3) Records, limited to the records of the present case in which the child has been charged, relating to a child charged under this section shall not be made public until after the child has been indicted and arraigned on the offense for trial of the child as an adult. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act is also prohibited.
- (4) This section shall not be construed as permitting the release of the child's treatment, medical, mental, or psychological records unless those records are presented as evidence in open court. The release of information relative to the child's eligibility for services under Title IV-E or IV-B of the Federal Social Security Act is prohibited.

KRS 635.020 Criteria for determining how child is to be tried.

- (1) If, prior to an adjudicatory hearing, there is a reasonable cause to believe that a child before the court has committed a felony other than those described in subsections (2) and (3) of this section, a misdemeanor, or a violation, the court shall initially proceed in accordance with the provisions of this chapter.
- (2) If a child charged with a capital offense, Class A felony, or Class B felony, had attained age fourteen (14) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (3) If a child charged with a Class C or Class D felony has on one (1) prior separate occasion been adjudicated a public offender for a felony offense and had attained the age of sixteen (16) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (4) Any other provision of KRS Chapters 610 to 645 to the contrary notwithstanding, if a child charged with a felony in which a firearm, whether functional or not, was used in the commission of the offense had attained the age of fourteen (14) years at the time of the commission of the alleged offense, he shall be transferred to the Circuit Court for trial as an adult if, following a preliminary hearing, the District Court finds probable cause to believe that the child committed a felony, that a firearm was used in the commission of that felony, and that the child was fourteen (14) years of age or older at the time of the commission of the alleged felony. If convicted in the Circuit Court, he shall be subject to the same penalties as an adult offender, except that until he reaches the age of eighteen (18) years, he shall be confined in a facility or program for juveniles or for youthful offenders, unless the provisions of KRS 635.025 apply or unless he is released pursuant to expiration of sentence or parole, and at age eighteen (18) he shall be returned to the sentencing Circuit Court for proceedings consistent with KRS 640.030(2).

- (5) If a child previously convicted as a youthful offender under the provisions of KRS Chapter 640 is charged with a felony allegedly committed prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (6) A child who is charged as is provided in subsection (2) of this section and is also charged with a Class C or D felony, a misdemeanor, or a violation arising from the same course of conduct shall have all charges included in the same proceedings; and the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (7) If a person who is eighteen (18) or older and before the court is charged with a felony that occurred prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (8) All offenses arising out of the same course of conduct shall be tried with the felony arising from that course of conduct, whether the charges are adjudicated under this chapter or under KRS Chapter 640 and transferred to Circuit Court.

KRS 640.010 Preliminary hearing - Proof required to try child as youthful offender in Circuit Court.

- (1) For children who are alleged to be youthful offenders by falling in the purview of KRS 635.020(2), (3), (5), (6), (7), or (8), the court shall at arraignment assure that the child's rights as specified in KRS 610.060 have been explained and followed.
- (2) In the case of a child alleged to be a youthful offender by falling within the purview of KRS 635.020(2), (3), (5), (6), (7), or (8), the District Court shall, upon motion by the county attorney to proceed under this chapter, and after the county attorney has consulted with the Commonwealth's attorney, conduct a preliminary hearing to determine if the child should be transferred to Circuit Court as a youthful offender. The preliminary hearing shall be conducted in accordance with the Rules of Criminal Procedure.
 - (a) At the preliminary hearing, the court shall determine if there is probable cause to believe that a offense was committed, that the child committed the offense, and that the child is of sufficient age and has the requisite number of prior adjudications, if any, necessary to fall within the purview of KRS 635.020.
 - (b) If the District Court determines probable cause exists, the court shall consider the following factors before determining whether the child's case shall be transferred to the Circuit Court:
 1. The seriousness of the alleged offense;
 2. Whether the offense was against persons or property, with greater weight being given to offenses against persons;
 3. The maturity of the child as determined by his environment;
 4. The child's prior record;
 5. The best interest of the child and community;
 6. The prospects of adequate protection of the public;
 7. The likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available to the juvenile justice system; and
 8. Evidence of a child's participation in a gang.
 - (c) If, following the completion of the preliminary hearing, the District Court finds, after considering the factors enumerated in paragraph (b) of this subsection, that two (2) or more of the factors specified in paragraph (b) of this subsection are determined to favor transfer, the child may be transferred to Circuit Court, and if the child is transferred the District

Court shall issue an order transferring the child as a youthful offender and shall state on the record the reasons for the transfer. The child shall then be proceeded against in the Circuit Court as an adult, except as otherwise provided in this chapter.

- (d) If, following completion of the preliminary hearing, the District Court is of the opinion, after considering the factors enumerated in paragraph (b) of this subsection, that the child shall not be transferred to the Circuit Court, the case shall be dealt with as provided in KRS Chapter 635.
- (3) If the child is transferred to Circuit Court under this section and the grand jury does not find that there is probable cause to indict the child as a youthful offender, as defined in KRS 635.020(2), (3), (5), (6), (7), and (8), but does find that there is probable cause to indict the child for another criminal offense, the child shall not be tried as a youthful offender in Circuit Court but shall be returned to District Court to be dealt with as provided in KRS Chapter 635.

KRS 640.030 Sentencing after conviction or plea of guilty.

A youthful offender, who is convicted of, or pleads guilty to, a felony offense in Circuit Court, shall be subject to the same type of sentencing procedures and duration of sentence, including probation and conditional discharge, as an adult convicted of a felony offense, except that:

- (1) The presentence investigation required by KRS 532.050 shall be prepared by the Department of Juvenile Justice or by its designated representative;
- (2) Except as provided in KRS 640.070, any sentence imposed upon the youthful offender shall be served in a facility or program operated or contracted by the Department of Juvenile Justice until the expiration of the sentence, the youthful offender is paroled, the youthful offender is probated, or the youthful offender reaches the age of eighteen (18), whichever first occurs. The Department of Juvenile Justice shall take custody of a youthful offender, remanded into its custody, within sixty (60) days following sentencing. If an individual sentenced as a youthful offender attains the age of eighteen (18) prior to the expiration of his sentence, and has not been probated or released on parole, that individual shall be returned to the sentencing court. At that time, the sentencing court shall make one (1) of the following determinations:
 - (a) Whether the youthful offender shall be placed on probation or conditional discharge;
 - (b) Whether the youthful offender shall be returned to the Department of Juvenile Justice to complete a treatment program, which treatment program shall not exceed the youthful offender's attainment of the age of eighteen (18) years and five (5) months. At the conclusion of the treatment program, the individual shall be returned to the sentencing court for a determination under paragraph (a) or (c) of this subsection; or
 - (c) Whether the youthful offender shall be incarcerated in an institution operated by the Department of Corrections;
- (3) If a youthful offender has attained the age of eighteen (18) years but less than eighteen (18) years and five (5) months prior to sentencing, that individual shall be returned to the sentencing court upon attaining the age of eighteen (18) years and five (5) months if that individual has been sentenced to a period of placement or treatment with the Department of Juvenile Justice. The court shall have the same dispositional options as currently provided in subsection (2)(a) and (c) of this section;
- (4) The Department of Juvenile Justice shall inform the sentencing court of any youthful offender in their custody pursuant to this section who has attained the age of eighteen (18) years and five (5) months, and the court shall enter a court order directing the sheriff or jailer to transport the youthful offender to the county jail to await sentencing pursuant to subsection (2)(a) or (c) of this section; and
- (5) KRS 197.420 to the contrary notwithstanding, a youthful offender who has committed a sex crime, as defined in KRS 17.500, or any similar offense in another jurisdiction shall be provided a sexual offender treatment program by the Department of Juvenile Justice pursuant to KRS 635.500 and as mandated by KRS 439.340(11) unless the youthful offender has been transferred to the Department of Corrections.

D. SENTENCING GUIDELINES AND PROCEDURES

KRS 532.031 Hate crimes -- Finding Effect -- Definitions.

- (1) A person may be found by the sentencing judge to have committed an offense specified below as a result of a hate crime if the person intentionally because of race, color, religion, sexual orientation, or national origin of another individual or group of individuals or because of a person's actual or perceived employment as a state, city, county, or federal peace officer, member of an organized fire department, or emergency medical services personnel, violates a provision of any one (1) of the following:
 - (a) KRS 508.010, 508.020, 508.025, or 508.030;
 - (b) KRS 508.050 or 508.060;
 - (c) KRS 508.100 or 508.110;
 - (d) KRS 509.020;
 - (e) KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.100, or 510.110;
 - (f) KRS 512.020, 512.050, or 512.060;
 - (g) KRS 513.020, 513.030, or 513.040; or
 - (h) KRS 525.020, 525.050, 525.060, 525.070, or 525.080.
- (2) At sentencing, the sentencing judge shall determine if, by a preponderance of the evidence presented at the trial, a hate crime was a primary factor in the commission of the crime by the defendant. If so, the judge shall make a written finding of fact and enter that in the court record and in the judgment rendered against the defendant.
- (3) The finding that a hate crime was a primary factor in the commission of the crime by the defendant may be utilized by the sentencing judge as the sole factor for denial of probation, shock probation, conditional discharge, or other form of nonimposition of a sentence of incarceration.
- (4) The finding by the sentencing judge that a hate crime was a primary factor in the commission of the crime by the defendant may be utilized by the Parole Board in delaying or denying parole to a defendant.
- (5) As used in this section:
 - (a) "Emergency medical services personnel" has the same meaning as in KRS 311A.010; and
 - (b) "Member of an organized fire department, or emergency medical services personnel" includes volunteers, if the violation occurs while the volunteer is performing duties with an organized fire department or as emergency medical services personnel.

KRS 532.032 Restitution.

- (1) Restitution to a named victim, if there is a named victim, shall be ordered in a manner consistent, insofar as possible, with the provisions of this section and KRS 439.563, 532.033, 533.020, and 533.030 in addition to any other part of the penalty for any offense under this chapter. The provisions of this section shall not be subject to suspension or nonimposition.
- (2) If pretrial diversion is granted, restitution shall be a part of the diversion agreement.
- (3) If probation, shock probation, conditional discharge, or other alternative sentence is granted, restitution shall be a condition of the sentence.
- (4) If a person is sentenced to incarceration and paroled, restitution shall be made a condition of parole.
- (5) Restitution payments ordered under this section shall be paid by the defendant to the clerk or a court-authorized program run by the county attorney or the Commonwealth's attorney of the county

KRS 532.040 Probation and conditional discharge.

When a person is convicted of an offense, other than a capital offense or having been designated a violent offender as defined in KRS 439.3401, the court, where authorized by KRS Chapter 533 and where not prohibited by other provisions of applicable law, may sentence such person to a period of probation or to a period of conditional discharge as provided in that chapter. A sentence to probation or conditional discharge shall be deemed a tentative one to the extent that it may be altered or revoked in accordance with KRS Chapter 533, but for purposes of appeal shall be deemed to be a final judgment of conviction. In any case where the court imposes a sentence of probation or conditional discharge, it may also impose a fine as authorized by KRS Chapter 534.

KRS 532.050 Presentence procedure for felony conviction.

- (1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody.
- (2) The report shall be prepared and presented by a probation officer and shall include:
 - (a) The results of the defendant's risk and needs assessment;
 - (b) An analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits;
 - (c) A preliminary calculation of the credit allowed the defendant for time spent in custody prior to the commencement of a sentence under KRS 532.120; and
 - (d) Any other matters that the court directs to be included.
- (3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.
- (4) If the defendant has been convicted of a sex crime, as defined in KRS 17.500, prior to determining the sentence or prior to final sentencing for youthful offenders, the court shall order a comprehensive sex offender presentence evaluation of the defendant to be conducted by an approved provider, as defined in KRS 17.500, the Department of Corrections, or the Department of Juvenile Justice if the defendant is a youthful offender. The comprehensive sex offender presentence evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment and shall be considered by the court in determining the appropriate sentence. A copy of the comprehensive sex offender presentence evaluation shall be furnished to the court, the Commonwealth's attorney, and to counsel for the defendant. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the comprehensive sex offender presentence evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any comprehensive sex offender presentence evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.
- (5) The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based and correctional-institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.

- (6) Before imposing sentence, the court shall advise the defendant or his or her counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

KRS 532.055 Verdicts and sentencing by jury in felony cases.

- (1) In all felony cases, the jury in its initial verdict will make a determination of not guilty, guilty, guilty but mentally ill, or not guilty by virtue of insanity, and no more.
- (2) Upon return of a verdict of guilty or guilty but mentally ill against a defendant, the court shall conduct a sentencing hearing before the jury, if such case was tried before a jury. In the hearing the jury will determine the punishment to be imposed within the range provided elsewhere by law. The jury shall recommend whether the sentences shall be served concurrently or consecutively.
- (a) Evidence may be offered by the Commonwealth relevant to sentencing including:
1. Minimum parole eligibility, prior convictions of the defendant, both felony and misdemeanor;
 2. The nature of prior offenses for which he was convicted;
 3. The date of the commission, date of sentencing, and date of release from confinement or supervision from all prior offenses;
 4. The maximum expiration of sentence as determined by the division of probation and parole for all such current and prior offenses;
 5. The defendant's status if on probation, parole, post-incarceration supervision, conditional discharge, or any other form of legal release;
 6. Juvenile court records of adjudications of guilt of a child for an offense that would be a felony if committed by an adult. Subject to the Kentucky Rules of Evidence, these records shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial and may be used during the sentencing phase of a criminal trial; however, the fact that a juvenile has been adjudicated delinquent of an offense that would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the federal Social Security Act is also prohibited; and
 7. The impact of the crime upon the victim or victims, as defined in KRS 421.500, including a description of the nature and extent of any physical, psychological, or financial harm suffered by the victim or victims;
- (b) The defendant may introduce evidence in mitigation or in support of leniency; and
- (c) Upon conclusion of the proof, the court shall instruct the jury on the range of punishment and counsel for the defendant may present arguments followed by the counsel for the Commonwealth. The jury shall then retire and recommend a sentence for the defendant.
- (3) All hearings held pursuant to this section shall be combined with any hearing provided for by KRS 532.080.
- (4) In the event that the jury is unable to agree as to the sentence or any portion thereof and so reports to the judge, the judge shall impose the sentence within the range provided elsewhere by law.

KRS 532.060 Sentence of imprisonment for felony.

- (1) A sentence of imprisonment for a felony shall be an indeterminate sentence, the maximum of which shall be fixed within the limits provided by subsection (2), and subject to modification by the trial judge pursuant to KRS 532.070.
- (2) Unless otherwise provided by law, the authorized maximum terms of imprisonment for felonies are:
 - (a) For a Class A felony, not less than twenty (20) years nor more than fifty (50) years, or life imprisonment;
 - (b) For a Class B felony, not less than ten (10) years nor more than twenty (20) years;
 - (c) For a Class C felony, not less than five (5) years nor more than ten (10) years; and
 - (d) For a Class D felony, not less than one (1) year nor more than five (5) years.
- (3) For any felony specified in KRS Chapter 510, KRS 530.020, 530.064(1)(a), or 531.310, the sentence shall include an additional five (5) year period of post-incarceration supervision which shall be added to the maximum sentence rendered for the offense. During this period of post-incarceration supervision, if a defendant violates the provisions of post-incarceration supervision, the defendant may be reincarcerated for:
 - (a) The remaining period of his initial sentence, if any is remaining; and
 - (b) The entire period of post-incarceration supervision, or if the initial sentence has been served, for the remaining period of post-incarceration supervision.
- (4) In addition to the penalties provided in this section, for any person subject to a period of post-incarceration supervision pursuant to KRS 532.400 his or her sentence shall include an additional one (1) year period of post-incarceration supervision following release from incarceration upon expiration of sentence if the offender is not otherwise subject to another form of post-incarceration supervision. During this period of post-incarceration supervision, if an offender violates the provisions of supervision, the offender may be reincarcerated for the remaining period of his or her post-incarceration supervision
- (5) The actual time of release within the maximum established by subsection (1), or as modified pursuant to KRS 532.070, shall be determined under procedures established elsewhere by law.

KRS 532.070 Court modification of felony sentence.

- (1) When a sentence of imprisonment for a felony is fixed by a jury pursuant to KRS 532.060 and the trial court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that the maximum term fixed by the jury is unduly harsh, the court may modify that sentence and fix a maximum term within the limits provided in KRS 532.060 for the offense for which the defendant presently stands convicted.
- (2) When a sentence of imprisonment for a Class D felony is fixed by a jury pursuant to KRS 532.060 and the trial court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose such a sentence, the court may sentence the defendant to a definite term of imprisonment in a county or a regional correctional institution for a term of one (1) year or less.

KRS 532.080 Persistent felony offender sentencing.

- (1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the sentence of imprisonment assessed under KRS 532.060 for the crime of which such person presently stands convicted, shall fix a sentence of imprisonment as authorized by subsection (5) or (6) of this section. When a defendant is charged with being a persistent felony offender, the determination of whether or not he is such an offender and the punishment to be imposed pursuant to subsection (5) or (6) of this section shall be determined in a separate proceeding from that proceeding which resulted in his last conviction. Such proceeding shall be conducted before

the court sitting with the jury that found the defendant guilty of his most recent offense unless the court for good cause discharges that jury and impanels a new jury for that purpose.

- (2) A persistent felony offender in the second degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of one (1) previous felony. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:
- (a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and
 - (b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and
 - (c) That the offender:
 - 1. Completed service of the sentence imposed on the previous felony conviction within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
 - 2. Was on probation, parole, post-incarceration supervision, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
 - 3. Was discharged from probation, parole, post-incarceration supervision, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
 - 4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or
 - 5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.
- (3) A persistent felony offender in the first degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of two (2) or more felonies, or one (1) or more felony sex crimes against a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more felonies. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:
- (a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and
 - (b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and
 - (c) That the offender:
 - 1. Completed service of the sentence imposed on any of the previous felony convictions within five (5) years prior to the date of the commission of the felony for which he now stands convicted; or
 - 2. Was on probation, parole, post-incarceration supervision, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
 - 3. Was discharged from probation, parole, postincarceration supervision, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
 - 4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or
 - 5. Had escaped from custody while serving any of the previous felony convictions at the

time of commission of the felony for which he now stands convicted.

- (4) For the purpose of determining whether a person has two (2) or more previous felony convictions, two (2) or more convictions of crime for which that person served concurrent or uninterrupted consecutive terms of imprisonment shall be deemed to be only one (1) conviction, unless one (1) of the convictions was for an offense committed while that person was imprisoned.
- (5) A person who is found to be a persistent felony offender in the second degree shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing provisions of KRS 532.060(2) for the next highest degree than the offense for which convicted. A person who is found to be a persistent felony offender in the second degree shall not be eligible for probation, shock probation, or conditional discharge, unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person, in which case probation, shock probation, or conditional discharge may be granted. A violent offender who is found to be a persistent felony offender in the second degree shall not be eligible for parole except as provided in KRS 439.3401.
- (6) A person who is found to be a persistent felony offender in the first degree shall be sentenced to imprisonment as follows:
 - (a) If the offense for which he presently stands convicted is a Class A or Class B felony, or if the person was previously convicted of one (1) or more sex crimes committed against a minor as defined in KRS 17.500 and presently stands convicted of a subsequent sex crime, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than twenty (20) years nor more than fifty (50) years, or life imprisonment, or life imprisonment without parole for twenty-five (25) years for a sex crime committed against a minor;
 - (b) If the offense for which he presently stands convicted is a Class C or Class D felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten (10) years nor more than twenty (20) years.
- (7) A person who is found to be a persistent felony offender in the first degree shall not be eligible for probation, shock probation, or conditional discharge, unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person or a sex crime as that term is defined in KRS 17.500, in which case, probation, shock probation, or conditional discharge may be granted. If the offense the person presently stands convicted of is a Class A, B, or C felony, the person shall not be eligible for parole until the person has served a minimum term of incarceration of not less than ten (10) years, unless another sentencing scheme applies. A violent offender who is found to be a persistent felony offender in the first degree shall not be eligible for parole except as provided in KRS 439.3401.
- (8) No conviction, plea of guilty, or Alford plea to a violation of KRS 218A.500 shall bring a defendant within the purview of or be used as a conviction eligible for making a person a persistent felony offender under this section.
- (9) The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be retroactive.
- (10)
 - (a) Except as provided in paragraph (b) of this subsection, this section shall not apply to a person convicted of a criminal offense if the penalty for that offense was increased from a misdemeanor to a felony, or from a lower felony classification to a higher felony classification, because the conviction constituted a second or subsequent violation of that offense.
 - (b) This subsection shall not prohibit the application of this section to a person convicted of:
 1. A felony offense arising out of KRS 189A.010, 189A.090, 506.140, 508.032, 508.140, or 510.015; or
 2. Any other felony offense if the penalty was not enhanced to a higher level because the Commonwealth elected to prosecute the person as a first-time violator of that offense.

KRS 532.090 Sentence of imprisonment for misdemeanor.

A sentence of imprisonment for a misdemeanor shall be a definite term and shall be fixed within the following maximum limitations:

- (1) For a Class A misdemeanor, the term shall not exceed twelve (12) months; and
- (2) For a Class B misdemeanor, the term shall not exceed ninety (90) days.

KRS 532.100 Place of imprisonment -- Commitment when death sentence imposed -- Housing for female state inmates -- Incarceration of certain Class C and D felons and felons convicted of sex crimes -- Work release for certain inmates.

NOTE: Statute effective January 1, 2019, subsequent to the publishing of this manual.

- (1) When an indeterminate term of imprisonment is imposed, the court shall commit the defendant to the custody of the Department of Corrections for the term of his sentence and until released in accordance with the law.
- (2) When a definite term of imprisonment is imposed, the court shall commit the defendant to the county or city correctional institution or to a regional correctional institution for the term of his sentence and until released in accordance with the law.
- (3) When a sentence of death is imposed, the court shall commit the defendant to the custody of the Department of Corrections with directions that the sentence be carried out according to law.
- (4)
 - (a) The provisions of KRS 500.080(5) notwithstanding, if a Class D felon is sentenced to an indeterminate term of imprisonment of five (5) years or less, he shall serve that term in a county jail in a county in which the fiscal court has agreed to house state prisoners; except that, when an indeterminate sentence of two (2) years or more is imposed on a Class D felon convicted of a sexual offense enumerated in KRS 197.410(1), or a crime under KRS 17.510(11) or (12), the sentence shall be served in a state institution. Counties choosing not to comply with the provisions of this paragraph shall be granted a waiver by the commissioner of the Department of Corrections.
 - (b) The provisions of KRS 500.080(5) notwithstanding, a Class D felon who received a sentence of more than five (5) years for nonviolent, nonsexual offenses, but who currently has less than five (5) years remaining to be served, may serve the remainder of his or her term in a county jail in a county in which the fiscal court has agreed to house state prisoners.
 - (c)
 1. The provisions of KRS 500.080(5) notwithstanding, and except as provided in subparagraph 2. of this paragraph, a Class C or D felon with a sentence of more than five (5) years who is classified by the Department of Corrections as community custody shall serve that term in a county jail in a county in which the fiscal court has agreed to house state prisoners if:
 - a. Beds are available in the county jail;
 - b. State facilities are at capacity; and
 - c. Halfway house beds are being utilized at the contract level as of July 15, 2000.
 2. When an indeterminate sentence of two (2) years or more is imposed on a felon convicted of a sex crime, as defined in KRS 17.500, or any similar offense in another jurisdiction, the sentence shall be served in a state institution.
 3. Counties choosing not to comply with the provisions of this paragraph shall be granted a waiver by the commissioner of the Department of Corrections.
 - (d) Any jail that houses state inmates under this subsection shall offer programs as recommended by the Jail Standards Commission. The Department of Corrections shall adopt the recommendations of the Jail Standards Commission and promulgate administrative regulations establishing required programs for a jail that houses state inmates under this subsection.
 - (e) Before housing any female state inmate, a county jail shall be certified pursuant to KRS 197.020.

- (5) The jailer of a county in which a Class D felon or a Class C felon is incarcerated may request the commissioner of the Department of Corrections to incarcerate the felon in a state corrections institution if the jailer has reasons to believe that the felon is an escape risk, a danger to himself or other inmates, an extreme security risk, or needs protective custody beyond that which can be provided in a county jail. The commissioner of the Department of Corrections shall evaluate the request and transfer the inmate if he deems it necessary. If the commissioner refuses to accept the felon inmate, and the Circuit Judge of the county that has jurisdiction of the offense charged is of the opinion that the felon cannot be safely kept in a county jail, the Circuit Judge, with the consent of the Governor, may order the felon transferred to the custody of the Department of Corrections.
- (6) Class D felons and Class C felons serving their time in a local jail shall be considered state prisoners, and the Department of Corrections shall pay the jail in which the prisoner is incarcerated a per diem amount determined according to KRS 431.215(2). For other state prisoners and parole violator prisoners, the per diem payments shall also begin on the date prescribed in KRS 431.215(2).
- (7) State prisoners, excluding the Class D felons and Class C felons qualifying to serve time in county jails, shall be transferred to the state institution within forty-five (45) days of final sentencing.
- (8)
 - (a) Class D felons eligible for placement in a local jail may be permitted by the warden or jailer to participate in any approved community work program or other form of work release with the approval of the commissioner of the Department of Corrections.
 - (b) The authority to release an inmate to work under this subsection may be exercised at any time during the inmate's sentence, including the period when the court has concurrent authority to permit work release pursuant to KRS 439.265.
 - (c) The warden or jailer may require an inmate participating in the program to pay a fee to reimburse the warden or jailer for the cost of operating the community work program or any other work release program. The fee shall not exceed the lesser of fifty-five dollars (\$55) per week or twenty percent (20%) of the prisoner's weekly net pay earned from the community work program or work release participation. In addition, the inmate may be required to pay for any drug testing performed on the inmate as a requirement of the community work program or work release participation.
 - (d) This subsection shall not apply to an inmate who:
 1. Is not eligible for work release pursuant to KRS 197.140;
 2. Has a maximum or close security classification as defined by administrative regulations promulgated by the Department of Corrections;
 3. Is subject to the provisions of KRS 532.043; or
 4. Is in a reentry center as defined in KRS 441.005.

KRS 533.010 Criteria for utilizing chapter -- Alternative sentences -- Monitoring by private agency -- Work release.

- (1) Any person who has been convicted of a crime and who has not been sentenced to death may be sentenced to probation, probation with an alternative sentencing plan, or conditional discharge as provided in this chapter.
- (2) Before imposition of a sentence of imprisonment, the court shall consider probation, probation with an alternative sentencing plan, or conditional discharge. Unless the defendant is a violent felon as defined in KRS 439.3401 or a statute prohibits probation, shock probation, or conditional discharge, after due consideration of the defendant's risk and needs assessment, nature and circumstances of the crime, and the history, character, and condition of the defendant, probation or conditional discharge shall be granted, unless the court is of the opinion that imprisonment is necessary for protection of the public because:

- (a) There is substantial risk that during a period of probation or conditional discharge the defendant will commit another crime;
 - (b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution; or
 - (c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.
- (3) In the event the court determines that probation is not appropriate after due consideration of the defendant's risk and needs assessment, nature and circumstances of the crime, and the history, character, and condition of the defendant, probation with an alternative sentencing plan shall be granted unless the court is of the opinion that imprisonment is necessary for the protection of the public because:
- (a) There is a likelihood that during a period of probation with an alternative sentencing plan or conditional discharge the defendant will commit a Class D or Class C felony or a substantial risk that the defendant will commit a Class B or Class A felony;
 - (b) The defendant is in need of correctional treatment that can be provided most effectively by commitment to a correctional institution; or
 - (c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.
- (4) The court shall not determine that there is a likelihood that the defendant will commit a Class C or Class D felony based upon the defendant's risk and needs assessment and the fact that:
- (a) The defendant has never been convicted of, pled guilty to, or entered an Alford plea to a felony offense;
 - (b) If convicted of, having pled guilty to, or entered an Alford plea to a felony offense, the defendant successfully completed probation more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period; or
 - (c) The defendant has been released from incarceration for the commission of a felony offense more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period.
- (5) In making a determination under subsection (4) of this section, the court may determine that the greater weight of the evidence indicates that there is a likelihood that the defendant will commit a Class C or Class D felony.
- (6) Upon initial sentencing of a defendant or upon modification or revocation of probation, when the court deems it in the best interest of the public and the defendant, the court may order probation with the defendant to serve one (1) of the following alternative sentences:
- (a) To a halfway house for no more than twelve (12) months;
 - (b) To home incarceration with or without work release for no more than twelve (12) months;
 - (c) To jail for a period not to exceed twelve (12) months with or without work release, community service and other programs as required by the court;
 - (d) To a residential treatment program for the abuse of alcohol or controlled substances; or
 - (e) To a reentry center for no more than twelve (12) months
 - (f) To any other specified counseling program, rehabilitation or treatment program, or facility.
- (7) If during the term of the alternative sentence the defendant fails to adhere to and complete the conditions of the alternative sentence, the court may modify the terms of the alternative sentence or may modify or revoke probation and alternative sentence and commit the defendant to an institution.
- (8) In addition to those conditions that the court may impose, the conditions of alternative sentence shall include the following and, if the court determines that the defendant cannot comply with them, then they shall not be made available:

- (a) A defendant sentenced to a halfway house shall:
 1. Be working or pursuing his or her education or be enrolled in a full-time treatment program;
 2. Pay restitution during the term of probation; and
 3. Have no contact with the victim of the defendant's crime;
- (b) A defendant sentenced to home incarceration shall:
 1. Be employed by another person or self-employed at the time of sentencing to home incarceration and continue the employment throughout the period of home incarceration, unless the court determines that there is a compelling reason to allow home incarceration while the defendant is unemployed;
 2. Pay restitution during the term of home incarceration;
 3. Enter a treatment program, if appropriate;
 4. Pay all or some portion of the cost of home incarceration as determined by the court;
 5. Comply with other conditions as specified; and
 6. Have no contact with the victim of the defendant's crime;
- (c) A defendant sentenced to jail with community service shall:
 1. Pay restitution during all or some part of the defendant's term of probation; and
 2. Have no contact with the victim of the defendant's crime; or
- (d) A defendant sentenced to a residential treatment program for drug and alcohol abuse shall:
 1. Undergo mandatory drug screening during term of probation;
 2. Be subject to active, supervised probation for a term of five (5) years;
 3. Undergo aftercare as required by the treatment program;
 4. Pay restitution during the term of probation; and
 5. Have no contact with the victim of the defendant's crime; or
- (e) A defendant sentenced to a reentry center shall:
 1. Be employed in the community or working in a vocational program at the reentry center;
 2. Be enrolled in a treatment program;
 3. Pay restitution, fees, and fines during the term of probation; and
 4. Comply with other conditions as specified.
- (9) When the court deems it in the best interest of the defendant and the public, the court may order the person to work at community service related projects under the terms and conditions specified in KRS 533.070. Work at community service related projects shall be considered as a form of conditional discharge.
- (10) Probation with alternative sentence shall not be available as set out in KRS 532.045 and 533.060, except as provided in KRS 533.030(6).
- (11) The court may utilize a community corrections program authorized or funded under KRS Chapter 196 to provide services to any person released under this section.
- (12) When the court deems it in the best interest of the defendant and the public, the court may order the defendant to placement for probation monitoring by a private agency. The private agency shall report to the court on the defendant's compliance with his terms of probation or conditional discharge. The defendant shall be responsible for any reasonable charges which the private agency charges.
- (13) The jailer in each county incarcerating Class D felons may deny work release privileges to any defendant for violating standards of discipline or other jail regulations. The jailer shall report the action taken and the details of the violation on which the action was based to the court of jurisdiction within five (5) days of the violation.
- (14) The Department of Corrections shall, by administrative regulation, develop written criteria for work release privileges granted under this section.
- (15) Reimbursement of incarceration costs shall be paid directly to the jailer in the amount specified by written order of the court. Incarceration costs owed to the Department of

Corrections shall be paid through the circuit clerk.

- (16) The court shall enter into the record written findings of fact and conclusions of law when considering implementation of any sentence under this section.

KRS 533.015 Alternatives to incarceration.

Whenever a statute mentions probation, shock probation, conditional discharge, home incarceration, or other form of alternative to incarceration, that alternative may include a community-based, faith-based, charitable, church-sponsored, or nonprofit residential or nonresidential counseling and treatment program or drug court, and, upon petition by the defendant, the court may sentence or permit the defendant to attend that program. This program may also be used for pretrial release and pretrial diversion.

501 KAR 6:200 Comprehensive sex offender presentence evaluation procedure.

Section 1. Definitions.

- (1) "Amenability to treatment" means the offender is free from organic or psychological impairment that would prevent the offender from engaging meaningfully in sex offender treatment and he is, at least minimally, receptive to the treatment process.
- (2) "Appropriate setting" means a secure institutional setting or a community-based setting.
- (3) "Approved provider" is defined by KRS 17.550(3).
- (4) "Board" is defined by KRS 17.550(1).
- (5) "Clinically adjusted" means changing the risk level recommendation based on facts or evidence which indicate to an approved provider that the probability of recidivism ranges are inappropriate for a sex offender.
- (6) "Comprehensive sex offender presentence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the four (4) factors listed in KRS 17.554(2).
- (7) "Nature of required sex offender treatment" means the treatment management issues including recommendations for the focus of treatment, special treatment considerations, further evaluation, and restrictions to minimize the risk of recidivism.
- (8) "Risk of recommitting a sex crime" means a designation of high or not high risk based on the finding of the instrument and other clinically relevant data where sexual reoffense is more likely than not.
- (9) "Sex offender" is defined by KRS 17.550(2).

Section 2. Comprehensive Sex Offender Presentence Evaluation Procedures.

- (1)
 - (a) An approved provider shall conduct a comprehensive mental health evaluation following the professional standards of care in the area of his certification or licensure.
 - (b) The evaluation shall include a face-to-face interview and a review of collateral information. The face-to-face interview may be conducted by videoconferencing if it allows the approved provider to see the offender at all times during the interview.
 - (c) If the results of initial mental health screening procedure dictate, additional appropriate psychological testing addressing cognitive functioning, mental illness, and severe characterological impairment shall be employed as circumstances allow.
- (2) Risk of recommitting a sex crime shall be determined in the following manner:
 - (a) If applicable, an actuarial instrument shall be used which is appropriate to the sex offender. An actuarial instrument shall be appropriate for use if:
 1. The instrument's developmental sample or subsequent study samples contained individuals with characteristics similar to the offender being evaluated; and
 2. The instrument's reliability and validity has been demonstrated through research. The results of the instrument may be clinically adjusted at the discretion of the approved provider.

- (b) If an actuarial instrument is not appropriate, an empirically guided approach shall be used. An empirically-guided approach shall mean that the approved provider shall consider risk factors that research has demonstrated to be associated with risk for recidivism.
- (3) The threat to public safety shall be determined in the following manner:
 - (a) The approved provider shall consider the following domains in assessing the sex offender's immediate threat to public safety and in arriving at a recommendation regarding an appropriate treatment setting:
 1. The sex offender's amenability to treatment;
 2. The degree of threat of harm or actual force employed in the index offense and in prior offenses;
 3. The nature and duration of the offending;
 4. The sex offender's psychological adjustment;
 5. The sex offender's social and occupational adjustment; and
 6. The sex offender's statements or indications of harm directed to another.
 - (b) The approved provider shall make a recommendation as to the appropriate setting in which treatment, if indicated, should be provided for the sex offender.
- (4) To assess amenability, the approved provider shall address the following factors. The sex offender shall:
 - (a) Not exhibit symptoms of a psychological disturbance that may significantly inhibit treatment effectiveness.
 - (b) Exhibit a level of intellectual functioning sufficient to complete the task assigned in the treatment program to which he shall be referred.
 - (c) Acknowledge involvement in the sex offense for which he is charged.
 - (d) Consider his involvement in the sex offense to be a problematic behavior that he does not want to repeat.
 - (e) Verbalize a willingness to enter and fully participate in treatment.
- (5) In assessing the nature of required sex offender treatment, the approved provider shall address management issues including:
 - (a) Recommendations for the focus of treatment;
 - (b) Special treatment considerations;
 - (c) Further evaluation; and
 - (d) Restrictions to minimize the risk of recidivism.

Section 3. Evaluation Report.

- (1) An approved provider shall prepare a comprehensive sex offender presentence evaluation report to the court in the form of a bifurcated document.
- (2) The first section of the report shall consist of information prepared specifically for the court and contain the following headings:
 - (a) Identifying information including name, Social Security number, date of birth and age, indictment number or county;
 - (b) Referral information, including reason for referral, informed consent, and procedures;
 - (c) Information sources; and
 - (d) Summary, conclusions, and recommendations.
- (3) The second section shall include the following information from which the summary and conclusions were reached:
 - (a) Criminal justice information, including index offense, prior sex offense, or other legal history;
 - (b) Psychosocial history including: family of origin, education, military, occupational, and financial history; sexual and relationship history; and mental health and medical history;
 - (c) Behavioral observations and mental status;
 - (d) Psychological testing;
 - (e) Diagnosis impressions;

- (f) Treatment considerations; and
 - (g) The statutory factors found in KRS 17.554(2).
- (4) The report shall be entitled "Comprehensive Sex Offender Presentence Evaluation."
- (5) An approved provider shall place his signature at the end of the recommendation report if he:
- (a) Conducted the comprehensive sex offender presentence evaluation; or
 - (b) Reviewed and approved the evaluation.
- (6) If the approved provider previously provided treatment to the sex offender, he shall not perform a sex offender presentence evaluation for the offender.

Section 4. Recordkeeping.

- (1) An approved provider shall:
- (a) Transmit all comprehensive sex offender presentence evaluation information to the board; or
 - (b) Maintain the information for a period of fifteen (15) years.
- (2) The original or a copy of all comprehensive sex offender presentence evaluation information shall be provided to the board:
- (a) Upon request; or
 - (b) At the death of the approved provider.

E. RELEASE

1. Pre-Trial Release

KRS 431.064 Pretrial release of person arrested for assault, sexual offense, or violation of protective order -- Conditions -- Hearing -- Victim entitled to copy of conditions of release -- Entry of conditions into Law Information Network -- Penalty.

- (1) In making a decision concerning pretrial release of a person who is arrested for a violation of KRS Chapter 508 or 510, or charged with a crime involving a violation of an order of protection as defined in KRS 403.720 and 456.010, the court or agency having authority to make a decision concerning pretrial release shall review the facts of the arrest and detention of the person and determine whether the person:
- (a) Is a threat to the alleged victim or other family or household member; and
 - (b) Is reasonably likely to appear in court.
- (2) Before releasing a person arrested for or charged with a crime specified in subsection (1) of this section, the court shall make findings, on the record if possible, concerning the determination made in accordance with subsection (1) of this section, and may impose conditions of release or bail on the person to protect the alleged victim of domestic violence or abuse and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:
- (a) An order enjoining the person from threatening to commit or committing acts of domestic violence or abuse against the alleged victim or other family or household member;
 - (b) An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly;
 - (c) An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;
 - (d) An order prohibiting the person from using or possessing a firearm or other weapon specified by the court;
 - (e) An order prohibiting the person from possession or consumption of alcohol or controlled substances;
 - (f) Any other order required to protect the safety of the alleged victim and to ensure the appearance of the person in court; or
 - (g) Any combination of the orders set out in paragraphs (a) to (f) of this subsection.
- (3) If conditions of release are imposed, the court imposing the conditions on the arrested or

charged person shall:

- (a) Issue a written order for conditional release; and
 - (b) Immediately distribute a copy of the order to pretrial services.
- (4) The court shall provide a copy of the conditions to the arrested or charged person upon release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.
 - (5) If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the court to review the conditions. Upon request, the court shall hold a prompt hearing to review the conditions.
 - (6) The victim, as defined in KRS 421.500, of the defendant's alleged crime, or an individual designated by the victim in writing, shall be entitled to a free certified copy of the defendant's conditions of release, or modified conditions of release, upon request to the clerk of the court which issued the order releasing the defendant. The victim or the victim's designee may personally obtain the document at the clerk's office or may have it delivered by mail.
 - (7) The circuit clerk or the circuit clerk's designee, in cooperation with the court that issued the order releasing the defendant, shall cause the conditions of release to be entered into the computer system maintained by the clerk and the Administrative Office of the Courts within twenty-four (24) hours following its filing, excluding weekends and holidays. Any modification of the release conditions shall likewise be entered by the circuit clerk, or the circuit clerk's designee.
 - (8) The information entered under this section shall be accessible to any agency designated by the Department of Kentucky State Police as a terminal agency for the Law Information Network of Kentucky.
 - (9) All orders issued under this section which require entry into the Law Information Network of Kentucky shall be entered on forms prescribed by the Administrative Office of the Courts. If the conditions of pretrial release are contained in an order which is narrative in nature, the prescribed form shall be used in addition to the narrative order.
 - (10) Any person who violates any condition of an order issued pursuant to this section is guilty of a Class A misdemeanor.

2. Pre-Trial Diversion

KRS 533.250 Pretrial diversion program in each judicial circuit - Elements - Fee.

- (1) A pretrial diversion program shall be operated in each judicial circuit. The chief judge of each judicial circuit, in cooperation with the Commonwealth's attorney, shall submit a plan for the pretrial diversion program to the Supreme Court for approval on or before December 1, 1999. The pretrial diversion program shall contain the following elements:
 - (a) The program may be utilized for a person charged with a Class D felony offense who has not, within ten (10) years immediately preceding the commission of this offense, been convicted of a felony under the laws of this state, another state, or of the United States, or has not been on probation or parole or who has not been released from the service of any felony sentence within ten (10) years immediately preceding the commission of the offense.
 - (b) The program shall not be utilized for persons charged with offenses for which probation, parole, or conditional discharge is prohibited under KRS 532.045.
 - (c) No person shall be eligible for pretrial diversion more than once in a five (5) year period.
 - (d) No person shall be eligible for pretrial diversion who has committed a sex crime as defined in KRS 17.500. A person who is on pretrial diversion on July 12, 2006, may remain on pretrial diversion if the person continues to meet the requirements of the pretrial diversion and the registration requirements of KRS 17.510.
 - (e) Any person charged with an offense not specified as precluding a person from pretrial diversion under paragraph (b) of this subsection may apply in writing to the trial court and

- the Commonwealth's attorney for entry into a pretrial diversion program.
- (f) Any person shall be required to enter an Alford plea or a plea of guilty as a condition of pretrial diversion.
 - (g) The provisions of KRS 533.251 shall be observed; and
 - (h) The program may include as a component referral to the intensive secured substance abuse treatment program developed under KRS 196.285 for persons charged with a felony offense under KRS Chapter 218A and persons charged with a felony offense whose record indicates a history of recent and relevant substance abuse who have not previously been referred to the program under KRS 533.251.
- (2) Upon the request of the Commonwealth's attorney, a court ordering pretrial diversion may order the person to:
- (a) Participate in a global positioning monitoring system program through the use of a county-operated program pursuant to KRS 67.372 and 67.374 for all or part of the time during which a pretrial diversion agreement is in effect; or
 - (b) Use and pay all costs, including administrative and operating costs, associated with the alcohol monitoring device as defined in KRS 431.068. If the court determines that the defendant is indigent, and a person, county, or other organization has not agreed to pay the costs for the defendant in an attempt to reduce incarceration expenses and increase public safety, the court shall consider other conditions of pretrial diversion.
- (3) A court ordering global positioning monitoring system for a person pursuant to this section shall:
- (a) Require the person to pay all or a part of the monitoring costs based upon the sliding scale determined by the Supreme Court of Kentucky pursuant to KRS 403.761 or 456.100 and administrative costs for participating in the system;
 - (b) Provide the monitoring system with a written or electronic copy of the conditions of release; and
 - (c) Provide the monitoring system with a contact at the office of the Commonwealth's attorney for reporting violations of the monitoring order.
- (4) A person, county, or other organization may voluntarily agree to pay all or a portion of a person's monitoring costs specified in subsection (3) of this section.
- (5) The court shall not order a person to participate in a global positioning monitoring system program unless the person agrees to the monitoring in open court or the court determines that public safety and the nature of the person's crime require the use of a global positioning monitoring system program.
- (6) The Commonwealth's attorney shall make a recommendation upon each application for pretrial diversion to the Circuit Judge in the court in which the case would be tried. The court may approve or disapprove the diversion.
- (7) The court shall assess a diversion supervision fee of a sufficient amount to defray all or part of the cost of participating in the diversion program. Unless the fee is waived by the court in the case of indigency, the fee shall be assessed against each person placed in the diversion program. The fee may be based upon ability to pay.

KRS 533.252 Requirements of Commonwealth's Attorney when considering application for pretrial diversion.

When considering an application for pretrial diversion, the attorney for the Commonwealth shall:

- (1) Have a criminal record check made to ascertain if the person is eligible for pretrial diversion.
- (2) Interview the victim of the crime, if there is an identified victim, and, when the victim of the crime is deceased or the attorney for the Commonwealth deems it necessary, interview a member of the family of the victim of the crime. The attorney for the Commonwealth shall explain to the victim the diversion program, the proposed diversion conditions, and any other matters that the attorney for the Commonwealth deems to be appropriate. The results of the interview

and recommendations of the victim may be presented to the court when it is considering the application for pretrial diversion. If the application for diversion is approved by the court, the approval shall be in open court and may be attended by the victim and the victim's family. The attorney for the Commonwealth shall attempt to notify them of this fact and the time, date, and place of the hearing.

- (3) Conduct any other investigation that the attorney for the Commonwealth determines may be necessary with regard to the defendant and the circumstances of the crime so as to enable him or her to set proper conditions of pretrial diversion, or to make a decision whether to recommend pretrial diversion.

KRS 533.254 Application of probation and restitution.

- (1) The provisions of KRS 533.020 relating to the period of probation shall, in so far as possible, be applicable to the period of pretrial diversion except that supervision of the participants in the programs shall be done by the Division of Probation and Parole.
- (2) The provisions of KRS 533.030 relating to conditions of probation and restitution shall, in so far as possible, be applicable to pretrial diversion. Restitution shall be ordered in all cases where a victim has suffered monetary damage as a result of the alleged crime. Restitution to the state or the victim, or both, may be ordered in any pretrial diversion program.

KRS 533.256 Failure to complete provisions of pretrial diversion agreement.

- (1) If the defendant fails to complete the provisions of the pretrial diversion agreement within the time specified, or is not making satisfactory progress toward the completion of the provisions of the agreement, the Division of Probation and Parole, the victim, or a peace officer may inform the attorney for the Commonwealth of the alleged violation or noncompliance, and the attorney for the Commonwealth may apply to the court for a hearing to determine whether or not the pretrial diversion agreement should be voided and the court should proceed on the defendant's plea of guilty in accordance with the law.
- (2) In making a determination as to whether or not a pretrial diversion agreement should be voided, the court shall use the same criteria as for the revocation of probation, and the defendant shall have the same rights as he or she would if probation revocation was sought.
- (3) Making application for a pretrial diversion agreement tolls any statute of limitations relative to the criminal offenses for which the application is made for the period until the application is granted or denied. Approval of the application for pretrial diversion by the court tolls any statute of limitations relative to criminal offenses diverted for the period of the diversion agreement.
- (4) If the court voids the pretrial diversion agreement, the court shall notify the applicable prosecutor in writing that the pretrial diversion agreement has been voided and the reasons for the action. The prosecutor shall decide whether or not to proceed on the plea of guilty in accordance with the law.

KRS 533.258 Effects of successful completion of pretrial diversion agreement.

- (1) If the defendant successfully completes the provisions of the pretrial diversion agreement, the charges against the defendant shall be listed as "dismissed-diverted" and shall not constitute a criminal conviction.
- (2) The defendant shall not be required to list this disposition on any application for employment, licensure, or otherwise unless required to do so by federal law.
- (3) Pretrial diversion records shall not be introduced as evidence in any court in a civil, criminal, or other matter without the consent of the defendant.

KRS 533.262 Other program before and after July 15, 1998.

- (1) The pretrial diversion program authorized by KRS 533.250 to 533.260 shall be the sole program utilized in the Circuit Courts of the Commonwealth except for drug court diversion as approved by the Supreme Court and the Department of Corrections.
- (2) As of July 15, 1998, the only other pretrial diversion programs utilized by the Commonwealth shall be those authorized by the Kentucky Supreme Court and providing for the pretrial diversion of misdemeanants. Programs existing as of July 15, 1998, may continue for the purpose of supervising persons granted pretrial diversion prior to July 15, 1998, however no new persons shall be admitted to these programs.
- (3) A person who is in a pretrial diversion program as of July 15, 1998, may continue in that program until he or she successfully completes the program or is removed from the program for other reasons, whichever occurs earlier

3. Probation and Conditional Discharge

KRS 532.040 Probation and conditional discharge. - *Text included in Chapter 5, Section D.*

KRS 532.043 Requirement of post-incarceration supervision for certain felonies.

- (1) In addition to the penalties authorized by law, any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510 (sex offenses), 529.100 (prostitution, human trafficking) involving commercial sexual activity, 530.020 (incest), 530.064(1)(a), 531.310 (use of a minor in a sexual performance), or 531.320 (promoting a sexual performance by a minor) shall be subject to a period of post-incarceration supervision following release from:
 - (a) Incarceration upon expiration of sentence; or
 - (b) Completion of parole.
- (2) The period of post-incarceration supervision shall be five (5) years.
- (3) During the period of post-incarceration supervision, the defendant shall:
 - (a) Be subject to all orders specified by the Department of Corrections; and
 - (b) Comply with all education, treatment, testing, or combination thereof required by the Department of Corrections.
- (4) Persons under post-incarceration supervision pursuant to this section shall be subject to the supervision of the Division of Probation and Parole and under the authority of the Parole Board.
- (5) If a person violates a provision specified in subsection (3) of this section, the violation shall be reported in writing by the Division of Probation and Parole. Notice of the violation shall be sent to the Parole Board to determine whether probable cause exists to revoke the defendant's post-incarceration supervision and re-incarcerate the defendant as set forth in KRS 532.060.
- (6) The provisions of this section shall apply only to persons convicted, pleading guilty, or entering an Alford plea after July 15, 1998.

KRS 532.045 Persons prohibited from probation or post-incarceration supervision -- Procedure when probation or post-incarceration supervision not prohibited.

- (1) As used in this section:
 - (a) "Position of authority" means but is not limited to the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff, or volunteer who is an adult, adult athletic manager, adult coach, teacher, classified school employee, certified school employee, counselor, staff, or volunteer for either a residential treatment facility or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health-care provider, or employer;

- (b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and
- (c) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or the victim, by any foreign object; oral copulation; or masturbation of either the minor or the offender.

(2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for a person convicted of violating: 510.050 (Rape 2nd), 510.080 (Sodomy 2nd), 529.040 (Promoting prostitution), 529.070 (Permitting prostitution), 529.100 (Human trafficking) where the offense involves commercial sexual activity, 530.020 (incest), 531.310 (Use of a minor in a sexual performance), 531.320 (Promoting a sexual performance by a minor), or 531.370 (Using minors to distribute material portraying a sexual performance by a minor), or criminal attempt to commit any of these offenses under KRS 506.010,

AND, who meets one (1) or more of the following criteria:

- (a) A person who commits any of the offenses enumerated in this subsection against a minor by the use of force, violence, duress, menace, or threat of bodily harm;
- (b) A person who, in committing any of the offenses enumerated in this subsection, caused bodily injury to the minor;
- (c) A person convicted of any of the offenses enumerated in this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;
- (d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in this subsection;
- (e) A person convicted of any of the offenses enumerated in this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in this subsection;
- (f) A person convicted of kidnapping a minor in violation of the Kentucky Penal Code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection;
- (g) A person who is convicted of committing any of the offenses enumerated in this subsection on more than one (1) minor at the same time or in the same course of conduct;
- (h) A person who in committing any of the offenses enumerated in this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or
- (i) A person who occupies a position of special trust and commits an act of substantial sexual conduct.

Nothing in this section shall be construed to prohibit the additional period of five (5) years' post-incarceration supervision required by KRS 532.043.

- (3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of the comprehensive sex offender presentence evaluation of the offender performed by an approved provider, as defined in KRS 17.500 or the Department of Corrections. The court shall use the comprehensive sex offender presentence evaluation in determining the appropriateness of probation or conditional discharge.
- (4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community-based sexual offender treatment program operated or approved by the Department of Corrections or the Sex Offender Risk Assessment Advisory Board.

- (5) The offender shall pay for any evaluation or treatment required pursuant to this section up to the offender's ability to pay but not more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.
- (6) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.
- (7) The comprehensive sex offender presentence evaluation and all communications relative to the comprehensive sex offender presentence evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440. The comprehensive sex offender presentence evaluation shall be filed under seal and shall not be made a part of the court record subject to review in appellate proceedings and shall not be made available to the public.
- (8) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any comprehensive sex offender presentence evaluation performed pursuant to this section and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel and the Commonwealth's attorney a copy of the comprehensive sex offender presentence evaluation. It shall not be necessary to disclose the sources of confidential information.
- (9) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

KRS 532.047 Nonavailability of probation or suspension of sentence to violent offender -- Exception.

Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, a person who has been designated as a violent offender as defined in KRS 439.3401, unless such probation is granted in accordance with KRS 439.3401.

KRS 533.020 Probation and conditional discharge.

- (1) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court shall place him on probation if he is in need of the supervision, guidance, assistance, or direction that the probation service can provide. Conditions of probation shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of probation. When setting conditions under this subsection, the court shall not order any defendant to pay incarceration costs or any other cost permitted to be ordered under KRS 533.010 or other statute, except restitution and any costs owed to the Department of Corrections, through the circuit clerk.
- (2) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him to probation with an alternative sentence if it is of the opinion that the defendant should conduct himself according to conditions determined by the court and that probationary supervision alone is insufficient. The court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the alternative sentence.
- (3) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him to conditional discharge if it is of the opinion that the defendant should conduct himself according to conditions determined by the court but that probationary supervision is inappropriate. Conditions of conditional discharge shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of conditional discharge.

- (4) The period of probation, probation with an alternative sentence, or conditional discharge shall be fixed by the court and at any time may be extended or shortened by duly entered court order. Such period, with extensions thereof, shall not exceed five (5) years, or the time necessary to complete restitution, whichever is longer, upon conviction of a felony nor two (2) years, or the time necessary to complete restitution, whichever is longer, upon conviction of a misdemeanor. Upon completion of the probationary period, probation with an alternative sentence, or the period of conditional discharge, the defendant shall be deemed finally discharged, provided no warrant issued by the court is pending against him, and probation, probation with an alternative sentence, or conditional discharge has not been revoked.
- (5) Notwithstanding the fact that a sentence to probation, probation with an alternative sentence, or conditional discharge can subsequently be modified or revoked, a judgment which includes such a sentence shall constitute a final judgment for purposes of appeal.

KRS 533.030 Conditions of probation and conditional discharge -- Restitution to victim.

- (1) The conditions of probation and conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation or conditional discharge that the defendant not commit another offense during the period for which the sentence remains subject to revocation.
- (2) When imposing a sentence of probation or conditional discharge, the court may, in addition to any other reasonable condition, require that the defendant:
 - (a) Avoid injurious or vicious habits;
 - (b) Avoid persons or places of disreputable or harmful character;
 - (c) Work faithfully at suitable employment as far as possible;
 - (d) Undergo available medical or psychiatric treatment and remain in a specific institution as required for that purpose;
 - (e) Post a bond, without surety, conditioned on performance of any of the prescribed conditions;
 - (f) Support his dependents and meet other family responsibilities;
 - (g) Pay the cost of the proceeding as set by the court;
 - (h) Remain within a specified area;
 - (i) Report to the probation officer as directed;
 - (j) Permit the probation officer to visit him at his home or elsewhere;
 - (k) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment;
 - (l) Submit to periodic testing for the use of controlled substances or alcohol, if the defendant's record indicates a controlled substance or alcohol problem, and to pay a reasonable fee, as determined by the court, which fee shall not exceed the actual cost of the test and analysis and shall be paid directly to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis, as specified by written order of the court, performed under this subsection. For good cause shown, the testing fee may be waived by the court;
 - (m) Use an alcohol monitoring device, as defined in KRS 431.068. All costs associated with the device, including administrative and operating costs, shall be paid by the defendant. If the court determines that the defendant is indigent, and a person, county, or other organization has not agreed to pay the costs for the defendant in an attempt to reduce incarceration expenses and increase public safety, the court shall consider other conditions of probation or conditional discharge provided for in this section; or
 - (n) During all or part of the period of probation or conditional discharge, participate in a global positioning monitoring system program operated by a county pursuant to KRS 67.372 and 67.374 under the same terms and conditions as provided in KRS 431.517.

- (3) When imposing a sentence of probation or conditional discharge in a case where a victim of a crime has suffered monetary damage as a result of the crime due to his property having been converted, stolen, or unlawfully obtained, or its value substantially decreased as a result of the crime, or where the victim suffered actual medical expenses, direct out-of-pocket losses, or loss of earning as a direct result of the crime, or where the victim incurred expenses in relocating for the purpose of the victim's safety or the safety of a member of the victim's household, or if as a direct result of the crime the victim incurred medical expenses that were paid by the Cabinet for Health and Family Services, the Kentucky Claims Commission, or any other governmental entity, the court shall order the defendant to make restitution in addition to any other penalty provided for the commission of the offense. Payment of restitution to the victim shall have priority over payment of restitution to any government agency. Restitution shall be ordered in the full amount of the damages, unless the damages exceed one hundred thousand dollars (\$100,000) or twice the amount of the gain from the commission of the offense, whichever is greater, in which case the higher of these two (2) amounts shall be awarded. The court may, in lieu of ordering monetary restitution, order the defendant to make restitution by working for or on behalf of the victim. The court shall determine the number of hours of work necessary by applying the then-prevailing federal minimum wage to the total amount of monetary damage caused by or incidental to the commission of the crime. The court may, with the consent of the agency, order the defendant to work as specified in KRS 533.070. Any work ordered pursuant to this section shall not be deemed employment for any purpose, nor shall the person performing the work be deemed an employee for any purpose. Where there is more than one (1) defendant or more than one (1) victim, restitution may be apportioned. Restitution shall be subject to the following additional terms and conditions:
- (a) Where property which is unlawfully in the possession of the defendant is in substantially undamaged condition from its condition at the time of the taking, return of the property shall be ordered in lieu of monetary restitution;
 - (b) The circuit clerk shall assess an additional fee of five percent (5%) to defray the administrative costs of collection of payments or property. This fee shall be paid by the defendant and shall inure to a trust and agency account which shall not lapse and which shall be used to hire additional deputy clerks and office personnel or increase deputy clerk or office personnel salaries, or combination thereof;
 - (c) When a defendant fails to make restitution ordered to be paid through the circuit clerk or a court-authorized program run by the county attorney or the Commonwealth's attorney, the circuit clerk or court-authorized program shall notify the court; and
 - (d) An order of restitution shall not preclude the owner of property or the victim who suffered personal physical or mental injury or out-of-pocket loss of earnings or support or other damages from proceeding in a civil action to recover damages from the defendant. A civil verdict shall be reduced by the amount paid under the criminal restitution order.
- (4) When requiring fees for controlled substances or alcohol tests, or other fees and payments authorized by this section or other statute, except restitution, to be paid by the defendant, the court shall not order the payments to be paid through the circuit clerk.
- (5) When a defendant is sentenced to probation or conditional discharge, he shall be given a written statement explicitly setting forth the conditions under which he is being released.
- (6) When imposing a sentence of probation or conditional discharge, the court, in addition to conditions imposed under this section, may require as a condition of the sentence that the defendant submit to a period of imprisonment in the county jail or to a period of home incarceration at whatever time or intervals, consecutive or nonconsecutive, the court shall determine. The time actually spent in confinement or home incarceration pursuant to this provision shall not exceed twelve (12) months or the maximum term of imprisonment assessed pursuant to KRS Chapter 532, whichever is the shorter. Time spent in confinement or home incarceration under this subsection shall be credited against the maximum term

of imprisonment assessed for the defendant pursuant to KRS Chapter 532, if probation or conditional discharge is revoked and the defendant is sentenced to imprisonment. Any prohibitions against probation, shock probation, or conditional discharge under KRS 533.060(2) or 532.045 shall not apply to persons convicted of a misdemeanor or Class D felony and sentenced to a period of confinement or home incarceration under this section.

4. Shock Probation

KRS 439.265 Shock probation in felony conviction -- Procedure -- Availability for violent offenders and sexual offenders -- Comprehensive sex offender presentence evaluation -- Exercise of authority.

- (1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any Circuit Court may, upon motion of the defendant made not earlier than thirty (30) days nor later than one hundred eighty (180) days after the defendant has been incarcerated in a county jail following his conviction and sentencing pending delivery to the institution to which he has been sentenced, or delivered to the keeper of the institution to which he has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon terms the court determines. Time spent on any form of release following conviction shall not count toward time required under this section.
- (2) The court shall consider any motion filed in accordance with subsection (1) of this section within sixty (60) days of the filing date of that motion, and shall enter its ruling within ten (10) days after considering the motion. The defendant may, in the discretion of the trial court, have the right to a hearing on any motion he may file, or have filed for him, that would suspend further execution of sentence. Any court order granting or denying a motion to suspend further execution of sentence is not reviewable.
- (3) (a) During the period in which the defendant may file a motion pursuant to this statute, the sentencing judge, within his or her discretion, may order that the defendant be held in a local detention facility that is not at or above maximum capacity until such time as the court rules on said motion. During this period of detention, and prior to the court's ruling on said motion, the court may require the defendant to participate in any approved community work program or other forms of work release. Persons held in the county jail pursuant to this subsection shall not be subject to transfer to a state correctional facility until the decision is made not to place the petitioner on shock probation.
(b) The provisions concerning community work programs or other forms of work release shall apply only to persons convicted of Class C or Class D felonies, and may be granted only after a hearing at which the Commonwealth's attorney has the opportunity to present arguments in favor or opposition thereto.
- (4) If the defendant is a violent offender as defined in KRS 439.3401, the sentence shall not be probated under this section.
- (5) If the defendant has been convicted of an offense under KRS 510.050, 510.080, 530.020, 530.064(1)(a), or 531.310, or criminal attempt to commit any of these offenses under KRS 506.010, the sentence shall not be suspended, in accordance with KRS 532.045.
- (6) When a defendant has been convicted of a sex crime, as defined in KRS 17.500, the court shall order a comprehensive sex offender presentence evaluation, unless one has been provided within the past six (6) months, in which case the court may order an update of the comprehensive sex offender presentence evaluation of the defendant conducted by the sex offender treatment program operated or approved by the Department of Corrections or the Sex Offender Risk Assessment Advisory Board. The comprehensive sex offender presentence evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining whether to suspend the sentence. If the court suspends the sentence and

places the defendant on probation, the provisions of KRS 532.045(3) to (7) shall apply.

- (7) The authority granted in this section shall be exercised by the judge who imposed sentence on the defendant, unless he is unable to act and it appears that his inability to act should continue beyond the expiration of the term of the court. In such case, the judge who imposed sentence shall assign a judge to dispose of a motion filed under this section, or as prescribed by the rules and practices concerning the responsibility for disposition of criminal matters.
- (8) The provisions of this section shall not apply where a sentence of death has been imposed.

KRS 439.267 Shock probation in misdemeanor convictions -- Procedure -- Exercise of authority -- Availability for sexual offenders.

- (1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any District Court, or any Circuit Court with respect to a defendant convicted in Circuit Court of a misdemeanor, may, upon motion of the defendant made not earlier than thirty (30) days after the defendant has been delivered to the keeper of the institution to which he has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon terms as the court determines.
- (2) The court shall consider any motion filed in accordance with subsection (1) of this section within sixty (60) days of the filing date of that motion, and shall enter its ruling within ten (10) days after considering the motion. The defendant may, in the discretion of the trial court, have the right to a hearing on any motion he may file, or have filed for him, that would suspend further execution of sentence. Any court order granting or denying a motion to suspend further execution of sentence is not reviewable.
- (3) The authority granted in this section shall be exercised by the judge who imposed sentence on the defendant, unless he is unable to act and it appears that his inability to act should continue beyond the expiration of the term of the court. In this case, the judge who imposed sentence shall assign a judge to dispose of a motion filed under this section, or as prescribed by the rules and practices concerning the responsibility for disposition of criminal matters.
- (4) If the defendant has been convicted of a misdemeanor offense under KRS Chapter 510 (sex offenses), or criminal attempt to commit any of these offenses under KRS 506.010, prior to considering the motion to suspend the sentence, the court may, for a misdemeanor offense specified herein, and shall, for any felony offense specified in this subsection order an evaluation of the defendant to be conducted by the sex offender treatment program operated or approved by the Department of Corrections or the Department for Behavioral Health, Developmental and Intellectual Disabilities. The evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining whether to suspend the sentence. If the court suspends the sentence and places the defendant on probation, the provisions of KRS 532.045(3) to (7) shall apply.

5. Conditional Release

KRS 439.555 Conditional release of certain prisoners.

Any prisoner having served the term for which he has been sentenced for a crime he committed after June 16, 1972, less good time deduction, if any has been accumulated, shall be released by minimum expiration of sentence.

KRS 197.045 Credit on sentence for prior confinement, educational accomplishment, good behavior, or meritorious service -- Requirement of completion of sex offender treatment program for eligible sexual offenders -- Forfeiture of credit for certain dismissals of inmates' civil actions.

- (1) Any person convicted and sentenced to a state penal institution
 - (a) Shall receive a credit on his or her sentence for:
 1. Prior confinement as specified in KRS 532.120;
 2. Successfully receiving a general equivalency diploma or a high school diploma, a two (2) or four (4) year college degree, a two (2) year or four (4) year degree in applied sciences, a completed technical education program, or an online or correspondence education program, each as provided and defined by the department, or a civics education program that requires passing a final exam, in the amount of ninety (90) days per diploma, degree, or technical education program completed; and
 3. Successfully completing a drug treatment program or other evidence-based program approved by the department, in the amount of ninety (90) days for each program completed; and
 - (b) May receive a credit on his or her sentence for:
 1. Good behavior in an amount not exceeding ten (10) days for each month served, to be determined by the department from the conduct of the prisoner;
 2. Performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs, awarded at the discretion of the commissioner in an amount not to exceed seven (7) days per month; and
 3. Acts of exceptional service during times of emergency, awarded at the discretion of the commissioner in an amount not to exceed seven (7) days per month.
- (2) Except for a sentencing credit awarded for prior confinement, the department may forfeit any sentencing credit awarded under subsection (1) of this section previously earned by the prisoner or deny the prisoner the right to earn future sentencing credit in any amount if during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.
- (3) When two (2) or more consecutive sentences are to be served, the several sentences shall be merged and served in the aggregate for the purposes of the sentencing credit computation or in computing dates of expiration of sentence.
- (4) Until successful completion of the sex offender treatment program, an eligible sexual offender may earn sentencing credit. However, the sentencing credit shall not be credited to the eligible sexual offender's sentence. Upon the successful completion of the sex offender treatment program, as determined by the program director, the offender shall be eligible for all sentencing credit earned but not otherwise forfeited under administrative regulations promulgated by the Department of Corrections. After successful completion of the sex offender treatment program, an eligible sexual offender may continue to earn sentencing credit in the manner provided by administrative regulations promulgated by the Department of Corrections. Any eligible sexual offender, as defined in KRS 197.410, who has not successfully completed the sex offender treatment program as determined by the program director shall not be entitled to the benefit of any credit on his or her sentence. A sexual offender who does not complete the sex offender treatment program for any reason shall serve his or her entire sentence without benefit of sentencing credit, parole, or other form of early release. The provisions of this section shall not apply to any sexual offender convicted before July 15, 1998, or to any sexual offender with an intellectual disability.
- (5)
 - (a) The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of sentencing credit and the ability to earn sentencing credit in the future for those inmates who have civil actions dismissed because the court found the action to be malicious, harassing, or factually frivolous.

(b) Penalties set by administrative regulation pursuant to this subsection shall be as uniform as practicable throughout all institutions operated by, under contract to, or under the control of the department and shall specify a specific number of days or months of sentencing credit forfeited as well as any prohibition imposed on the future earning of sentencing credit.

(6) The provisions in subsection (1)(a)2. of this section shall apply retroactively to July 15, 2011.

6. Parole

KRS 439.340 Parole of prisoners confined in adult penal or correctional institutions.

- (1) The board may release on parole persons confined in any adult state penal or correctional institution of Kentucky or sentenced felons incarcerated in county jails eligible for parole. All paroles shall issue upon order of the board duly adopted. As soon as practicable after his or her admission to an adult state penal or correctional institution or county jail if he or she is a sentenced felon, and at such intervals thereafter as it may determine, the Department of Corrections shall obtain all pertinent information regarding each prisoner, except those not eligible for parole. The information shall include the results of his or her most recent risk and needs assessment, his or her criminal record, his or her conduct, employment, and the reports of physical and mental examinations that have been made. The Department of Corrections shall furnish the circumstances of his or her offense, the results of his or her most recent risk and needs assessment, and his or her previous social history to the board. The Department of Corrections shall prepare a report on any information it obtains. It shall be the duty of the Department of Corrections to supplement this report with any material the board may request and submit the report to the board.
- (2) Before granting the parole of any prisoner, the board shall consider the pertinent information regarding the prisoner, including the results of his or her most recent risk and needs assessment, and shall have him or her appear before it for interview and hearing. The board in its discretion may hold interviews and hearings for prisoners convicted of Class C felonies not included within the definition of "violent offender" in KRS 439.3401 and Class D felonies. The board in its discretion may request the parole board of another state confining prisoners pursuant to KRS 196.610 to interview eligible prisoners and make a parole recommendation to the board. A parole shall be ordered only for the best interest of society and not as an award of clemency, and it shall not be considered a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his or her proper employment or for his or her maintenance and care, and when the board believes he or she is able and willing to fulfill the obligations of a law abiding citizen. Notwithstanding any statute to the contrary, including KRS 440.330, when a prisoner is otherwise eligible for parole and the board has recommended parole for that prisoner for the reasons set forth in this subsection, the board may grant parole to any prisoner wanted as a fugitive by any other jurisdiction, and the prisoner shall be released to the detainer from that jurisdiction. Such parole shall not constitute a relinquishment of jurisdiction over the prisoner, and the board in all cases expressly reserves the right to return the prisoner to confinement in a correctional institution of the Commonwealth if the prisoner violates the terms of his or her parole.
- (3) (a) A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years who is confined to a state penal institution or county jail shall have his or her case reviewed by the Parole Board after serving fifteen percent (15%) or two (2) months of the original sentence, whichever is longer.
- (b) Except as provided in this section, the board shall adopt administrative regulations with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings and all other matters that come before it, or conditions to be imposed upon parolees. Regulations governing the eligibility of prisoners for parole shall be in accordance

with professionally accepted ideas of correction and reform and may utilize in part objective, performance-based criteria and risk and needs assessment information; however, nothing herein contained shall preclude the board from utilizing its present regulations in conjunction with other factors involved that would relate to the inmate's needs and the safety of the public.

- (4) The board shall insure that all sentenced felons who have longer than ninety (90) days to serve in state penal institutions, halfway houses, and county jails are considered for parole not less than sixty (60) days prior to their parole eligibility date, and the Department of Corrections shall provide the necessary assistance and information to the board in order for it to conduct timely parole reviews.
- (5) In addition to or in conjunction with each hearing conducted under subsection (2) of this section for any prisoner convicted of a Class A, B, or C felony and prior to the granting of a parole to any such prisoner, the parole board shall conduct a hearing of which the following persons shall receive not less than forty-five (45) nor more than ninety (90) days' notice: the Commonwealth's attorney who shall notify the sheriff of every county and the chief of police of every city and county in which the prisoner committed any Class A, B, or C felony for which he or she is imprisoned, and all identified victims of the crimes or the next of kin of any victim who is deceased. Notice to the Commonwealth's attorney shall be by mail, fax, or electronic means at the discretion of the board, and shall be in a manner that ensures receipt at the Commonwealth attorney's business office. Notices received by chiefs of police and sheriffs shall be posted in a conspicuous location where police employed by the department may see it. Notices shall be posted in a manner and at a time that will allow officers to make comment thereon to the Parole Board. Notice to victims or their next of kin shall be made, for prisoners incarcerated prior to July 15, 1986, by mail, fax, or electronic means at the discretion of the board, and shall be in a manner that ensures receipt by the Commonwealth's attorney, who shall forward the notice promptly to the victims or their next of kin at their last known address. For prisoners incarcerated on or after July 15, 1986, notice to the victims or their next of kin shall be by mail from the Parole Board to their last known address as provided by the Commonwealth's attorney to the Parole Board at the time of incarceration of the prisoner. Notice to the victim or the next of kin of subsequent considerations for parole after the initial consideration shall not be sent if the victim or the next of kin gives notice to the board that he or she no longer wants to receive such notices. The notice shall include the time, date, and place of the hearing provided for in this subsection, and the name and address of a person to write if the recipient of the notice desires to attend the hearing or to submit written comments.
- (6) Persons receiving notice as provided for in subsection (5) of this section may submit comments, in person or in writing, to the board upon all issues relating to the parole of the prisoner. The board shall read and consider all comments prior to making its parole decision, if they are received by the board not less than seven (7) days before the date for the hearing. The board shall retain all comments in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decisions affecting the prisoner. In addition to officers listed in subsection (5) of this section, the crime victims or the next of kin of any victim who is deceased or who is disabled and cannot attend the hearing or the parent or legal guardian of any victim who is a minor may attend the hearing provided for in subsection (5) of this section and present oral and written comments upon all issues relating to the parole of the prisoner, if they have advised the board, in writing received by the board not less than seven (7) days prior to the date set for the hearing, of their intention to attend the hearing. The board shall receive and consider all comments, shall make a record of them which it shall retain in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decision affecting the prisoner. Persons appearing before the Parole Board pursuant to this subsection may elect to make their presentations outside of the presence of the prisoner.

- (7) Victims of Class D felonies may submit comments in person or in writing to the board upon all issues relating to the parole of a prisoner.
- (8) Any hearing provided for in subsections (5), (6), and (7) of this section shall be open to the public unless the persons having a right to appear before the board as specified in those subsections request closure of hearing for reasons of personal safety, in which event the hearing shall be closed. The time, date, and location of closed hearings shall not be disclosed to the public.
- (9) Except as specifically set forth in this section, nothing in this section shall be deemed to expand or abridge any existing rights of persons to contact and communicate with the Parole Board or any of its members, agents, or employees.
- (10) The unintentional failure by the Parole Board, sheriff, chief of police, or any of its members, agents, or employees or by a Commonwealth's attorney or any of his or her agents or employees to comply with any of the provisions of subsections (5), (6), and (8) of this section shall not affect the validity of any parole decision or give rise to any right or cause of action by the crime victim, the prisoner, or any other person.
- (11) No eligible sexual offender within the meaning of KRS 197.400 to 197.440 shall be granted parole unless he or she has successfully completed the Sexual Offender Treatment Program.
- (12) Any prisoner who is granted parole after completion of the Sexual Offender Treatment Program shall be required, as a condition of his or her parole, to participate in regular treatment in a mental health program approved or operated by the Department of Corrections.
- (13) When the board grants parole contingent upon completion of a program, the commissioner, or his or her designee, shall determine the most appropriate placement in a program operated by the department or a residential or nonresidential program within the community approved by the department. If the department releases a parolee to a nonresidential program, the department shall release the parolee only if he or she will have appropriate community housing pursuant to KRS 439.3408.
- (14) If the parole board does not grant parole to a prisoner, the maximum deferment for a prisoner convicted of a non-violent, non-sexual Class C or Class D felony shall be twenty-four (24) months. For all other prisoners who are eligible for parole:
 - (a) No parole deferment greater than five (5) years shall be ordered unless approved by a majority vote of the full board; and
 - (b) No deferment shall exceed ten (10) years, except for life sentences.
- (15) When an order for parole is issued, it shall recite the conditions thereof.

KRS 439.3401 Parole for violent offenders -- Applicability of section to victim of domestic violence or abuse -- Time of offense -- Prohibition against award of credit.

- (1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of:
 - (a) A capital offense;
 - (b) A Class A felony;
 - (c) A Class B felony involving the death of the victim or serious physical injury to a victim;
 - (d) An offense described in KRS 507.040 or 507.050 where the offense involves the killing of a peace officer or firefighter while the officer or firefighter was acting in the line of duty;
 - (e) A Class B felony involving criminal attempt to commit murder under KRS 506.010 if the victim of the offense is a clearly identifiable peace officer or fire fighter acting in the line of duty, regardless of whether an injury results;
 - (f) The commission or attempted commission of a felony sexual offense described in KRS Chapter 510;
 - (g) Use of a minor in a sexual performance as described in KRS 531.310;
 - (h) Promoting a sexual performance by a minor as described in KRS 531.320;
 - (i) Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a);

- (j) Human trafficking under KRS 529.100 involving commercial sexual activity where the victim is a minor;
- (k) Criminal abuse in the first degree as described in KRS 508.100;
- (l) Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;
- (m) Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or
- (n) Robbery in the first degree.

The court shall designate in its judgment if the victim suffered death or serious physical injury.

- (2) A violent offender who has been convicted of a capital offense and who has received a life sentence (and has not been sentenced to twenty-five (25) years without parole or imprisonment for life without benefit of probation or parole), or a Class A felony and receives a life sentence, or to death and his or her sentence is commuted to a life sentence shall not be released on probation or parole until he or she has served at least twenty (20) years in the penitentiary. Violent offenders may have a greater minimum parole eligibility date than other offenders who receive longer sentences, including a sentence of life imprisonment.
- (3)
 - (a) A violent offender who has been convicted of a capital offense or Class A felony with a sentence of a term of years or Class B felony shall not be released on probation or parole until he has served at least eighty-five percent (85%) of the sentence imposed.
 - (b) A violent offender who has been convicted of a violation of KRS 507.040 where the victim of the offense was clearly identifiable as a peace officer or a firefighter and the victim was acting in the line of duty shall not be released on probation or parole until he or she has served at least eighty-five percent (85%) of the sentence imposed.
 - (c) A violent offender who has been convicted of a violation of KRS 507.040 or 507.050 where the victim of the offense was a peace officer or a firefighter and the victim was acting in the line of duty shall not be released on probation or parole until he or she has served at least fifty percent (50%) of the sentence imposed.
 - (d) Any offender who has been convicted of a homicide or fetal homicide offense under KRS Chapter 507 or 507A in which the victim of the offense died as the result of an overdose of a Schedule I controlled substance and who is not otherwise subject to paragraph (a), (b), or (c) of this subsection shall not be released on probation, shock probation, parole, conditional discharge, or other form of early release until he or she has served at least fifty percent (50%) of the sentence imposed
- (4) A violent offender shall not be awarded any credit on his sentence authorized by KRS 197.045(1)(b)1. In no event shall a violent offender be given credit on his or her sentence if the credit reduces the term of imprisonment to less than eighty-five percent (85%) of the sentence.
- (5) This section shall not apply to a person who has been determined by a court to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or serious physical injury to the victim. The provisions of this subsection shall not extend to rape in the first degree or sodomy in the first degree by the defendant.
- (6) This section shall apply only to those persons who commit offenses after July 15, 1998.
- (7) For offenses committed prior to July 15, 1998, the version of this statute in effect immediately prior to that date shall continue to apply.
- (8) The provisions of subsection (1) of this section extending the definition of "violent offender" to persons convicted of or pleading guilty to robbery in the first degree shall apply only to persons whose crime was committed after July 15, 2002.

KRS 439.3402 Exemption from KRS 439.3401 for victims of domestic violence and abuse - Procedures - Effect.

- (1) Any violent offender as defined in KRS 439.3401 who was convicted prior to July 14, 1992, who claims to come within the definitions of KRS 503.050 and 533.060 and the purview of this section as the victim of domestic violence and abuse may be exempt from KRS 439.3401 under the conditions set forth in this section.
- (2) (a) The offender shall file a motion in the Circuit Court in which the offender was convicted stating the facts which qualify the offender for exemption under this section.
(b) The motion shall state whether the offender requests an evidentiary hearing, or whether the offender relies on the record of evidence already on file with the Circuit Court.
(c) If the offender requests an evidentiary hearing the motion shall state what witnesses the offender wishes to testify and a brief summary of each witness' expected testimony.
(d) The motion shall state whether the offender wishes the court to appoint counsel to represent the offender or what attorney, if any, will represent the offender at the hearing. The appointment of counsel by the court shall be made in conformity with the provisions of KRS Chapter 31.
- (3) (a) The Commonwealth shall respond to the motion within twenty (20) days after the motion was filed.
(b) If the Commonwealth requests an evidentiary hearing and the offender did not, the Commonwealth's response shall state what witnesses and evidence the Commonwealth intends to introduce.
(c) The Commonwealth may stipulate to the offender's evidence stated in the motion in lieu of the evidentiary hearing.
- (4) The Circuit Court shall hold any evidentiary hearing within thirty (30) days after the Commonwealth's response was filed, or if the Commonwealth did not respond, within sixty (60) days.
- (5) The Circuit Court shall issue findings of fact and an order ruling upon the motion within thirty (30) days after the evidentiary hearing, or if no hearing was held, within sixty (60) days after the Commonwealth's response was filed or due to be filed.
- (6) The order of the Circuit Court may be appealed in the manner as authorized for judgments in criminal cases.
- (7) Only one (1) motion under this section may be filed by the same offender regarding the same conviction.
- (8) The effect of granting a motion under this section is to remove the status as a violent offender for the offense for which the motion was filed and permit the offender to be eligible for parole in the manner specified in KRS 439.340.

KRS 439.3405 Parole of prisoners with documented terminal medical conditions - Hearing.

- (1) Notwithstanding any statute eliminating parole or establishing minimum time for parole eligibility for a certain class or status of offender, including KRS 439.340(11), 439.3401, 532.080(7), and 533.060, the board, with the written consent of a majority of the full board, may review the case of any prisoner and release that prisoner on parole despite any elimination of or minimum time for parole eligibility, when the prisoner has a documented terminal medical condition likely to result in death within one (1) year or severe chronic lung disease, end-stage heart disease, severe neuro-muscular disease such as multiple sclerosis; or has severely limited mobility as a result of stroke, disease, or trauma; or is dependent on external life support systems and would not pose a threat to society if paroled.
- (2) Medical information considered under this section shall be limited to the medical findings supplied by Department of Corrections medical staff. The medical staff shall provide in writing the prisoner's diagnosis and prognosis in support of the conclusion that the prisoner suffers from a terminal medical condition likely to result in death within one (1) year or because of the

conditions set forth in subsection (1) of this section he or she is substantially dependent on others for the activities of daily living.

- (3) The medical information prepared by the Department of Corrections medical staff under this section shall be forwarded to the medical director of the Department of Corrections who shall submit that information and a recommendation for or against parole review under this section to the commissioner of the Department of Corrections or his or her designee. With the approval of the commissioner of the Department of Corrections, a request for parole review under this section, along with the medical information and medical director's recommendation, shall be submitted to the board.
- (4) Medical information presented under this section shall be considered along with other information relevant to a decision regarding the granting of parole and shall not constitute the only reason for granting parole.
- (5) Notwithstanding KRS 439.340(5), in addition to or in conjunction with each review conducted under subsection (1) of this section for any prisoner convicted of a Class A or B felony, or of a Class C felony involving violence or a sexual offense and prior to the granting of parole to any such prisoner, the Parole Board shall conduct a hearing of which the following persons shall receive not less than fifteen (15) nor more than thirty (30) days' notice:
 - (a) The Commonwealth's attorney, who shall notify the sheriff of every county and the chief of police of every city and county in which the prisoner committed any Class A, B, or C felony for which he or she is imprisoned; and
 - (b) All identified victims of the crimes or the next of kin of any victim who is deceased.

Notice to the Commonwealth's attorney shall be by mail, fax, or electronic means, at the discretion of the board, and shall be in a manner that ensures receipt at the Commonwealth attorney's business office. Notices received by chiefs of police and sheriffs shall be posted in a conspicuous location where police employed by the department may see it. Notices shall be posted in a manner and at a time that will allow officers to make comment thereon to the Parole Board. Notice to victims or their next of kin shall be made by mail, fax, or electronic means, at the discretion of the board, to their last known address or telephone number as provided by the Commonwealth's attorney to the Parole Board at the time of incarceration of the prisoner. Notice to the victim or the next of kin of subsequent considerations for parole after the initial consideration shall not be sent if the victim or the next of kin gives notice to the board that he or she no longer wants to receive such notices. The notice shall include the time, date, and place of the hearing provided for in this subsection, and the name and address of a person to write if the recipient of the notice desires to attend the hearing or to submit written comments.

501 KAR 1:030 Determining Parole Eligibility.

Section 1. Definitions.

- (1) "Board" is defined by KRS 439.250(5).
- (2) "Deferment" means a decision by the board that an inmate shall serve a specific number of months before further parole consideration.
- (3) "Detainer" means a document issued or made by a legal authority, authorizing the keeper of a prison or jail to keep the person named in the document in custody.
- (4) "Parole" means the release of an inmate with a signed parole certificate to:
 - (a) The community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision;
 - (b) Answer the detainer.
- (5) "Parole eligibility date" means the date set by the board for conducting parole hearings at the location designated for an inmate's parole release hearing to take place during the month the inmate becomes eligible for parole.

- (6) "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence..
- (7) "Parole for violent offender" is defined in KRS 439.3401.
- (8) "Physical injury" is defined in KRS 500.080(13)
- (9) "Serious physical injury" is defined in KRS 500.080(15).
- (10) "Serve-out", "SOT", or "serve-out-time" means a decision of the board that an inmate shall serve until the completion of his sentence.
- (11) "SOTP" means Sex Offender Treatment Program.

Section 2. Ineligibility.

- (1) An eligible sex offender, as defined in KRS 197.410(2), convicted prior to July 15, 1998 shall not be eligible for a parole consideration hearing unless:
 - (a) He has been denied entrance into the Sex Offender Treatment Program;
 - (b) He has been terminated from the SOTP; or
 - (c) He has successfully completed the SOTP.
- (2) On or after July 15, 1998, a sex offender's eligibility shall be governed by KRS 197.045(4).
- (3) On or after July 15, 1998, a person confined to a state penal institution or county jail as a result of the revocation of his conditional discharge by the court pursuant to KRS 532.043 and 532.060 shall not be eligible for parole consideration.
- (4) If an inmate is within sixty (60) days of being released by minimum expiration, administrative release, or maximum expiration at the time of his next scheduled parole hearing, the inmate shall not be eligible for parole.

Section 3. Parole Eligibility.

- (1) Initial parole review date. Except as provided by Section 2 of this administrative regulation, a person confined to a state penal institution or county jail shall have his case reviewed by the board, in accordance with the following schedules:
 - (a) A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years shall have his or her case reviewed by the Parole Board upon reaching his or her parole eligibility date as established in KRS 439.340(3)(a).
 - (b) For a felony offense committed prior to December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and including 15 years	2 years
More than 15 years, up to and including 21 years	4 years
More than 21 years, up to and including life	6 years

(c) For a felony offense committed after December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years
Persistent felony offender I in conjunction with a Class A, B, or C felony	10 years

(d) For any crime, committed on or after July 15, 1986, but prior to July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:

Sentences of a number of years	50% of the sentence received or 12 years, whichever is less
Sentence of life	12 years

(e) For a crime:

1. Committed on or after July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1;
2. Committed on or after July 15, 2002, which is:
 - a. Burglary in the first degree accompanied by the commission or attempted commission of a felony sexual offense in KRS Chapter 510;
 - b. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;
 - c. Burglary in the first degree accompanied by commission or attempted commission of kid-napping as prohibited by KRS 509.040; or
 - d. Robbery in the first degree;
3. Committed on or after July 12, 2006, which is:
 - a. A capital offense;
 - b. Class A felony;
 - c. Complicity to a Class A felony;
 - d. Class B felony involving the death of the victim or serious physical injury to a victim;
 - e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;
 - f. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);
 - g. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);
 - h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;
 - i. Promoting prostitution in the first degree as described in KRS 529.030(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;
 - j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;
 - k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

- l. Robbery in the first degree; or
- 4. Committed on or after June 26, 2007, which is:
 - a. A capital offense;
 - b. Class A felony;
 - c. Complicity to a Class A felony;
 - d. Class B felony involving the death of the victim or serious physical injury to a victim;
 - e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;
 - f. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);
 - g. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);
 - h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;
 - i. Human trafficking as described in KRS 529.010(5)(b) when the victim is a minor;
 - j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;
 - k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or
 - l. Robbery in the first degree:

Sentences of a number of years	85% of sentence received or 20 years, whichever is less
Sentence of life	20 years

- (f) For an individual serving multiple sentences, if one (1) or more of the crimes resulted in a conviction committed under paragraph (e) of this subsection and one (1) or more of the crimes resulted in a conviction committed under paragraph (c) of this subsection, parole eligibility shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.
- (2) Subsequent parole review. Except as provided in KRS 439.340(14)
 - (a) After the initial review for parole, a subsequent review, during confinement, shall be at the discretion of the board; and
 - (b) The board, at the initial or a subsequent review, may order a serve-out on a sentence.
- (3) Parole review with new felony conviction.
 - (a) If a confined prisoner is sentenced for a felony committed prior to the date of his current incarceration, he has not been discharged since his original admission, and if this new conviction will be served consecutively, the sentence received for the latter conviction shall be added to the sentence currently being served to determine his parole eligibility.
 - (b)
 - 1. If a confined prisoner is a returned parole violator who receives an additional consecutive sentence, his parole eligibility shall be set on the length on the new sentence only, beginning from the date of his final sentencing, unless the board has previously set a new parole eligibility date.
 - 2. If the board has previously set a new parole eligibility date, the parole eligibility date shall be the date which last occurs.
 - (c) If parole is recommended, and a confined prisoner receives an additional sentence after board consideration, but before his release:
 - 1. The recommendation of parole shall automatically be voided; and
 - 2. The new parole eligibility date shall be set based upon the date of original admission on the aggregate sentences.

- (4) Parole review for crimes committed while in an institution or while on escape. If an inmate commits a crime while confined in an institution or while on an escape and receives a concurrent or consecutive sentence for this crime, eligibility time towards parole consideration on the latter sentence shall not begin to accrue until he becomes eligible for parole on his original sentence. This shall include a life sentence.
- (a) Except as provided by paragraph (b) of this subsection, in determining parole eligibility for an inmate who receives a sentence for an escape, a sentence for a crime committed while in the institution, or on a sentence for a crime committed while on an escape, the total parole eligibility shall be set by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively:
 - 1. The amount of time to be served for parole eligibility on the original sentence;
 - 2. If the inmate has an additional sentence for escape, the amount of time to be served for parole eligibility on the additional sentence for the escape;
 - 3. If the inmate has an additional sentence for a crime committed while in the institution, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while in the institution; and
 - 4. If the inmate has an additional sentence for a crime committed while on escape, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while on escape.
 - (b) If the board has previously set a parole eligibility date for an inmate described in paragraph (a) of this subsection, and that date is later than that set under paragraph (a) of this subsection, the later date shall be the parole eligibility date.
 - (c)
 - 1. Except as provided by paragraph (b) of this subsection, if a confined prisoner who has previously met the board is given a deferment, escapes during the period of the deferment, and returns from that escape without a new sentence for the escape, the time out on the escape shall be added to the original deferment date to arrive at the new adjusted date.
 - 2. (a) If the prisoner later receives a sentence for the escape, the previous deferment shall be automatically voided and the new parole eligibility date shall be set based on the new sentence beginning from the date of sentencing for the new sentence, unless the deferment date set by the board is a later date than that set based on the new sentence.
 - (b) If the deferment date set by the board is a later date, the parole eligibility date shall be the date which last occurs.
 - (d) If an inmate receives a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence for a crime committed while on escape or confined in an institution, his parole eligibility date shall be set from the date of his new sentence or from the date previously set by the board, whichever occurs last.
 - (e) If an inmate receives a parole recommendation but escapes prior to being released, the parole recommendation shall be void. Upon return to a state institution, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines it may conduct a face-to-face hearing with this person at the institution with a three (3) member panel.
- (5) Parole reviews for persons on shock probation or on prerelease probation. If a person is shock probated, or on prerelease probation, and is later returned to the institution as a shock probation violator or prerelease probation violator, his new parole eligibility shall be calculated by adding the period of time the inmate is on shock probation or prerelease probation to his original parole eligibility date.
- (a) If a person on shock probation or prerelease probation is returned to the institution with a new consecutive sentence acquired while on shock probation or prerelease probation, he

shall be eligible for a parole hearing if he has reached parole eligibility on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation or prerelease probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences. The time spent out on shock probation or prerelease probation shall not be included as part of the total period of time to be served for parole eligibility.

- (b) If a person on parole is returned to the institution, has received a new sentence for a crime committed while on parole, and is probated or shock probated on the new sentence, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines, it may conduct a face-to-face hearing with this person at the institution with a panel of at least two (2) members.

Section 4. Emergency Authority.

If the Commissioner of the Department of Corrections gives notice to the board of a need to relieve state prison or local jail overpopulation, the board may authorize the Commissioner to release one (1) or more persons who have been granted parole but who remain in custody solely to meet the time service requirements of this administrative regulation, if:

- (1) Sixty (60) or fewer days remain between the date of the actual release and the date on which the inmate would otherwise be physically released on parole;
- (2) The release would not result in a violation of a statutorily set minimum service of time requirement, including that set out for violent offenders under KRS 439.3401; and
- (3) All other release requirements, including victim notification and re-entry planning, are completed.

KRS 439.341 Preliminary revocation hearings of probation, parole, and post-incarceration supervision violators.

Preliminary revocation hearings of probation, parole, and post-incarceration supervision violators shall be conducted by hearing officers. These hearing officers shall be attorneys, appointed by the board and admitted to practice in Kentucky, who shall perform the aforementioned duties and any others assigned by the board.

KRS 439.344 Effect of parole time on sentence -- Exceptions.

The period of time spent on parole shall count as a part of the prisoner's sentence, except when a parolee is:

- (1) Returned to prison as a parole violator for a new felony conviction;
- (2) Returned to prison as a parole violator after charges have been filed or an indictment has been returned for a felony offense committed while on parole and the prisoner is subsequently convicted of that offense;
- (3) Returned to prison as a parole violator and is subsequently convicted of a felony offense committed while on parole;
- (4) Returned to prison as a parole violator for absconding from parole supervision, except that the time spent on parole prior to absconding shall count as part of the prisoner's sentence;
- (5) Returned to prison as a parole violator and it is subsequently determined that he or she owes restitution pursuant to KRS 439.563 and has an arrearage on that restitution. Any credit withheld pursuant to this subsection shall be reinstated when the arrearage is paid in full;
- (6) Classified as a violent offender pursuant to KRS 439.3401; or
- (7) A registered sex offender pursuant to KRS 17.500 to 17.580.

KRS 439.346 Paroled prisoner or under post-incarceration supervision subject to orders of board.

During the period of his or her parole or post-incarceration supervision, the prisoner shall be amenable to the orders of the board and the department.

KRS 439.510 Information obtained by probation or parole officer to be privileged -Exception.

All information obtained in the discharge of official duty by any probation or parole officer shall be privileged and shall not be received as evidence in any court. Such information shall not be disclosed directly or indirectly to any person other than the court, board, cabinet, or others entitled under KRS 439.250 to 439.560 to receive such information, unless otherwise ordered by such court, board or cabinet. Information shall be made available to sex offender treatment programs operated or approved by the Department of Corrections or the Department for Behavioral Health, Developmental and Intellectual Disabilities who request the information in the course of conducting an evaluation or treatment pursuant to KRS 439.265(6), 532.045(3), or 532.050(4).

KRS 439.563 Restitution as condition of parole -- Board order -- Effect on length of parole.

- (1) When there is an identified victim of a defendant's crime to whom restitution has been ordered but not yet paid in full, or restitution has been ordered paid to a government agency and has not yet been paid in full, the Parole Board shall order the defendant to pay restitution as a condition of parole.
- (2) When the Parole Board orders restitution, the board shall:
 - (a) Order the restitution to be paid to a specific person or organization through the Division of Probation and Parole, which shall disburse the moneys as ordered by the board;
 - (b) Set the amount of restitution to be paid, if not already set;
 - (c) Set the amount and frequency of each restitution payment or require the payment to be made in a lump sum.
- (3) When the Parole Board orders restitution, the Department of Probation and Parole shall:
 - (a) Monitor and oversee the collection of the restitution;
 - (b) Institute parole violation proceedings if the restitution is not being paid;
 - (c) Institute sanctions against the defendant if restitution is not being paid and good cause is not shown for the nonpayment; and
 - (d) Maintain parole supervision over the defendant until restitution has been paid in full.
- (4) The board, in addition to any other sanctions which may be imposed on the defendant, ask a court to hold a defendant who is not paying restitution in the manner or amount prescribed in contempt of court.
- (5) Any statute relating to the length of parole supervision notwithstanding, the parole for a person owing restitution shall be until the restitution is paid in full, even if this would lengthen the period of supervision beyond the statutory limit of parole supervision or the statutory limit for serving out the sentence imposed.
- (6) Payment of restitution in full prior to the end of the period of parole supervision shall not shorten the period of parole supervision.

KRS 439.575 Prerelease probation of inmates program.

- (1) There is hereby created a program for prerelease probation of inmates confined in correctional facilities under the jurisdiction of or under contract to the Department of Corrections.
- (2) Any inmate who is in a prerelease program or eligible for a prerelease program as specified by administrative regulations of the Department of Corrections may apply to the sentencing court for prerelease probation.
- (3) The court, upon favorable recommendation of the Department of Corrections, may place the inmate on probation under those terms and conditions the court deems necessary, which may include but not need to be limited to those specified in KRS 533.030.
- (4) In particular, the court may require that an inmate placed on prerelease probation remain in a halfway house approved by the Department of Corrections and that the probationer pay the cost of his or her lodging in the halfway house and the costs of probation supervision in accordance with applicable statutes for probation supervision and persons granted work release from jail. Costs for lodging in a halfway house or other facility approved, but not

operated, by the Department of Corrections shall be paid by the defendant directly to the halfway house or other facility at the rate specified by court order or by the Department of Corrections.

- (5) An inmate placed on prerelease probation shall no longer be considered as an inmate of the Department of Corrections but shall be considered as a defendant placed on probation, subject to supervision by the Division of Probation and Parole, or other agency approved by the court, and the orders of the court.
- (6) A person placed on prerelease probation by the court who violates the conditions of his or her probation may be dealt with by the court in the same manner as any other person who violates the conditions of probation.
- (7) The period of probation under this section shall not exceed the maximum expiration date of the inmate applying for the probation.

F. SEX OFFENDER TREATMENT AND HIV TESTING

1. Adult Sex Offender Risk Assessment and Treatment

KRS 17.550 Definitions for KRS 17.550 to 17.991.

As used in KRS 17.550 to 17.991, the following definitions shall apply:

- (1) "The board" means the Sex Offender Risk Assessment Advisory Board created under KRS 17.554;
- (2) "Sex offender" means a person who has been convicted of a sex crime as defined in KRS 17.500;
- (3) "Approved provider" means a mental health professional licensed or certified in Kentucky whose scope of practice includes providing mental health treatment services and who is approved by the Sex Offender Risk Assessment Advisory Board, under administrative regulations promulgated by the board, to provide comprehensive sex offender presentence evaluations or treatment to adults and youthful offenders, as defined in KRS 600.020; and
- (4) "Victim" means victim as defined by KRS 421.500.

KRS 17.552 Approval requirement for sexual offender risk evaluations or treatment - Exemptions.

No person shall conduct comprehensive sex offender presentence evaluations or treatment without first obtaining approval from the Sex Offender Risk Assessment Advisory Board, except that the Department of Corrections sex offender treatment program shall be regulated under KRS 197.400 to 197.440 and excluded from the application of this statute, and the Department of Juvenile Justice sex offender treatment program shall be regulated under KRS 635.500 and 635.520 and excluded from the application of this statute.

KRS 17.554 Sex Offender Risk Assessment Advisory Board - Risk assessment procedure.

- (1) A Sex Offender Risk Assessment Advisory Board is hereby created. The board shall approve providers who shall conduct comprehensive sex offender presentence evaluations and treatment.
- (2) The board shall develop a comprehensive sex offender presentence evaluation that shall be used by approved providers in assessing the risk of recommitting a sex crime by a sex offender, the threat posed to public safety, amenability to sex offender treatment, and the nature of the required sex offender treatment. The evaluation shall be based upon, but not limited to the following factors:
 - (a) Criminal history;
 - (b) Nature of the offense;
 - (c) Conditions of release that minimize risk;
 - (d) Physical conditions that minimize risk;

- (e) Psychological or psychiatric profiles;
- (f) Recent behavior that indicates an increased risk of recommitting a sex crime;
- (g) Recent threats or gestures against persons or expressions of an intent to commit additional offenses; and
- (h) Review of the victim impact statement.

KRS 17.556 Membership of board -- Chair -- Terms - Committees.

The board shall consist of the members named in subsections (1) and (2) of this section:

- (1)
 - (a) The commissioner of the Department of Corrections, or the commissioner's designee;
 - (b) The commissioner of the Department of Juvenile Justice, or the commissioner's designee;
 - (c) The program administrator of the Sex Offender Treatment Program created pursuant to KRS 197.400; and
 - (d) The commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities, or the commissioner's designee.
- (2) The following members, appointed by the Governor:
 - (a) One (1) probation and parole officer;
 - (b) Four (4) mental health professionals licensed or certified pursuant to KRS Chapter 309, 311, 314, 319, or 335 who demonstrated expertise in working with sex offenders;
 - (c) One (1) professional working in an agency which provides services to adult or child victims of sex offenses; and
 - (d) One (1) representative of an advocacy group with a demonstrated interest in the welfare of victims of sex offenses.
- (3) The Governor shall appoint the first chair of the board who shall serve for a term of two (2) years after which the chair shall be elected by the members of the board.
- (4) The probation and parole officer and the members identified in subsection (2) of this section shall serve for the remainder of the term of office of the Governor during whose incumbency they were appointed, unless removed sooner for cause, but they shall remain on the board until their successors are appointed or until they are reappointed.
- (5) No member appointed pursuant to subsection (4) of this section may be represented by a designee.
- (6) No member appointed pursuant to subsection (4) of this section shall serve more than four (4) years unless reappointed.
- (7) All members identified under subsection (1) of this section shall serve during their terms of office.
- (8) All members of the board shall be reimbursed for their necessary travel and other expenses actually incurred in the discharge of their duties on the board.
- (9) The board shall be empowered to create committees for the purpose of carrying out its statutory duties.
- (10) The board shall be attached to the Department of Corrections for administrative purposes.

KRS 17.558 Issuance of approvals.

- (1) The board may issue, refuse to issue, reissue, or renew a provider approval, or may probate, suspend, or revoke the approval of a provider.
- (2) The board shall revoke the approval of a provider while his or her approval is suspended.

KRS 17.566 Use of "approved provider" designation restricted.

Only persons approved under KRS 17.500 to 17.580 and 17.991 may be known as approved providers in the Commonwealth of Kentucky, or use any words or letters or assume any titles or description tending to convey the impression that they are approved providers.

KRS 17.574 Forwarding of relevant information by certain facilities to approved provider for review prior to release - Confidentiality.

- (1) Any statutes to the contrary notwithstanding, all state or local detention or correctional facilities, hospitals, or institutions shall forward all relevant information pertaining to a sexual offender to be discharged, paroled, or released to the approved provider for review prior to the release or discharge for consideration in making recommendations to the sentencing court. The relevant information shall include but is not limited to:
 - (a) The institutional record;
 - (b) The medical record including all psychological records; and
 - (c) The treatment record.
- (2) All confidential records provided pursuant to this section shall remain confidential, unless otherwise ordered by a court or by another person duly authorized to release the information.

KRS 17.576 Privileged communications - Written waiver.

Communications made in the course of comprehensive sex offender presentence evaluations or treatment to the approved provider and any employee of the approved provider who is assigned to assist in the assessments shall be privileged from disclosure in any civil or criminal proceeding, other than to determine sentence, unless the offender consents in writing to the disclosure or the communication is related to an ongoing criminal investigation. The sexual offender shall be informed in writing of the limits of the privilege created in this section.

KRS 197.440 Sexual offender's communications which are privileged.

Communications made in the application for or in the course of a sexual offender's diagnosis and treatment in the program between a sexual offender or member of the offender's family and any employee of the department who is assigned to work in the program, or approved provider, as defined in KRS 17.500, shall be privileged from disclosure in any civil or criminal proceeding, other than proceedings to determine the sentence, unless the offender consents in writing to the disclosure or the communication is related to an ongoing criminal investigation. The privilege created by this section shall not extend to disclosures made for the purpose of determining whether the offender should continue to participate in the program. The provisions of KRS 620.030 shall not apply to a communication made, received, or overheard if the communication is made pursuant to this section. The offender shall be informed in writing of the limits of the privilege created in this section.

KRS 635.527 Disclosure of communications made in course of sexual offender's diagnosis and treatment.

Communications made in the application for or in the course of a child sexual offender's diagnosis and treatment in the program, between a sexual offender or member of the sexual offender's family and any employee of the department who is assigned to work in the program, or any approved provider as defined in KRS 17.500, shall be privileged from disclosure in any civil or criminal proceeding, other than proceedings to determine the sentence, unless the sexual offender consents in writing to the disclosure or the communication is related to an ongoing criminal investigation. The privilege created by this section shall not extend to disclosures made for the purpose of determining whether the sexual offender should continue to participate in the program. The provisions of KRS 620.030 shall not apply to a communication made, received, or overheard if the communication is made pursuant to this section. The child sexual offender shall be informed in writing of the limits of the privilege created by this section.

501 KAR 6:200 Comprehensive sex offender presentence evaluation procedure – Text included in Chapter 5, Section D.

501 KAR 6:220 Treatment for sex offenders.

Section 1. Definitions.

- (1) "Approved provider" is defined in KRS 17.550(3).
- (2) "Board" is defined in KRS 17.550(1).
- (3) "Community standards of care" means the standards of care generally accepted by sex offender treatment professionals within the commonwealth of Kentucky and taking into account the general standards of care for the mental health profession for which the approved provider is licensed or certified.
- (4) "Treatment services" is defined in KRS 197.420(2)(b).

Section 2. Procedures for Treatment of Sex Offenders.

- (1) Treatment shall conform to community standards of care, and shall include:
 - (a) A diagnosis; and
 - (b) A written treatment plan, which shall include:
 1. Goals and objectives; and
 2. Modalities of treatment and the rationale therefor.
- (2) Treatment shall be conducted in a psychotherapy format.
- (3) Treatment may utilize psychoeducational components if indicated.
- (4) Prior to providing treatment, an approved provider shall:
 - (a) Obtain written informed consent for treatment from the offender;
 - (b) Contact the offender's supervising probation and parole officer to discuss the offender and obtain offender information; and
 - (c) Make a good faith effort to obtain the offender's mental health records; and
 - (d) Submit a general treatment curriculum to the board that includes the required elements in Section 3(1) of this administrative regulation. If the approved provider intends to treat an offender who has already completed a sex offender treatment program, then the approved provider shall also submit a treatment curriculum that includes the required elements in Section 4(2) of this administrative regulation. If an approved provider proposes changes in his submitted treatment curriculum, the approved provider shall submit a treatment curriculum with the changes to the board for approval.
- (5) An approved provider shall:
 - (a) Provide psychological or pharmaco-therapy services or testing as needed or make the appropriate referral and act as liaison for the provision of services;
 - (b) Provide treatment consistent with current professional literature which minimizes the risk of reoffending and emphasizes community safety;
 - (c) Maintain an individual record which shall include documentation of the offender's attendance and evaluative progress notes;
 - (d) Obtain a release of information signed by the sex offender which allows the approved provider to release information to probation and parole personnel responsible for the sex offender's supervision and the Sex Offender Risk Assessment Advisory Board;
 - (e) Notify the offender's supervising probation and parole officer in writing if the offender fails to attend a treatment session or fails to make a good faith effort to participate in the treatment;
 - (f) Provide the Required Monthly Progress Report to the supervising probation and parole officer each month;
 - (g) Cooperate fully with the probation and parole supervision team responsible for a sex offender under the approved provider's treatment;
 - (h) Prepare a treatment summary at discharge from treatment; and
 - (i) Provide written notice of the sex-offender's discharge from treatment and the reason for discharge to the supervising probation and parole officer within ten (10) days of discharge.

Section 3. Procedures for Treatment of Sex Offenders Who Have Not Completed a Sex Offender Treatment Program.

If a sex offender has not completed a sex offender treatment program, an approved provider shall:

- (1) Use a treatment curriculum which, at a minimum, shall include:
 - (a) Treatment services as may be necessary to meet the needs of the individual offender;
 - (b) An emphasis on acceptance of responsibility by the offender for present and past sexual offending behavior;
 - (c) Gender and culture specific programming; and
 - (d) Education of the offender in:
 1. The cycle of sexual abuse;
 2. Human sexuality;
 3. Deviant arousal and its reduction;
 4. Cognitive restructuring;
 5. Relapse prevention;
 6. Partner and family interactions and support, if applicable;
 7. Victim empathy awareness; and
 8. Relationship skills; and
- (2) Provide a minimum of eighty (80) face-to-face sessions of at least forty-five (45) minutes for an individual session or ninety (90) minutes for a group session for at least twenty-four (24) months with a minimum of forty (40) face-to-face sessions conducted during the first twelve (12) months.

Section 4. Procedures For Treatment of Sex Offenders Who Have Completed a Sex Offender Treatment Program.

- (1) If a sex offender has completed a sex offender treatment program, an approved provider shall:
 - (a) Obtain documentation from the sex offender treatment program showing completion of the program;
 - (b) Assess and document whether the offender can demonstrate acceptable levels of skills and knowledge of treatment areas listed in Section 3(1)(d) of this administrative regulation;
 - (c) Require the offender to repeat the areas in Section 3(1)(d) of this administrative regulation in which he has not demonstrated competence; and
 - (d) Provide a minimum of fifty (50) face-to-face sessions of at least forty-five(45) minutes for an individual session or ninety (90) minutes for a group session for at least eighteen (18) months with a minimum of forty (40) face-to-face sessions conducted during the first twelve (12) months;
- (2) If an offender has completed a sex offender treatment program, the approved provider shall use a treatment curriculum which, at a minimum, shall include:
 - (a) Dynamic risk factors assessment;
 - (b) Basic ownership, which means a component for offender responsibility for sexual offending behavior;
 - (c) Relapse prevention;
 - (d) Development of treatment partner relationship, including partner alert sessions;
 - (e) Collaborative development of a practical living skills plan;
 - (f) Commitment to follow-up with adjunct therapies where needed, including the following:
Substance abuse; Domestic violence; Anger management; and Psychotropic medications;
and
 - (g) A plan for family and children reintegration.
- (3) Reintegration.
 - (a) Reintegration with a victim shall not comply with treatment requirements unless it is approved by the approved provider and the probation and parole officer.
 - (b) If the offender victimized a child, reintegration with other children shall not comply with treatment requirements unless approved by the approved provider and the probation and parole officer.

- (c) The approved provider and probation and parole officer shall address at a minimum the following when considering reintegration of an offender with a child victim or other children:
1. Assessment of age and sex of child victims and offender potential for cross-over;
 2. Assessment of how the offender accessed prior child victims and similarities to situations and persons with whom he is currently considering to reside;
 3. Assessment of adult partner's knowledge and insight into offender's dynamics; and
 4. A gradual reintegration process plan.

Section 5. Incorporation by Reference.

- (1) The Sex Offender Risk Assessment Advisory Board form "Required Monthly Progress Report", 4/12/05, 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, Office of Legal Services, 125 Holmes Street, Frankfort, KY 40601, phone (502) 564-3279, fax (502) 564-6686, Mon - Fri, 8am - 4:30pm.

2. Juvenile Sex Offender Risk Assessment and Treatment

KRS 635.500 Operation of treatment program for juvenile sexual offenders -- Purpose.

- (1) The Department of Juvenile Justice shall operate a program for the treatment of juvenile sexual offenders, referred to in KRS 635.500 to 635.545 as the "program."
- (2) The general purpose of the program shall be to provide early intervention and treatment of the juvenile sexual offender in an effort to affect the progression to adult criminal activity. Recognizing the significance of these offenses, the program shall endeavor to deter repeat offenses through mandatory follow-up and serve to protect potential victims in the community.

KRS 635.505 Definitions for Chapter.

As used in this chapter, unless the context otherwise requires:

- (1) The "treatment program" means a continuum of services provided in community and institutional settings designed to provide early intervention and treatment services for juvenile sexual offenders.
- (2) A "juvenile sexual offender" as used in this chapter means an individual who was at the time of the commission of the offense under the age of eighteen (18) years who is not actively psychotic or an individual with an intellectual disability and who has been adjudicated guilty of or has been convicted of or pled guilty to:
 - (a) A felony under KRS Chapter 510;
 - (b) Any other felony committed in conjunction with a misdemeanor described in KRS Chapter 510;
 - (c) Any felony under KRS 506.010 when the crime attempted is a felony or misdemeanor described in KRS Chapter 510;
 - (d) An offense under KRS 530.020;
 - (e) An offense under KRS 530.064(1)(a);
 - (f) An offense under KRS 531.310; or
 - (g) A misdemeanor offense under KRS Chapter 510.
- (3) A "juvenile sexual offender assessment" means an assessment of the child's adolescent social development, medical history, educational history, legal history, family history, substance abuse history, sexual history, treatment history, and recent behaviors, which shall be prepared in order to assist the courts in determining whether the child should be declared a juvenile sexual offender, and to provide information regarding the risk for reoffending and recommendations for treatment.

- (4) "Individual with an intellectual disability" as used in this section means a juvenile with a full scale intelligent quotient of seventy (70) or below.

KRS 635.510 Criteria for classification as juvenile sexual offender -- Juvenile sexual offender assessment.

- (1) A child, thirteen (13) years of age or older at the time of the commission of the offense, shall be declared a juvenile sexual offender if the child has been adjudicated guilty of an offense listed in KRS 635.505(2)(a), (b), (c), (d), (e), or (f).
- (2) (a) A child, less than thirteen (13) years of age, may be declared a juvenile sexual offender if the child has been adjudicated guilty of an offense listed in KRS 635.505(2).
(b) Any child, thirteen (13) years of age or older, may be declared a juvenile sexual offender if the child has been adjudicated guilty of an offense listed in KRS 635.505(2)(g).
- (3) Upon final adjudication by the juvenile court under subsection (2) of this section, the juvenile court judge shall order a juvenile sexual offender assessment to be conducted on the child by the Department of Juvenile Justice treatment program or by a qualified professional approved by the program which shall recommend whether the child be declared a sexual offender and receive sexual offender treatment. Upon receipt of the findings of the assessment, the juvenile court judge shall determine whether the child shall be declared a juvenile sexual offender, and, if so, shall initiate a referral to the Department of Juvenile Justice treatment program for treatment.

KRS 635.515 Treatment time -- Treatment agreement -- Reports -- Reviews.

- (1) A child declared a juvenile sexual offender shall be committed to the custody of the Department of Juvenile Justice and shall receive sexual offender treatment for not more than three (3) years, except that this period of sexual offender treatment may be extended for one (1) additional year by the sentencing court upon motion of the Department of Juvenile Justice, and the juvenile sexual offender shall not remain in the care of the Department of Juvenile Justice after the age of twenty-one (21) years.
- (2) Based on the assessment and evaluation of the juvenile sexual offender and his family, the Department of Juvenile Justice shall utilize the treatment setting which provides the least restrictive alternative as defined in KRS 600.020.
- (3) The program shall develop a written treatment agreement upon the child's placement in a community setting, detailing the responsibilities of the juvenile sexual offender, his family, and the program to include but not be limited to: attendance; participation in education; participation in planning and completion of treatment goals; curfew; visit of appropriate staff to the home; participation in parenting groups and family counseling; continued contact with the program, schools, and courts; insurance of legal rights; and discharge criteria.
- (4) The written treatment agreement shall be presented to the court, and the court shall include the agreement as part of the order except for good cause shown.
- (5) The program shall be responsible for sending written reports every sixty (60) days to the juvenile court judge concerning the participation of the juvenile sexual offender and family in the treatment program. The written report shall include information about the treatment received by the juvenile sexual offender and family, an assessment of the sexual offender's current condition, and recommendations by the program staff.
- (6) The case may be called for review upon the recommendation of the program staff or by the juvenile court judge at any time during the course of treatment. The review may be called to consider documentation of noncompliance, absenteeism, or unwillingness to acknowledge responsibility for sexually inappropriate behavior which may be remedied through the contempt powers of the court.

(7) A court review shall be requested by the program sixty (60) days prior to the recommended program release date. The juvenile court judge shall schedule a hearing to formally consider the recommendation of release from the program.

KRS 635.520 Responsibility for design of program -- Agreements with public and private agencies.

- (1) The Department of Juvenile Justice shall have the sole authority and responsibility for establishing the design of the juvenile sexual offender treatment program but shall consult with the Administrative Office of the Courts and the Cabinet for Health and Family Services.
- (2) The Department of Juvenile Justice may enter into agreements with public or private agencies in order to implement and operate the juvenile sexual offender treatment program

KRS 635.525 Maintenance of data -- Annual report.

The Department of Juvenile Justice shall maintain complete and comprehensive data on each juvenile sexual offender participating in the program and shall compile an annual statistical report on the program.

KRS 635.527 Disclosure of communications made in course of sexual offender's diagnosis and treatment.

Communications made in the application for or in the course of a child sexual offender's diagnosis and treatment in the program, between a sexual offender or member of the sexual offender's family and any employee of the department who is assigned to work in the program, or any approved provider as defined in KRS 17.500, shall be privileged from disclosure in any civil or criminal proceeding, other than proceedings to determine the sentence, unless the sexual offender consents in writing to the disclosure or the communication is related to an ongoing criminal investigation. The privilege created by this section shall not extend to disclosures made for the purpose of determining whether the sexual offender should continue to participate in the program. The provisions of KRS 620.030 shall not apply to a communication made, received, or overheard if the communication is made pursuant to this section. The child sexual offender shall be informed in writing of the limits of the privilege created by this section.

KRS 635.545 File of participants to be maintained -- Biennial report on whether participants later committed sex-related or other criminal offenses.

- (1) The Department of Juvenile Justice shall maintain on file the names and identities of program participants for a period of fifteen (15) years following their participation in the program. The names and identities shall not be disclosed except for the purposes allowed in this section.
- (2) On a biennial basis, the Department of Juvenile Justice shall request from the Administrative Office of the Courts and the Department of Kentucky State Police information concerning whether any of the individuals who participated in the program have been arrested, tried, convicted, or incarcerated for any offense under KRS Chapter 510, KRS 530.020, 530.064(1)(a), or 531.310, or any other criminal offense.
- (3) Each two (2) years, the Department of Juvenile Justice shall compile the information obtained and present it to the Governor, the Legislative Research Commission, and the Supreme Court. The report shall not contain the names of any of the individual participants but shall contain identifying information which may assist in the evaluation of the program and in determination of whether participants have engaged in further criminal behavior as juveniles or adults.

**KRS 630.080 Detention in secure juvenile detention facility or juvenile holding facility -
Limitation on detention of child.**

- (1) In order for the court to detain a child after the detention hearing, the Commonwealth shall establish probable cause at the detention hearing that the child is a status offender and that further detention of the child is necessary for the protection of the child or the community. If the Commonwealth fails to establish probable cause that the child is a status offender, the complaint shall be dismissed and the child shall be released. If the Commonwealth establishes probable cause that the child is a status offender, but that further detention of the child is not necessary for the protection of the child or the community, the child shall be released to the parent or person exercising custodial control or supervision of the child. If grounds are established that the child is a status offender, and that further detention is necessary, the child may be placed in a nonsecure setting approved by the Department of Juvenile Justice;
- (2) A status offender may be securely detained if the cabinet has initiated or intends to initiate transfer of the youth by competent document under the provisions of the interstate compact pursuant to KRS Chapter 615;
- (3) The appropriate public agency shall:
 - (a) Within twenty-four (24) hours, exclusive of weekends and holidays, of receiving notification, as provided in subsection (3) of KRS 17.510, that a status offender or alleged status offender has been detained on the allegation that the child has violated a valid court order, meet with and interview the child; and
 - (b) Within forty-eight (48) hours, exclusive of weekend and holidays, of the detention hearing required under KRS 64.005, prepare and deliver to the court the completed written report required by subsection (4) of this section and KRS 64.005 if the child remains in detention after the detention hearing, and prior to the disposition hearing if the child has not been detained; and
- (4) A status offender or alleged status offender who is subject to a valid court order may be securely detained upon a finding that the child violated the valid court order if the court does the following prior to ordering that detention:
 - (a) Affirms that the requirements for a valid court order were met at the time the original order was issued;
 - (b) Makes a determination during the adjudicatory hearing that the child violated the valid court order; and
 - (c) Within forty-eight (48) hours after the adjudicatory hearing on the violation of a valid court order by the child, exclusive of weekends and holidays, the court receives and reviews a written report prepared by an appropriate public agency that reviews the behavior of the child and the circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate. If a prior written report is included in the child's file, that report shall not be used to satisfy this requirement. The child may be securely detained for a period not to exceed forty-eight (48) hours, exclusive of weekends and holidays, pending receipt and review of the report by the court. The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure or nonsecure detention of a status offender.

3. HIV Testing

KRS 510.320 Human immunodeficiency virus testing for defendants accused of certain sexual offenses -- Results -- Counseling when test positive -- Cost -- Effect of appeal.

- (1) For purposes of this section, "human immunodeficiency virus test" means a test of an individual for presence of human immunodeficiency virus, or for antibodies or antigens that result from human immunodeficiency virus infection, or for any other substance specifically indicating human immunodeficiency virus infection.
- (2) A defendant charged with an offense pursuant to this chapter which has sexual intercourse or deviate sexual intercourse as an element, or has sexual contact as an element when the circumstances of the case demonstrate a possibility of transmission of human immunodeficiency virus, shall upon initial court appearance on the charge, be informed by the judge of the availability of human immunodeficiency virus testing. The judge shall also notify the victim of the offense, or parent or guardian of the victim, that the defendant has been so notified.
- (3) When a defendant has been convicted of any offense in subsection (2) of this section, other provisions of law to the contrary notwithstanding, the sentencing court, regardless of any prior human immunodeficiency virus test, shall order the defendant to undergo a human immunodeficiency virus test, under the direction of the Cabinet for Health and Family Services.
- (4)
 - (a) The result of any human immunodeficiency virus test conducted pursuant to this section shall not be a public record for purposes of KRS Chapter 61.
 - (b) The result of any human immunodeficiency virus test conducted pursuant to this section shall only be made available by the Cabinet for Health and Family Services to the victim, or the parent or guardian of a victim who is a minor, an individual with an intellectual disability, or mentally incapacitated, the defendant, the court issuing the order for testing, and to any other agency as directed pursuant to KRS Chapter 214.
 - (c) The Cabinet for Health and Family Services shall immediately provide to the victim the results of any human immunodeficiency virus test conducted under this section.
 - (d) In addition, the Cabinet for Health and Family Services shall provide to the Department of Corrections the result of any human immunodeficiency virus test conducted pursuant to this section which indicates that the defendant is infected with the human immunodeficiency virus. The Department of Corrections shall use this information solely for the purpose of providing medical treatment to the defendant while incarcerated in a state penitentiary or correctional institution or county jail.
- (5) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Cabinet for Health and Family Services shall provide counseling to the victim and the defendant regarding human immunodeficiency virus disease, and referral for appropriate health-care and support services.
- (6) The cost of testing under this section shall be paid by the defendant tested, unless the court has determined the defendant to be indigent.
- (7) Filing of a notice of appeal shall not automatically stay an order that the defendant submit to a human immunodeficiency virus test.

KRS 438.250 Mandatory testing for HIV, hepatitis B & C, tuberculosis, and other diseases for criminal defendants, inmates, and state patients under specified conditions -- Effect of refusal to be tested - Costs.

- (1) When a public servant, as defined in KRS 521.010, a health care professional who is licensed or certified under the laws of the Commonwealth, an employee of the health care professional, an employee of a health care facility that is licensed under the laws of the Commonwealth, or victim of a crime is bitten by, suffers a puncture wound caused by, or is exposed to the blood or body fluids of a criminal defendant, inmate, parolee, probationer, or patient or

resident of any health facility owned or operated by the Commonwealth, or the blood or body fluids of a criminal defendant, inmate, parolee, or probationer have come into contact with the skin or unprotected clothing of a public servant during any incident in which the public servant and the criminal defendant, inmate, parolee, or probationer are involved, the criminal defendant, inmate, parolee, or probationer shall be ordered to submit to testing for human immunodeficiency virus (HIV), hepatitis B and C viruses, and any other disease, if testing for that disease is recommended by the most current guidelines of the Centers for Disease Control and Prevention, and if testing for any of these conditions is recommended, then testing will be conducted as recommended by the Centers for Disease Control and Prevention.

- (2) The written results of the testing shall be made available to each public servant, victim of the crime, criminal defendant, inmate, parolee, or probationer coming within the purview of subsection (1). However, the results shall not be public records and shall be disclosed to others only on a need-to-know basis. The victim of the crime shall receive written results as provided in KRS 510.320.
- (3) If a criminal defendant, inmate, parolee, or probationer fails or refuses to be tested as ordered, he may be held in criminal contempt. A Circuit or District Judge shall compel the criminal defendant, inmate, parolee, or probationer to undergo the testing required herein if he fails or refuses to do so. Undergoing compulsory testing after a failure or refusal to be tested shall not relieve the criminal defendant, inmate, parolee, or probationer of the liability imposed by this subsection.
- (4) The costs of the testing shall be borne by the criminal defendant, inmate, parolee, or probationer unless he is determined unable to pay for the test by a court of competent jurisdiction for criminal defendants and probationers and by the Department of Corrections pursuant to their indigency standards for inmates and parolees, in which case the Commonwealth shall pay for the testing.
- (5) The provisions of subsections (1) to (4) of this section shall apply to juveniles falling within any category specified in subsections (1) to (4) of this section as well as to adults.

G. SEX OFFENDER REGISTRATION

1. Sex Offender Registration & Residency Restrictions

KRS 17.500 Definitions for KRS 17.500 to 17.580.

As used in KRS 17.500 to 17.580:

- (1) "Approved provider" means a mental health professional licensed or certified in Kentucky whose scope of practice includes providing mental health treatment services and who is approved by the Sex Offender Risk Assessment Advisory Board, under administrative regulations promulgated by the board, to provide comprehensive sex offender presentence evaluations or treatment to adults and youthful offenders, as defined in KRS 600.020;
- (2) "Cabinet" means the Justice and Public Safety Cabinet;
- (3) (a) Except as provided in paragraph (b) of this subsection, "criminal offense against a victim who is a minor" means any of the following offenses if the victim is under the age of eighteen (18) at the time of the commission of the offense:
 1. Kidnapping, as set forth in KRS 509.040, except by a parent;
 2. Unlawful imprisonment, as set forth in KRS 509.020, except by a parent;
 3. Sex crime;
 4. Promoting a sexual performance of a minor, as set forth in KRS 531.320;
 5. Human trafficking involving commercial sexual activity, as set forth in KRS 529.100;
 6. Promoting human trafficking involving commercial sexual activity, as set forth in KRS 529.110;

7. Promoting prostitution, as set forth in KRS 529.040, when the defendant advances or profits from the prostitution of a person under the age of eighteen (18);
 8. Use of a minor in a sexual performance, as set forth in KRS 531.310;
 9. Sexual abuse, as set forth in KRS 510.120 and 510.130;
 10. Unlawful transaction with a minor in the first degree, as set forth in KRS 530.064(1)(a);
 11. Any offense involving a minor or depictions of a minor, as set forth in KRS Chapter 531;
 12. Any attempt to commit any of the offenses described in subparagraphs 1. to 11. of this paragraph;
 13. Solicitation to commit any of the offenses described in subparagraphs 1. to 11. of this paragraph; or
 14. Any offense from another state or territory, any federal offense, or any offense subject to a court martial of the United States Armed Forces, which is similar to any of the offenses described in subparagraphs 1. to 13. of this paragraph.
- (b) Conduct which is criminal only because of the age of the victim shall not be considered a criminal offense against a victim who is a minor if the perpetrator was under the age of eighteen (18) at the time of the commission of the offense;
- (4) "Law enforcement agency" means any lawfully organized investigative agency, sheriff's office, police unit, or police force of federal, state, county, urban-county government, charter county, city, consolidated local government, or a combination of these, responsible for the detection of crime and the enforcement of the general criminal federal or state laws;
- (5) "Registrant" means:
- (a) Any person eighteen (18) years of age or older at the time of the offense or any youthful offender, as defined in KRS 600.020, who has committed:
 1. A sex crime; or
 2. A criminal offense against a victim who is a minor; or
 - (b) Any person required to register under KRS 17.510; or
 - (c) Any sexually violent predator; or
 - (d) Any person whose sexual offense has been diverted pursuant to KRS 533.250, until the diversionary period is successfully completed;
- (6) "Registrant information" means the name, including any lawful name change together with the previous name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, fingerprints, palm prints, DNA sample, a photograph, aliases used, residence, motor vehicle operator's license number as well as any other government-issued identification card numbers, if any, a brief description of the crime or crimes committed, and other information the cabinet determines, by administrative regulation, may be useful in the identification of registrants;
- (7) "Residence" means any place where a person sleeps. For the purposes of this statute, a registrant may have more than one (1) residence. A registrant is required to register each residence address;
- (8) "Sex crime" means:
- (a) A felony offense defined in KRS Chapter 510, or KRS 530.020, 530.064(1)(a), 531.310, 531.320, or 531.335;
 - (b) A felony attempt to commit a felony offense specified in paragraph (a) of this subsection; or
 - (c) A federal felony offense, a felony offense subject to a court-martial of the United States Armed Forces, or a felony offense from another state or a territory where the felony offense is similar to a felony offense specified in paragraph (a) of this subsection;
- (9) "Sexual offender" means any person convicted of, pleading guilty to, or entering an Alford plea to a sex crime as defined in this section, as of the date the verdict is entered by the court;
- (10) "Sexually violent predator" means any person who has been subjected to involuntary civil commitment as a sexually violent predator, or a similar designation, under a state, territory, or federal statutory scheme;

- (11) "The board" means the Sex Offender Risk Assessment Advisory Board created under KRS 17.554;
- (12) "Victim" has the same meaning as in KRS 421.500;
- (13) "DNA sample" or "deoxyribonucleic acid sample" means a blood or swab specimen from a person, as prescribed by administrative regulation, that is required to provide a DNA sample pursuant to KRS 17.170 or 17.510, that shall be submitted to the Department of Kentucky State Police forensic laboratory for law enforcement identification purposes and inclusion in law enforcement identification databases; and
- (14) "Authorized personnel" means an agent of state government who is properly trained in DNA sample collection pursuant to administrative regulation.

KRS 17.510 Registration system for adults who have committed sex crimes or crimes against minors -- Persons required to register -- Exemption for registration for juveniles to be retroactive -- Manner of registration -- Penalties -- Notifications of violations required.

- (1) The cabinet shall develop and implement a registration system for registrants which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.
- (2) A registrant shall, on or before the date of his or her release by the court, the parole board, the cabinet, or any detention facility, register with the appropriate local probation and parole office in the county in which he or she intends to reside. The person in charge of the release shall facilitate the registration process.
- (3) Any person required to register pursuant to subsection (2) of this section shall be informed of the duty to register by the court at the time of sentencing if the court grants probation or conditional discharge or does not impose a penalty of incarceration, or if incarcerated, by the official in charge of the place of confinement upon release. The court and the official shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register has been explained to the person. The court and the official in charge of the place of confinement shall require the release to complete the acknowledgment form and the court or the official shall retain the original completed form. The official shall then send the form to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.
- (4) The court or the official shall order the person to register with the appropriate local probation and parole office which shall obtain the person's fingerprints, palm prints, DNA sample, photograph, and a copy of his or her motor vehicle operator's license as well as any other government-issued identification cards, if any. Thereafter, the registrant shall return to the appropriate local probation and parole office not less than one (1) time every two (2) years in order for a new photograph to be obtained, and the registrant shall pay the cost of updating the photo for registration purposes. Any registrant who has not provided palm prints, a copy of his or her motor vehicle operator's license, or a copy of any other government-issued identification cards, if any, as of July 14, 2018, shall provide the information to the appropriate local probation and parole office when the registrant appears for a new photograph to be obtained. Any change to a registrant's motor vehicle operator's license number or any other government-issued identification card after the registrant appears for a new photograph shall be registered in accordance with subsection (10) of this section. Failure to comply with this requirement shall be punished as set forth in subsection (11) of this section.
- (5) (a) The appropriate probation and parole office shall send the registration form containing the registrant information, fingerprints, palm prints, photograph, and a copy of his or her motor vehicle operator's license as well as any other government-issued identification cards, if any, and any special conditions imposed by the court or the Parole Board, to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601. The appropriate probation and parole office shall send the DNA sample to the Department

of Kentucky State Police forensic laboratory in accordance with administrative regulations promulgated by the cabinet.

- (b) The Information Services Center, upon request by a state or local law enforcement agency, shall make available to that agency registrant information, including a person's fingerprints and photograph, where available, as well as any special conditions imposed by the court or the Parole Board.
 - (c) Any employee of the Justice and Public Safety Cabinet who disseminates, or does not disseminate, registrant information in good-faith compliance with the requirements of this subsection shall be immune from criminal and civil liability for the dissemination or lack thereof.
- (6) (a) Except as provided in paragraph (b) of this subsection, any person who has been convicted in a court of any state or territory, a court of the United States, or a similar conviction from a court of competent jurisdiction in any other country, or a court martial of the United States Armed Forces of a sex crime or criminal offense against a victim who is a minor and who has been notified of the duty to register by that state, territory, or court, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws, or has a similar conviction from a court of competent jurisdiction in any other country, shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register with the appropriate local probation and parole office in the county of residence within five (5) working days of relocation. No additional notice of the duty to register shall be required of any official charged with a duty of enforcing the laws of this Commonwealth.
- (b) No person shall be required to register under this subsection for a juvenile adjudication if such an adjudication in this Commonwealth would not create a duty to register. This paragraph shall be retroactive.
- (7) (a) Except as provided in paragraph (b) of this subsection, if a person is required to register under federal law or the laws of another state or territory, or if the person has been convicted of an offense in a court of the United States, in a court martial of the United States Armed Forces, or under the laws of another state or territory that would require registration if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register within five (5) working days with the appropriate local probation and parole office in the county of residence, employment, vocation, or schooling. A person required to register under federal law or the laws of another state or territory shall be presumed to know of the duty to register in the Commonwealth. As used in this subsection, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.
- (b) No person shall be required to register under this subsection for a juvenile adjudication if such an adjudication in this Commonwealth would not create a duty to register. This paragraph shall be retroactive.
- (8) The registration form shall be a written statement signed by the person which shall include registrant information, including an up-to-date photograph of the registrant for public dissemination.

- (9) For purposes of KRS 17.500 to 17.580 and 17.991, a post office box number shall not be considered an address.
- (10) (a) If the residence address of any registrant changes, but the registrant remains in the same county, the person shall register, on or before the date of the change of address, with the appropriate local probation and parole office in the county in which he or she resides.
- (b) 1. If the registrant changes his or her residence to a new county, the person shall notify his or her current local probation and parole office of the new residence address on or before the date of the change of address.
2. The registrant shall also register with the appropriate local probation and parole office in the county of his or her new residence no later than five (5) working days after the date of the change of address.
- (c) If the:
1. Motor vehicle operator's license number or any other government-issued identification card number of any registrant changes; or
2. Registrant obtains for the first time a motor vehicle operator's license number or any other government-issued identification card number; then, the registrant shall register the change or addition no later than five (5) working days after the date of the change or the date of the addition, with the appropriate local probation and parole office in the county in which he or she resides.
- (d) 1. As soon as a probation and parole office learns of the person's new address under paragraph (b)1. of this subsection, that probation and parole office shall notify the appropriate local probation and parole office in the county of the new address of the effective date of the new address.
2. As soon as a probation and parole office learns of the person's new address under paragraph (b)2. of this subsection, that office shall forward this information as set forth under subsection (5) of this section.
- (e) 1. A registrant shall register the following information with the appropriate local probation and parole office no less than twenty-one (21) days before traveling outside of the United States:
- a. His or her passport number and country of issue;
- b. The dates of departure, travel, and return; and
- c. The foreign countries, colonies, territories, or possessions that the registrant will visit.
2. The appropriate local probation and parole office no later than five (5) working days after the date of his or her return from traveling outside of the United States:
- a. The date he or she departed, traveled, and returned; and
- b. The foreign countries, colonies, territories, or possessions that the registrant visited.
- (11) Any person required to register under this section who knowingly violates any of the provisions of this section or prior law is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (12) Any person required to register under this section or prior law who knowingly provides false, misleading, or incomplete information is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (13) (a) The cabinet shall verify the addresses, names, motor vehicle operator's license numbers, and government-issued identification card numbers of individuals required to register under this section. Verification shall occur at least once every ninety (90) days for a person required to register under KRS 17.520(2) and at least once every calendar year for a person required to register under KRS 17.520(3).
- (b) If the cabinet determines that a person has:
1. Moved without providing his or her new address; or
2. A new name, motor vehicle operator's license number, or government- issued

identification card number that he or she has not provided; to the appropriate local probation and parole office or offices as required under subsection (10) (a), (b), and (c) of this section, the cabinet shall notify the appropriate local probation and parole office of the new address, name, motor vehicle operator's license number, or government-issued identification card number used by the person. The office shall then forward this information as set forth under subsection (5) of this section. The cabinet shall also notify the appropriate court, Parole Board, and appropriate Commonwealth's attorney, sheriff's office, probation and parole office, corrections agency, and law enforcement agency responsible for the investigation of the report of noncompliance.

- (c) An agency that receives notice of the noncompliance from the cabinet under paragraph (a) of this subsection:
1. Shall consider revocation of the parole, probation, post-incarceration, supervision, or conditional discharge of any person released under its authority; and
 2. Shall notify the appropriate county or Commonwealth's Attorney for prosecution.

KRS 17.520 Period of registration.

- (1) A registrant, upon his or her release by the court, the Parole Board, the cabinet, or any detention facility, shall be required to register for a period of time required under this section.
- (2) (a) Lifetime registration is required for:
1. Any person who has been convicted of kidnapping, as set forth in KRS 509.040, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;
 2. Any person who has been convicted of unlawful imprisonment, as set forth in KRS 509.020, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;
 3. Any person convicted of a sex crime:
 - a. Who has one (1) or more prior convictions of a felony criminal offense against a victim who is a minor; or
 - b. Who has one (1) or more prior sex crime convictions;
 4. Any person who has been convicted of two (2) or more felony criminal offenses against a victim who is a minor;
 5. Any person who has been convicted of:
 - a. Rape in the first degree under KRS 510.040; or
 - b. Sodomy in the first degree under KRS 510.070; and
 6. Any sexually violent predator.
- (3) All other registrants are required to register for twenty (20) years following discharge from confinement or twenty (20) years following the maximum discharge date on probation, shock probation, conditional discharge, parole, or other form of early release, whichever period is greater.
- (4) If a person required to register under this section is reincarcerated for another offense or as the result of having violated the terms of probation, parole, post-incarceration supervision, or conditional discharge, the registration requirements and the remaining period of time for which the registrant shall register are tolled during the reincarceration.
- (5) A person who has pled guilty, entered an Alford plea, or been convicted in a court of another state or territory, in a court of the United States, or in a court-martial of the United States Armed Forces who is required to register in Kentucky shall be subject to registration in Kentucky based on the conviction in the foreign jurisdiction. The Justice and Public Safety Cabinet shall promulgate administrative regulations to carry out the provisions of this subsection.

- (6) The court shall designate the registration period as mandated by this section in its judgment and shall cause a copy of its judgment to be mailed to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.

KRS 17.530 Authority to share information from registrations.

The cabinet may share information gathered pursuant to KRS 17.510 with law enforcement agencies of this state, other states, and the federal government in the course of their official duties.

KRS 17.540. Short title for KRS 17.500 to 17.540.

KRS 17.500 to 17.540 may be cited as the "Sex Offender Registration Act"

KRS 17.545 Registrant prohibited from residing or being present in certain areas -- Violations -- Exception.

- (1) No registrant, as defined in KRS 17.500, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility. The measurement shall be taken in a straight line from the nearest property line of the school to the nearest property line of the registrant's place of residence.
- (2) No registrant, as defined in KRS 17.500, nor any person residing outside of Kentucky who would be required to register under KRS 17.510 if the person resided in Kentucky, shall be on the clearly defined grounds of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility, except with the advance written permission of the school principal, the school board, the local legislative body with jurisdiction over the publicly owned playground, or the day care director that has been given after full disclosure of the person's status as a registrant or sex offender from another state and all registrant information as required in KRS 17.500. As used in this subsection, "local legislative body" means the chief governing body of a city, county, urban-county government, consolidated local government, charter county government, or unified local government that has legislative powers.
- (3) For purposes of this section:
- (a) The registrant shall have the duty to ascertain whether any property listed in subsection (1) of this section is within one thousand (1,000) feet of the registrant's residence; and
- (b) If a new facility opens, the registrant shall be presumed to know and, within ninety (90) days, shall comply with this section.
- (4)
- (a) Except as provided in paragraph (b) of this subsection, no registrant who is eighteen (18) years of age or older and has committed a criminal offense against a victim who is a minor shall have the same residence as a minor.
- (b) A registrant who is eighteen (18) years of age or older and has committed a criminal offense against a victim who is a minor may have the same residence as a minor if the registrant is the spouse, parent, grandparent, stepparent, sibling, stepsibling, or court-appointed guardian of the minor, unless the spouse, child, grandchild, stepchild, sibling, stepsibling, or ward was a victim of the registrant.
- (c) This subsection shall not operate retroactively and shall apply only to a registrant that committed a criminal offense against a victim who is a minor after July 14, 2018.
- (5) Any person who violates subsection (1) or (4) of this section shall be guilty of:
- (a) A Class A misdemeanor for a first offense; and
- (b) A Class D felony for the second and each subsequent offense.
- (6) Any registrant residing within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility on July 12, 2006, shall move and comply with this section within ninety (90) days of July 12, 2006, and thereafter, shall be subject to the penalties set forth under subsection (5) of this section.

(7) This section shall not apply to a youthful offender probated or paroled during his or her minority or while enrolled in an elementary or secondary education program.

KRS 17.546 Registrant prohibited from using social networking Web site or instant messaging or chat room program accessible by minors, exception for parents -- Registrant prohibited from photographing, filming, or making a video of a minor without consent of minor's parent or guardian.

(1)

(a) As used in this subsection, "electronic communications" means any transfer of information, including signs, signals, data, writings, images, sounds, text, voice, and video, transmitted primarily through the use of electrons or electromagnetic waves or particles.

(b) Except as provided in paragraph (c) of this subsection, a registrant who has committed a criminal offense against a victim who is a minor after July 14, 2018, shall not knowingly or intentionally use electronic communications for communicating with or gathering information about a person who is less than eighteen (18) years of age.

(c) It is not a violation of paragraph (b) of this subsection for a registrant to use electronic communications to communicate with or gather information about a person under the age of eighteen (18) years of age if:

1. The registrant is the parent of the person; and
2. The registrant is not prohibited by court order, or the terms of probation, shock probation, conditional discharge, parole, or any other form of early release, from communicating with or gathering information about a person.

(2) No registrant shall intentionally photograph, film, or video a minor through traditional or electronic means without the written consent of the minor's parent, legal custodian, or guardian unless the registrant is the minor's parent, legal custodian, or guardian. The written consent required under this subsection shall state that the person seeking the consent is required to register as a sex offender under Kentucky law.

(3) Any person who violates subsection (1) or (2) of this section shall be guilty of a Class A misdemeanor.

KRS 17.547 Persons immune from suit for good faith conduct under KRS 17.500 to 17.580 and 17.991.

The following shall be immune from suit for good faith conduct under KRS 17.500 to 17.580 and 17.991:

- (1) Law enforcement agencies including the cabinet;
- (2) Independent contractors acting under the direction of law enforcement agencies;
- (3) State and county officials;
- (4) Approved providers, as defined in KRS 17.500; and
- (5) Employees of any of the agencies, entities, and persons identified in subsections (1), (2), (3), and (4) of this section.

KRS 17.549 False statements to law enforcement officials regarding noncompliant registrant -- Harboring - Violation.

(1) A person shall be guilty of making a false statement to a law enforcement official when he or she intentionally misleads any law enforcement official regarding a noncompliant registrant.

(2) A person shall be guilty of harboring when he or she intentionally allows a registrant to reside at his or her residence to avoid registration if the address is not the address the registrant listed as his or her residence address.

- (3) For the purposes of this section, law enforcement officials include the Attorney General, elected sheriffs, deputy sheriffs, city police officers, county police officers, state police officers, probation and parole officers, state and federal prosecutors, and investigators employed by any of these officers.
- (4) A person who violates this section shall be guilty of a Class A misdemeanor for a first offense and a Class D felony for each subsequent offense.

KRS 17.578 Termination of duty to register.

A person required to register under the provisions of KRS 17.510 and 17.520 shall be relieved of any further duty to register only upon reversal of the underlying conviction or upon a pardon.

KRS 17.580 Duty of Department of Kentucky State Police to maintain and update Web site containing information about adults who have committed sex crimes or crimes against minors -- Immunity from liability for good-faith dissemination of information -- Justice and Public Safety Cabinet to establish toll-free telephone number -- Permission for local law enforcement agency to notify of registrants in jurisdiction.

- (1) The Department of Kentucky State Police shall establish a Web site available to the public. The Web site shall display:
 - (a) The registrant information, except for information that identifies a victim, DNA samples, fingerprints, palm prints, Social Security numbers, motor vehicle operator's license numbers, and government-issued identification card numbers obtained by the Information Services Center, Department of Kentucky State Police, under KRS 17.510;
 - (b) The sex offender information, except for information that identifies a victim, DNA samples, Social Security numbers, and vehicle registration data, obtained by the Information Services Center, Department of Kentucky State Police, under KRS 17.510 prior to April 11, 2000; and
 - (c) The registrant's conviction, the elements of the offense for which the registrant was convicted, whether the registrant is currently on probation or parole, and whether the registrant is compliant or noncompliant.The Web site shall be updated every day except for Saturdays, Sundays, and state holidays.
- (2) The information pertaining to an individual shall be maintained on the Web site so long as that individual is registered in accordance with KRS 17.500 to 17.580.
- (3) The following language shall be prominently displayed on the Web site: "UNDER KRS 525.070 AND 525.080, USE OF INFORMATION OBTAINED FROM THIS WEB SITE TO HARASS A PERSON IDENTIFIED ON THIS WEB SITE IS A CRIMINAL OFFENSE PUNISHABLE BY UP TO NINETY (90) DAYS IN THE COUNTY JAIL. MORE SEVERE CRIMINAL PENALTIES APPLY FOR MORE SEVERE CRIMES COMMITTED AGAINST A PERSON IDENTIFIED ON THIS WEB SITE."
- (4)
 - (a) Any Department of Kentucky State Police employee who disseminates, or does not disseminate, registrant information or sex offender information in good-faith compliance with the requirements of this section shall be immune from criminal and civil liability for the dissemination or lack thereof.
 - (b) Any person, including an employee of a sheriff's office, acting in good faith in disseminating, or not disseminating, information previously disseminated by the Department of Kentucky State Police shall be immune from criminal and civil liability for the dissemination or lack thereof.
- (5) The cabinet shall establish a toll-free telephone number for a person to call to learn the identity of the Web site created in this section and the location of public access to the Web site in the county where the person resides.
- (6) In addition to the Web site, a local law enforcement agency may provide personal notification regarding the registrants located in its jurisdiction. Any notification shall contain the warning specified in subsection (3) of this section.

2. Employment & Volunteer Background Checks

KRS 15.382 Minimum qualifications for certification (for a Law Enforcement Officer).

NOTE: Statute effective January 1, 2019, subsequent to the publishing of this manual.

A person certified after December 1, 1998, under KRS 15.380 to 15.404 shall, at the time of becoming certified, meet the following minimum qualifications:

- (1) Be a citizen of the United States;
- (2) Be at least twenty-one (21) years of age;
- (3) (a) Be a high school graduate, regardless of whether the school is accredited or certified by a governing body, provided that the education received met the attendance and curriculum standards of Kentucky law at the time of graduation, as determined by the Kentucky Department of Education; or
(b) Possess a High School Equivalency Diploma;
- (4) Possess a valid license to operate a motor vehicle;
- (5) Be fingerprinted for a criminal background check;
- (6) Not have been convicted of any felony;
- (7) Not be prohibited by federal or state law from possessing a firearm;
- (8) Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;
- (9) Have not received a dishonorable discharge, bad conduct discharge, or general discharge under other than honorable conditions, if having served in any branch of the Armed Forces of the United States;
- (10) Have passed a medical examination as defined by the council by administrative regulation and provided by a licensed physician, physician assistant, or advanced practice registered nurse to determine if he can perform peace officer duties as determined by a validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall pass the medical examination, appropriate to the agency's job task analysis, of the employing agency. All agencies shall certify passing medical examination results to the council, which shall accept them as complying with KRS 15.310 to 15.510;
- (11) Have passed a drug screening test administered or approved by the council by administrative regulation. A person shall be deemed to have passed a drug screening test if the results of the test are negative for the use of an illegal controlled substance or prescription drug abuse. Any agency that administers its own test that meets or exceeds this standard shall certify passing test results to the council, which shall accept them as complying with KRS 15.310 to 15.510;
- (12) Have undergone a background investigation established or approved by the council by administrative regulation to determine suitability for the position of a peace officer. If the employing agency has established its own background investigation that meets or exceeds the standards of the council, as set forth by administrative regulation, the agency shall conduct the background investigation and shall certify background investigation results to the council, which shall accept them as complying with KRS 15.310 to 15.510;
- (13) Have been interviewed by the employing agency;
- (14) Not have had certification as a peace officer permanently revoked in another state;
- (15) Have taken a psychological suitability screening administered or approved by the council by administrative regulation to determine the person's suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take that agency's psychological examination, appropriate to the agency's job task analysis. All agencies shall certify psychological examination results to the council, which shall accept them as complying with KRS 15.310 to 15.510;
- (16) Have passed a physical agility test administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties as determined by a

council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take the physical agility examination of the employing agency. All agencies shall certify physical agility examination results to the council, which shall accept them as demonstrating compliance with KRS 15.310 to 15.510; and

- (17) Have taken a polygraph examination administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties. Any agency that administers its own polygraph examination as approved by the council shall certify the results that indicate whether a person is suitable for employment as a peace officer to the council, which shall accept them as complying with KRS 15.310 to 15.510.

KRS 15.3971 Court security officers -- Minimum qualifications - Exceptions.

- (1) A person certified as a court security officer after June 26, 2007, under KRS 15.380 to 15.404 shall, at the time of becoming certified, meet the following minimum qualifications:
- (a) Be a citizen of the United States;
 - (b) Be at least twenty-one (21) years of age;
 - (c) 1. Be a high school graduate, regardless of whether the school is accredited or certified by a governing body, provided that the education received met the attendance and curriculum standards of Kentucky law at the time of graduation, as determined by the Kentucky Department of Education; or
2. Possess a high school diploma or a High School Equivalency Diploma;
 - (d) Possess a valid license to operate a motor vehicle;
 - (e) Be fingerprinted for a criminal background check;
 - (f) Not have been convicted of any felony;
 - (g) Not be prohibited by federal or state law from possessing a firearm;
 - (h) Have received and read the Kentucky Law Enforcement Officers Code of Ethics, as established by the council;
 - (i) Have not received a dishonorable discharge, a bad conduct discharge, or general discharge under other than honorable conditions if he or she served in any branch of the Armed Forces of the United States;
 - (j) Have passed a drug screening test administered or approved by the council by administrative regulation. A person shall be deemed to have passed a drug screening test if the results of the test are negative for the use of an illegal controlled substance or prescription drug abuse. Any agency that administers its own test that meets or exceeds this standard shall certify passing test results to the council, which shall accept them as complying with KRS 15.380 to 15.404;
 - (k) Have undergone a background investigation established or approved by the council by administrative regulation to determine suitability for the position of a court security officer. If the employing agency has established its own background investigation that meets or exceeds the standards of the council, as set forth by administrative regulation, the agency shall conduct the background investigation and shall certify background investigation results to the council, which shall accept them as complying with KRS 15.380 to 15.404;
 - (l) Have been interviewed by the employing agency;
 - (m) Have taken a psychological suitability screening administered or approved by the council by administrative regulation to determine the person's suitability to perform court security officer duties; and
 - (n) Have taken a polygraph examination administered or approved by the council by administrative regulation to determine his or her suitability to perform court security officer duties. Any agency that administers its own polygraph examination as approved by the council shall certify the results that indicate whether a person is suitable for employment as a court security officer to the council, which shall accept them as complying with KRS 15.380 to 15.404.

- (2) A court security officer employed on or before June 26, 2007, shall comply with the requirements of subsection (1) of this section within six (6) months of June 26, 2007.
- (3) A peace officer who has previously attended law enforcement basic training and met the certification requirements of KRS 15.380 and 15.382 shall not be required to meet the requirements of this section to be appointed a court security officer, but shall meet the requirements of KRS 15.386(3).

KRS 160.151 Criminal background check on certified employees and student teachers in private, parochial, and church schools - Fingerprinting - Disclosure - Contractors, volunteers, and visitors subject to check - Employment of offenders by nonpublic schools. - *Text included in Chapter 4, Section E, 1, B.*

KRS 160.380 (4-14) School employees - Restrictions on appointment of violent offenders, and persons convicted of sex crimes - National and state criminal history background checks on applicants and new hires - Application and renewal forms - Employees charged with felony offenses. - *Text included in Chapter 4, Section E, 1, B.*

KRS 161.148 Use of volunteer personnel - Criminal records check - Orientation - Exception.

- (1) As used in this section, "volunteers" means adults who assist teachers, administrators, or other staff in public school classrooms, schools, or school district programs, and who do not receive compensation for their work.
- (2) Local school districts may utilize adult volunteers in supplementary instructional and noninstructional activities with pupils under the direction and supervision of the professional administrative and teaching staff.
- (3) Each board of education shall develop policies and procedures that encourage volunteers to assist in school or district programs.
- (4) Each local board of education shall develop and adopt a policy requiring a state criminal records check on all volunteers who have contact with students on a regularly scheduled or continuing basis, or who have supervisory responsibility for children at a school site or on school-sponsored trips. The request for records may be from the Justice and Public Safety Cabinet or the Administrative Office of the Courts, or both, and shall include records of all available convictions as described in KRS 17.160(1). Any request for a criminal records check of a volunteer under this subsection shall be on a form or through a process approved by the Justice and Public Safety Cabinet or the Administrative Office of the Courts. If the cabinet or the Administrative Office of the Courts charges fees, the local board of education shall arrange to pay the cost which may be from local funds or donations from any source including volunteers.
- (5) The local board of education shall provide orientation material to all volunteers who have contact with students on a regularly scheduled or continuing basis, including school policies, safety and emergency procedures, and other information deemed appropriate by the local board of education.
- (6) The provisions of this section shall not apply to students enrolled in an educational institution and who participate in observations and educational activities under direct supervision of a local school teacher or administrator in a public school.

KRS 164.281 Public institution of postsecondary education criminal history background checks - Initial hires, contractors, employees, volunteers, visitors - Disclosures - Termination. - *Text included in Chapter 4, E, 2, B.*

KRS 199.462 Criminal background investigation of applicant to provide foster care, relative caregiver services, fictive kin placement, or adoptive home, and of applicant's adult household members -- Request for conviction information -- Form and fee for request -- Background investigation at annual reevaluation authorized -- Administrative regulation -- Rap back system. (in re: Foster Care Provider)

- (1) Before an applicant is approved to provide foster care or relative caregiver services to a child, considered a fictive kin placement for a child, or approved to receive a child for adoption, the Cabinet for Health and Family Services shall:
 - (a) Require a criminal background investigation of the applicant and any of the applicant's adult household members by means of a fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation; or
 - (b) Request from the Justice and Public Safety Cabinet records of all conviction information for the applicant and any of the applicant's adult household members. The Justice and Public Safety Cabinet shall furnish the information to the Cabinet for Health and Family Services and shall also send a copy of the information to the applicant.
- (2) The request for records shall be in a manner approved by the Justice and Public Safety Cabinet, and the Justice and Public Safety Cabinet may charge a fee to be paid by the applicant for the actual cost of processing the request.
- (3) During a certified adoptive or foster home's annual reevaluation, the Cabinet for Health and Family Services may:
 - (a) Require a background investigation for each adult household member of the certified adoptive or foster home under subsections (1) and (2) of this section; or
 - (b) Register each adult household member of a certified adoptive or foster home under subsections (1) and (2) of this section in the rap back system.
- (4) If a child is placed and resides in a fictive kin home for more than seventy-two (72) hours, the Cabinet for Health and Family Services shall take action, including but not limited to the following:
 - (a) Provide information on how to recognize and report child abuse or neglect; and
 - (b) Ensure that, within the first five (5) days of a child under the age of five (5) years old being placed in a fictive kin home, the fictive kin has completed a one (1) time training course of one and one-half (1.5) hours of training covering the prevention and recognition of pediatric abusive head trauma, as defined in KRS 620.020.
- (5) The Cabinet for Health and Family Services shall promulgate an administrative regulation to implement this section.

KRS 199. 640(6) Licensing of child-caring and child-placing agencies or facilities - Prohibition against hiring convicted sex offender.

- (6) Any administrative regulations promulgated pursuant to KRS Chapter 13A to govern services provided by church-related privately operated child-caring agencies or facilities shall not prohibit the use of reasonable corporal physical discipline which complies with the provisions of KRS 503.110(1), including the use of spanking or paddling, as a means of punishment, discipline, or behavior modification and shall prohibit the employment of persons convicted of any sexual offense with any child-caring facility or child-placing agency.

216.533 Department for Behavioral Health, Developmental and Intellectual Disabilities long-term care facilities -- Criminal background checks for applicants for employment -- Persons who may not be employed -- Effect of pardon or expunged record -- Exemption from KRS 216.789(1).

- (1) A long-term care facility owned, managed, or operated by the Department for Behavioral Health, Developmental and Intellectual Disabilities shall request an in-state criminal background information check from the Justice and Public Safety Cabinet or Administrative Office of the Courts for each applicant recommended for employment. Out-of-state criminal background information checks shall be obtained for any applicant recommended for employment who has resided or been employed outside of the Commonwealth.
- (2) No facility specified in subsection (1) of this section shall knowingly employ any person who has been convicted of a felony offense under:
 - (a) KRS Chapter 209;
 - (b) KRS Chapter 218A;
 - (c) KRS 507.020, 507.030, and 507.040;
 - (d) KRS Chapter 509;
 - (e) KRS Chapter 510;
 - (f) KRS Chapter 511;
 - (g) KRS Chapter 513;
 - (h) KRS 514.030;
 - (i) KRS Chapter 530;
 - (j) KRS Chapter 531;
 - (k) KRS 508.010, 508.020, 508.030, and 508.032;
 - (l) A criminal statute of the United States or another state similar to paragraphs (a) to (k) of this subsection; or
 - (m) A violation of the uniform code of military justice or military regulation similar to paragraphs (a) to (k) of this subsection which has caused the person to be discharged from the Armed Forces of the United States.
- (3) A person who has received a pardon for an offense specified in subsection (2) or has had the record of such an offense expunged may be employed.
- (4) Department for Behavioral Health, Developmental and Intellectual Disabilities facilities specified in subsection (1) of this section shall be exempt from the provisions of KRS 216.789(1).

KRS 216.789 Prohibition against employing certain felons at long-term care facilities, in nursing pools providing staff to nursing facilities, or in assisted-living communities - Preemployment check with Justice and Public Safety Cabinet - Temporary employment.

- (1) No long-term care facility as defined by KRS 216.535(1), nursing pool providing staff to a nursing facility, or assisted-living community shall knowingly employ a person in a position which involves providing direct services to a resident or client if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or a sexual crime.
- (2) A nursing facility, nursing pool providing staff to a nursing facility, or assisted-living community may employ persons convicted of or pleading guilty to an offense classified as a misdemeanor if the crime is not related to abuse, neglect, or exploitation of an adult.
- (3) Each long-term care facility as defined by KRS 216.535(1), nursing pool providing staff to a nursing facility, or assisted-living community shall request all conviction information from the Justice and Public Safety Cabinet for any applicant for employment pursuant to KRS 216.793.
- (4) The long-term care facility, nursing pool providing staff to a nursing facility, or assisted-living community may temporarily employ an applicant pending the receipt of the conviction information.

KRS 329A.035 (3) Applications for licenses (as Private Investigators) -- Requirements.

(3) Each applicant for an individual license or owner, partner, or qualifying agent for a company license shall:

- (a) Be at least twenty-one (21) years of age;
- (b) Be a citizen of the United States or a resident alien;
- (c) Have a high school education or its equivalent;
- (d) Not receive a license until the earlier of:
 - 1. The expiration of ten (10) years from the applicant's release from a sentence imposed by any state or territory of the United States or the federal government for the commission of a felony, including a sentence of confinement or time served on probation, parole, or other form of conditional release or discharge; or
 - 2. The date the applicant received a restoration of the applicant's civil rights;
- (e) Not have been convicted of a misdemeanor involving moral turpitude or for which dishonesty is a necessary element within the previous five (5) years;
- (f) Not have been dishonorably discharged from any branch of the Armed Forces of the United States;
- (g) Not have had his or her certification as a peace officer revoked in this or another state;
- (h) Not have been declared by any court of competent jurisdiction to be incompetent by reason of mental defect or disease unless a court of competent jurisdiction has since declared the applicant to be competent;
- (i) Not have been voluntarily or involuntarily committed to a facility or outpatient program for the abuse of a controlled substance or been convicted of a misdemeanor violation of KRS Chapter 218A or similar laws of any other state relating to controlled substances within the three (3) year period immediately preceding the date on which the application is submitted;
- (j) Not chronically and habitually use alcoholic beverages as evidenced by:
 - 1. The applicant having two (2) or more convictions for violating KRS 189A.010 within the three (3) year period immediately preceding the date on which the application is submitted; or
 - 2. The applicant having been committed as an alcoholic pursuant to KRS Chapter 222, or similar laws of any other state, within the three (3) year period immediately preceding the date on which the application is submitted;
- (k) Not chronically and habitually use alcoholic beverages or drugs to the extent that his or her normal faculties are impaired;
- (l) Be of good moral character;
- (m) Pass an examination administered by the board in accordance with KRS 329A.025(2)(c); and
- (n) Submit proof of coverage which meets the following requirements:
 - 1. Is written by an insurance company which is lawfully engaged to provide insurance coverage in Kentucky;
 - 2. Provides for a combined single-limit policy in the amount of at least two hundred fifty thousand dollars (\$250,000); and
 - 3. Insures for liability all of the applicant's employees while acting in the course of their employment.Private investigators who limit their practice exclusively to working under the supervision and as employees of an attorney who is licensed to practice law in this state are exempted from the requirement of this paragraph.

922 KAR 1:490. Background checks for foster and adoptive parents, caretaker relatives, kinship caregivers, fictive kin, and reporting requirements.

Section 1. Definitions.

- (1) "Address check" means a search of the Sex Offender Registry to determine if an address is a known address of a registered sex offender.
- (2) "Administrative review" means that the status of the individual subject to the child abuse and neglect check is pending the outcome of an:
 - (a) Investigation or assessment in accordance with 922 KAR 1:330; or
 - (b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.
- (3) "Adolescent member of the household" means a youth who:
 - (a) Resides in the home of:
 1. An individual who applies for approval or has been approved to provide foster or adoptive services; or
 2. A caretaker relative, fictive kin, or kinship caregiver;
 - (b) Is age twelve (12) through age seventeen (17); and
 - (c) Is not placed in the home by a state agency.
- (4) "Adult member of the household" means an adult who:
 - (a) Resides in the home of:
 1. An individual who applies for approval or has been approved to provide foster or adoptive services; or
 2. A caretaker relative, fictive kin, or kinship caregiver; and
 - (b) Is eighteen (18) years of age or older.
- (5) "Applicant" means an individual who applies for approval as a foster or adoptive parent of a child in the custody of the state under:
 - (a) 922 KAR 1:350, Family Preparation; or
 - (b) 922 KAR 1:310, Standards for Child-Placing Agencies.
- (6) "Caretaker relative" means a relative with whom the child is, or shall be, placed by the cabinet.
- (7) "Child fatality" is defined by KRS 211.684.
- (8) "Child-placing agency" is defined by KRS 199.011(6).
- (9) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).
- (10) "Kinship caregiver" means the qualified caretaker relative of a child with whom the child is placed by the cabinet as an alternative to foster care in accordance with 922 KAR 1:130.
- (11) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).
- (12) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.
- (13) "Sexual abuse" is defined by KRS 600.020(60).
- (14) "Sexual exploitation" is defined by KRS 600.020(61).

Section 2. Background Checks Required for Foster or Adoptive Parent Applicants.

- (1) An applicant, and each adult member of the household, shall complete a DPP-157, Background Checks for Applicants or Foster/Adoptive Parents, and submit to:
 - (a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:
 1. Kentucky Justice and Public Safety Cabinet; or
 2. Administrative Office of the Courts;
 - (b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years;
 - (c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and
 - (d) An address check of the Sex Offender Registry.
- (2) Prior to approval of an applicant, each adolescent member of the household shall complete a DPP-157 and submit to a child abuse or neglect check conducted by the cabinet.

- (3) A Kentucky child abuse or neglect check conducted by the cabinet shall identify the name of each applicant, adolescent member of the household, or adult member of the household who has:
 - (a) Been found by the cabinet to have:
 1. Committed sexual abuse or sexual exploitation of a child;
 2. Been responsible for a child fatality or near fatality related to abuse or neglect;
 3. Abused or neglected a child within the seven (7) year period immediately prior to the application; or
 4. Had parental rights terminated; or
 - (b) A matter pending administrative review.
- (4) An applicant shall not be approved if:
 - (a) A criminal records check reveals that the applicant, or adult member of the household, has a:
 1. Felony conviction involving:
 - a. A spouse, a child, sexual violence, or death as described by 42 U.S.C. 671(a)(20); or
 - b. Physical abuse, battery, a drug, or alcohol within the five (5) year period prior to application;
 2. Criminal conviction relating to child abuse or neglect; or
 3. Civil judicial determination related to child abuse or neglect;
 - (b) A child abuse or neglect check reveals that the applicant, adolescent member of the household, or adult member of the household, has been found to have:
 1. Committed sexual abuse or sexual exploitation of a child;
 2. Been responsible for a child fatality or near fatality related to abuse or neglect; or
 3. Had parental rights terminated involuntarily in accordance with KRS 625.050 through 625.120 or another state's laws; or
 - (c) An address check of the Sex Offender Registry and supporting documentation confirm that a sex offender resides at the applicant's home address.
- (5) An individual identified in accordance with subsection (3) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 3. Procedure for Requesting a Cabinet Child Abuse or Neglect Check, a Criminal Record Check, and an Address Check of the Sex Offender Registry.

Prior to approval of an applicant, a child-placing agency shall request a child abuse or neglect check, a criminal records check, and an address check of the Sex Offender Registry by submitting to the cabinet:

- (1) A completed form, DPP-157, including the fee for a criminal background check; and
- (2) Documentation required to request a child abuse or neglect check from the child welfare agency in each previous state of residence, if the applicant or adult household member has resided outside of the state of Kentucky in the previous five (5) years.
- (3) To the extent resources are available, the department shall post information about other states' child abuse and neglect checks on the department's Web site.

Section 4. Request for a Child Abuse or Neglect Check from Another State.

- (1) The cabinet shall conduct a child abuse or neglect check as required by 42 U.S.C. 671(a)(20) if a:
 - (a) Completed DPP-157 or DPP-159, Background Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers, is submitted to the cabinet; or
 - (b) Request is received on agency letterhead and includes two (2) numeric identifiers.
- (2) The cabinet shall:
 - (a) Protect the confidentiality of the information transmitted by the cabinet to a child welfare agency; and
 - (b) Waive the fee specified in 922 KAR 1:470.

Section 5. Background Checks Required for a Caretaker Relative and Fictive Kin.

- (1) A caretaker relative, fictive kin, and each adult member of the household, shall complete a DPP-159 and submit to:
 - (a) An in-state criminal records check, conducted pursuant to KRS 199.462(1) by the:
 1. Kentucky Justice and Public Safety Cabinet; or
 2. Administrative Office of the Courts;
 - (b) A child abuse or neglect check conducted by the cabinet;
 - (c) An address check of the Sex Offender Registry; and
 - (d) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation if the caretaker relative, fictive kin, or adult household member has lived outside the state of Kentucky during the past five (5) years.
- (2) An adolescent member of a caretaker relative's or fictive kin's household shall complete a DPP-159 and submit to a child abuse or neglect check conducted by the cabinet.
- (3) A child abuse and neglect check conducted by the cabinet in accordance with subsection (1)(b) or (2) of this section shall include any finding consistent with Section 2(3) of this administrative regulation.
- (4) A caretaker relative or fictive kin shall not be approved if a criminal records check, a child abuse and neglect check, or an address check of the Sex Offender Registry reveals a finding consistent with Section 2(4) of this administrative regulation.

Section 6. Approval.

- (1) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, approval of an applicant, fictive kin, or caretaker relative who has been convicted of a nonviolent felony or misdemeanor, has been found by the cabinet or another child welfare agency to have abused or neglected a child, or whose parental rights have been terminated voluntarily, shall be handled on a case-by-case basis with consideration given to the:
 - (a) Nature of the offense;
 - (b) Length of time that has elapsed since the event; and
 - (c) Applicant's life experiences during the ensuing period of time.
- (2) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, an applicant, fictive kin, or caretaker relative may be approved on a case-by-case basis in accordance with the criteria described by subsection (1)(a) through (c) of this section if:
 - (a) An adolescent member of the household has:
 1. Been found by the cabinet to have abused or neglected a child; or
 2. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws; or
 - (b) An adult member of the household has:
 1. Been convicted of a nonviolent felony or misdemeanor;
 2. Been found to have abused or neglected a child; or
 3. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws.

Section 7. Reevaluation.

- (1) An approved foster or adoptive parent and each adult member of the household shall submit annually, prior to or during the anniversary month of initial approval, to:
 - (a) A criminal records check as described in Section 2(1)(a) of this administrative regulation;
 - (b) A child abuse or neglect check conducted by the cabinet; and
 - (c) An address check of the Sex Offender Registry.
- (2)
 - (a) If an adult becomes a new member of an approved foster or adoptive parent's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 2(1)(a)

through (d) of this administrative regulation.

- (b) If an adult becomes a new member of a kinship caregiver's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 5(1) of this administrative regulation.
- (3) If an adolescent becomes a new member of an approved foster or adoptive parent or a kinship caregiver's household, the new adolescent member of the household shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 2(2) or 5(2) of this administrative regulation.
- (4) If the cabinet has custody of a child placed with a caretaker relative or fictive kin:
 - (a) A new adult household member of a caretaker relative or fictive kin shall submit to background checks within thirty (30) calendar days of residence in the household in accordance with Section 5(1) of this administrative regulation; and
 - (b) A new adolescent household member of a caretaker relative or fictive kin shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 5(2) of this administrative regulation.
- (5) An annual address check of the Sex Offender Registry shall be completed for a kinship caregiver's eligibility redetermination in accordance with 922 KAR 1:130, Section 13(2).
- (6) If an annual address check indicates a match with the Sex Offender Registry, a report of abuse, neglect, or dependency shall be made in accordance with 922 KAR 1:330.

Section 8. Maintenance of Records.

- (1) A completed copy of each criminal records check conducted pursuant to Section 2 or 7 of this administrative regulation and the DPP-157 shall be maintained on behalf of each:
 - (a) Applicant;
 - (b) Foster or adoptive parent; and
 - (c) Adult member of an applicant or foster or adoptive parent's household.
- (2) A completed copy of each DPP-157 submitted pursuant to Section 2(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent member of:
 - (a) An applicant's household; or
 - (b) A foster or adoptive parent's household.
- (3) A completed copy of the DPP-159 and criminal records check conducted pursuant to Section 5 or 7 of this administrative regulation shall be maintained for each:
 - (a) Caretaker relative;
 - (b) Kinship caregiver;
 - (c) Fictive kin; and
 - (d) Adult member of a caretaker relative, fictive kin, or kinship caregiver's household.
- (4) A completed copy of the DPP-159 submitted pursuant to Section 5(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent household member of a:
 - (a) Caretaker relative;
 - (b) Kinship caregiver; or
 - (c) Fictive kin.

Section 9. Communications.

This administrative regulation shall not limit the cabinet's ability to discuss the qualifications or fitness of an applicant or an existing foster or adoptive parent with a child-placing agency in accordance with:

- (1) KRS 620.050(5); or
- (2) The terms and conditions of:
 - (a) A release of information signed by the applicant or foster or adoptive parent; or
 - (b) The agreement between the cabinet and the child-placing agency.

Section 10. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "DPP-157, Background Checks for Applicants or Foster/Adoptive Parents", 1/18; and
 - (b) "DPP-159, Background Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers", 1/18.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 am to 4:30 pm.

922 KAR 2:090, Section 16 ,Child-care center licensure -- Basis for Denial, Suspension or Revocation.

Section 16. Basis for Denial, Suspension or Revocation.

- (1) (a) The cabinet shall deny, suspend, or revoke a preliminary or regular license in accordance with KRS 199.896 if the applicant for licensure, director, employee, or a person who has supervisory authority over, or unsupervised contact with, a child fails to meet the requirements of this administrative regulation, 922 KAR 2:120, 922 KAR 2:280, or 922 KAR 2:190.
 - (b) A licensee whose regular license is suspended or revoked shall:
 1. Receive a new license certificate indicating that the license is under adverse action; and
 2. Post the new license certificate in accordance with Section 8(6) of this administrative regulation.
- (2) Emergency Action.
 - (a) The cabinet shall take emergency action in accordance with KRS 199.896(4) by issuing an emergency order that suspends a child-care center's license.
 - (b) An emergency order shall:
 1. Be served to a licensed child-care center in accordance with KRS 13B.050(2); and
 2. Specify the regulatory violation that caused the emergency condition to exist.
 - (c) Upon receipt of an emergency order, a child-care center shall surrender its license to the cabinet.
 - (d) The cabinet or its designee and the child-care center shall make reasonable efforts to:
 1. Notify a parent of each child in care of the center's suspension; and
 2. Refer a parent for assistance in locating alternate child care arrangements.
 - (e) A child-care center required to comply with an emergency order issued in accordance with this subsection may submit a written request for an emergency hearing within twenty (20) calendar days of receipt of the order to determine the propriety of the licensure's suspension in accordance with KRS 199.896(7).
 - (f) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing in accordance with KRS 13B.125(3).
 - (g)
 1. Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency order to suspend licensure.
 2. The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.
 - (h) A provider's license shall be revoked if the:
 1. Provider does not request a hearing within the timeframes established in paragraph (e) of this subsection; or
 2. Condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.
- (3) Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).
- (4) Unless an applicant for a license meets requirements of Section 6(5) of this administrative

- regulation, the cabinet shall deny an applicant for a preliminary or regular license if:
- (a) The applicant has had previous ownership interest in a child-care provider that had its certification, license, or registration denied or revoked;
 - (b) Denial, investigation, or revocation proceedings were initiated, and the licensee voluntarily relinquished the license;
 - (c) An appeal of a denial or revocation is pending;
 - (d) The applicant previously failed to comply with the requirements of KRS 199.896, 922 KAR 2:120, 922 KAR 2:280, 922 KAR 2:190, this administrative regulation, or another administrative regulation effective at the time;
 - (e) An individual with ownership interest in the child-care center has been discontinued or disqualified from participation in:
 - 1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or
 - 2. Another governmental assistance program due to fraud, abuse, or criminal conviction related to that program;
 - (f) The applicant is the parent, spouse, sibling, or child of a previous licensee whose license was denied, revoked, or voluntarily relinquished as described in paragraphs (a) through (d) of this subsection, and the previous licensee will be involved in the child-care center in any capacity;
 - (g) The applicant listed as an officer, director, incorporator, or organizer of a corporation or limited liability company whose child-care center license was denied, revoked, or voluntarily relinquished as described in paragraph (a) through (d) of this subsection within the past seven (7) years;
 - (h) The applicant knowingly misrepresents or submits false information on a form required by the cabinet;
 - (i) The applicant interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(8)(f) or 6(9) of this administrative regulation;
 - (j) The applicant's background check reveals that the applicant is disqualified in accordance with 922 KAR 2:280;
 - (k) The applicant has been the subject of more than two (2) directed plans of correction during a three (3) year period; or
 - (l) The applicant has failed to comply with payment provisions in accordance with 922 KAR 2:190.
- (5) A child-care center's license shall be revoked if:
- (a) A representative of the center interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(8)(f) or 6(9) of this administrative regulation;
 - (b) A cabinet representative, a representative from another agency with regulatory authority, or parent is denied access during operating hours to:
 - 1. A child;
 - 2. The child-care center; or
 - 3. Child-care center staff;
 - (c) The licensee is discontinued or disqualified from participation in:
 - 1. The Child Care Assistance Program as a result of an intentional program violation in accordance with 922 KAR 2:020; or
 - 2. A governmental assistance program as a result of fraud, abuse, or criminal conviction related to that program;
 - (d) The licensee fails to meet a condition of, or violates a requirement of a directed plan of correction pursuant to Section 15 of this administrative regulation;
 - (e) The applicant or licensee knowingly misrepresents or submits false information on a form required by the cabinet;

- (f) The licensee is the subject of more than two (2) directed plans of correction during a three (3) year period; or
 - (g) The licensee has failed to comply with payment provisions in accordance with 922 KAR 2:190.
- (6) The cabinet or its designee shall suspend the license if:
- (a) A regulatory violation is found to pose an immediate threat to the health, safety, and welfare of the children in care as described in KRS 199.896(4); or
 - (b) The child care-center fails to comply with the approved plan of correction.

H. VICTIM & COMMUNITY NOTIFICATION

KRS 17.580 Duty of Department of Kentucky State Police to maintain and update Web site containing information about adults who have committed sex crimes or crimes against minors -- Immunity from liability for good-faith dissemination of information -- Justice and Public Safety Cabinet to establish toll-free telephone number -- Permission for local law enforcement agency to notify of registrants in jurisdiction. – *Text included in Chapter 5, Section G.*

KRS 196.280 Notification of release of person from penitentiary, facility for youthful offenders, regional jail, or county jail - Escape. (VINE System Requirements)

- (1) (a) The Department of Corrections shall provide or contract with a private entity to provide to members of the public who have made a notification request, notification of the release of an incarcerated person from a penitentiary, as defined in KRS 197.010, facility for youthful offenders, regional jail, or county jail. The warden, jailer, or chief administrator, or a person designated by the warden, jailer, or chief administrator, of a penitentiary, facility for youthful offenders, regional jail, or county jail, shall make available to the Department of Corrections, or any private entity under contract with the Department of Corrections, the information necessary to implement this section in a timely manner and before the release of any incarcerated person from the penitentiary, facility for youthful offenders, regional jail, or county jail. The Department of Corrections or the private entity under contract with the Department of Corrections shall be responsible for retrieving the information and notifying the requester in accordance with administrative regulations promulgated by the Department of Corrections.
- (b) If an incarcerated person escapes from any penitentiary, facility for youthful offenders, regional jail, or county jail, the warden, jailer, or chief administrator, or a person designated by the warden, jailer, or chief administrator, shall immediately provide the information necessary to implement this section.
- (c) If, upon a hearing, a court releases an incarcerated person and the incarcerated person does not return to the penitentiary, facility for youthful offenders, regional jail, or county jail, the warden, jailer, or chief administrator, or a person designated by the warden, jailer, or chief administrator, shall provide the information necessary to implement this section as soon as practicable.
- (2) The Department of Corrections shall promulgate administrative regulations for the implementation of this section.

501 KAR 14:010 Psychiatric or Forensic Psychiatric Facility Victim Notification System. Section 1. Definitions.

- (1) "Notification" means the telephonic communication to the individual regarding the release or escape of an involuntarily committed person.
- (2) "Register" means the electronic communication by the individual recording a telephone number to be contacted when the involuntarily committed person is released or escapes.

Section 2.

- (1) The chief administrator of a psychiatric or forensic psychiatric facility shall make available the name, date of birth, date of commitment, the charge, date of release or escape of the involuntarily committed individual to the Department of Corrections.
- (2) The Department of Corrections shall provide:
 - (a) The ability to register for notification purposes; and
 - (b) The notification for which the individual has registered.

Section 3.

- (1) A victim may register for notification by calling Victim Information and Notification Every Day (VINE) at (800) 511-1670 and providing his name, address, and telephone number.
- (2) The victim may provide the notification information by:
 - (a) Speaking to a VINE operator; or
 - (b) Accessing the VINE system through the keypad on his telephone.

Section 4.

If the Department of Corrections provides the administrator with any instrument or equipment to provide victim notification, the instrument or equipment shall be secured. The instrument or equipment shall be used only for the purposes set out in this administrative regulation, unless express written permission is obtained from the Department of Corrections.

908 KAR 3:025 Notification of discharge, transfer or escape of violent offenders.**Section 1. Definitions.**

- (1) "Facility administrator" means the director of the facility or designee.
- (2) "State psychiatric facility" or "facility" means a hospital operated or contracted by the Department for Behavioral Health, Developmental and Intellectual Disabilities Services.
- (3) "Violent offender" is defined in KRS 439.3401.

Section 2. Identification of Violent Offenders.

- (1) If a person is committed to a state psychiatric facility pursuant to a court order issued in accordance with KRS 202A.101 and the order indicates that the person has been charged with or convicted of a violent crime as defined in KRS 439.3401, the facility staff person who authorized admission to the facility shall determine if the requirements of KRS 202A.101(5) have been met.
- (2) Upon admission of a violent offender who has been involuntarily committed to a state psychiatric facility, the facility staff person who authorized the admission shall notify the facility administrator that the violent offender has been admitted. The notification shall specify:
 - (a) The offender's name;
 - (b) The offender's date of birth;
 - (c) The criminal charge pending against the offender, if applicable;
 - (d) The criminal charge for which the offender has been convicted, if applicable;
 - (e) The county in which the offense occurred; and
 - (f) The location where the offender is housed within the facility.

Section 3. Required Procedures for Notification of Transfer or Discharge.

- (1) Prior to the discharge or transfer of a violent offender who has been involuntarily committed, the facility administrator shall notify officials specified in KRS 202A.410 in the following manner:
 - (a) The Department of Corrections in accordance with the provisions of 501 KAR 14:010;
 - (b) The prosecutor in the county where the violent crime was committed by sending a certified or registered letter; and
 - (c) The law enforcement agency with jurisdiction in the area to which the violent offender is discharged or transferred by sending a certified or registered letter.
- (2) Notification of prosecutors and law enforcement agencies shall:
 - (a) Include the date of discharge or transfer;
 - (b) The name and address of the facility to which a violent offender is transferred if applicable;

and

- (c) The information specified in Section 2(2)(a) through (e) of this administrative regulation.
- (3) If a violent offender is ordered to be transferred to a psychiatric facility in accordance with KRS 202A.201, the psychiatric facility shall not transfer or discharge the offender except in accordance with KRS 202A.201(3).

Section 4. Required Procedures for Notification of Escape.

- (1) If a violent offender who has been involuntarily committed escapes from a psychiatric facility, the facility administrator shall notify the officials specified in KRS 210.410 no later than one (1) hour after an escape is discovered. The notification process shall be to the following entities as follows:
- (a) The Department of Corrections in accordance with the provisions of 501 KAR 14:010;
 - (b) The prosecutor in the county where the violent crime was committed, by telephone, facsimile transmission, or other electronic device; and
 - (c) A local law enforcement agency that has jurisdiction in the area in which the facility is located, by telephone, facsimile transmission, or other electronic device.
- (2) Notification of prosecutors and law enforcement agencies shall include:
- (a) The date and time the escape was discovered; and
 - (b) The information specified in Section 2(2)(a) through (e) of this administrative regulation.

Section 5. Internal Procedures for Implementation. The facility administrator shall establish internal procedures to assure the proper and effective implementation of this administrative regulation. The internal procedures shall specify:

- (1) Staff designated to make the notifications required by Sections 3 and 4 of this administrative regulation;
- (2) Requirements for documentation of a discharge, transfer, or escape of a violent offender;
- (3) Requirements for notifying the facility administrator if a violent offender is transferred, is discharged or escapes;
- (4) Methods of monitoring the movement of violent offenders within the facility; and
- (5) Methods for discovering, reporting, and documenting the escape of a violent offender. (25 Ky.R. 2082; Am. 2399; eff. 4-21-1999; TAm eff. 4-27-2016.).

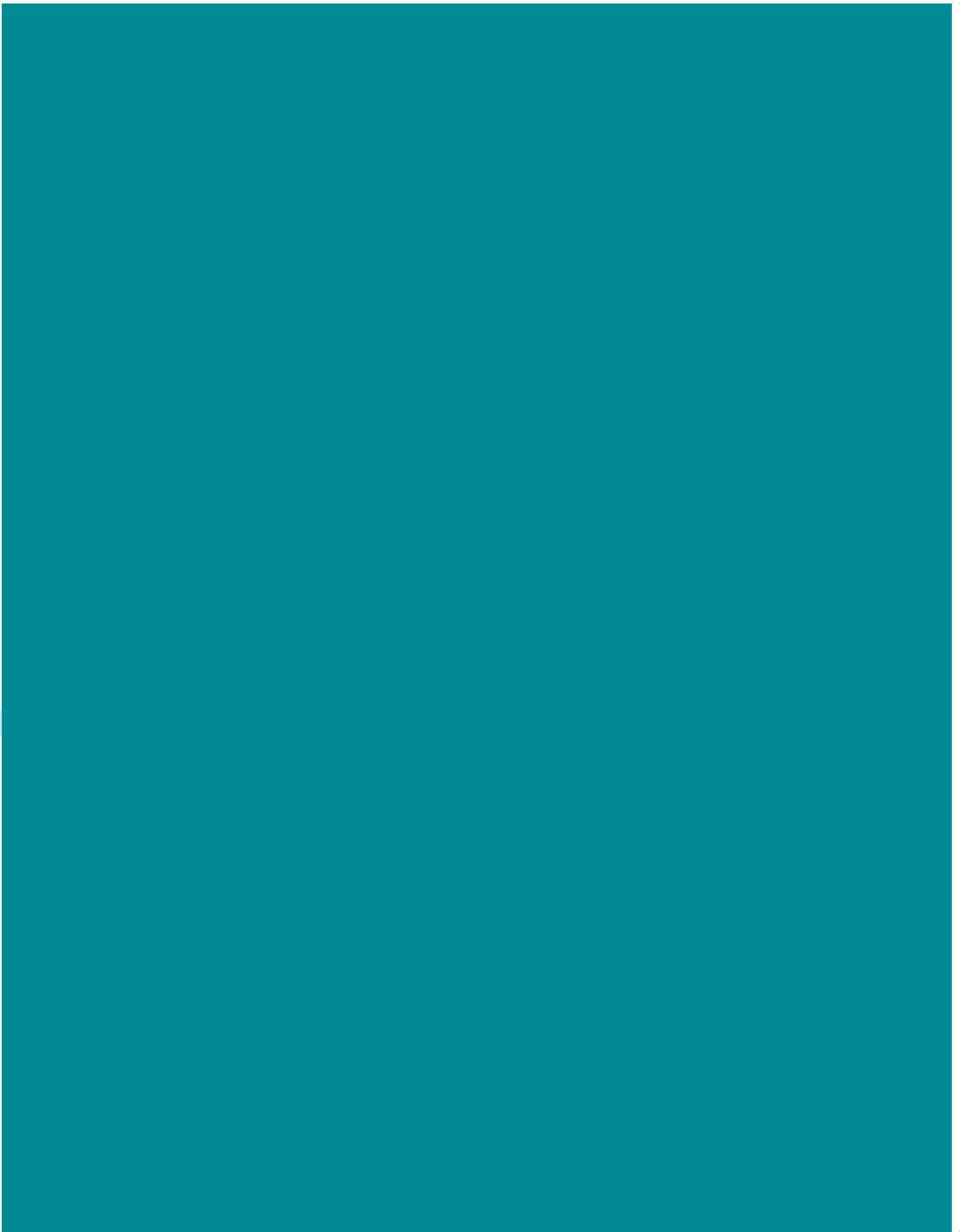
I. CRIMINAL CASE DATA COLLECTION

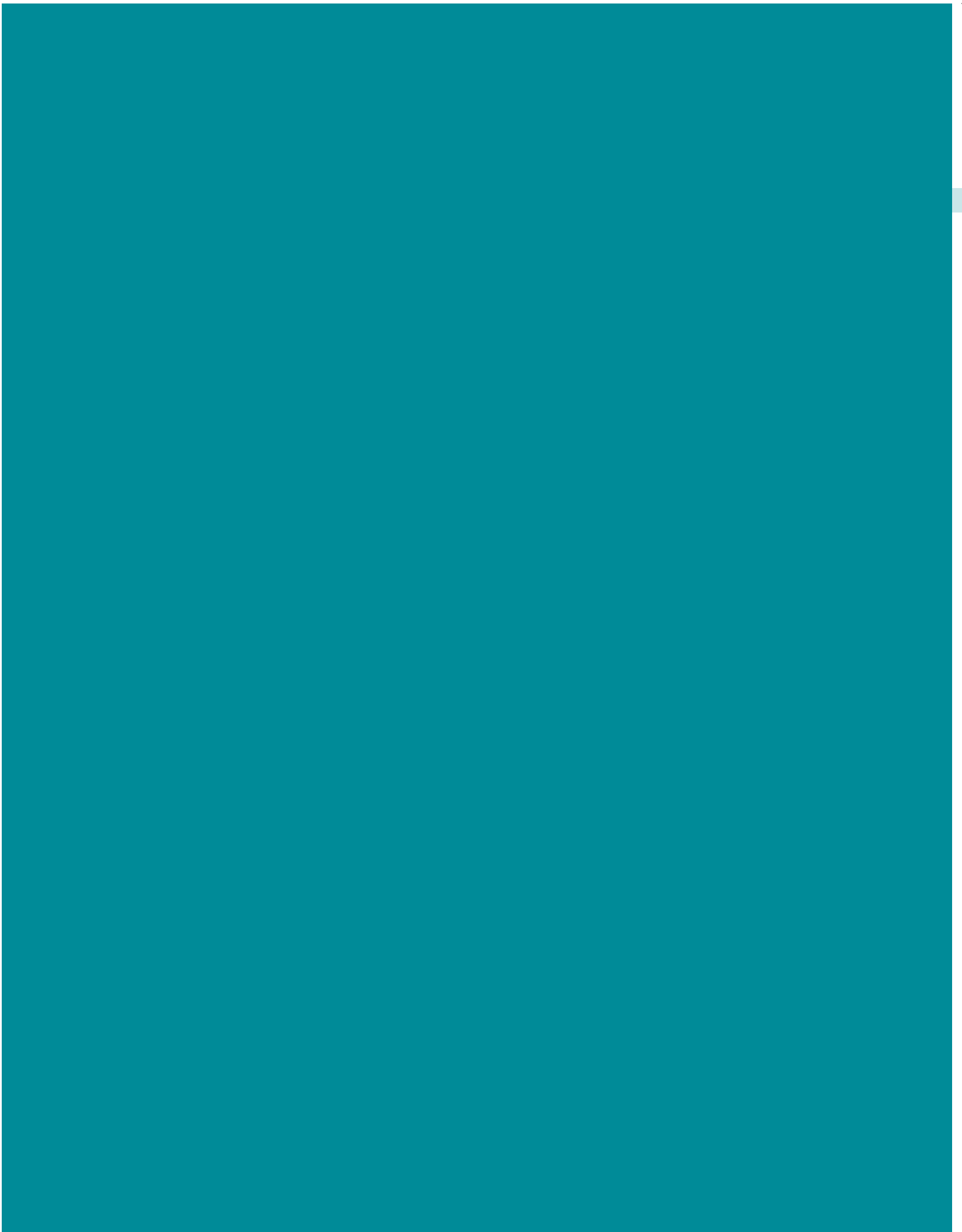
KRS 16.132 Collection of statistical data concerning sexual offenses and sexual assault evidence kits.

- (1) The Administrative Office of the Courts shall collect statistical data regarding the prosecution, dismissal, conviction, or acquittal of any person charged with committing, attempting to commit, or complicity to a sexual offense as defined by KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, 510.130, 510.140, 530.020, 530.064(1)(a), and 531.310.
- (2) The information collected pursuant to this section for the previous calendar year shall be provided by May 1 of 2018 and by each May 1 thereafter to the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707

KRS 27A.305 Collection of statistical data concerning sexual offenses.

- (1) The Administrative Office of the Courts shall collect statistical data regarding the prosecution, dismissal, conviction, or acquittal of any person charged with committing, attempting to commit, or complicity to a sexual offense as defined by KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, 510.130, 510.140, 530.020, 530.064(1)(a), and 531.310.
- (2) The information collected pursuant to this section for the previous calendar year shall be provided by May 1 of 2018 and by each May 1 thereafter to the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.





CHAPTER 6 CIVIL LAW

A. CIVIL CLAIMS FOR DAMAGES

1. About Civil Claims for Damages

Though victims of sexual violence have historically depended on criminal prosecution to ensure legal justice, most acts of sexual violence can also be described as “torts,” or civil wrongs that result in personal injury and/or loss of property. Where a “tort” has occurred, an injured party may bring a “civil claim” in order to recover money damages.

Civil claims for damages may be based on either intentional wrongdoing or negligence. Where the suit is directed at the perpetrator of the crime, the claim is generally described as an “intentional tort.” Civil claims may also be brought against third parties whose “negligence” provided the opportunity for or facilitated the crime. Third party negligence must be based on a “duty of care” owed to the victim for her/his safety, security, protection, etc., and a “breach,” or violation, of that duty of care which ultimately leads to an opportunity for the perpetrator to commit the crime. In order to prevail, a plaintiff must also establish “damages” that can be remedied through the judicial process by the payment of money damages.

There are two general types of damages, “actual” and “punitive.” “Actual damages” are described as “real, substantial and just damages,” or an amount awarded in compensation for actual losses or injury. “Punitive damages” may be awarded over and above actual damages, where the wrong was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant. “Punitive damages” are intended to compensate for mental anguish, damaged feelings, shame, degradation, or other aggravations of the original wrong. “Punitive damages” may also be intended to punish the defendant for “evil behavior” or to make an example of that person.

The section below describes various civil claims or “causes of action,” outlining the elements of each and the relevant statute of limitations. Where there is a statute on point, the text of the statute has been included. However, some of these causes of action are based on “common law theories,” that is law established by precedent and court decisions. This Handbook is designed to provide basic information only and does not constitute legal advice. Individuals are encouraged to contact practicing attorneys to discuss whether civil action is appropriate in particular cases.

2. Civil Causes of Action

a. Any person injured by violation of any statute may recover damages

KRS 446.070 Penalty no bar to civil recovery.

A person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty or forfeiture is imposed for such violation.

b. Threats, Contact, and/or injury

Assault (Common law based action)

Assault is an intentional tort involving merely the threat of unwanted touching. The plaintiff must be placed in fear or apprehension of immediate harmful or offensive contact without consent or privilege. It is not necessary to prove actual damages - proof of fear or apprehension is enough. However, words alone are not enough; there must be an act or gesture of some kind. The plaintiff may recover for emotional distress. The statute of limitations is one year from the incident.

The parallel criminal offenses are menacing (KRS 508.050), wanton endangerment (KRS 508.060-.070), terroristic threatening (KRS 508.080) and indecent exposure (KRS 510.148-150).

Stalking

KRS 411.220 Action by crime stalking victim against stalker - Damages - Statute of limitations.

A civil action may be maintained under this section against any person who commits the conduct prohibited under KRS 508.140 or 508.150. A civil action may be maintained under this section whether or not the individual who is alleged to have violated KRS 508.140 or 508.150 has been charged or convicted of the alleged crime. Liability under this section shall include the actual damages caused by the violation and may include punitive damages, court costs, and reasonable attorney's fees. An action under this section shall be brought within two (2) years of the last act of conduct in violation of this section.

The parallel criminal offenses are stalking in the first degree (KRS 508.140) and stalking in the second degree (KRS 508.150).

False Imprisonment (Common law based action)

False imprisonment is any deprivation of the liberty of one person by another, or detention for however short a time without such person's consent and against the person's will, whether done by actual violence, threats, or otherwise. It is necessary that the restraint be wrongful, improper, or without a claim of reasonable justification, authority or privilege. The detention may be accomplished by either actual violence or mere threats of violence.

A plaintiff is entitled to compensation for loss of time, for physical discomfort or inconvenience, and for any resulting physical illness or injury to health. Since the injury is in large part a mental one, the plaintiff is also entitled to damages for mental suffering, humiliation, embarrassment, and the like. The statute of limitations is one year from the incident.

The parallel criminal offenses are unlawful imprisonment (KRS 509.020-.030) and kidnapping (KRS 509.040).

Battery (Common law based action)

Battery is an unpermitted/unwanted touching or harmful/offensive contact. The primary issue is generally lack of consent, which the plaintiff must prove. The plaintiff must also prove intent on the part of the perpetrator to make contact with her/him, but necessarily intent to harm. The plaintiff can recover for emotional distress caused by the battery. Punitive damages are available. The statute of limitations is one year from the incident.

The corresponding criminal offenses are assault (KRS 508.010 through KRS 508.040), criminal abuse (KRS 508.100 through KRS 508.120), and sexual offenses (KRS Chapter 510), including rape, sodomy, sexual abuse, and sexual misconduct.

Sexual Assault and Abuse

KRS 413.249 Action relating to childhood sexual abuse or childhood sexual assault.

NOTE: Amended, 2017, extends statute of limitations to ten years.

(1) As used in this section:

- (a) "Childhood sexual assault" means an act or series of acts against a person less than eighteen (18) years old and which meets the criteria defining a felony in KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 529.100 where the offense involves commercial sexual activity, 529.110 where the offense involves commercial sexual activity, 530.020, 530.064, 531.310, or 531.320. No prior criminal prosecution or conviction of the civil defendant for the act or series of acts shall be required to bring a civil action for redress of childhood sexual assault;
- (b) "Childhood sexual abuse" means an act or series of acts against a person less than eighteen (18) years old and which meets the criteria defining a misdemeanor in KRS 510.120, KRS 510.130, KRS 510.140, or KRS 510.150. No prior criminal prosecution or conviction of the civil defendant for the act or series of acts shall be required to bring a civil action for redress of childhood sexual abuse;
- (c) "Child" means a person less than eighteen (18) years old; and
- (d) "Injury or illness" means either a physical or psychological injury or illness.

(2) A civil action for recovery of damages for injury or illness suffered as a result of childhood sexual abuse or childhood sexual assault shall be brought before whichever of the following periods last expires:

- (a) Within ten (10) years of the commission of the act or the last of a series of acts by the same perpetrator;
- (b) Within ten (10) years of the date the victim knew, or should have known, of the act;
- (c) Within ten (10) years after the victim attains the age of eighteen (18) years; or
- (d) Within ten (10) years of the conviction of a civil defendant for an offense included in the definition of childhood sexual abuse or childhood sexual assault

(3) If a complaint is filed alleging that an act of childhood sexual assault or childhood sexual abuse occurred more than ten (10) years prior to the date that the action is commenced, the complaint shall be accompanied by a motion to seal the record and the complaint shall immediately be sealed by the clerk of the court. The complaint shall remain sealed until:

- (a) The court rules upon the motion to seal;
- (b) Any motion to dismiss under CR 12.02 is ruled upon, and if the complaint is dismissed, the complaint and any related papers or pleadings shall remain sealed unless opened by a higher court; or
- (c) The defendant files an answer and a motion to seal the record upon grounds that a valid factual defense exists, to be raised in a motion for summary judgment pursuant to CR 56. The record shall remain sealed by the clerk until the court rules upon the defendant's motion to close the record. If the court grants the motion to close, the record shall remain sealed until the defendant's motion for summary judgment is granted. The complaint, motions, and other related papers or pleadings shall remain sealed unless opened by a higher court.

KRS 413.2485 Action relating to injury to or illness of an adult as a result of a sexual offense.

- (1) As used in this section, “injury or illness” means either a physical or psychological injury or illness.
- (2) A civil action for recovery of damages for an injury or illness suffered as a result of an act or series of acts against a person eighteen (18) years old or older that meets the criteria of KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, 510.130, 510.140, 510.150, 529.100 where the offense involves commercial sexual activity, 529.110 where the offense involves commercial sexual activity, 530.020, 531.090, or 531.100, shall be brought before whichever of the following periods last expires
 - (a) Within five (5) years of the act or the last of a series of acts by the same perpetrator;
 - (b) Within five (5) years of the date the victim knew, or should have known, of the act;
 - (c) Within five (5) years upon knowledge or identity of the perpetrator; or
 - (d) Within five (5) years of the conviction of a civil defendant for KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, 510.130, 510.140, 510.150, 529.100 where the offense involves commercial sexual activity, 529.110 where the offense involves commercial sexual activity, 530.020, 531.090, or 531.100.
- (3) No prior criminal prosecution or conviction of the civil defendant for the act or series of acts shall be required to bring a civil action under this section for redress of an injury or illness.

Damages following conviction of sexual offense or pornography

KRS 431.082 Civil action by victim against defendant -- Damages -- Construction.

- (1) In the event of the conviction of a defendant for the violation of any offense proscribed by KRS Chapter 510 or 531 or any human trafficking offense proscribed by KRS Chapter 529, the person who was the victim of the offense may bring an action in damages against the defendant in the criminal case.
- (2) If the plaintiff prevails, he or she shall be entitled to attorney’s fees and all other costs incurred in the bringing of the action, including but not limited to the services of expert witnesses, testing and counseling, medical and psychological treatment, and other expenses reasonably incurred as a result of the criminal act.
- (3) Any award of nominal damages shall support an award of attorney’s fees and costs to the prevailing party.
- (4) Punitive damages as well as compensatory damages shall be awardable in cases brought under this section.
- (5) The provisions of this section shall not be construed as repealing any provision of KRS 431.080 or any other applicable statute or of any statutory or common law right of action but shall be construed as ancillary and supplemental thereto.

c. Mental or Emotional Injury or Distress

Intentional infliction of emotional distress (tort of outrage) (Common law based action)
The wrongdoer’s conduct must be intentional or reckless, and must be outrageous and intolerable in that it offends generally accepted standards of decency and morality; there must be a causal connection between the wrongdoer’s conduct and the emotional distress, and the distress suffered must be severe. The statute of limitations is five years.

d. Injury to Victim’s Property

Trespass to land (Common law based action)

Trespass to land is the intentional physical entry upon the land of another. It can be achieved merely by walking upon the land, by causing deleterious substances to be placed on land, causing objects (e.g., rocks and garbage) to be cast on the land, by firing projectiles on to the land, or by

failing to remove property.

The statute of limitations is five (5) years. (KRS 413.120)

Conversion / Trespass to Chattels (Common law based action)

Conversion is the wrongful exercise of dominion and control over the personal property of another. The measure of damages is the value of the property at the time of the conversion. However, if the interference is minor, the tort committed is trespass to chattels.

The statute of limitations is five (5) years. (KRS 413.120)

Reparation for property stolen or damages

KRS 431.200 Reparation for property stolen or damaged, from person convicted.

Any person convicted of a misdemeanor or felony for taking, injuring or destroying property shall restore the property or make reparation in damages if not ordered as a condition of probation. The court in which the conviction is had, if applied to by verified petition made within ninety (90) days of the date the sentence was pronounced, may order restitution or give judgment against the defendant for reparation in damages, and enforce collection by execution or other process. In a petition for restitution or reparation, the court shall cause the defendant, if in custody, to be brought into court, and demand of him if he has any defense to make to the petition. If he consents to the restitution or to reparation in damages in an agreed sum, the court shall give judgment accordingly. Otherwise a jury shall be impaneled to try the facts and ascertain the amount and the value of the property, or assess the damage, as the case may be. A failure to pursue this remedy shall not deprive the person aggrieved of his civil action for the injury sustained.

The parallel criminal offenses are burglary (KRS 511.020 - 511.040), criminal trespass (KRS 511.060 - 511.080) and criminal mischief (KRS 512.020 - 512.0440).

e. Claims by Individual Other than the Victim

Wrongful death

When death results from injury inflicted by the negligence or wrongful action of another, damages may be recovered from the person who caused it or whose agent or servant caused the death. The personal representative of the deceased must file the action. Only spouses, children, parents, or the general estate may recover. Recovery is limited to the lost power to earn. However, punitive damages are available where the death was caused by the willful actions or gross negligence of the defendant. The statute of limitations is two years from the date of death.

KRS 411.130 Action for wrongful death-Personal representative to prosecute-Distribution of amount recovered.

- (1) Whenever the death of a person results from an injury inflicted by the negligence or wrongful act of another, damages may be recovered for the death from the person who caused it, or whose agent or servant caused it. If the act was willful or the negligence gross, punitive damages may be recovered. The action shall be prosecuted by the personal representative of the deceased.
- (2) The amount recovered, less funeral expenses and the cost of administration and costs of recovery including attorney fees, not included in the recovery from the defendant, shall be for the benefit of and go to the kindred of the deceased in the following order:
 - (a) If the deceased leaves a widow or husband, and no children or their descendants, then the whole to the widow or husband.
 - (b) If the deceased leaves a widow and children or a husband and children, then one-half (1/2) to the widow or husband and the other one-half (1/2) to the children of the deceased.

- (c) If the deceased leaves a child or children, but no widow or husband, then the whole to the child or children.
- (d) If the deceased leaves no widow, husband or child, then the recovery shall pass to the mother and father of the deceased, one (1) moiety each, if both are living; if the mother is dead and the father is living, the whole thereof shall pass to the father; and if the father is dead and the mother living, the whole thereof shall go to the mother. In the event the deceased was an adopted person, "mother" and "father" shall mean the adoptive parents of the deceased.
- (e) If the deceased leaves no widow, husband or child, and if both father and mother are dead, then the whole of the recovery shall become a part of the personal estate of the deceased, and after the payment of his debts the remainder, if any, shall pass to his kindred more remote than those above named, according to the law of descent and distribution.

Death by a deadly weapon

This statute (KRS 411.150) permits a cause of action for a surviving spouse or child of a person killed with a deadly weapon. Damages are the same as in wrongful death, but the jury may also award "vindictive damages." The statute of limitations is the same as in a wrongful death action, two (2) years from the date of death.

The parallel criminal offense is criminal homicide (KRS Chapter 507).

KRS 411.150 Action by surviving spouse or child of person killed with deadly weapon.

The surviving spouse and child, under the age of eighteen (18) or either of them, of a person killed by the careless, wanton or malicious use of a deadly weapon, not in self-defense, may have an action against the person who committed the killing and all others aiding or promoting, or any one (1) or more of them. In such actions the jury may give vindictive damages.

KRS 500.080(4) Definition of 'deadly weapon'.

- (4) "Deadly weapon" means any of the following:
- (a) A weapon of mass destruction;
 - (b) Any weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged;
 - (c) Any knife other than an ordinary pocket knife or hunting knife;
 - (d) Billy, nightstick, or club;
 - (e) Blackjack or slapjack;
 - (f) Nunchaku karate sticks;
 - (g) Shuriken or death star; or
 - (h) Artificial knuckles made from metal, plastic, or other similar hard material.

Loss of Consortium

KRS 411.145 Damages for Loss of Consortium.

- (1) As used in this section "consortium" means the right to the services, assistance, aid, society, companionship and conjugal relationship between husband and wife, or wife and husband.
- (2) Either a wife or husband may recover damages against a third person for loss of consortium, resulting from a negligent or wrongful act of such third person.

Minor children may bring a civil action for loss of parental consortium. The cause of action, however, is only available for the wrongful death of a parent. Additionally, in the wrongful death of a child, the parents can sue for loss of consortium of the child, but only for the time of the child's minority.

f. Negligence & Third Party Liability

Not only can the perpetrator be named as a defendant, but the attorney may also wish to name as defendants those individuals who had a duty to protect or to care for the victim and did not do so - in other words, those parties who did not actually commit the crime but whose negligence may have facilitated the commission of the crime. Some examples are:

Landlords - who do not provide adequate security measures, such as locks on doors and windows or adequate lighting.

Colleges - that fail to provide adequate security for students, fail to notify students of campus assaults, and do not follow federal law regarding campus security.

Shopping malls - that do not employ, or inadequately provide security guards or other necessary measures, despite the likelihood of criminal attacks on customers.

Employers - that do not properly check the background of their employees or simply transfer employees to other locations following allegations of abuse. An employer can be held liable for negligent hiring, retention, and supervision. Additionally, Kentucky's Civil Rights Act (KRS 344.040) prohibits sexual harassment at work, as well as other discrimination, such as gender discrimination. Also prohibited is any retaliatory action taken against an employee who complains about sexual harassment or other discriminatory conduct by a co-worker.

Law Enforcement - Causes of action against law enforcement address the failure to adequately protect a victim, e.g., failure to arrest a perpetrator pursuant to an arrest warrant despite several opportunities to do so, failure to know about an existing protective order, and failure to comply with mandatory reporting, recording, and arrest requirements. Officers are allowed immunity from suit in some circumstances, but not in all cases.

Other examples are hotels, security companies, child care centers, neighbors, schools, churches, hospitals, and transportation services. In addition to the added benefit of the victim's having access to a greater pool of resources, third party liability serves to deter crime and promote safer and fairer practices in society.

3. Statutes of Limitation and Survival

KRS 413.120 Actions to be brought within five years.

The following actions shall be commenced within five (5) years after the cause of action accrued:

- (1) An action upon a contract not in writing, express or implied.
- (2) An action upon a liability created by statute, when no other time is fixed by the statute creating the liability.
- (3) An action for a penalty or forfeiture when no time is fixed by the statute prescribing it.
- (4) An action for trespass on real or personal property.
- (5) An action for the profits of or damages for withholding real or personal property.
- (6) An action for an injury to the rights of the plaintiff, not arising on contract and not otherwise enumerated.
- (7) An action upon a bill of exchange, check, draft or order, or any endorsement thereof, or upon a promissory note, placed upon the footing of a bill of exchange.
- (8) An action to enforce the liability of a steamboat or other vessel.
- (9) An action upon a merchant's account for goods sold and delivered, or any article charged in such store account.

- (10) An action upon an account concerning the trade of merchandise, between merchant and merchant or their agents.
- (11) An action for relief or damages on the ground of fraud or mistake.
- (12) An action to enforce the liability of bail.
- (13) An action for personal injuries suffered by any person against the builder of a home or other improvements. This cause of action shall be deemed to accrue at the time of original occupancy of the improvements which the builder caused to be erected.

KRS 413.125 Actions relating to personal property to be brought within two years.

An action for the taking, detaining or injuring of personal property, including an action for specific recovery shall be commenced within two (2) years from the time the cause of action accrued

KRS 413.130 When certain actions in KRS 413.120 accrue.

- (1) In every action upon a merchants' account as described in subsection (9) of KRS 413.120, the limitation shall be computed from January 1 next succeeding the respective dates of the delivery of the several articles charged in the account. Judgment shall be rendered for no more than the amount of articles actually charged or delivered within five (5) years preceding that in which the action was brought. If any merchant willfully postdates any article charged in such account, or the receipt for the delivery of it, he shall forfeit ten (10) times the amount of the article postdated, to be credited against the account. This credit shall be allowed in an action on the account, without any written pleadings setting it up.
- (2) In an action to recover a balance due upon a mutual open and current account concerning the trade of merchandise between merchant and merchant or their agents, as described in subsection (10) of KRS 413.120, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account claimed, or proved to be chargeable on the adverse side.
- (3) In an action for relief or damages for fraud or mistake, referred to in subsection (11) of KRS 413.120, the cause of action shall not be deemed to have accrued until the discovery of the fraud or mistake. However, the action shall be commenced within ten (10) years after the time of making the contract or the perpetration of the fraud.

KRS 413.140 Actions to be brought within one year.

- (1) The following actions shall be commenced within one (1) year after the cause of action accrued:
 - (a) An action for an injury to the person of the plaintiff, or of her husband, his wife, child, ward, apprentice, or servant;
 - (b) An action for injuries to persons, cattle, or other livestock by railroads or other corporations, with the exception of hospitals licensed pursuant to KRS Chapter 216;
 - (c) An action for malicious prosecution, conspiracy, arrest, seduction, criminal conversation, or breach of promise of marriage;
 - (d) An action for libel or slander;
 - (e) An action against a physician, surgeon, dentist, or hospital licensed pursuant to KRS Chapter 216, for negligence or malpractice;
 - (f) A civil action, arising out of any act or omission in rendering, or failing to render, professional services for others, whether brought in tort or contract, against a real estate appraiser holding a certificate or license issued under KRS Chapter 324A;
 - (g) An action for the escape of a prisoner, arrested or imprisoned on civil process;
 - (h) An action for the recovery of usury paid for the loan or forbearance of money or other thing, against the loaner or forbearer or assignee of either;
 - (i) An action for the recovery of stolen property, by the owner thereof against any person having the same in his possession;

- (j) An action for the recovery of damages or the value of stolen property, against the thief or any accessory; and
 - (k) An action arising out of a detention facility disciplinary proceeding, whether based upon state or federal law;
 - (l) An action for damages arising out of a deficiency, defect, omission, error, or miscalculation in any survey or plat, whether brought in tort or contract, against a licensed professional land surveyor holding a license under KRS Chapter 322; and
 - (m) An action for violating KRS 311.782
- (2) In respect to the action referred to in paragraph (e) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the injury is first discovered or in the exercise of reasonable care should have been discovered; provided that such action shall be commenced within five (5) years from the date on which the alleged negligent act or omission is said to have occurred.
 - (3) In respect to the action referred to in paragraph (f) or (l) of subsection (1) of this section, the cause of action shall be deemed to accrue within one (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should have been, discovered by the party injured.
 - (4) In respect to the action referred to in paragraph (h) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time of payment. This limitation shall apply to all payments made on all demands, whether evidenced by writing or existing only in parol.
 - (5) In respect to the action referred to in paragraph (i) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the property is found by its owner.
 - (6) In respect to the action referred to in paragraph (j) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time of discovery of the liability.
 - (7) In respect to the action referred to in paragraph (k) of subsection (1) of this section, the cause of action shall be deemed to accrue on the date an appeal of the disciplinary proceeding is decided by the institutional warden.
 - (8) In respect to the action referred to in subsection (1)(m) of this section, the cause of action shall be deemed to accrue after the performance or inducement or attempt to perform or induce the abortion.

KRS 413.160 Actions upon written contract or not provided for by statute -- Ten-year limitation.

An action upon a written contract executed after July 15, 2014, unless otherwise provided by statute, and an action for relief not provided for by statute can only be commenced within ten (10) years after the cause of action accrued.

KRS 413.250 When action commences.

An action shall be deemed to commence on the date of the first summons or process issued in good faith from the court having jurisdiction of the cause of action.

KRS 413.260 Effect of injunction or other restraint on limitation.

- (1) If the doing of an act necessary to save any right or benefit is restrained or suspended by injunction or other lawful restraint, vacancy in office, absence of an officer or his refusal to act, the time covered by the injunction, restraint, vacancy, absence or refusal to act shall not be counted in the application of any statute of limitations.
- (2) When the collection of a judgment or the commencement of an action is stayed by injunction, the time of continuance of the injunction shall not be counted as part of the period limited for the collection of the judgment or the commencement of the action.

KRS 413.265 Validity of agreements extending limitations periods.

Written agreements entered into in good faith and at arms-length to extend limitations periods for the filing of civil actions, including agreements entered into prior to July 15, 1988, shall be valid and enforceable according to their terms.

KRS 413.270 Effect of judgment of no jurisdiction-Application to administrative agencies.

- (1) If an action is commenced in due time and in good faith in any court of this state and the defendants or any of them make defense, and it is adjudged that the court has no jurisdiction of the action, the plaintiff or his representative may, within ninety (90) days from the time of that judgment, commence a new action in the proper court. The time between the commencement of the first and last action shall not be counted in applying any statute of limitation.
- (2) As used in this section, "court" means all courts, commissions, and boards which are judicial or quasi-judicial tribunals authorized by the Constitution or statutes of the Commonwealth of Kentucky or of the United States of America.

KRS 413.280 Person under more than one disability.

When two (2) or more disabilities exist in the same person at the time the cause of action accrues, the limitation does not attach until they are all removed.

KRS 413.320 Cause of action barred here if barred where it accrued.

When a cause of action has arisen in another state or country, and by the laws of this state or country where the cause of action accrued the time for the commencement of an action thereon is limited to a shorter period of time than the period of limitation prescribed by the laws of this state for a like cause of action, then said action shall be barred in this state at the expiration of said shorter period.

KRS 413.330 Action on judgement barred here if barred where rendered - Exception.

If, by the laws of any other state or country, an action upon a judgment or decree rendered in that state or country cannot be maintained there by reason of the lapse of time, and the judgment or decree is incapable of being otherwise enforced there, an action upon it may not be maintained in this state, except in favor of a resident thereof who has had the cause of action from the time it accrued.

KRS 411.140 What action shall survive.

No right of action for personal injury or for injury to real or personal property shall cease or die with the person injuring or injured, except actions for slander, libel, criminal conversation, and so much of the action for malicious prosecution as is intended to recover for the personal injury. For any other injury an action may be brought or revived by the personal representative, or against the personal representative, heir or devisee, in the same manner as causes of action founded on contract.

KRS 413.249 Action relating to childhood sexual abuse or assault. -- *Text (above) in Ch. 6, Section A(2)(b)*

KRS 413.2485 Action relating to adult sexual assault. - *Text (above) in Ch. 6, Section A(2)(b)*

4. Damages

KRS 411.182 Allocation of fault in tort actions - Award of damages - Effect of release.

- (1) In all tort actions, including products liability actions, involving fault of more than one (1) party to the action, including third-party defendants and persons who have been released under subsection (4) of this section, the court, unless otherwise agreed by all parties, shall instruct the jury to answer interrogatories or, if there is no jury, shall make findings indicating:
 - (a) The amount of damages each claimant would be entitled to recover if contributory fault is disregarded; and
 - (b) The percentage of the total fault of all the parties to each claim that is allocated to each claimant, defendant, third-party defendant, and person who has been released from liability under subsection (4) of this section.
- (2) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed.
- (3) The court shall determine the award of damages to each claimant in accordance with the findings, subject to any reduction under subsection (4) of this section, and shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault.
- (4) A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable, shall discharge that person from all liability for contribution, but it shall not be considered to discharge any other persons liable upon the same claim unless it so provides. However, the claim of the releasing person against other persons shall be reduced by the amount of the released persons' equitable share of the obligation, determined in accordance with the provisions of this section.

KRS 411.184 Definitions - Punitive damages - Proof of punitive damages.

- (1) As used in this section and KRS 411.186, unless the context requires otherwise:
 - (a) "Oppression" means conduct which is specifically intended by the defendant to subject the plaintiff to cruel and unjust hardship.
 - (b) "Fraud" means an intentional misrepresentation, deceit, or concealment of material fact known to the defendant and made with the intention of causing injury to the plaintiff.
 - (c) "Malice" means either conduct which is specifically intended by the defendant to cause tangible or intangible injury to the plaintiff or conduct that is carried out by the defendant both with a flagrant indifference to the rights of the plaintiff and with a subjective awareness that such conduct will result in human death or bodily harm.
 - (d) "Plaintiff" means any party claiming punitive damages.
 - (e) "Defendant" means any party against whom punitive damages are sought.
 - (f) "Punitive damages" includes exemplary damages and means damages, other than compensatory and nominal damages, awarded against a person to punish and to discourage him and others from similar conduct in the future.
- (2) A plaintiff shall recover punitive damages only upon proving, by clear and convincing evidence, that the defendant from whom such damages are sought acted toward the plaintiff with oppression, fraud or malice.
- (3) In no case shall punitive damages be assessed against a principal or employer for the act of an agent or employee unless such principal or employer authorized or ratified or should have anticipated the conduct in question.
- (4) In no case shall punitive damages be awarded for breach of contract.
- (5) This statute is applicable to all cases in which punitive damages are sought and supersedes any and all existing statutory or judicial law insofar as such law is inconsistent with the provisions of this statute.

KRS 411.186 Assessment of punitive damages.

- (1) In any civil action where claims for punitive damages are included, the jury issues presented, whether punitive damages may be assessed.
- (2) If the trier of fact determines that punitive damages should be awarded, the trier of fact shall then assess the sum of punitive damages. In determining the amount of punitive damages to be assessed, the trier of fact should consider the following factors:
 - (a) The likelihood at the relevant time that serious harm would arise from the defendant's misconduct;
 - (b) The degree of the defendant's awareness of that likelihood;
 - (c) The profitability of the misconduct to the defendant;
 - (d) The duration of the misconduct and any concealment of it by the defendant; and
 - (e) Any actions by the defendant to remedy the misconduct once it became known to the defendant.
- (3) KRS 411.184 and this section are applicable to all cases in which punitive damages are sought.

KRS 411.187 Supersedeas bond for punitive damages on appeal - Limit - Rescission of limit if assets diverted or dissipated.

- (1) In any civil action brought under any legal theory, the amount of a supersedeas bond necessary to stay execution of a judgment granting legal, equitable, or any other relief during the entire course of all appeals or discretionary reviews of the judgment by all appellate courts shall be set in accordance with applicable law, except that the total amount of the supersedeas bonds that are required collectively of all appellants during the appeal of a civil action may not exceed one hundred million dollars (\$100,000,000) in the aggregate, regardless of the amount of the judgment that is appealed.
- (2) If the appellee proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond requirement has been limited, is purposefully dissipating or diverting assets outside of the ordinary course of its business for the purpose of avoiding ultimate payment of the judgment, the limitation granted under subsection (1) of this section shall be rescinded and a court may require the appellant to post a bond in an amount up to the full amount of the judgment pursuant to the Kentucky Rules of Civil Procedure

B. CIVIL RIGHTS (PROTECTION FROM SEXUAL HARASSMENT)

Note: This subsection includes portions of Kentucky's Civil Rights Act, which addresses sexual harassment as an issue of discrimination. There are additional protections under federal law.

KRS 344.010 Definitions for chapter.

In this chapter:

- (1) "Person" includes one (1) or more individuals, labor organizations, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, fiduciaries, receivers, or other legal or commercial entity; the state, any of its political or civil subdivisions or agencies.
- (2) "Commission" means the Kentucky Commission on Human Rights.
- (3) "Commissioner" means a member of the commission.
- (4) "Disability" means, with respect to an individual:
 - (a) A physical or mental impairment that substantially limits one (1) or more of the major life activities of the individual;
 - (b) A record of such an impairment; or

(c) Being regarded as having such an impairment.

Persons with current or past controlled substances abuse or alcohol abuse problems and persons excluded from coverage by the Americans with Disabilities Act of 1990 (P.L. 101-336) shall be excluded from this section.

(5) "Discrimination" means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment of a person or persons, or the aiding, abetting, inciting, coercing, or compelling thereof made unlawful under this chapter.

...

(14) "Family" includes a single individual.

(15) (a) "Familial status" means one (1) or more individuals who have not reached the age of eighteen (18) years and are domiciled with:

1. A parent or another person having legal custody of the individual or individuals; or
2. The designee of a parent or other person having custody, with the written permission of the parent or other person.

(b) The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen (18) years.

(16) "Discriminatory housing practice" means an act that is unlawful under KRS 344.360, 344.367, 344.370, 344.380, or 344.680.

KRS 344.020 Purposes and construction of chapter - Effect.

(1) The general purposes of this chapter are:

(a) To provide for execution within the state of the policies embodied in the Federal Civil Rights Act of 1964 as amended (78 Stat. 241), Title VIII of the Federal Civil Rights Act of 1968 (82 Stat. 81), the Fair Housing Act as amended (42 U.S.C. 360), the Federal Age Discrimination in Employment Act of 1967 (81 Stat. 602), the Americans with Disabilities Act of 1990 (P.L. 101-336), and the Civil Rights Act of 1991 as amended (P.L. 102-166, amended by P.L. 102-392);

(b) To safeguard all individuals within the state from discrimination because of familial status, race, color, religion, national origin, sex, age forty (40) and over, or because of the person's status as a qualified individual with a disability as defined in KRS 344.010 and KRS 344.030; thereby to protect their interest in personal dignity and freedom from humiliation, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest which would menace its democratic institutions, to preserve the public safety, health, and general welfare, and to further the interest, rights, and privileges of individuals within the state;

(c) To establish as the policy of the Commonwealth the safeguarding of the rights of an individual selling or leasing his primary residence through private sale without the aid of any real estate operator, broker, or salesman and without advertising or public display.

(2) This chapter shall be construed to further the general purposes stated in this section and the special purposes of the particular provision involved.

(3) Nothing in this chapter shall be construed as indicating an intent to exclude local laws on the same subject matter not inconsistent with this chapter.

(4) Nothing contained in this chapter shall be deemed to repeal any other law of this state relating to discrimination because of familial status, race, color, religion, national origin, sex, age forty (40) and over, or because of the person's status as a qualified individual with a disability as defined in KRS 344.030.

KRS 344.030 Definitions for KRS 344.030 to 344.110.

For the purposes of KRS 344.030 to 344.110:

- (1) "Qualified individual with a disability" means an individual with a disability as defined in KRS 344.010 who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires unless an employer demonstrates that he is unable to reasonably accommodate an employee's or prospective employee's disability without undue hardship on the conduct of the employers' business. Consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.
- (2) "Employer" means a person who has eight (8) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year and an agent of such a person, except for purposes of determining discrimination based on disability, employer means a person engaged in an industry affecting commerce who has fifteen (15) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of that person, except that, for two (2) years following July 14, 1992, an employer means a person engaged in an industry affecting commerce who has twenty-five (25) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding year, and any agent of that person. For the purposes of determining discrimination based on disability, employer shall not include:
 - (a) The United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or
 - (b) A bona fide private membership club (other than a labor organization) that is exempt from taxation under Section 501(c) of the Internal Revenue Service Code of 1986.
- (3) "Employment agency" means a person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such person.
- (4) "Labor organization" means a labor organization and an agent of such an organization, and includes an organization of any kind, an agency or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and a conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.
- (5) (a) "Employee" means an individual employed by an employer, but does not include an individual employed by his parents, spouse, or child, or an individual employed to render services as a domestic in the home of the employer.
 - (b) Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisee, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purpose under this chapter.
 - (c) Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisor, neither a franchisor nor a franchisor's employee shall be deemed to be an employee of the franchisee for any purpose under this chapter.
 - (d) For purposes of this subsection, "franchisee" and "franchisor" have the same meanings as in 16 C.F.R. sec. 436.1.
- (6) "Reasonable accommodation" means making existing facilities used by employees readily accessible to and usable by individuals with disabilities, job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for

individuals with disabilities.

- (7) "Religion" means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.
- (8) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in this section shall be interpreted to permit otherwise.
- (9) "Undue hardship," for purposes of disability discrimination, means an action requiring significant difficulty or expense, when considered in light of the following factors:
 - (a) The nature and cost of the accommodation needed;
 - (b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at the facility; the effect on expenses and resources; or the impact otherwise of such accommodation upon the operation of the facility;
 - (c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; and the number, type, and location of its facilities; and
 - (d) The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

KRS 344.040 Unlawful discrimination by employers -- Difference in health plan contribution rates for smokers and nonsmokers and benefits for smoking cessation program participants excepted.

- (1) It is an unlawful practice for an employer:
 - (a) To fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the individual's race, color, religion, national origin, sex, age forty (40) and over, because the person is a qualified individual with a disability, or because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking;
 - (b) To limit, segregate, or classify employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect status as an employee, because of the individual's race, color, religion, national origin, sex, or age forty (40) and over, because the person is a qualified individual with a disability, or because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking; or
 - (c) To require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products outside the course of employment, as long as the person complies with any workplace policy concerning smoking.
- (2)
 - (a) A difference in employee contribution rates for smokers and nonsmokers in relation to an employer-sponsored health plan shall not be deemed to be an unlawful practice in violation of this section.
 - (b) The offering of incentives or benefits offered by an employer to employees who participate in a smoking cessation program shall not be deemed to be an unlawful practice in violation of this section.

KRS 344.120 Refusal to rent or sell public accommodations unlawful.

Except as otherwise provided in KRS 344.140 and 344.145, it is an unlawful practice for a person to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation, resort, or amusement, as defined in KRS 344.130, on the ground of disability, race, color, religion, or national origin.

KRS 344.200 Complaints of discrimination -- Procedure -- Conciliation agreements -- Enforcement.

- (1) An individual claiming to be aggrieved by an unlawful practice other than a discriminatory housing practice, a member of the commission, or the Attorney General may file with the commission a written sworn complaint stating that an unlawful practice has been committed, setting forth the facts upon which the complaint is based, and setting forth facts sufficient to enable the commission to identify the persons charged (referred to as the respondent in this section, KRS 344.210, 344.230, and 344.240). The commission shall make reasonable accommodations to assist persons with disabilities in filing a written sworn complaint. The commission staff or a person designated pursuant to its administrative regulations shall promptly investigate the allegations of unlawful practice set forth in the complaint and shall within five (5) days furnish the respondent with a copy of the complaint. The complaint must be filed within one hundred eighty (180) days after the alleged unlawful practice occurs.
- (2) The commission or an individual designated pursuant to its administrative regulations shall determine within thirty (30) days after the complaint has been filed whether there is probable cause to believe the respondent has engaged in an unlawful practice. If it is determined that there is no probable cause to believe that the respondent has engaged in an unlawful practice, the commission shall issue an order dismissing the complaint and shall furnish a copy of the order to the complainant, the respondent, the Attorney General, and any other public officers and persons that the commission deems proper.
- (3) The complainant, within ten (10) days after receiving a copy of the order dismissing the complaint, may file with the commission an application for reconsideration of the order. Upon receiving a reconsideration application, the commission or an individual designated pursuant to administrative regulation shall make a new determination within ten (10) days whether there is probable cause to believe that the respondent has engaged in an unlawful practice. If it is determined that there is no probable cause to believe that the respondent has engaged in an unlawful practice, the commission shall issue an order dismissing the complaint and furnishing a copy of the order to the complainant, the respondent, the Attorney General, and any other public officers and persons that the commission deems proper.
- (4) If the staff determines, after investigation, or if the commission determines after the review provided for in subsection (3) of this section that there is probable cause to believe that the respondent has engaged in an unlawful practice, the commission staff shall endeavor to eliminate the alleged unlawful practice by conference, conciliation, and persuasion. The terms of a conciliation agreement reached with a respondent may require him to refrain from the commission of unlawful discriminatory practices in the future and make any further provisions as may be agreed upon between the commission or its staff and the respondent. If a conciliation agreement is entered into, the commission shall issue and serve on the complainant an order stating its terms. A copy of the order shall be delivered to the respondent, the Attorney General, and any other public officers and persons that the commission deems proper. Except for the terms of the conciliation agreement, neither the commission nor any officer or employee thereof shall make public, without the written consent of the complainant and the respondent, information concerning efforts in a particular case to eliminate an unlawful practice by conference, conciliation, or persuasion whether or not there is a determination of probable cause or a conciliation agreement.

- (5) At the expiration of one (1) year from the date of a conciliation agreement, and at other times in its reasonable discretion, the commission staff may investigate whether the terms of the agreement have been and are being complied with by the respondent. Upon a finding that the terms of the agreement are not being complied with by the respondent, the commission shall take whatever action it deems appropriate to assure compliance.
- (6) At any time after a complaint is filed, the commission may file an action in the Circuit Court in a county in which the subject of the complaint occurs, or in a county in which a respondent resides or has his principal place of business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings including an order or decree restraining him from doing or procuring any act tending to render ineffectual any order the commission may enter with respect to the complaint. The court shall have power to grant temporary relief or a restraining order as it deems just and proper.
- (7) Nothing in this section shall apply to any discriminatory housing practice.

KRS 344.230 Orders of commission -- Nature of affirmative action.

- (1) If the commission determines that the respondent has not engaged in an unlawful practice, the commission shall issue a final order in accordance with the provisions of KRS Chapter 13B dismissing the complaint. A copy of the order shall be delivered to the complainant, the respondent, the Attorney General, and any other public officers and persons that the commission deems proper.
- (2) If the commission determines that the respondent has engaged in an unlawful practice, the commission shall issue a final order requiring the respondent to cease and desist from the unlawful practice and to take affirmative action as in the judgment of the commission will carry out the purposes of this chapter. A copy of the final order shall be delivered to the respondent, the complainant, the Attorney General, and to any other public officers and persons that the commission deems proper.
- (3) Affirmative action ordered under this section may include, but is not limited to:
 - (a) Hiring, reinstatement, or upgrading of employees with or without back pay. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.
 - (b) Admission or restoration of individuals to union membership, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program, or other occupational training or retraining program, and the utilization of objective criteria in the admission of individuals to such programs.
 - (c) Admission of individuals to a place of public accommodation, resort, or amusement.
 - (d) The extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent.
 - (e) Reporting as to the manner of compliance.
 - (f) Posting notices in conspicuous places in the respondent's place of business in form prescribed by the commission.
 - (g) Sale, exchange, lease, rental, assignment, or sublease of real property to an individual.
 - (h) Payment to the complainant of damages for injury caused by an unlawful practice including compensation for humiliation and embarrassment, and expense incurred by the complainant in obtaining alternative housing accommodations and for other costs actually incurred by the complainant as a direct result of an unlawful practice.
- (4) The commission may publish or cause to be published the names of persons who have been determined to have engaged in an unlawful practice.

KRS 344.240 Scope of and procedure for judicial review -- Hearing -- Appeal.

- (1) Any complainant, respondent, or intervenor aggrieved by a final order of the commission, including a final order dismissing any complaint or stating the terms of a conciliation agreement, may obtain judicial review, and the commission may obtain an order of the court for enforcement of its final order, in a proceeding brought in the Circuit Court in a county in which the alleged unlawful practice which is the subject of the final order or complaint occurs or in which a respondent resides or has his principal place of business.
- (2) Except for a discriminatory housing practice, if the commission has failed to schedule a hearing in accordance with KRS 344.210(1) or has failed to issue a final order within one hundred eighty (180) days after the complaint is filed, the complainant, respondent, Attorney General, or an intervenor may petition the Circuit Court in a county in which the alleged unlawful practice set forth in the complaint occurs or in which the petitioner resides or has his principal place of business for an order directing the commission to schedule a hearing or to issue its final order. The court shall follow the procedure set forth in KRS Chapter 13B and this section so far as applicable.
- (3) If before the expiration of sixty (60) days after the date of the commission order is entered for a discriminatory housing practice and no petition for review has been filed under subsection (1) of this section, any person entitled to under the discriminatory housing practice order may petition for a decree enforcing the order in the Circuit Court for the county in which the discriminatory housing practice is alleged to have occurred.
- (4) Except for subsection (2) of this section, all provisions in this section shall apply to orders issued in a discriminatory housing practice proceeding.

KRS 344.280 Conspiracy to violate chapter unlawful.

It shall be an unlawful practice for a person, or for two (2) or more persons to conspire:

- (1) To retaliate or discriminate in any manner against a person because he has opposed a practice declared unlawful by this chapter, or because he has made a charge, filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under this chapter; or
- (2) To aid, abet, incite, compel, or coerce a person to engage in any of the acts or practices declared unlawful by this chapter; or
- (3) To obstruct or prevent a person from complying with the provisions of this chapter or any order issued thereunder;
- (4) To resist, prevent, impede, or interfere with the commission, or any of its members or representatives, in the lawful performance of duty under this chapter; or
- (5) To coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by KRS 344.360, 344.367, 344.370, 344.380, or 344.680.

KRS 344.360 Unlawful housing practices - Design and construction requirements.

It is an unlawful housing practice for a real estate operator, or for a real estate broker, real estate salesman, or any person employed by or acting on behalf of any of these:

- (1) To refuse to sell, exchange, rent, or lease, or otherwise deny to or withhold, real property from any person because of race, color, religion, sex, familial status, disability, or national origin;
- (2) To discriminate against any person because of race, color, religion, sex, familial status, disability, or national origin in the terms, conditions, or privileges of the sale, exchange, rental, or lease of real property or in the furnishing of facilities or services in connection therewith;
- (3) To refuse to receive or transmit a bona fide offer to purchase, rent, or lease real property from any person because of race, color, religion, sex, familial status, disability, or national origin;

- (4) To refuse to negotiate for the sale, rental, or lease of real property to any person because of race, color, religion, sex, familial status, disability, or national origin;
- (5) To represent to any person that real property is not available for inspection, sale, rental, or lease when it is so available, or to refuse to permit any person to inspect real property because of his race, color, religion, sex, familial status, disability, or national origin;
- (6) To make, print, circulate, post, or mail or cause to be printed, circulated, posted, or mailed an advertisement or sign, or to use a form of application for the purchase, rental, or lease of real property, or to make a record of inquiry in connection with the prospective purchase, rental, or lease of real property, which indicates, directly or indirectly, a limitation, specification, or discrimination as to race, color, religion, sex, familial status, disability, or national origin or an intent to make such a limitation, specification, or discrimination;
- (7) To offer, solicit, accept, use, or retain a listing of real property for sale, rental, or lease with the understanding that any person may be discriminated against in the sale, rental, or lease of that real property or in the furnishing of facilities or services in connection therewith because of his race, color, religion, sex, familial status, disability, or national origin;
- (8) To otherwise deny to or withhold real property from any person because of his race, color, religion, sex, familial status, disability, or national origin;
- (9) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a housing accommodation to any buyer or renter because of a disability of:
 - (a) That buyer or renter;
 - (b) A person residing in or intending to reside in that housing accommodation after it is sold, rented, or made available; or
 - (c) Any person associated with that buyer or renter; or
- (10) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such housing accommodation, because of a disability of:
 - (a) That person; or
 - (b) A person residing in or intending to reside in that housing accommodation after it is sold, rented, or made available; or
 - (c) Any person associated with that person.
- (11) For purposes of this section, discrimination includes:
 - (a) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by a person, if the modifications may be necessary to afford the person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
 - (b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford the person equal opportunity to use and enjoy a housing accommodation; or
 - (c) In connection with the design and construction of covered multifamily housing accommodations for first occupancy after January 1, 1993, a failure to design and construct those housing accommodations in a manner ensuring that they have at least one (1) entrance on an accessible route unless impractical to do so because of the terrain or unusual characteristics of the site. Housing accommodations with a building entrance on an accessible route shall comply with the following requirements:
 1. The public use and common use portions of the housing accommodations shall be readily accessible to and usable by disabled persons;
 2. All the doors designed to allow passage into and within all premises within the housing accommodations shall be sufficiently wide to allow passage by disabled persons in wheelchairs; and

3. All premises within the housing accommodations shall contain the following features of adaptive design:
 - a. An accessible route into and through the housing accommodation;
 - b. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - c. Reinforcements in bathroom walls to allow later installation of grab bars; and
 - d. Usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space.
- (12) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically disabled persons, (commonly cited as "ANSI A117.1 - 1986") suffices to satisfy the requirements of subsection (11)(c)3. of this section.
- (13) As used in subsection (11) of this section, the term "covered multifamily housing accommodation" means:
 - (a) Buildings consisting of four (4) or more units if the buildings have one (1) or more elevators; and
 - (b) Ground floor units in other buildings consisting of two (2) or more units.
- (14) Nothing in this section requires that a housing accommodation be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

KRS 344.400 Unlawful practices in connection with credit transactions - Exceptions.

- (1) It shall be an unlawful practice for any person, whether acting for himself or another, in connection with any credit transaction because of race, color, religion, national origin or sex to:
 - (a) deny credit to any person;
 - (b) increase the charges or fees for or collateral required to secure any credit extended to any person;
 - (c) restrict the amount or use of credit extended or impose different terms or conditions with respect to the credit extended to any person or any item or service related thereto;
 - (d) attempt to do any of the unlawful practices defined in this section.
- (2) The provisions of this section shall not prohibit any party to a credit transaction from considering the credit history of any individual applicant.
- (3) The provisions of this section shall not prohibit any party to a credit transaction from considering the application of Kentucky law on dower, curtesy, descent and distribution to the particular case or from taking reasonable action thereon.

KRS 344.550 Definitions for KRS 344.550 to 344.575.

For purposes of KRS 344.550 to 344.575:

- (1) "Educational institution" means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one (1) school, college, or department which are administratively separate units, the term means each school, college, or department.
- (2) "Funding recipient" means any department, agency, special purpose district, instrumentality of state or local government, college, university, postsecondary institution, public system of higher education, local educational agency, system of vocational education, corporation, partnership, private organization or sole proprietorship receiving state financial assistance for any education program or activity.

KRS 344.555 Prohibition against sex discrimination under any education program receiving state financial assistance -- Exceptions.

- (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving state financial assistance, except that:
- (a) In regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;
 - (b) This section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of the organization;
 - (c) This section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marines;
 - (d) In regard to admissions, this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one (1) sex;
 - (e) This section shall not apply to membership practices of a social fraternity or social sorority which is exempt under Section 501(a) of the Federal Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at an institution of higher education, or of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are exempt under Section 501(a) of the Federal Internal Revenue Code, the membership of which has traditionally been limited to persons of one (1) sex and principally to persons of less than nineteen (19) years of age;
 - (f) This section shall not apply to any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or any program or activity of any secondary school or educational institution specifically for the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or the selection of students to attend any such conference;
 - (g) This section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one (1) sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and
 - (h) This section shall not apply to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received the award in any pageant in which the attainment of the award is based upon a combination of factors related to the personal appearance, poise, and talent of the individual and in which participation is limited to individuals of one (1) sex only, so long as the pageant is in compliance with other nondiscrimination provisions of state and federal law.
- (2) Nothing contained in subsection (1) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one (1) sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any state supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, state, section, or other area. However, nothing in this subsection shall be construed to prevent the consideration in any hearing or proceeding under KRS 344.550 to 344.575 of statistical evidence tending to show that an imbalance exists with respect to the participation in, or receipt of the benefits of, any program or activity by the members of one (1) sex.

KRS 344.560 Agencies and departments required to effectuate KRS 344.555.

Each state department and agency which is empowered to extend state financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, shall effectuate the provisions of KRS 344.555 with respect to such program or activity by promulgating administrative regulations of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. This section shall not apply to a state department or agency which extends state financial assistance to an education institution if the amount of state financial assistance extended by the state department or agency represents less than two percent (2%) of the total state financial assistance received by the education institution. Compliance with any requirement adopted pursuant to this section shall be effected:

- (1) By the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which the noncompliance has been found; or
- (2) By any other means authorized by law.

However, no action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the chief officer of the state department or agency shall file with the committees of the House of Representatives and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty (30) days have elapsed after the filing of such report.

KRS 344.600 Complaint on discriminatory housing practice -- Investigation.

- (1) (a) 1. An aggrieved person may, not later than one (1) year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the commission alleging a discriminatory housing practice. All other complaints of an alleged discrimination practice must be filed pursuant to the procedure described in KRS 344.200. The commission, on its own initiative, or the Attorney General may also file a complaint alleging a discriminatory housing practice.
2. The complaint shall be in writing and shall contain the information and be in a form required by the commission.
3. The commission may also investigate housing practices to determine whether a complaint should be brought under this section.
- (b) Upon the filing of the discriminatory housing practice complaint:
 1. The commission shall within five (5) days serve written notice upon the aggrieved person acknowledging the filing and advising the aggrieved person of the time limits and choice of forums provided in KRS 344.635.
 2. The commission shall, not later than ten (10) days after the filing or the identification of an additional respondent under subsection (2) of this section, serve on the respondent a written notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of respondents under this chapter, together with a copy of the original complaint;
 3. Each respondent shall file, not later than ten (10) days after receipt of notice from the commission, an answer to the complaint; and
 4. The commission shall commence an investigation of the alleged discriminatory housing

practice within thirty (30) days of filing the complaint and complete the investigation within one hundred (100) days after the filing of the complaint, unless it is impracticable to do so.

- (c) If the commission is unable to complete the investigation within one hundred (100) days after the filing of the complaint, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.
 - (d) Complaints and answers shall be under oath or affirmation, and may be reasonably and fairly amended at any time.
- (2) (a) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under subsection (1) of this section, to that person, from the commission.
- (b) The notice, in addition to meeting the requirements of subsection (1) of this section, shall explain the basis for the commission's belief that the person to whom the notice is addressed is properly joined as a respondent.

KRS 344.620 Civil action for preliminary or temporary relief - Effect.

- (1) If the commission concludes at any time following the filing of a discriminatory housing complaint that prompt judicial action is necessary to carry out the purposes of this chapter, the commission may initiate a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section.
- (2) The commission shall promptly commence and maintain an action.
- (3) Any restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Kentucky Rules of Civil Procedure.
- (4) The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under KRS 344.600, 344.605, 344.635, 344.640, or 344.645.

KRS 344.625 Probable cause determination - Issuance of charge.

- (1) The commission shall determine, based on the facts, whether probable cause exists to believe that a discriminatory housing practice made unlawful under this chapter has occurred or is about to occur.
- (2) The commission shall make the determination under subsection (1) of this section not later than the one hundredth day after the date a complaint is filed unless:
 - (a) It is impracticable to make the determination; or
 - (b) The commission has approved a conciliation agreement relating to the discriminatory housing complaint.
- (3) If it is impracticable to make the determination within the time period provided by subsection (2) of this section, the commission shall notify the complainant and respondent in writing of the reasons for the delay.
- (4) If the commission determines that probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall, except as provided in subsection (6) of this section, immediately issue a charge on behalf of the aggrieved person for further proceeding under KRS 344.635.
- (5) The charge:
 - (a) Shall consist of a concise statement of the facts upon which the commission has found probable cause to believe that a discriminatory housing practice has occurred or is about to occur;
 - (b) Shall be based on the final investigative report; and
 - (c) Need not be limited to the facts or grounds alleged in the complaint filed under KRS 344.600.

- (6) If the commission determines that the matter involves the legality of any state or local zoning or other land use law or ordinance, the commission shall follow the procedures described in KRS 344.665.
- (7) If the commission determines that no probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall promptly dismiss the complaint. The commission shall make public disclosure of each dismissal at the request of the respondent.
- (8) The commission may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under a federal or state law seeking relief with respect to that discriminatory housing practice.

KRS 344.635 Election of method for securing relief.

When a discriminatory housing charge is filed under KRS 344.625, a complainant, a respondent, or the aggrieved person on whose behalf the complaint is filed, may elect to have the claims asserted in that charge decided in a civil action under KRS 344.670, in lieu of an administrative hearing before the commission under KRS 344.640.

- (1) The election shall be made not later than twenty (20) days after the receipt by the electing person of service under KRS 344.630, from the commission or, in the case of the commission, not later than twenty (20) days after service to the respondent and complainant.
- (2) The person making the election shall give written notice of doing so to the commission and to all other complainants and respondents to whom the charge relates

KRS 344.645 Final order of commission - Civil penalty.

- (1) If the commission finds that a respondent has engaged or is about to engage in a discriminatory housing practice, the commission shall promptly issue a final order for appropriate relief, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. The final order may, to vindicate the public interest, assess a civil penalty against the respondent:
 - (a) In an amount not exceeding ten thousand dollars (\$10,000) if the respondent has not been adjudged to have committed any prior discriminatory housing practice;
 - (b) In an amount not exceeding twenty-five thousand dollars (\$25,000) if the respondent has been adjudged to have committed one (1) other discriminatory housing practice during the five (5) year period ending on the date of the filing of this charge; and
 - (c) In an amount not exceeding fifty thousand dollars (\$50,000) if the respondent has been adjudged to have committed two (2) or more discriminatory housing practices during the seven (7) year period ending on the date of the filing of this charge; except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in paragraphs (b) or (c) of this subsection may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.
- (2) No final order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of the final order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the discriminatory housing charge.
- (3) If the commission finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, the commission shall enter a final order dismissing the charge. The commission shall make public disclosure of the dismissal.
- (4) The commission shall issue a final order in accordance with the provisions of KRS Chapter 13B.

KRS 344.650 Civil action for relief from discriminatory housing practice or breach of conciliation agreement - Time limitation.

- (1) An aggrieved person may file a civil action in an appropriate Circuit Court not later than two (2) years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into as the result of an alleged discriminatory housing practice, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach.
- (2) The computation of the two (2) year period shall not include any time during which an administrative proceeding under this chapter is pending with respect to a complaint or charge of an alleged discriminatory housing practice. This subsection does not apply to actions arising from a breach of a conciliation agreement entered into as a result of an alleged discriminatory housing practice.
- (3) An aggrieved person may file a civil action under this section whether or not a complaint has been filed under KRS 344.600, and without regard to the status of any such complaint, but:
 - (a) If the commission has obtained a conciliation agreement with the consent of an aggrieved person, the aggrieved person may not file an action under this section with respect to the alleged discriminatory housing practice which forms the basis for the complaint except for the purposes of enforcing the terms of the conciliation agreement; and
 - (b) An aggrieved person may not file a civil action under this section with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the commission if the commission has commenced a hearing.

KRS 344.655 Powers of Circuit Court.

Upon application by a person alleging a discriminatory housing practice or a person against whom a discriminatory housing practice is alleged, the Circuit Court may:

- (1) Appoint an attorney for the person; or
- (2) Authorize the commencement or continuation of a civil action under KRS 344.650, without the payment of fees, costs, or security, if in the opinion of the court the person is financially unable to bear the cost of such action.

KRS 344.660 Damages and injunctive relief available.

- (1) In a civil action under KRS 344.650, if the Circuit Court finds that a discriminatory housing practice has occurred or is about to occur, the Circuit Court may award to the plaintiff actual and punitive damages, and subject to subsection (3) of this section, may grant as relief, as the court deems appropriate any permanent or temporary injunction, restraining order, or other order including an order enjoining the defendant from engaging in the practice or ordering affirmative action as appropriate.
- (2) In a civil action under KRS 344.240, 344.650, or 344.665, the court, in its discretion, may award the prevailing complainant, a reasonable attorneys' fee and costs. The court, in its discretion, may award the prevailing respondent a reasonable attorneys' fee and costs if the respondent establishes that the complaint upon which the action was based was brought in bad faith. Whether a party has committed bad faith shall be determined in accordance with Rule 11 of the Kentucky Rules of Civil Procedure. The state shall not be liable in any event for fees and costs.
- (3) However, no relief provided under this section shall effect any contract, sale, encumbrance, or lease consummated before the granting of that relief, and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of the complaint of a discriminatory housing practice complaint with the commission or the filing of a civil action.

KRS 344.665 Institution of civil actions by commission or Attorney General -- Powers of court.

- (1) The commission or the Attorney General may file a civil action in Circuit Court for appropriate relief if the commission or Attorney General has probable cause to believe that:
 - (a) Any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any housing right granted by this chapter; or
 - (b) Any group of persons has been denied any housing right granted by this chapter and the denial raises an issue of general public importance; or
 - (c) Any state or local zoning or land use law is a discriminatory housing practice. The action shall be brought within eighteen (18) months of the occurrence or termination of the alleged discriminatory practice; or
 - (d) A conciliation agreement has been breached.

The action shall be brought within ninety (90) days of the commission or Attorney General receiving notice of the breach.
- (2) In an action under this section, the court:
 - (a) May award preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation to assure the full enjoyment of the rights granted by this chapter;
 - (b) May award other appropriate relief, including compensatory and punitive damages;
 - (c) May award a reasonable attorney's fee and costs to the prevailing party to the same extent allowed in KRS 344.660. The state shall not be liable in any event for fees and costs; and
 - (d) May, to vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed:
 1. Fifty thousand dollars (\$50,000) for a first violation; and
 2. One hundred thousand dollars (\$100,000) for a second or subsequent violation.
 - (e) A person may intervene in an action under this section if the person is:
 1. An aggrieved person to the discriminatory housing practice; or
 2. A party to a conciliation agreement concerning the discriminatory housing practice.

KRS 344.670 Civil action by commission on behalf of aggrieved person electing judicial proceeding.

- (1) If an election is made under KRS 344.635 for a judicial rather than an administrative proceeding, the commission shall not later than thirty (30) days after the election is made, commence and maintain a civil action on behalf of the aggrieved person in the appropriate Circuit Court seeking relief under this section.
- (2) Any aggrieved person with respect to the issues to be determined in a civil action under this section may intervene as of right in that civil action.
- (3) If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief under KRS 344.660 which a court could grant with respect to a discriminatory housing practice in a civil action under KRS 344.650. Any relief granted under KRS 344.660 that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under KRS 344.650 shall also accrue to that aggrieved person in a civil action under this section. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award relief if that aggrieved person has not complied with discovery orders entered by the court.

KRS 344.675 Appointment of attorney and award of fees.

- (1) In any administrative proceeding brought under KRS 344.640 or 344.645 or any court proceeding arising therefrom, including actions described in KRS 344.240 or any civil action, the commission or the court, as the case may be, upon application of either party, and in its discretion, may:
 - (a) Appoint an attorney for the person; or
 - (b) Award a reasonable attorneys' fee and costs to the prevailing party to the same extent allowed in KRS 344.660, or both. The state shall not be liable in any event for fees and costs.
- (2) The state through the commission's attorney or the Attorney General shall maintain any civil action on behalf of the complainant or aggrieved party.
- (3) Where the parties to an alleged discriminatory housing practice have elected an administrative determination rather than a civil adjudication, the commission staff attorney shall represent the complainant or aggrieved party before the commission.

C. DOMESTIC VIOLENCE PROTECTIVE ORDERS

KRS 403.715 Interpretation of KRS 403.715 to 403.785.

KRS 403.715 to 403.785 shall be interpreted to:

- (1) Allow victims to obtain effective, short-term protection against further wrongful conduct in order that their lives may be as secure and as uninterrupted as possible;
- (2) Expand the ability of law enforcement officers to effectively respond to further wrongful conduct so as to prevent future incidents and to provide assistance to the victims;
- (3) Provide peace officers with the authority to immediately apprehend and charge for violation of an order of protection any person whom the officer has probable cause to believe has violated an order of protection and to provide courts with the authority to conduct contempt of court proceedings for these violations;
- (4) Provide for the collection of data concerning incidents of domestic violence and abuse in order to develop a comprehensive analysis of the numbers and causes of such incidents; and
- (5) Supplement and not repeal or supplant any duties, responsibilities, services, or penalties under KRS Chapters 209, 209A, and 620.

KRS 403.720 Definitions for KRS 403.715 to 403.785.

As used in KRS 403.715 to 403.785:

- (1) "Domestic violence and abuse" means physical injury, serious physical injury, stalking, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple;
- (2) "Family member" means a spouse, including a former spouse, a grandparent, a grandchild, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim;
- (3) "Foreign protective order" means any judgment, decree, or order of protection which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 that was issued on the basis of domestic violence and abuse;
- (4) "Global positioning monitoring system" means a system that electronically determines a person's location through a device worn by the person which does not invade his or her bodily integrity and which transmits the person's latitude and longitude data to a monitoring entity;
- (5) "Member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together;
- (6) "Order of protection" means an emergency protective order or a domestic violence order and includes a foreign protective order; and

(7) "Substantial violation" means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection.

KRS 403.725 Petition for order of protection -- Venue -- Verified contents -- Concurrent jurisdiction -- Protocols for access and supplemental jurisdiction -- Referral.

- (1) A petition for an order of protection may be filed by:
 - (a) A victim of domestic violence and abuse; or
 - (b) An adult on behalf of a victim who is a minor otherwise qualifying for relief under this subsection.
- (2) The petition may be filed in the victim's county of residence or a county where the victim has fled to escape domestic violence and abuse.
- (3) The petition shall be verified and contain:
 - (a) The name, age, address, occupation, residence, and school or postsecondary institution of the petitioner;
 - (b) The name, age, address, occupation, residence, and school or postsecondary institution of the person or persons who have engaged in the alleged act or acts complained of in the petition;
 - (c) The facts and circumstances which constitute the basis for the petition;
 - (d) The date and place of the marriage of the parties, if applicable; and
 - (e) The names, ages, and addresses of the petitioner's minor children, if applicable.
- (4) The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers, Commonwealth's or county attorneys, and regional rape crisis centers or domestic violence shelters.
- (5) All petitions requested, completed, and signed by persons seeking protection under this chapter shall be accepted and filed with the court.
- (6)
 - (a) Jurisdiction over petitions filed under this chapter shall be concurrent between the District Court and Circuit Court and a petition may be filed by a petitioner in either court, except that a petition shall be filed in a family court if one has been established in the county where the petition is filed.
 - (b) The Court of Justice shall provide a protocol for twenty-four (24) hour access to orders of protection in each county with any protocol, whether statewide or local, being subject to Supreme Court review and approval of the initial protocol and any subsequent amendments. This protocol may allow for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.
 - (c) The Court of Justice may authorize by rule that petitions in a specific county be filed in accordance with a supplemental jurisdictional protocol adopted for that county. This protocol may provide for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.
 - (d)
 1. In addition to the protocols for twenty-four (24) hour access established under paragraphs (b) and (c) of this subsection, before January 1, 2019, the Court of Justice shall provide protocols for filing, including electronic filing, of petitions for orders of protection at those regional rape crisis centers designated under KRS 211.600, or regional domestic violence shelters designated under KRS 209A.045, that elect to participate in any county's twenty-four (24) hour access protocol.
 2. These protocols shall be subject to Supreme Court review for approval of the initial protocol and any subsequent amendments.

- (7) Any judge to whom a petition is referred under subsection (6) of this section shall have full authority to review and hear a petition and subsequently grant and enforce an order of protection.
- (8) If the judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is unavailable or unable to act within a reasonable time, the proceedings may be conducted by any judge of the county in accordance with court rules.

KRS 403.735 Hearing on petition for order of protection -- Criteria to assess appropriate relief and sanctions -- Continuance of hearing and emergency protective order.

- (1) Prior to or at a hearing on a petition for an order of protection:
 - (a) The court may obtain the respondent's Kentucky criminal and protective order history and utilize that information to assess what relief and which sanctions may protect against danger to the petitioner or other person for whom protection is being sought, with the information so obtained being provided to the parties in accordance with the Rules of Civil Procedure; and
 - (b) If the petitioner or respondent is a minor, the court shall inquire whether the parties attend school in the same school system to assist the court in imposing conditions in the order that have the least disruption in the administration of education to the parties while providing appropriate protection to the petitioner.
- (2)
 - (a) If the adverse party is not present at the hearing ordered pursuant to KRS 403.730 and has not been served, a previously issued emergency protective order shall remain in place, and the court shall direct the issuance of a new summons for a hearing set not more than fourteen (14) days in the future. If service has not been made on the adverse party before that hearing or a subsequent hearing, the emergency protective order shall remain in place, and the court shall continue the hearing and issue a new summons with a new date and time for the hearing to occur, which shall be within fourteen (14) days of the originally scheduled date for the continued hearing. The court shall repeat the process of continuing the hearing and reissuing a new summons until the adverse party is served in advance of the scheduled hearing. If service has not been made on the respondent at least seventy-two (72) hours prior to the scheduled hearing, the court may continue the hearing no more than fourteen (14) days in the future. In issuing the summons, the court shall simultaneously transmit a copy of the summons or notice of its issuance and provisions to the petitioner.
 - (b) The provisions of this section permitting the continuance of an emergency protective order shall be limited to six (6) months from the issuance of the emergency protective order. If the respondent has not been served within that period, the order shall be rescinded without prejudice. Prior to the expiration of the emergency protective order, the court shall provide notice to the petitioner stating that, if the petitioner does not file a new petition, the order shall be rescinded without prejudice.

KRS 403.740 Domestic violence order -- Restrictions -- Temporary child support -- Expiration and reissuance.

- (1) Following a hearing ordered under KRS 403.730, if a court finds by a preponderance of the evidence that domestic violence and abuse has occurred and may again occur, the court may issue a domestic violence order:
 - (a) Restraining the adverse party from:
 - 1. Committing further acts of domestic violence and abuse;
 - 2. Any unauthorized contact or communication with the petitioner or other person specified by the court;
 - 3. Approaching the petitioner or other person specified by the court within a distance specified in the order, not to exceed five hundred (500) feet;

4. Going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located; and
5. Disposing of or damaging any of the property of the parties;
- (b) Directing or prohibiting any other actions that the court believes will be of assistance in eliminating future acts of domestic violence and abuse, except that the court shall not order the petitioner to take any affirmative action;
- (c) Directing that either or both of the parties receive counseling services available in the community in domestic violence and abuse cases; and
- (d) Additionally, if applicable:
 1. Directing the adverse party to vacate a residence shared by the parties to the action;
 2. Utilizing the criteria set forth in KRS 403.270, 403.320, and 403.822, grant temporary custody, subject to KRS 403.315; and
 3. Utilizing the criteria set forth in KRS 403.211, 403.212, and 403.213, award temporary child support.
- (2) In imposing a location restriction described in subsection (1)(a)4. of this section, the court shall:
 - (a) Afford the petitioner and respondent, if present, an opportunity to testify on the issue of the locations and areas from which the respondent should or should not be excluded;
 - (b) Only impose a location restriction where there is a specific, demonstrable danger to the petitioner or other person protected by the order;
 - (c) Specifically describe in the order the locations or areas prohibited to the respondent; and
 - (d) Consider structuring a restriction so as to allow the respondent transit through an area if the respondent does not interrupt his or her travel to harass, harm, or attempt to harass or harm the petitioner.
- (3) When temporary child support is granted under this section, the court shall enter an order detailing how the child support is to be paid and collected. Child support ordered under this section may be enforced utilizing the same procedures as any other child support order.
- (4) A domestic violence order shall be effective for a period of time fixed by the court, not to exceed three (3) years, and may be reissued upon expiration for subsequent periods of up to three (3) years each. The fact that an order has not been violated since its issuance may be considered by a court in hearing a request for a reissuance of the order.

KRS 403.745 Duration of emergency protective order and domestic violence order -- Prohibited costs and conditions -- Mutual orders of protection -- Amendment - - Expungement.

- (1) An emergency protective order and a domestic violence order shall become effective and binding on the respondent when the respondent is given notice of the existence and terms of the order by a peace officer or the court or upon personal service of the order, whichever is earlier. A peace officer or court giving notice of an unserved order shall make all reasonable efforts to arrange for the order's personal service upon the respondent. Once effective, a peace officer or the court may enforce the order's terms and act immediately upon their violation.
- (2) Costs, fees, or bond shall not be assessed against or required of a petitioner for any filing, hearing, service, or order authorized by or required to implement KRS 403.715 to 403.785.
- (3) A court shall not require mediation, conciliation, or counseling prior to or as a condition of issuing an order of protection.
- (4) Mutual orders of protection may be issued only if:
 - (a) Separate petitions have been filed by both parties; and
 - (b) The orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order.
- (5) Upon proper filing of a motion, either party may seek to amend an order of protection.
- (6) Testimony offered by an adverse party in a hearing ordered pursuant to KRS 403.730 shall not be admissible in any criminal proceeding involving the same parties, except for purposes of impeachment.

- (7)
- (a) The Court of Justice, county and Commonwealth's attorneys, law enforcement agencies, and victim services organizations may jointly operate a domestic violence intake center to assist persons who apply for relief under KRS 403.715 to 403.785.
 - (b) In cases where criminal conduct is alleged, a court may suggest that a petitioner voluntarily contact the county attorney. A court may not withhold or delay relief if the petitioner elects to not contact the county attorney.
- (8) A person's right to apply for relief under this chapter shall not be affected by that person leaving his or her residence to avoid domestic violence and abuse.
- (9) A court shall order the omission or deletion of the petitioner's address and the address of any minor children from any orders or documents to be made available to the public or to any person who engaged in the acts complained of in the petition.
- (10) (a) If a petition under KRS 403.715 to 403.785 did not result in the issuance of a domestic violence order, the court in which the petition was heard may for good cause shown order the expungement of the records of the case if:
- 1. Six (6) months have elapsed since the case was dismissed; and
 - 2. During the six (6) months preceding the expungement request, the respondent has not been bound by an order of protection issued for the protection of any person, including an order of protection as defined in KRS 456.010.
- (b) As used in this subsection, "expungement" has the same meaning as in KRS 431.079.

KRS 403.750 Order of protection for family member or member of unmarried couple upon filing of petition or action under KRS Chapter 403.

- (1) Any family member or any member of an unmarried couple may file for and receive protection under this chapter from domestic violence and abuse, notwithstanding the existence of or intent to file an action under this chapter by either party.
- (2) (a) Any family member or member of an unmarried couple who files a petition for an order of protection based upon domestic violence or abuse shall make known to the court any custody or divorce actions involving both the petitioner and the respondent that are pending in any court.
- (b) If the petitioner or respondent to an order of protection initiates an action under this chapter, the party initiating the action shall make known to the court the existence and status of any orders of protection, which shall remain effective and enforceable until superseded by order of the court in which the case is filed.
- (3) If a family member or member of an unmarried couple files an action for dissolution of marriage, child custody, or visitation, the court hearing the case shall have jurisdiction to issue an order of protection upon the filing of a verified motion either at the commencement or during the pendency of the action.

KRS 403.7505 Certification standards for mental health professionals providing court-mandated treatment -- List of certified providers to Administrative Office of the Courts -- Collection of data.

- (1) The Cabinet for Health and Family Services shall, by administrative regulations promulgated pursuant to KRS Chapter 13A, establish certification standards for mental health professionals providing court-mandated treatment services for domestic violence offenders.
- (2) The standards created by the cabinet shall be based on the following principles:
- (a) Domestic violence is a pattern of coercive control which includes physical, sexual, psychological, and environmental abuse, and is considered to be criminal conduct;
 - (b) The primary goal of treatment programs for domestic violence offenders shall be the cessation of violence which will provide for the safety of victims and their children; and
 - (c) Domestic violence offenders are responsible and shall be held accountable for the violence which they choose to perpetrate.

- (3) The standards created by the cabinet shall address the following:
- (a) Qualifications of providers of court-mandated domestic violence offender treatment services which shall include appropriate requirements for degree, experience, training, and continuing education;
 - (b) Procedures for application by providers to receive certification which shall include methods of appeal if certification is denied, and sanctions for noncompliance with the standards which may include revocation of certification;
 - (c) Admittance and discharge criteria for domestic violence offenders to enter court-mandated treatment services provided pursuant to this section;
 - (d) Written protocols for referral by a court to certified providers and for progress reports to be made to the court by providers;
 - (e) Contracts for domestic violence offenders to sign prior to entering court-ordered treatment services provided pursuant to this section. The contract shall specify that certified providers may contact the victims of the offender if the victim chooses to be contacted. The contract shall authorize the provider to release information regarding the offender's progress in treatment to the court, victims, probation and parole officers, and other individuals authorized by the court to receive the information;
 - (f) Written procedures in compliance with KRS 202A.400, 209.030, and 620.030;
 - (g) Payment protocols which require the offender to pay the actual cost for any court-mandated evaluation or treatment pursuant to this section, subject to the offender's ability to pay; and
 - (h) Other provisions which shall further the availability and quality of court-mandated domestic violence offender services.
- (4) The cabinet shall:
- (a) Maintain a list of providers certified pursuant to this section and regularly submit the list to the Administrative Office of the Courts; and
 - (b) Collect data from certified providers, which shall include demographic information and clinical characteristics on offenders served, number of offenders admitted into treatment and discharge conditions, total clinical services provided to offenders, and other information necessary to monitor the safety and effectiveness of services provided, to be provided upon request.
- (5) No person, association, or organization shall conduct, operate, maintain, advise, or advertise any program that provides court-ordered treatment services for domestic violence offenders without first obtaining or maintaining valid certification under this chapter. If the cabinet has cause to believe that court-ordered treatment services for domestic violence offenders are being provided by a person or entity that does not possess valid certification under this chapter, the cabinet may institute proceedings, in the Circuit Court of the county in which the person or entity is located or in Franklin Circuit Court, for injunctive relief to terminate the provision of those services.
- (6) Any person certified under this section shall submit quarterly to the cabinet:
- (a) Demographic information and clinical characteristics on offenders served;
 - (b) Number of offenders admitted into treatment and discharge conditions;
 - (c) Total clinical services provided to offenders; and
 - (d) Other information as required by administrative regulation.

KRS 403.751 Entry of summons or order of protection issued pursuant to KRS 403.715 to 403.785 into Law Information Network of Kentucky.

- (1) All forms, affidavits, and orders of protection issued or filed pursuant to KRS 403.715 to 403.785 which require entry into the Law Information Network of Kentucky shall be entered on forms prescribed by the Administrative Office of the Courts after consultation with the Justice and Public Safety Cabinet. If the provisions of an order of protection are contained in an order which

- is narrative in nature, the prescribed form shall be used in addition to the narrative order.
- (2) The circuit clerk, in cooperation with the court, shall cause a copy of each summons or order issued pursuant to KRS 403.715 to 403.785, or foreign protective order, fully completed and authenticated pursuant to KRS 403.715 to 403.785, to be forwarded, by the most expedient means reasonably available and within twenty- four (24) hours following its filing with the clerk, to the appropriate agency designated for entry of orders of protection into the Law Information Network of Kentucky and to the agency assigned service. Any order or court record superseding, modifying, or otherwise affecting the status of an earlier summons or order shall likewise be forwarded by the circuit clerk to the appropriate Law Information Network of Kentucky entering agency and to the agency assigned service, if service is required. The clerk and the court shall comply with all provisions and guidelines of the Law Information Network of Kentucky for entry of the records.
 - (3) Each agency designated for entry of summonses and orders issued pursuant to KRS 403.715 to 403.785, or foreign protective orders authenticated pursuant to this chapter, into the Law Information Network of Kentucky shall, consistent with the provisions and guidelines of the Law Information Network of Kentucky, enter the records immediately upon receipt of copies forwarded to the agency in accordance with subsection (2) of this section.

KRS 403.7521 Foreign protective orders -- Rebuttable presumption of validity -- Enforcement -- Civil and criminal proceedings mutually exclusive.

- (1) All foreign protective orders shall have the rebuttable presumption of validity. The validity of a foreign protective order shall only be determined by a court of competent jurisdiction. Until a foreign protective order is declared to be invalid by a court of competent jurisdiction, it shall be given full faith and credit by all peace officers and courts in the Commonwealth.
- (2) All peace officers shall treat a foreign protective order as a legal document valid in Kentucky, and shall make arrests for a violation thereof in the same manner as for a violation of an order of protection issued in Kentucky.
- (3) The fact that a foreign protective order has not been entered into the Law Information Network of Kentucky shall not be grounds for a peace officer not to enforce the provisions of the order unless it is readily apparent to the peace officer to whom the order is presented that the order has either expired according to a date shown on the order, or that the order's provisions clearly do not prohibit the conduct being complained of. Officers acting in good faith shall be immune from criminal and civil liability.
- (4) If the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law.
- (5) Civil proceedings and criminal proceedings for violation of a foreign protective order for the same violation of the protective order shall be mutually exclusive. Once either proceeding has been initiated, the other shall not be undertaken, regardless of the outcome of the original proceeding.

KRS 403.7524 Statement to assist out-of-state court in determining whether order issued under KRS 403.715 to 403.785 is entitled to full faith and credit.

- (1) In order to assist a court of another state in determining whether an order issued under KRS 403.715 to 403.785 is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265:
 - (a) All domestic violence orders shall include a statement certifying that the issuing court had jurisdiction over the parties and the matter, and that reasonable notice and opportunity to be heard has been given to the person against whom the order is sought sufficient to protect that person's right to due process; and
 - (b) All emergency protective orders shall include a statement certifying that notice and opportunity to be heard has been provided within the time required by state law, and

in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

- (2) The Administrative Office of the Courts shall prescribe the form to be used for the purposes of this section.

KRS 403.7527 Filing of foreign protective order and affidavit -- Certification by issuing court official -- Entry into Law Information Network of Kentucky.

- (1) A copy of a foreign protective order may be filed in the office of the clerk of any court of competent jurisdiction of this state. A foreign protective order so filed shall have the same effect and shall be enforced in the same manner as an order of protection issued by a court of this state
- (2)
- (a) At the time of the filing of the foreign protective order, the person filing the order shall file with the clerk of the court an affidavit on a form prescribed and provided by the Administrative Office of the Courts. The affidavit shall set forth the name, city, county, and state or other jurisdiction of the issuing court. The person shall certify in the affidavit the validity and status of the foreign protective order, and attest to the person's belief that the order has not been amended, rescinded, or superseded by any orders from a court of competent jurisdiction. All foreign protective orders presented with a completed and signed affidavit shall be accepted and filed.
- (b) The affidavit signed by the applicant shall have space where the reviewing judge shall place information necessary to allow the order's entry into the Law Information Network of Kentucky in the same manner as a Kentucky order.
- (3)
- (a) If the person seeking to file the order presents a copy of the foreign order which is current by the terms of the order and has been certified by the clerk or other authorized officer of the court which issued it, the circuit clerk shall present it to the District Judge or Circuit Judge, who shall read the order and enter on the affidavit the information necessary to allow the order's entry into the Law Information Network of Kentucky. The order shall not be subject to further verification and shall be accepted as authentic, current, and subject to full faith and credit.
- (b) If the order presented is current by the terms of the order but is not certified in the manner specified in paragraph (a) of this subsection, the circuit clerk shall present the order and the affidavit to the District Judge or Circuit Judge, who shall read the order and enter on the affidavit the information necessary to allow the order's entry into the Law Information Network of Kentucky. The order shall be subject to full faith and credit in the same manner as a Kentucky order of protection, but shall be subject to verification by the circuit clerk. The order shall be valid for a period of fourteen (14) days and may be renewed once for a period of fourteen (14) days if the circuit clerk has not received a certified copy of the order from the issuing jurisdiction. The clerk shall treat the foreign protective order in the same manner as an order of protection issued pursuant to KRS 403.740, except that no service on the adverse party shall be required pursuant to 18 U.S.C. sec. 2265.
- (c) Upon the filing of an uncertified foreign protective order, the circuit clerk shall, within two (2) business days, contact the issuing court to request a certified copy of the order. If the certified copy of the order is received by the circuit clerk within the initial fourteen (14) day period, the clerk shall cause the information that certification has been received to be entered into the Law Information Network of Kentucky and shall notify the applicant for the order of the fact of its certification. A facsimile copy of a certified foreign protective order shall be grounds for the issuance of an order of protection.
- (d) If the clerk has not received a certified copy of the foreign protective order within ten (10) days, the clerk shall notify the court and the applicant that the order has not been received.

The notice to the applicant, on a form prepared by the Administrative Office of the Courts, shall state that the foreign protective order will be extended for another fourteen (14) days, but will be dismissed at the expiration of that time. If the clerk informs the judge in writing that the certified foreign protective order has been requested but has not yet been received, the judge shall extend the foreign protective order for a period of fourteen (14) days. If certification of the foreign protective order is not received within twenty-eight (28) days, the foreign protective order shall expire and shall not be reissued. If the applicant meets the qualifications for the issuance of a Kentucky domestic violence order, the court may, upon proper application and showing of evidence, issue a Kentucky order in accordance with this chapter.

- (4) The right of a person filing a foreign protective order to bring an action to enforce the order instead of proceeding under this chapter remains unimpaired.

KRS 403.7529 Authentication of foreign protective order.

- (1) Upon ex parte review of the foreign protective order and the affidavit filed pursuant to KRS 403.7527, and after determining the order is entitled to full faith and credit in this Commonwealth pursuant to 18 U.S.C. sec. 2265, the court shall declare the order to be authenticated and record the finding on the affidavit.
- (2) If the court declares the order to be authenticated, the court shall:
 - (a) Direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with, if applicable; and
 - (b) Order its enforcement in any county of the Commonwealth in the same manner as an domestic violence order of this state issued pursuant to KRS 403.740.
- (3) The clerk shall notify the person who filed the foreign protective order of the decision of the court and provide the person a certified copy of the affidavit declaring the authentication of the order.

KRS 403.7531 Clearing of foreign protective orders from Law Information Network of Kentucky.

- (1) A foreign protective order which has been entered into the Law Information Network of Kentucky shall be immediately cleared as an active record from the computer system when:
 - (a) The order expires according to its terms;
 - (b) A Kentucky court notifies the Law Information Network of Kentucky that a foreign protective order has been dismissed, either by court order or entry of notification by a circuit clerk; or
 - (c) A circuit clerk notifies the Law Information Network of Kentucky that a foreign protective order tendered to the clerk has not been authenticated in the time period specified in KRS 403.7527.
- (2) For validation purposes, the Law Information Network of Kentucky shall provide the circuit court clerk with a printout of foreign protective orders. The clerk shall validate each order annually by contacting the original issuing court or jurisdiction. If the clerk has not received information from the foreign jurisdiction within thirty- one (31) days, the clerk shall cause those orders to be cleared from the Law Information Network of Kentucky.

KRS 403.7535 Duty to notify court of change in foreign protective order.

- (1) A person who has filed a foreign protective order in a court in Kentucky is under a continuing obligation to inform the court of any expiration, vacation, modification, or other change in the order which the person filing the order has received from the issuing foreign court.
- (2) A person who has filed a foreign protective order in a court in Kentucky shall, within two (2) working days of the occurrence of any event specified in subsection (1) of this section, notify the clerk of the court in which the foreign protective order was filed of the fact of the changed order and present the clerk with a copy of the order for authentication as provided in this chapter. The clerk shall immediately notify the Law Information Network of Kentucky entering agency of the

modification.

- (3) No court in Kentucky and no peace officer in Kentucky shall be expected to enforce a provision of a foreign protective order which has been the subject of any action specified in subsection (1) of this section, unless proper notice has been given in accordance with this section.
- (4) Intentional failure of a person who has filed a foreign protective order to make the notifications required by this section in the manner required by this section shall constitute contempt of court and may be grounds for an appropriate civil action brought by any person damaged by the intentional act of omission by the person failing to act.

KRS 403.754 Petitioner for protective order may apply for temporary permit to carry concealed deadly weapon -- Criteria -- Denial of application final -- Conversion to concealed carry license -- Automated listing of temporary permit holders.

- (1) A petitioner for an order of protection granted under KRS 403.715 to 403.785 may apply for a temporary permit to carry a concealed deadly weapon on or about his or her person into those places and under the same conditions as a person holding a carry concealed deadly weapon license issued under KRS 237.110.
- (2) To request a temporary permit authorized by this section, the petitioner shall apply electronically for a license to carry a concealed deadly weapon in the manner set forth in KRS 237.110 and administrative regulation promulgated by the Department of Kentucky State Police, unless the electronic application is unavailable. If the electronic application is unavailable, applications for temporary permits under this section shall not be accepted.
- (3) Prior to the issuance of a temporary permit authorized by this section, the Department of Kentucky State Police, upon receipt of a completed application, application fee, and any documentation required by KRS 237.110 or administrative regulation promulgated by the Department of Kentucky State Police, shall conduct the background check as set forth in KRS 237.110.
- (4) The Department of Kentucky State Police shall issue a temporary permit authorized by this section if the applicant is not disqualified under the standards set forth in KRS 237.110(4)(a) to (h).
- (5) A temporary permit issued under this section shall be valid for forty-five (45) days from the date of issuance and not be subsequently extended or reissued. A temporary permit which has expired shall be void and shall not be valid for any purpose.
- (6) The Department of Kentucky State Police shall, within one (1) working day or as soon as practically possible after the date of receipt of the completed application, a recent color photograph of the applicant, and, for applicants who are not citizens of the United States, any documentation required under KRS 237.110, either issue the temporary permit or deny the application based solely on the grounds that the applicant fails to qualify under the criteria set forth in KRS 237.110.
- (7) In order to convert the temporary permit issued under this section into a license to carry a concealed deadly weapon issued under KRS 237.110, the applicant shall meet the firearms safety training requirement under KRS 237.110(4) within the forty-five (45) day period the temporary permit is valid. If firearms safety training is not completed within the forty-five (45) day temporary permit period, a new application for a license to carry a concealed deadly weapon shall be required.
- (8) If the Department of Kentucky State Police denies the application for a temporary permit, that decision shall be final but the applicant's application for a license to carry a concealed deadly license shall continue to be processed and either issued or denied in accordance with KRS 237.110.
- (9) The holder of a permit issued under this section shall carry the permit at all times the permit holder is carrying a concealed firearm or other deadly weapon and shall display the permit upon request of a law enforcement officer. Violation of the provisions of this subsection shall

constitute a noncriminal violation with a penalty of twenty-five dollars (\$25), payable to the clerk of the District Court, but no court costs shall be assessed.

- (10) The Department of Kentucky State Police shall maintain an automated listing of temporary permit holders and pertinent information under the same circumstances and restrictions set forth in KRS 237.110.
- (11) Nothing in this section shall authorize the carrying of a concealed deadly weapon by a person prohibited from possessing such a weapon by state or federal law.

KRS 403.761 Amendment of domestic violence order to require participation in global positioning monitoring system -- Cost to be paid by respondent and system operator -- Shortening or vacating of order -- Penalty for violation.

- (1) Upon a petitioner's request and after an evidentiary hearing, a court may amend a domestic violence order to require a respondent to participate in a global positioning monitoring system if:
- (a) The respondent has committed a substantial violation of a previously entered domestic violence order;
 - (b) The court has reviewed an updated history of the respondent's Kentucky criminal and protective order history; and
 - (c) The court makes a factual determination that the use of a global positioning monitoring system would increase the petitioner's safety.
- (2) An order requiring participation in a global positioning monitoring system shall:
- (a) Require the respondent to pay the cost of participation up to the respondent's ability to pay, with the system operator bearing any uncovered costs for indigent respondents;
 - (b) State with specificity the locations or areas where the respondent is prohibited from being located or persons with whom the respondent shall have no contact;
 - (c) Include the date that the order expires, which shall be no longer than the expiration date of the domestic violence order, although participation may be extended if the underlying order is extended;
 - (d) Require the entity that operates the monitoring system to immediately notify the petitioner, the local law enforcement agency named in the order, and the court if a respondent violates the order; and
 - (e) Include any other information as the court deems appropriate.
- (3) The Administrative Office of the Courts shall prepare a publicly available informational pamphlet containing information on the method of applying for, hearing, amending, and terminating an order requiring participation in a global positioning monitoring system.
- (4)
- (a) The Supreme Court may establish by rule a sliding scale of payment responsibility for indigent defendants for use in establishing required payments under subsection (2) of this section.
 - (b) A person, county, or other organization may voluntarily agree to pay all or a portion of a respondent's monitoring costs specified in this section.
- (5) An order requiring participation in a global positioning monitoring system may be shortened or vacated by the court either:
- (a) Upon request of the petitioner; or
 - (b) Upon request of the respondent after an evidentiary hearing, if the respondent has not violated the order and:
 - 1. Three (3) months have elapsed since the entry of the order; and
 - 2. No previous request has been made by the respondent in the previous six (6) months.
- (6) A respondent who fails to wear, removes, tampers with, or destroys a global positioning monitoring system device in contravention of an order entered under this section shall be guilty of a Class D felony.

KRS 403.763 Violation of order of protection constitutes contempt of court and criminal offense.

- (1) Violation of the terms or conditions of an order of protection after the person has been served or given notice of the order shall constitute contempt of court and a criminal offense under this section. Once a criminal or contempt proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.
- (2) (a) Court proceedings for contempt of court for violation of an order of protection shall be held in the county where the order was issued or filed.
(b) Court proceedings for a criminal violation of an order of protection shall follow the rules of venue applicable to criminal cases generally.
- (3) Nothing in this section shall preclude the Commonwealth from prosecuting and convicting the respondent of criminal offenses other than violation of an order of protection.
- (4) (a) A person is guilty of a violation of an order of protection when he or she intentionally violates the provisions of an order of protection after the person has been served or given notice of the order.
(b) Violation of an order of protection is a Class A misdemeanor.

KRS 15.440 (1) (h) Law Enforcement requirement to have domestic violence manual.

...

(1)...(h)

Possesses a written policy and procedures manual related to domestic violence for law enforcement agencies that has been approved by the cabinet. The policy shall comply with the provisions of KRS 403.715 to 403.785. The policy shall include a purpose statement; definitions; supervisory responsibilities; procedures for twenty-four (24) hour access to protective orders; procedures for enforcement of court orders or relief when protective orders are violated; procedures for timely and contemporaneous reporting of adult abuse and domestic violence to the Cabinet for Health and Family Services, Department for Community Based Services; victim rights, assistance, and service responsibilities; and duties related to timely completion of records;

D. INTERPERSONAL PROTECTIVE ORDERS

KRS 456.010 Definitions for chapter.

As used in this chapter:

- (1) "Dating relationship" means a relationship between individuals who have or have had a relationship of a romantic or intimate nature. It does not include a casual acquaintanceship or ordinary fraternization in a business or social context. The following factors may be considered in addition to any other relevant factors in determining whether the relationship is or was of a romantic or intimate nature:
 - (a) Declarations of romantic interest;
 - (b) The relationship was characterized by the expectation of affection;
 - (c) Attendance at social outings together as a couple;
 - (d) The frequency and type of interaction between the persons, including whether the persons have been involved together over time and on a continuous basis during the course of the relationship;
 - (e) The length and recency of the relationship; and
 - (f) Other indications of a substantial connection that would lead a reasonable person to understand that a dating relationship existed;
- (2) "Dating violence and abuse" means physical injury, serious physical injury, stalking, sexual assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault occurring between persons who are or have been in a dating relationship;

- (3) "Foreign protective order" means any judgment, decree, or order of protection which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 which was not issued on the basis of domestic violence and abuse;
- (4) "Global positioning monitoring system" means a system that electronically determines a person's location through a device worn by the person which does not invade his or her bodily integrity and which transmits the person's latitude and longitude data to a monitoring entity;
- (5) "Order of protection" means any interpersonal protective order, including those issued on a temporary basis, and includes a foreign protective order;
- (6) "Sexual assault" refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 or incest under KRS 530.020;
- (7) "Stalking" refers to conduct prohibited as stalking under KRS 508.140 or 508.150; and
- (8) "Substantial violation" means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection.

KRS 456.020 Interpretation of chapter.

- (1) This chapter shall be interpreted to:
 - (a) Allow victims to obtain effective, short-term protection against further wrongful conduct in order that their lives may be as secure and as uninterrupted as possible;
 - (b) Expand the ability of law enforcement officers to effectively respond to further wrongful conduct so as to prevent future incidents and to provide assistance to the victims;
 - (c) Provide peace officers with the authority to immediately apprehend and charge for violation of an order of protection any person whom the officer has probable cause to believe has violated an order of protection and to provide courts with the authority to conduct contempt of court proceedings for these violations;
 - (d) Provide for the collection of data concerning incidents of dating violence and abuse, sexual assault, and stalking in order to develop a comprehensive analysis of the numbers and causes of such incidents; and
 - (e) Supplement and not repeal or supplant any duties, responsibilities, services, or penalties under KRS Chapters 209, 209A, and 620.
- (2) Nothing in this chapter is intended to trigger the application of the provisions of 18 U.S.C. sec. 922(g) as to an interpersonal protective order issued on the basis of the existence of a current or previous dating relationship

KRS 456.030 Petition for interpersonal protective order.

- (1) A petition for an interpersonal protective order may be filed by:
 - (a) A victim of dating violence and abuse;
 - (b) A victim of stalking;
 - (c) A victim of sexual assault; or
 - (d) An adult on behalf of a victim who is a minor otherwise qualifying for relief under this subsection.
- (2) The petition may be filed in the victim's county of residence or a county where the victim has fled to escape dating violence and abuse, stalking, or sexual assault.
- (3) The petition shall be verified and contain:
 - (a) The name, age, address, occupation, residence, and school or postsecondary institution of the petitioner;
 - (b) The name, age, address, occupation, residence, and school or postsecondary institution of the person or persons who have engaged in the alleged act or acts complained of in the petition;
 - (c) The facts and circumstances which constitute the basis for the petition; and
 - (d) The names, ages, and addresses of the petitioner's minor children, if applicable.

- (4) The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers, Commonwealth's or county attorneys, and regional rape crisis centers or domestic violence shelters.
- (5) All petitions requested, completed, and signed by persons seeking protection under this chapter shall be accepted and filed with the court.
- (6)
 - (a) Jurisdiction over petitions filed under this chapter shall be concurrent between the District Court and Circuit Court.
 - (b) The Court of Justice shall provide a protocol for twenty-four (24) hour access to interpersonal protective orders in each county with any protocol, whether statewide or local, being subject to Supreme Court review and approval of the initial protocol and any subsequent amendments. This protocol may allow for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.
 - (c) The Court of Justice may authorize by rule that petitions in a specific county be filed in accordance with a supplemental jurisdictional protocol adopted for that county. This protocol may provide for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.
 - (d)
 1. In addition to the protocols for twenty-four (24) hour access established under paragraphs (b) and (c) of this subsection, before January 1, 2019, the Court of Justice shall provide protocols for filing, including electronic filing, of petitions for orders of protection at those regional rape crisis centers designated under KRS 211.600, or regional domestic violence shelters designated under KRS 209A.045, that elect to participate in any county's twenty-four (24) hour access protocol.
 2. These protocols shall be subject to Supreme Court review for approval of the initial protocol and any subsequent amendments.
- (7) Any judge to whom a petition is referred under subsection (6) of this section shall have full authority to review and hear a petition and subsequently grant and enforce an interpersonal protective order.
- (8) If the judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is unavailable or unable to act within a reasonable time, the proceedings may be conducted by any judge of the county in accordance with court rules.

KRS 456.040 Review of petition for interpersonal protective order -- Temporary interpersonal protective order.

- (1)
 - (a) The court shall review a petition for an interpersonal protective order immediately upon its filing. If the review indicates that dating violence and abuse, stalking, or sexual assault exists, the court shall summons the parties to an evidentiary hearing not more than fourteen (14) days in the future. If the review indicates that such a basis does not exist, the court may consider an amended petition or dismiss the petition without prejudice.
 - (b) Service of the summons and hearing order under this subsection shall be made upon the adverse party personally and may be made in the manner and by the persons authorized to serve subpoenas under Rule 45.03 of the Rules of Civil Procedure. A summons may be reissued if service has not been made on the adverse party by the fixed court date and time.
- (2)
 - (a) If the review under this section also indicates the presence of an immediate and present danger of dating violence and abuse, sexual assault, or stalking, the court shall, upon proper motion, issue ex parte a temporary interpersonal protective order that:

1. Authorizes relief appropriate to the situation utilizing the alternatives set out in KRS 456.060;
 2. Expires upon the conclusion of the evidentiary hearing required by this section unless extended or withdrawn by subsequent order of the court; and
 3. Does not order or refer the parties to mediation unless requested by the petitioner, and the court finds that:
 - a. The petitioner's request is voluntary and not the result of coercion; and
 - b. Mediation is a realistic and viable alternative to or adjunct to the issuance of an order sought by the petitioner.
- (b) If an order is not issued under this subsection, the court shall note on the petition, for the record, any action taken or denied and the reason for it.

KRS 456.050 Hearing on petition for interpersonal protective order.

- (1) Prior to or at a hearing on a petition for an interpersonal protective order:
- (a) The court may obtain the respondent's Kentucky criminal and protective order history and utilize that information to assess what relief and which sanctions may protect against danger to the petitioner or other person for whom protection is being sought, with the information so obtained being provided to the parties in accordance with the Rules of Civil Procedure; and
 - (b) If the petitioner or respondent is a minor, the court shall inquire whether the parties attend school in the same school system to assist the court in imposing conditions in the order that have the least disruption in the administration of education to the parties while providing appropriate protection to the petitioner.
- (2)
- (a) If the adverse party is not present at the hearing ordered pursuant to KRS 456.040 and has not been served, a previously issued temporary interpersonal protective order shall remain in place, and the court shall direct the issuance of a new summons for a hearing set not more than fourteen (14) days in the future. If service has not been made on the adverse party before that hearing or a subsequent hearing, the temporary interpersonal protective order shall remain in place, and the court shall continue the hearing and issue a new summons with a new date and time for the hearing to occur, which shall be within fourteen (14) days of the originally scheduled date for the continued hearing. The court shall repeat the process of continuing the hearing and reissuing a new summons until the adverse party is served in advance of the scheduled hearing. If service has not been made on the respondent at least seventy-two (72) hours prior to the scheduled hearing, the court may continue the hearing no more than fourteen (14) days in the future. In issuing the summons, the court shall simultaneously transmit a copy of the summons or notice of its issuance and provisions to the petitioner.
 - (b) The provisions of this section permitting the continuance of an interpersonal protective order shall be limited to six (6) months from the issuance of the temporary interpersonal protective order. If the respondent has not been served within that period, the order shall be rescinded without prejudice. Prior to the expiration of the temporary interpersonal protective order, the court shall provide notice to the petitioner stating that, if the petitioner does not file a new petition, the order shall be rescinded without prejudice.

KRS 456.060 Ruling on petition for interpersonal protective order -- Duration of order.

- (1) Following a hearing ordered under KRS 456.040, if a court finds by a preponderance of the evidence that dating violence and abuse, sexual assault, or stalking has occurred and may again occur, the court may issue an interpersonal protective order:
- (a) Restraining the adverse party from:
 1. Committing further acts of dating violence and abuse, stalking, or sexual assault;

2. Any unauthorized contact or communication with the petitioner or other person specified by the court;
 3. Approaching the petitioner or other person specified by the court within a distance specified in the order, not to exceed five hundred (500) feet;
 4. Going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located; and
 5. Disposing of or damaging any of the property of the parties;
- (b) Directing or prohibiting any other actions that the court believes will be of assistance in eliminating future acts of dating violence and abuse, stalking, or sexual assault, except that the court shall not order the petitioner to take any affirmative action; and
 - (c) Directing that either or both of the parties receive counseling services available in the community in dating violence and abuse cases.
- (2) In imposing a location restriction described in subsection (1)(a)4. of this section, the court shall:
 - (a) Afford the petitioner and respondent, if present, an opportunity to testify on the issue of the locations and areas from which the respondent should or should not be excluded;
 - (b) Only impose a location restriction where there is a specific, demonstrable danger to the petitioner or other person protected by the order;
 - (c) Specifically describe in the order the locations or areas prohibited to the respondent; and
 - (d) Consider structuring a restriction so as to allow the respondent transit through an area if the respondent does not interrupt his or her travel to harass, harm, or attempt to harass or harm the petitioner.
 - (3) An interpersonal protective order shall be effective for a period of time fixed by the court, not to exceed three (3) years, and may be reissued upon expiration for subsequent periods of up to three (3) years each. The fact that an order has not been violated since its issuance may be considered by a court in hearing a request for a reissuance of the order.

KRS 456.070 When protective order becomes effective and binding on respondent -- Mutual protective orders -- Petition hearing testimony later admissible only for impeachment purposes -- Interpersonal protective order intake center.

- (1) A temporary or ordinary interpersonal protective order shall become effective and binding on the respondent when the respondent is given notice of the existence and terms of the order by a peace officer or the court or upon personal service of the order, whichever is earlier. A peace officer or court giving notice of an unserved order shall make all reasonable efforts to arrange for the order's personal service upon the respondent. Once effective, a peace officer or the court may enforce the order's terms and act immediately upon their violation.
- (2) Costs, fees, or bond shall not be assessed against or required of a petitioner for any filing, hearing, service, or order authorized by or required to implement this chapter.
- (3) A court shall not require mediation, conciliation, or counseling prior to or as a condition of issuing an interpersonal protective order.
- (4) Mutual protective orders may be issued only if:
 - (a) Separate petitions have been filed by both parties; and
 - (b) The orders are written with sufficient specificity to allow any peace officer to identify which party has violated the order.
- (5) Upon proper filing of a motion, either party may seek to amend an interpersonal protective order.
- (6) Testimony offered by an adverse party in a hearing ordered pursuant to KRS 456.040 shall not be admissible in any criminal proceeding involving the same parties except for purposes of impeachment.
- (7)
 - (a) The Court of Justice, county and Commonwealth's attorneys, law enforcement agencies, and victim services organizations may jointly operate an interpersonal protective order

intake center to assist persons who apply for relief under this chapter.

- (b) In cases where criminal conduct is alleged, a court may suggest that a petitioner voluntarily contact the county attorney. A court may not withhold or delay relief if the petitioner elects to not contact the county attorney.
- (8) A person's right to apply for relief under this chapter shall not be affected by that person leaving his or her residence to avoid dating violence and abuse, sexual assault, or stalking.
- (9) A court shall order the omission or deletion of the petitioner's address and the address of any minor children from any orders or documents to be made available to the public or to any person who engaged in the acts complained of in the petition.
- (10)
 - (a) If a petition under this chapter did not result in the issuance of a non-temporary interpersonal protective order, the court in which the petition was heard may for good cause shown order the expungement of the records of the case if:
 - 1. Six (6) months have elapsed since the case was dismissed; and
 - 2. During the six (6) months preceding the expungement request, the respondent has not been bound by an order of protection issued for the protection of any person including an order of protection as defined in KRS 403.720.
 - (b) As used in this subsection, "expungement" has the same meaning as in KRS 431.079.

KRS 456.080 Disclosure of interpersonal protective orders upon filing KRS Chapter 403 action.

If the petitioner or respondent to an interpersonal protective order initiates an action under KRS Chapter 403, the party initiating the action shall make known to the court the existence and status of any interpersonal protective orders, which shall remain effective and enforceable until superseded by order of the court in which the KRS Chapter 403 case is filed.

KRS 456.090 Law enforcement to assist protective order petitioner and victim of dating violence and abuse, sexual assault, or stalking -- Statewide enforcement -- Civil and criminal immunity.

- (1) A court issuing an interpersonal protective order shall direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with.
- (2) When a law enforcement officer has reason to suspect that a person has been the victim of dating violence and abuse, sexual assault, or stalking, the officer shall use all reasonable means to provide assistance to the victim, including but not limited to:
 - (a) Remaining at the location of the call for assistance so long as the officer reasonably suspects there is danger to the physical safety of individuals there without the presence of a law enforcement officer;
 - (b) Assisting the victim in obtaining medical treatment, including transporting the victim to the nearest medical facility capable of providing the necessary treatment; and
 - (c) Advising the victim immediately of the rights available to them, including the provisions of this chapter.
- (3) Orders of protection shall be enforced in any county of the Commonwealth.
- (4) Officers acting in good faith under this chapter shall be immune from criminal and civil liability.

KRS 456.100 Amendment of interpersonal protective order to require participation in global positioning monitoring system.

- (1) Upon a petitioner's request and after an evidentiary hearing, a court may amend an interpersonal protective order to require a respondent to participate in a global positioning monitoring system if:
 - (a) The respondent has committed a substantial violation of a previously entered interpersonal protective order;
 - (b) The court has reviewed an updated history of the respondent's Kentucky criminal and protective order history; and

- (c) The court makes a factual determination that the use of a global positioning monitoring system would increase the petitioner's safety.
- (2) An order requiring participation in a global positioning monitoring system shall:
 - (a) Require the respondent to pay the cost of participation up to the respondent's ability to pay, with the system operator bearing any uncovered costs for indigent respondents;
 - (b) State with specificity the locations or areas where the respondent is prohibited from being located or persons with whom the respondent shall have no contact;
 - (c) Include the date that the order expires, which shall be no longer than the expiration date of the underlying interpersonal protective order, although participation may be extended if the underlying order is extended;
 - (d) Require the entity that operates the monitoring system to immediately notify the petitioner, the local law enforcement agency named in the order, and the court if a respondent violates the order; and
 - (e) Include any other information as the court deems appropriate.
- (3) The Administrative Office of the Courts shall prepare a publicly available informational pamphlet containing information on the method of applying for, hearing, amending, and terminating an order requiring participation in a global positioning monitoring system.
- (4)
 - (a) The Supreme Court may establish by rule a sliding scale of payment responsibility for indigent defendants for use in establishing required payments under subsection (2) of this section.
 - (b) A person, county, or other organization may voluntarily agree to pay all or a portion of a respondent's monitoring costs specified in this section.
- (5) An order requiring participation in a global positioning monitoring system may be shortened or vacated by the court either:
 - (a) Upon request of the petitioner; or
 - (b) Upon request of the respondent after an evidentiary hearing, if the respondent has not violated the order and:
 - 1. Three (3) months have elapsed since the entry of the order; and
 - 2. No previous request has been made by the respondent in the previous six (6) months.
- (6) A respondent who fails to wear, removes, tampers with, or destroys a global positioning monitoring system device in contravention of an order entered under this section shall be guilty of a Class D felony.

KRS 456.110 Entry of forms, affidavits, and orders of protection into Law Information Network of Kentucky.

- (1) All forms, affidavits, and orders of protection issued or filed pursuant to this chapter which require entry into the Law Information Network of Kentucky shall be entered on forms prescribed by the Administrative Office of the Courts after consultation with the Justice and Public Safety Cabinet. If the provisions of an interpersonal protective order are contained in an order which is narrative in nature, the prescribed form shall be used in addition to the narrative order.
- (2) The circuit clerk, in cooperation with the court, shall cause a copy of each summons or order issued pursuant to this chapter, or foreign protective order, fully completed and authenticated pursuant to this chapter, to be forwarded, by the most expedient means reasonably available and within twenty-four (24) hours following its filing with the clerk, to the appropriate agency designated for entry of interpersonal protective order records into the Law Information Network of Kentucky and to the agency assigned service. Any order or court record superseding, modifying, or otherwise affecting the status of an earlier summons or order shall likewise be forwarded by the circuit clerk to the appropriate Law Information Network of Kentucky entering agency and to the agency assigned service, if service is required. The clerk and the court shall

comply with all provisions and guidelines of the Law Information Network of Kentucky for entry of the records.

- (3) Each agency designated for entry of summonses and orders issued pursuant to this chapter, or foreign protective orders authenticated pursuant to this chapter, into the Law Information Network of Kentucky shall, consistent with the provisions and guidelines of the Law Information Network of Kentucky, enter the records immediately upon receipt of copies forwarded to the agency in accordance with subsection (2) of this section.

KRS 456.120 Foreign protective orders.

- (1) All foreign protective orders shall have the rebuttable presumption of validity. The validity of a foreign protective order shall only be determined by a court of competent jurisdiction. Until a foreign protective order is declared to be invalid by a court of competent jurisdiction, it shall be given full faith and credit by all peace officers and courts in the Commonwealth.
- (2) All peace officers shall treat a foreign protective order as a legal document valid in Kentucky, and shall make arrests for a violation thereof in the same manner as for a violation of an order of protection issued in Kentucky.
- (3) The fact that a foreign protective order has not been entered into the Law Information Network of Kentucky shall not be grounds for a peace officer not to enforce the provisions of the order unless it is readily apparent to the peace officer to whom the order is presented that the order has either expired according to a date shown on the order, or that the order's provisions clearly do not prohibit the conduct being complained of. Officers acting in good faith shall be immune from criminal and civil liability.
- (4) If the order has expired or its provisions do not prohibit the conduct being complained of, the officer shall not make an arrest unless the provisions of a Kentucky statute have been violated, in which case the peace officer shall take the action required by Kentucky law.
- (5) Civil proceedings and criminal proceedings for violation of a foreign protective order for the same violation of the protective order shall be mutually exclusive. Once either proceeding has been initiated, the other shall not be undertaken, regardless of the outcome of the original proceeding.

KRS 456.130 Information required in interpersonal protective order to assist in full faith and credit determination.

- (1) In order to assist a court of another state in determining whether an order issued under this chapter is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265:
 - (a) All interpersonal protective orders shall include a statement certifying that the issuing court had jurisdiction over the parties and the matter, and that reasonable notice and opportunity to be heard has been given to the person against whom the order is sought sufficient to protect that person's right to due process; and
 - (b) All temporary interpersonal protective orders shall include a statement certifying that notice and opportunity to be heard has been provided within the time required by state law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.
- (2) The Administrative Office of the Courts shall prescribe the form to be used for the purposes of this section.

KRS 456.140 Filing copy of foreign protective order -- Effect -- Required affidavit -- Certification by issuing court -- Uncertified order.

- (1) A copy of a foreign protective order may be filed in the office of the clerk of any court of competent jurisdiction of this state. A foreign protective order so filed shall have the same effect and shall be enforced in the same manner as an interpersonal protective order issued by a court of this state.

- (2)
- (a) At the time of the filing of the foreign protective order, the person filing the order shall file with the clerk of the court an affidavit on a form prescribed and provided by the Administrative Office of the Courts. The affidavit shall set forth the name, city, county, and state or other jurisdiction of the issuing court. The person shall certify in the affidavit the validity and status of the foreign protective order, and attest to the person's belief that the order has not been amended, rescinded, or superseded by any orders from a court of competent jurisdiction. All foreign protective orders presented with a completed and signed affidavit shall be accepted and filed.
 - (b) The affidavit signed by the applicant shall have space where the reviewing judge shall place information necessary to allow the order's entry into the Law Information Network of Kentucky in the same manner as a Kentucky order.
- (3)
- (a) If the person seeking to file the order presents a copy of the foreign protective order which is current by the terms of the order and has been certified by the clerk or other authorized officer of the court which issued it, the circuit clerk shall present it to the District Judge or Circuit Judge, who shall read the order and enter on the affidavit the information necessary to allow the order's entry into the Law Information Network of Kentucky. The order shall not be subject to further verification and shall be accepted as authentic, current, and subject to full faith and credit.
 - (b) If the order presented is current by the terms of the order but is not certified in the manner specified in paragraph (a) of this subsection, the circuit clerk shall present the order and the affidavit to the District or Circuit Judge, who shall read the order and enter on the affidavit the information necessary to allow the order's entry into the Law Information Network of Kentucky. The order shall be subject to full faith and credit in the same manner as a Kentucky interpersonal protective order, but shall be subject to verification by the circuit clerk. The order shall be valid for a period of fourteen (14) days and may be renewed once for a period of fourteen (14) days if the circuit clerk has not received a certified copy of the order from the issuing jurisdiction. The clerk shall treat the foreign protective order in the same manner as an interpersonal protective order of this state issued pursuant to KRS 456.060, except that no service on the adverse party shall be required pursuant to 18 U.S.C. sec. 2265.
 - (c) Upon the filing of an uncertified foreign protective order, the circuit clerk shall, within two (2) business days, contact the issuing court to request a certified copy of the order. If the certified copy of the order is received by the circuit clerk within the initial fourteen (14) day period, the clerk shall cause the information that certification has been received to be entered into the Law Information Network of Kentucky and shall notify the applicant for the order of the fact of its certification. A facsimile copy of a certified foreign protective order shall be grounds for the issuance of an interpersonal protective order.
 - (d) If the clerk has not received a certified copy of the foreign protective order within ten (10) days, the clerk shall notify the court and the applicant that the order has not been received. The notice to the applicant, on a form prepared by the Administrative Office of the Courts, shall state that the foreign protective order will be extended for another fourteen (14) days, but will be dismissed at the expiration of that time. If the clerk informs the judge in writing that the certified foreign protective order has been requested but has not yet been received, the judge shall extend the foreign protective order for a period of fourteen (14) days. If certification of the foreign protective order is not received within twenty-eight (28) days, the foreign protective order shall expire and shall not be reissued. If the applicant meets the qualifications for the issuance of a Kentucky interpersonal protective order, the court may, upon proper application and showing of evidence, issue a Kentucky order in accordance with this chapter.

- (4) The right of a person filing a foreign protective order to bring an action to enforce the order instead of proceeding under this chapter remains unimpaired.

KRS 456.150 Authentication of foreign protective order.

- (1) Upon ex parte review of the foreign protective order and the affidavit filed pursuant to KRS 456.140, and after determining the order is entitled to full faith and credit in this Commonwealth pursuant to 18 U.S.C. sec. 2265, the court shall declare the order to be authenticated and record the finding on the affidavit.
- (2) If the court declares the order to be authenticated, the court shall:
 - (a) Direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with, if applicable; and
 - (b) Order its enforcement in any county of the Commonwealth in the same manner as an interpersonal protective order of this state issued pursuant to KRS 456.060.
- (3) The clerk shall notify the person who filed the foreign protective order of the decision of the court and provide the person a certified copy of the affidavit declaring the authentication of the order.

KRS 456.160 Clearing of foreign protective order as active record from Law Information Network of Kentucky.

- (1) A foreign protective order which has been entered into the Law Information Network of Kentucky shall be immediately cleared as an active record from the computer system when:
 - (a) The order expires according to the terms contained therein;
 - (b) A Kentucky court notifies the Law Information Network of Kentucky that a foreign protective order has been dismissed, either by court order or entry of notification by a circuit clerk; or
 - (c) A circuit clerk notifies the Law Information Network of Kentucky that a foreign protective order tendered to the clerk has not been authenticated in the time period specified in KRS 456.140.
- (2) For validation purposes, the Law Information Network of Kentucky shall provide the circuit court clerk with a printout of foreign protective orders. The clerk shall validate each order annually by contacting the original issuing court or jurisdiction. If the clerk has not received information from the foreign jurisdiction within thirty- one (31) days, the clerk shall cause those orders to be cleared from the Law Information Network of Kentucky.

KRS 456.170 Notice to court of foreign protective order's expiration, vacation, modification, or other change.

- (1) A person who has filed a foreign protective order in a court in Kentucky is under a continuing obligation to inform the court of any expiration, vacation, modification, or other change in the order which the person filing the order has received from the issuing foreign court.
- (2) A person who has filed a foreign protective order in a court in Kentucky shall, within two (2) working days of the occurrence of any event specified in subsection (1) of this section, notify the clerk of the court in which the foreign protective order was filed of the fact of the changed order and present the clerk with a copy of the order for authentication as provided in this chapter. The clerk shall immediately notify the Law Information Network of Kentucky entering agency of the modification.
- (3) No court in Kentucky and no peace officer in Kentucky shall be expected to enforce a provision of a foreign protective order which has been the subject of any action specified in subsection (1) of this section, unless proper notice has been given in accordance with this section.
- (4) Intentional failure of a person who has filed a foreign protective order to make the notifications required by this section in the manner required by this section shall constitute contempt of court and may be grounds for an appropriate civil action brought by any person damaged by the intentional act of omission by the person failing to act.

KRS 456.180 Violation of order of protection.

- (1) Violation of the terms or conditions of an order of protection after the person has been served or given notice of the order shall constitute contempt of court and a criminal offense under this section. Once a criminal or contempt proceeding has been initiated, the other shall not be undertaken regardless of the outcome of the original proceeding.
- (2)
 - (a) Court proceedings for contempt of court for violation of an order of protection shall be held in the county where the order was issued or filed.
 - (b) Court proceedings for a criminal violation of an order of protection shall follow the rules of venue applicable to criminal cases generally.
- (3) Nothing in this section shall preclude the Commonwealth from prosecuting and convicting the respondent of criminal offenses other than violation of an order of protection.
- (4)
 - (a) A person is guilty of a violation of an order of protection when he or she intentionally violates the provisions of an interpersonal protective order after the person has been served or given notice of the order.
 - (b) Violation of an order of protection is a Class A misdemeanor.

E. DOMESTIC RELATIONS (FAMILY LAW)

Victims of sexual violence may face a variety of family law issues. Because of the focus of this Handbook, this section includes only those statutes that specifically address victims of violence.

KRS 402.020 Other prohibited marriages.

NOTE: Amended to protect youth under 18. Effective: July 14, 2018.

- (1) Marriage is prohibited and void:
 - (a) With a person who has been adjudged mentally disabled by a court of competent jurisdiction;
 - (b) Where there is a husband or wife living, from whom the person marrying has not been divorced;
 - (c) When not solemnized or contracted in the presence of an authorized person or society;
 - (d) Between members of the same sex;
 - (e) Between more than two (2) persons; and
 - (f) Except as provided in KRS 402.210, with a person who at the time of marriage is under eighteen (18) years of age.
- (2) Subsection (1)(f) of this section shall not apply to a lawful marriage entered into in the Commonwealth of Kentucky prior to July 14, 2018, or to a lawful marriage in another state or country prior to the parties' residence in the Commonwealth of Kentucky.

KRS 402.205 Petition to court by seventeen year old for permission to marry -- Evidentiary hearing -- Reasons for denying petition -- Effect of pregnancy -- Emancipation of minor -- Other court-imposed condition -- Fee. *Note: Effective 2018.*

- (1) A minor who is seventeen (17) years of age may petition the family court in the county in which the minor resides, or the District Court in that county if a family court division has not been established in that county, for an order granting permission to marry. The petition shall contain the following:
 - (a) The petitioner's name, gender, age, date of birth, address, and how long the petitioner has resided at that address, as well as prior addresses and dates of residence for the six (6)

- months preceding the petition;
- (b) The intended spouse's name, gender, age, date of birth, address, and how long the intended spouse has resided at that address, as well as prior addresses and dates of residence for the six (6) months preceding the petition;
 - (c) An affidavit attesting to the consent to marry signed by:
 - 1. The father or the mother of the petitioner, if the parents are married, the parents are not legally separated, no legal guardian has been appointed for petitioner, and no court order has been issued granting custody of petitioner to a party other than the father or mother;
 - 2. Both the father and the mother, if both are living and the parents are divorced or legally separated, and a court order of joint custody to the parents of the petitioner has been issued and is in effect;
 - 3. The surviving parent, if the parents were divorced or legally separated, and a court order of joint custody to the parents of the petitioner was issued prior to the death of either the father or mother, which order remains in effect;
 - 4. The custodial parent, as established by a court order which has not been superseded, where the parents are divorced or legally separated and joint custody of the petitioner has not been ordered; or
 - 5. Another person having lawful custodial charge of the petitioner;
 - (d) A statement of the reasons why the petitioner desires to marry, how the parties came to know each other, and how long they have known each other;
 - (e) Evidence of the petitioner's maturity and capacity for self-sufficiency independent of the petitioner's parents and the intended spouse, including but not limited to:
 - 1. Proof that the petitioner has maintained stable housing or employment for at least three (3) consecutive months prior to the petition; and
 - 2. Proof that the petitioner has completed high school, obtained a High School Equivalency Diploma, or completed a vocational training or certificate program;
 - (f) Copies of any criminal records of either party to be married; and
 - (g) Copies of any domestic violence order or interpersonal protective order involving either party to be married.
- (2) Upon the filing of the petition for permission to marry, the court shall set a date for an evidentiary hearing on the petition that is no sooner than thirty (30) days but not later than sixty (60) days from the date of the filing.
- (3) The petitioner may be represented by counsel in court proceeding pertaining to the petition to marry.
- (4) The court shall take reasonable measures to ensure that any representations made by a minor party are free of coercion, undue influence, or duress. Reasonable measures shall include but are not limited to in camera interviews.
- (5) Following an evidentiary hearing, the court shall grant the minor's petition for permission to marry unless:
- (a) The age difference between the parties is more than four (4) years;
 - (b) The intended spouse was or is a person in a position of authority or a position of special trust as defined in KRS 532.045 in relation to the minor;
 - (c) The intended spouse has previously been enjoined by a domestic violence order or interpersonal protective order, regardless of whether or not the person to be protected by the order was the minor petitioner;
 - (d) The intended spouse has been convicted of or entered into a diversion program for a criminal offense against a victim who is a minor as defined in KRS 17.500 or for a violent or sexual criminal offense under KRS Chapter 506, 507, 507A, 508, 509, 510, 529, 530, or 531;
 - (e) The court finds by a preponderance of the evidence that the minor was a victim and that the intended spouse was the perpetrator of a sexual offense against the minor under KRS

- 510.040, 510.050, 510.060, 510.110, 510.120, or 510.130;
- (f) The court finds by a preponderance of the evidence that abuse, coercion, undue influence, or duress is present; or
 - (g) The court finds that it would otherwise not be in the minor party's best interest to grant the petition to marry.
- (6) A past or current pregnancy of the minor or the intended spouse shall not be sufficient evidence to establish that the best interests of the minor would be served by granting the petition for marriage.
 - (7) The granting of a petition for permission to marry filed under subsection (1) of this section shall remove the disabilities of minority. A minor emancipated by the petition shall be considered to have all the rights and responsibilities of an adult, except for specific constitutional or statutory age requirements, including but not limited to voting, the use of alcoholic beverages, and other health and safety regulations relevant to him or her because of his or her age.
 - (8) The minor shall be advised by the court of the rights and responsibilities of parties to a marriage and of emancipated minors. The minor shall be provided with a fact sheet on these rights and responsibilities to be developed by the Office of the Attorney General and the Cabinet for Health and Family Services. The fact sheet shall include referral information for legal aid agencies in the Commonwealth and national hotlines for domestic violence and sexual assault.
 - (9) The court may make any other orders that the court deems appropriate for the minor's protection and may impose any other condition on the grant of the petition that the court determines is reasonable under the circumstances for the minor's protection.
 - (10) The court may set a fee not to exceed twenty dollars (\$20) to file a petition for permission to marry under this section.

KRS 403.036 Mediation not to be ordered unless conditions are met.

In any court proceeding conducted pursuant to KRS 403.010 to 403.350, if there is a finding of domestic violence and abuse, as defined in KRS 403.720, the court shall not order mediation unless requested by the victim of the alleged domestic violence and abuse, and the court finds that:

- (1) The victim's request is voluntary and not the result of coercion; and
- (2) Mediation is a realistic and viable alternative to or adjunct to the issuance of an order sought by the victim of the alleged domestic violence and abuse.

KRS 403.100 Compensation of guardian ad litem when petitioner is victim of KRS Chapter 507, 508, 509, or 510 offense committed by respondent.

In any court proceeding conducted pursuant to KRS 403.010 to 403.350, if the respondent is incarcerated for a conviction pursuant to KRS Chapter 507, 508, 509, or 510, where the petitioner is the victim, the guardian ad litem shall be paid by the Finance and Administration Cabinet.

KRS 403.160 Temporary orders -- Maintenance, child support, injunction -- Disclosure of information on domestic violence or child abuse.

- (1) In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.
- (2) (a) In a proceeding for dissolution of marriage, legal separation, or child support, either party, with notice to the opposing party, may move for temporary child support. The motion shall be accompanied by an affidavit setting forth the number of children of the marriage and the information required to calculate the combined adjusted parental gross income set

forth in KRS 403.212(2)(g), and the Social Security numbers, provided in accordance with KRS 403.135, of all parties subject to the motion. The court shall, within fourteen (14) days from the filing of said motion, order an amount of temporary child support based upon the child support guidelines as provided by law, and the ordered child support shall be retroactive to the date of the filing of the motion unless otherwise ordered by the court.

- (b) Upon a showing of good cause, either party may move the court to enter an order for temporary child support without written or oral notice to the adverse party. After reviewing the affidavit required by paragraph (a) of this subsection, the court may issue a temporary child support order based upon the child support guidelines. The order shall provide that the order becomes effective seven (7) days following service of the order and movant's affidavit upon the adverse party unless the adverse party, within the seven (7) day period, files a motion for a hearing before the court. The motion for hearing shall be accompanied by the affidavit required by paragraph (a) of this subsection. Pending the hearing, the adverse party shall pay child support in an amount based upon the guidelines and the adverse party's affidavit. The child support order entered following the hearing shall be retroactive to the date of the filing of the motion for temporary support unless otherwise ordered by the court.
- (3) As part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction or restraining order pursuant to the Rules of Civil Procedure.
- (4) If the court or agent of the court is made aware that there is reasonable evidence of domestic violence or child abuse, the court shall determine whether disclosure to any other person of the information could be harmful to the parent or child, and if the court determines that disclosure to any person could be harmful, the court and its agents shall not make the disclosure.
- (5) On the basis of the showing made and in conformity with KRS 403.200, the court may issue a temporary injunction or restraining order and an order for temporary maintenance in amounts and on terms just and proper in the circumstances.
- (6) A temporary order or temporary injunction:
 - (a) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;
 - (b) May be revoked or modified before final decree on a showing of the facts necessary to revocation or modification under the circumstances; and
 - (c) Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

KRS 403.270 Custodial issues -- Best interests of child shall determine -- Rebuttable presumption that joint custody and equally shared parenting time is in child's best interests -- De facto custodian.

(1)

- (a) As used in this chapter and KRS 405.020, unless the context requires otherwise, "de facto custodian" means a person who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older or has been placed by the Department for Community Based Services. Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person for the required minimum period.
- (b) A person shall not be a de facto custodian until a court determines by clear and convincing evidence that the person meets the definition of de facto custodian established in paragraph (a) of this subsection. Once a court determines that a person meets the

definition of de facto custodian, the court shall give the person the same standing in custody matters that is given to each parent under this section and KRS 403.280, 403.340, 403.350, 403.822, and 405.020.

- (2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. Subject to KRS 403.315, there shall be a presumption, rebuttable by a preponderance of evidence, that joint custody and equally shared parenting time is in the best interest of the child. If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule which maximizes the time each parent or de facto custodian has with the child and is consistent with ensuring the child's welfare. The court shall consider all relevant factors including:
 - (a) The wishes of the child's parent or parents, and any de facto custodian, as to his or her custody;
 - (b) The wishes of the child as to his or her custodian, with due consideration given to the influence a parent or de facto custodian may have over the child's wishes;
 - (c) The interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may significantly affect the child's best interests;
 - (d) The motivation of the adults participating in the custody proceeding;
 - (e) The child's adjustment and continuing proximity to his or her home, school, and community;
 - (f) The mental and physical health of all individuals involved;
 - (g) A finding by the court that domestic violence and abuse, as defined in KRS 403.720, has been committed by one (1) of the parties against a child of the parties or against another party. The court shall determine the extent to which the domestic violence and abuse has affected the child and the child's relationship to each party, with due consideration given to efforts made by a party toward the completion of any domestic violence treatment, counseling, or program;
 - (h) The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;
 - (i) The intent of the parent or parents in placing the child with a de facto custodian;
 - (j) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school; and
 - (k) The likelihood a party will allow the child frequent, meaningful, and continuing contact with the other parent or de facto custodian, except that the court shall not consider this likelihood if there is a finding that the other parent or de facto custodian engaged in domestic violence and abuse, as defined in KRS 403.720, against the party or a child and that a continuing relationship with the other parent will endanger the health or safety of either that party or the child.
- (3) The abandonment of the family residence by a custodial party shall not be considered where said party was physically harmed or was seriously threatened with physical harm by his or her spouse, when such harm or threat of harm was causally related to the abandonment.
- (4) If the court grants custody to a de facto custodian, the de facto custodian shall have legal custody under the laws of the Commonwealth.

403.315 Presumption that joint custody and equally shared parenting time is in best interest of child inapplicable if domestic violence order entered against a party.

When determining or modifying a custody order pursuant to KRS 403.270, 403.280, 403.340, or 403.740, the court shall consider the safety and well-being of the parties and of the children. If a domestic violence order is being or has been entered against a party by another party or on behalf of a child at issue in the custody hearing, the presumption that joint custody and equally shared parenting time is in the best interest of the child shall not apply as to the party against whom the domestic violence order is being or has been entered. The court shall weigh all factors set out in KRS 403.270(2) in determining the best interest of the child.

KRS 403.320 Visitation of minor child.

- (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health. Upon request of either party, the court shall issue orders which are specific as to the frequency, timing, duration, conditions, and method of scheduling visitation and which reflect the development age of the child.
- (2) If domestic violence and abuse, as defined in KRS 403.720, has been alleged, the court shall, after a hearing, determine the visitation arrangement, if any, which would not endanger seriously the child's or the custodial parent's physical, mental, or emotional health.
- (3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

KRS 403.322 Custody, visitation, and inheritance rights denied parent convicted of felony sexual offense from which victim delivered a child -- Waiver -- child support obligation.

- (1) The Commonwealth recognizes that certain victims of sexual assault may conceive a child as a result of the sexual assault and may choose to bear and raise the child. The Commonwealth also recognizes that victims of a sexual assault who have elected to raise a child born as a result of the sexual assault, as well as that child, may suffer serious emotional or physical trauma if the perpetrator of the assault is granted parental rights with the child.
- (2) Except as provided in subsection (3) of this section, any person who has been convicted of a felony offense under KRS Chapter 510, in which the victim of that offense has conceived and delivered a child, shall not have custody or visitation rights, or the rights of inheritance under KRS Chapter 391 with respect to that child.
- (3) The mother of the child may waive the protection afforded under subsection (2) of this section regarding visitation and request that the court grant reasonable visitation rights with the child if paternity has been acknowledged.
- (4) Unless waived by the mother and, if applicable, the public agency substantially contributing to the support of the child, a court shall establish a child support obligation against the father of the child pursuant to KRS 403.211.

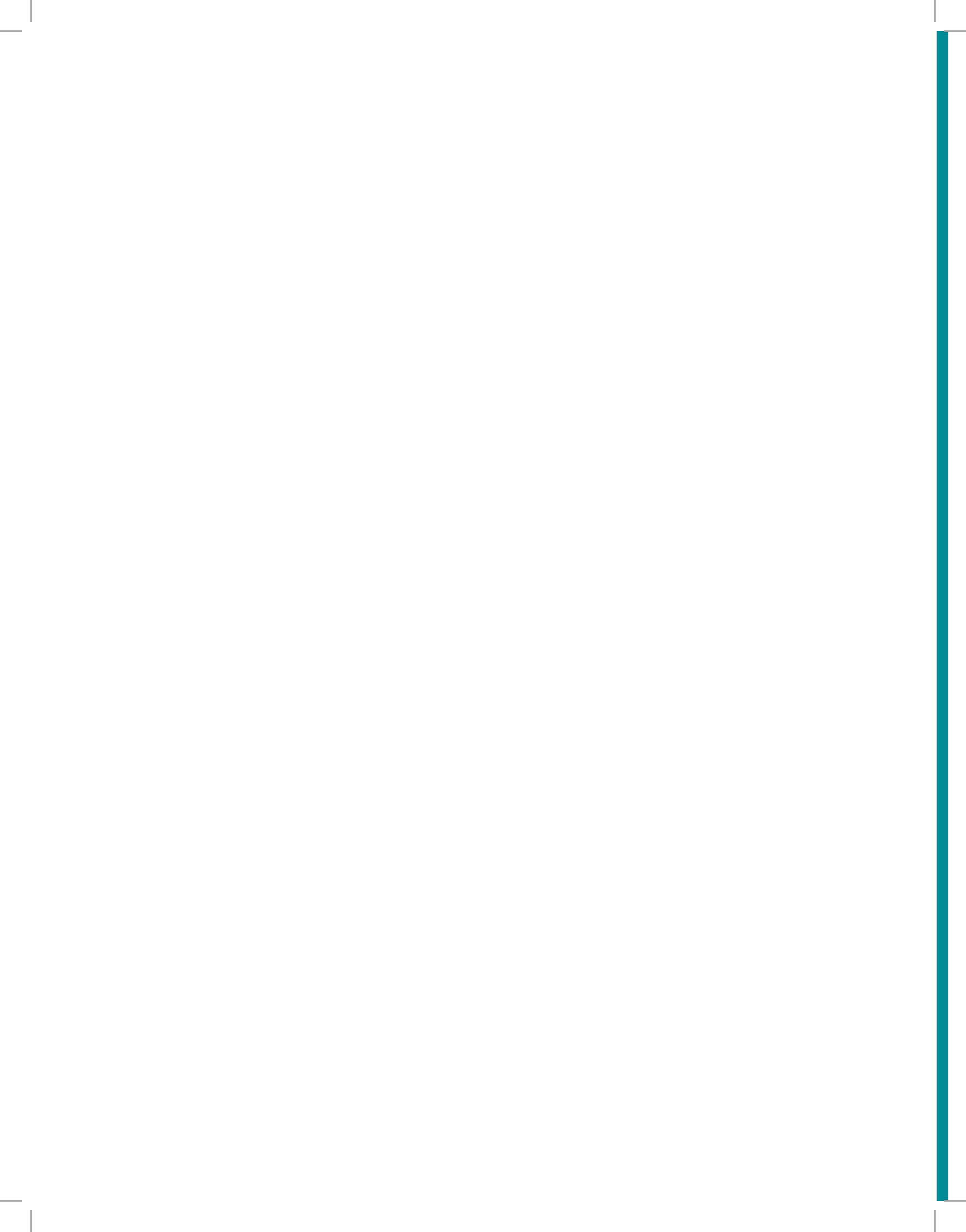
KRS 403.325 Visitation denied parent convicted of homicide of other parent -- Exception -- Hearing required.

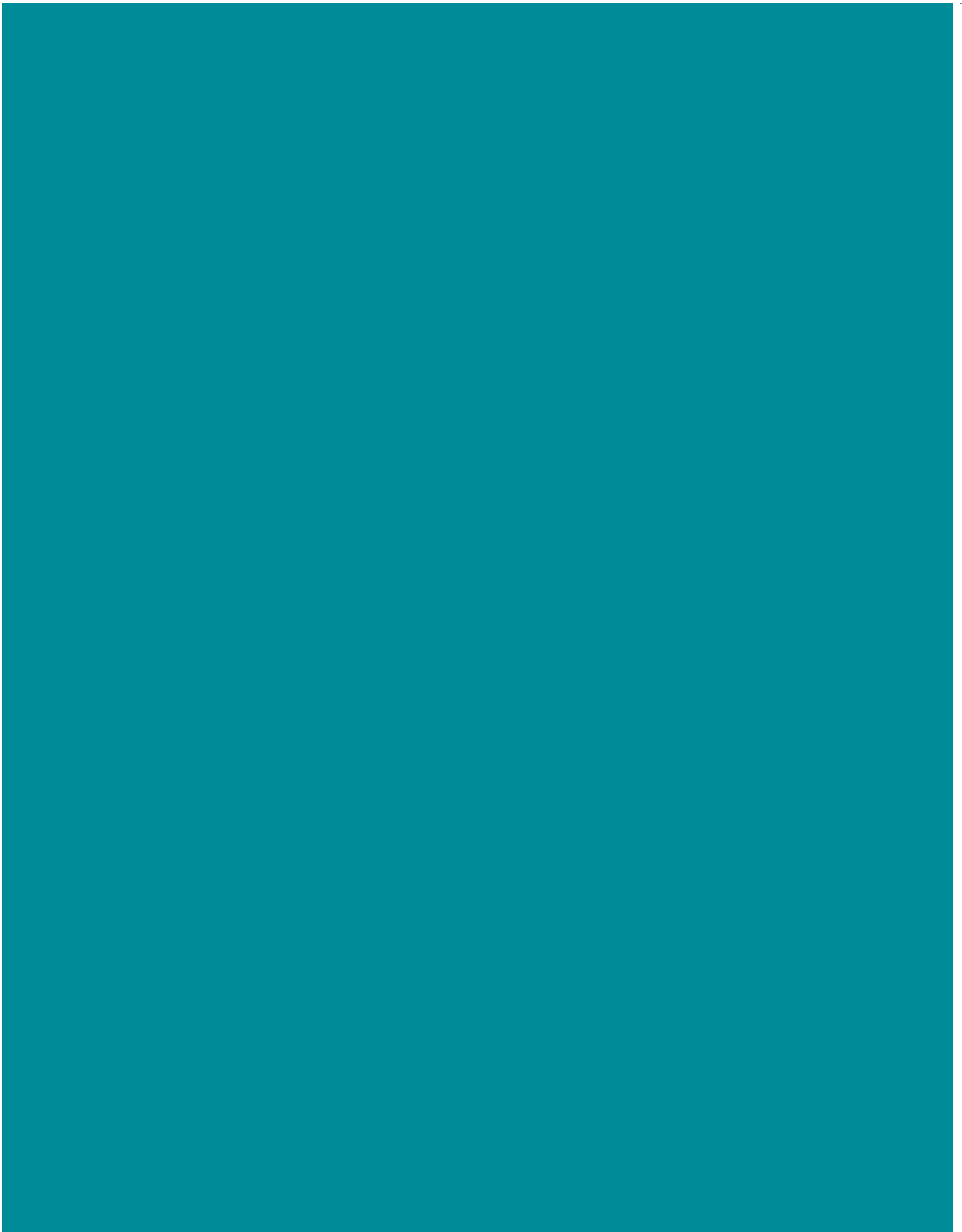
- (1) Notwithstanding the provisions of KRS 403.320, if a parent of a child is convicted of murder or manslaughter in the first degree of the other parent, a court shall not grant the convicted parent visitation rights with respect to that child unless the court, through a hearing, determines that visitation is in the child's best interest.
- (2) If the court later modifies a denial of visitation to grant visitation, the court shall do so only after a hearing which establishes that visitation is in the child's best interest.
- (3) In any hearing conducted under subsection (1) or (2) of this section:
 - (a) Jurisdiction shall lie with the Circuit Court of the county where the child resides; and
 - (b) The convicted parent, to obtain visitation, shall have to meet the burden of proving that visitation is in the child's best interest.

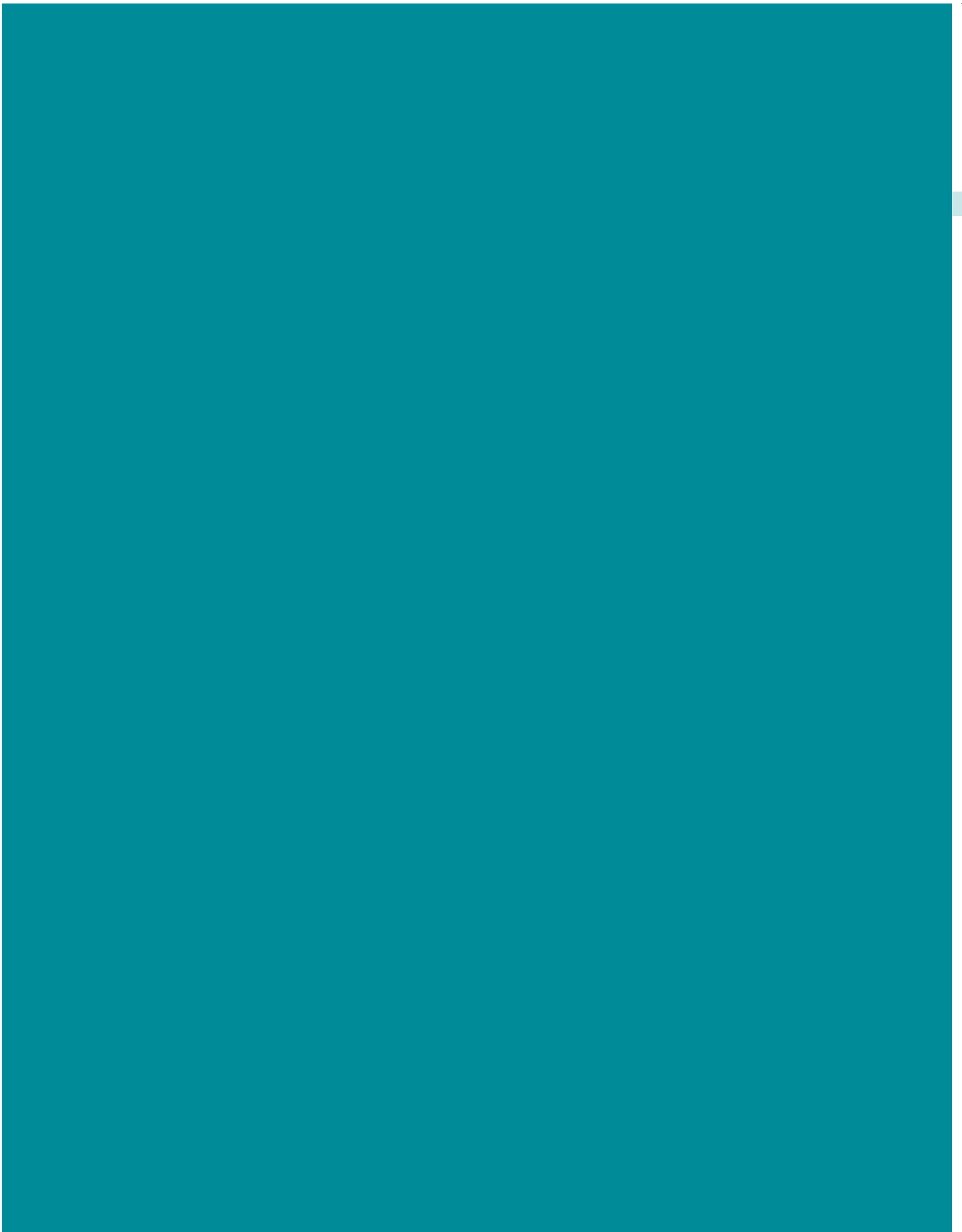
KRS 403.340 Modification of custody decree -- Modification based on active duty deployment to revert back on parent or custodian's return.

- (1) As used in this section, "custody" means sole or joint custody, whether ordered by a court or agreed to by the parties.
- (2) No motion to modify a custody decree shall be made earlier than two (2) years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe that:
 - (a) The child's present environment may endanger seriously his physical, mental, moral, or emotional health; or
 - (b) The custodian appointed under the prior decree has placed the child with a de facto custodian.
- (3) If a court of this state has jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the court shall not modify a prior custody decree unless after hearing it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that the modification is necessary to serve the best interests of the child. When determining if a change has occurred and whether a modification of custody is in the best interests of the child, the court shall consider the following:
 - (a) Whether the custodian agrees to the modification;
 - (b) Whether the child has been integrated into the family of the petitioner with consent of the custodian;
 - (c) The factors set forth in KRS 403.270(2) to determine the best interests of the child;
 - (d) Whether the child's present environment endangers seriously his physical, mental, moral, or emotional health;
 - (e) Whether the harm likely to be caused by a change of environment is outweighed by its advantages to him; and
 - (f) Whether the custodian has placed the child with a de facto custodian.
- (4) In determining whether a child's present environment may endanger seriously his physical, mental, moral, or emotional health, the court shall consider all relevant factors, including, but not limited to:
 - (a) The interaction and interrelationship of the child with his parent or parents, his de facto custodian, his siblings, and any other person who may significantly affect the child's best interests;
 - (b) The mental and physical health of all individuals involved;
 - (c) Repeated or substantial failure, without good cause as specified in KRS 403.240, of either parent to observe visitation, child support, or other provisions of the decree which affect the child, except that modification of custody orders shall not be made solely on the basis of failure to comply with visitation or child support provisions, or on the basis of which parent

- is more likely to allow visitation or pay child support
- (d) If domestic violence and abuse, as defined in KRS 403.720, is found by the court to exist, the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parent.
- (5) (a) Except as provided in paragraph (b) of this subsection, any court-ordered modification of a child custody decree, based in whole or in part on:
1. The active duty of a parent or a de facto custodian as a regular member of the United States Armed Forces deployed outside the United States; or
 2. Any federal active duty of a parent or a de facto custodian as a member of a state National Guard or a Reserve component;
- shall be temporary and shall revert back to the previous child custody decree at the end of the deployment outside the United States or the federal active duty, as appropriate.
- (b) A parent or de facto custodian identified in paragraph (a) of this subsection may consent to a modification of a child custody decree that continues past the end of the deployment outside the United States or the federal active duty, as appropriate.
- (6) Subject to KRS 403.315, if the court orders a modification of a child custody decree, there shall be a presumption, rebuttable by a preponderance of evidence, that it is in the best interest of the child for the parents to have joint custody and share equally in parenting time. If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule which maximizes the time each parent or de facto custodian has with the child and is consistent with ensuring the child's welfare.
- (7) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.







CHAPTER 7 SUPPLEMENTAL INFORMATION AND RESOURCES

A. OPEN RECORDS PRIVACY EXCEPTION FOR SEXUAL ASSAULT VICTIMS

Pursuant to Kentucky's Open Records Law "all public records shall be open for inspection by any person" because "free and open examination of public records is in the public interest." For information see KRS 61.870-.884. However, this requirement does not apply to "public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." For information see KRS 61.878(1)(a).

Public agencies, including law enforcement organizations, may redact (or edit out) identifying information in sex crimes cases. See Courier-Journal v. Louisville, 147 SW 3d 731 (2003), (holding that police may deny access to personally identifiable information relating to victims of sex offenses that appeared in police incident reports; and acknowledging the singularly traumatic consequences of crimes of sexual violence).

The purpose of Open Records Law is to allow the public to monitor how government agencies fulfill their duties. Therefore, access may be denied to records regarding the details of a sex crime or the condition of the victim in the aftermath, where those records are not related to how the public agency carries out its duties.

See In re: Courier-Journal/Crime Victims Compensation Board, 03-ORD-153 (holding that the Crime Victims' Compensation Board may refuse to disclose detailed information from certain police reports, sexual assault examination reports, and medical records related to a victim's post-assault suicide attempt; and acknowledging that "information is no less private simply because that information is available someplace.")

Questions regarding Open Records Laws can be directed to the Office of the Attorney General, Civil Law Division at (502) 696-5300 or <https://ag.ky.gov/honest-government/open-records-open-meetings-decisions>.

B. KY SEX CRIMES AND OFFENSE CHART

The chart provided on the following pages outlines the elements of sex crimes and related crimes. Corresponding statutes are provided in Chapter 5 of the Handbook.

<i>Kentucky Sex Crimes and Offenses</i>			
Crime	Elements	Classification	Penalty
Rape 1st Degree KRS 510.040	<input type="checkbox"/> Sexual intercourse and <input type="checkbox"/> Forcible compulsion OR <input type="checkbox"/> Sexual intercourse and <input type="checkbox"/> V(victim) is less than 12 OR <input type="checkbox"/> Sexual intercourse and <input type="checkbox"/> V is physically helpless .	Class B Felony Class A Felony if V is less than 12, or receives serious physical injury	10-20 yrs 20-50 yrs or life
Rape 2nd Degree KRS 510.050	<input type="checkbox"/> Sexual intercourse and <input type="checkbox"/> V is less than 14 and <input type="checkbox"/> Perpetrator (P) is 18 or older OR <input type="checkbox"/> Sexual intercourse and <input type="checkbox"/> V is mentally incapacitated OR <input type="checkbox"/> Sexual intercourse and <input type="checkbox"/> V is an individual with an intellectual disability	Class C Felony	5-10 years
Rape 3rd Degree KRS 510.060	<input type="checkbox"/> Sexual intercourse and <input type="checkbox"/> V is 16 or 17 and <input type="checkbox"/> P is at least ten (10) years older than V OR <input type="checkbox"/> Sexual intercourse and <input type="checkbox"/> V is less than 16 and <input type="checkbox"/> P is 21 or older OR <input type="checkbox"/> Sexual intercourse and <input type="checkbox"/> V is less than 18 and <input type="checkbox"/> P is a person in a position of authority or special trust and <input type="checkbox"/> P came into contact with V as a result of that position OR <input type="checkbox"/> Sexual intercourse and <input type="checkbox"/> V is less than 18 and <input type="checkbox"/> P is 21 or older and provides a foster family home for V OR <input type="checkbox"/> Sexual intercourse and <input type="checkbox"/> P is a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, and <input type="checkbox"/> V is a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity	Class D Felony	1-5 years
Sodomy 1st Degree KRS 510.070	<input type="checkbox"/> Deviate sexual intercourse and <input type="checkbox"/> Forcible compulsion OR <input type="checkbox"/> Deviate sexual intercourse and <input type="checkbox"/> V is physically helpless OR <input type="checkbox"/> Deviate sexual intercourse and <input type="checkbox"/> V is less than 12	Class B Felony Class A Felony if V is less than 12 or receives a serious physical injury	10-20 yrs 20-50 yrs or life
Sodomy 2nd Degree KRS 510.080	<input type="checkbox"/> Deviate sexual intercourse and <input type="checkbox"/> V is less than 14 and <input type="checkbox"/> P is 18 or older OR <input type="checkbox"/> Deviate sexual intercourse and <input type="checkbox"/> V is mentally incapacitated , OR <input type="checkbox"/> Deviate sexual intercourse and <input type="checkbox"/> V is an individual with an intellectual disability .	Class C Felony	5-10 years
Sodomy 3rd Degree KRS 510.090	<input type="checkbox"/> Deviate sexual intercourse and <input type="checkbox"/> V is 16 or 17 and <input type="checkbox"/> P is at least 10 years older than V OR <input type="checkbox"/> Deviate sexual intercourse and <input type="checkbox"/> V is less than 16 and <input type="checkbox"/> P is 21 or older OR <input type="checkbox"/> Deviate sexual intercourse and <input type="checkbox"/> V is less than 18 and <input type="checkbox"/> P is a person in a position of authority or special trust and <input type="checkbox"/> P came into contact with V as a result of that position OR	Class D Felony	1-5 years

Kentucky Sex Crimes and Offenses			
Crime	Elements	Classification	Penalty
Sodomy 3 rd Degree Continued KRS 510.090	<input type="checkbox"/> Deviate sexual intercourse and <input type="checkbox"/> V is less than 18 and <input type="checkbox"/> P is 21 or older and provides a foster family home for V OR <input type="checkbox"/> Deviate sexual intercourse and <input type="checkbox"/> P is a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, and <input type="checkbox"/> V is a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity	Class D Felony	1-5 years
Sexual Abuse 1st Degree KRS 510.110	<input type="checkbox"/> Sexual contact and <input type="checkbox"/> Forcible compulsion OR <input type="checkbox"/> Sexual contact and <input type="checkbox"/> V is less than 12 OR <input type="checkbox"/> Sexual contact and <input type="checkbox"/> V is mentally incapacitated OR <input type="checkbox"/> Sexual contact and <input type="checkbox"/> V is physically helpless OR <input type="checkbox"/> Sexual contact and <input type="checkbox"/> V is an individual with an intellectual disability OR <input type="checkbox"/> Sexual contact OR masturbating in presence of V, including electronically and <input type="checkbox"/> P is 21 or older and <input type="checkbox"/> V is less than 16 OR <input type="checkbox"/> Sexual contact OR masturbating in presence of V, including electronically and <input type="checkbox"/> P is a person in a position of authority or special trust and <input type="checkbox"/> P came into contact with V as a result of that position and <input type="checkbox"/> V is less than 18	Class C Felony where V is less than 12 years old Class D Felony if V is 12 years old or older	5-10 years 1-5 years
Sexual Abuse 2nd Degree KRS 510.120	<input type="checkbox"/> Sexual contact and <input type="checkbox"/> V is at least 18 and <input type="checkbox"/> V is a person who is incarcerated, supervised, evaluated, or treated by DOC, DJJ, detention facility, or contracting entity and <input type="checkbox"/> P is a jailer, employee, contractor, vendor, or volunteer, of DOC, DJJ, or detention facility, or entity under contract with them for custody, supervision, evaluation, or treatment of offenders OR <input type="checkbox"/> Sexual contact and <input type="checkbox"/> V is less than 16 and <input type="checkbox"/> P is at least 18, but less than 21	Class A Misdemeanor	Max 12 months
Sexual Abuse 3rd Degree KRS 510.130	<input type="checkbox"/> Sexual contact and <input type="checkbox"/> Without V's consent.	Class B Misdemeanor	Max 90 days
Sexual Misconduct KRS 510.140	<input type="checkbox"/> Sexual intercourse OR deviate sexual intercourse and <input type="checkbox"/> Without V's consent	Class A Misdemeanor	Max 12 months
Indecent Exposure 1 st Degree KRS 510.148	<input type="checkbox"/> Intentional exposure of genitals <input type="checkbox"/> Under circumstances likely to cause affront or alarm <input type="checkbox"/> V is under the age of 18 years	1 st offense - Class B Misd. 2 nd w/in 3 yrs. – Class A Misd. 3 rd & others – Class D Felony	Max 90 days Max 12 months 1-5 years
Indecent Exposure 2 nd Degree KRS 510.150	<input type="checkbox"/> Intentional exposure of genitals and <input type="checkbox"/> Under circumstances likely to cause affront or alarm and <input type="checkbox"/> V is 18 years of age or older	Class B Misdemeanor	Max 90 days

Crime	Elements	Classification	Penalty
Electronic solicitation of a minor for sex or other illegal activity KRS 510.155	<ul style="list-style-type: none"> <input type="checkbox"/> Knowingly use a communications system (including computers, computer networks, computer bulletin boards, cellular telephones or other electronics) and <input type="checkbox"/> For the purpose of procuring or promoting the use of a minor, or a peace officer posing as a minor and <input type="checkbox"/> For any activity in violation of KRS 510.040 - 510.110, 529.100 if commercial sex, or 530.064(1)(a), or KRS 531 	Class D Felony	1-5 years
Voyeurism KRS 531.090	<ul style="list-style-type: none"> <input type="checkbox"/> For the purpose of observing, viewing, photographing, filming, or videotaping the sexual conduct, genitals, an undergarment worn without being publicly visible, or female nipple of another person and <input type="checkbox"/> without V's consent and <input type="checkbox"/> V is in a place where a reasonable person would believe the conduct, genitals, undergarments, or female nipple will not be observed or videotaped without his or her knowledge and <input type="checkbox"/> P intentionally uses or causes use of a camera, videotape, or other image recording device OR <input type="checkbox"/> P intentionally uses the eye or any vision enhancing device OR <input type="checkbox"/> P intentionally enters or remains unlawfully in or upon the premises of another person 	Class A Misdemeanor	Max 12 months
Video voyeurism KRS 531.100	<ul style="list-style-type: none"> <input type="checkbox"/> Intentional use or causing use of a camera, videotape, or other image recording device and <input type="checkbox"/> For the purpose of observing, viewing, photographing, filming, or videotaping the sexual conduct, genitals, or female nipple of another person <input type="checkbox"/> Without that person's consent and <input type="checkbox"/> Uses or divulges any image so obtained for consideration OR <input type="checkbox"/> Distributes any images so obtained by live or recorded visual medium, electronic mail, Internet, or commercial on-line service. 	Class D Felony	1-5 years
Distribution of sexually explicit images without consent KRS 531.120	<ul style="list-style-type: none"> <input type="checkbox"/> P intentionally distributes to any 3rd party private erotic matter and <input type="checkbox"/> without written consent of the person depicted, and <input type="checkbox"/> With the intent to profit, or to harm, harass, intimidate, threaten, or coerce the person depicted; and <input type="checkbox"/> The disclosure would cause a reasonable person to suffer harm. <p>NOTE: Restrictions apply, see Ch. 5, A(4)</p>	<p><u>P's first offense</u> Class A misdemeanor</p> <p><u>Subsequent offenses</u> Class D felony</p> <p><u>P distributes the erotic matter for profit or gain</u> Class D felony for the first offense and a Class C felony subsequent offense</p>	<p>Max 12 months</p> <p>1-5 years</p> <p>1-5 years</p> <p>5-10 years</p>
Human Trafficking KRS 529.100	<ul style="list-style-type: none"> <input type="checkbox"/> Intentionally subjecting one or more person to <input type="checkbox"/> Commercial sexual activity <input type="checkbox"/> Through the use of force, fraud, or coercion <input type="checkbox"/> Except that if the trafficked person is under 18, force, fraud, or coercion is not needed 	<p><u>If V is 18 or older</u> Class C Felony or Class B Felony if serious physical injury</p> <p><u>If V is under 18</u> Class B Felony or Class A Felony if serious physical injury</p>	<p>5-10 years</p> <p>10-20 yrs</p> <p>10-20 yrs</p> <p>20-50 yrs or life</p>
Promoting Human Trafficking KRS 529.110	<ul style="list-style-type: none"> <input type="checkbox"/> Intentionally benefits financially or receives anything of value from knowing participation in human trafficking OR <input type="checkbox"/> Intentionally recruits, entices, harbors, transports, provides, or obtains by any means, another person OR <input type="checkbox"/> attempts to recruit, entice, harbor, transport, provide, or obtain by any means, another person and <input type="checkbox"/> knowing that the person will be subject to human trafficking 	<p><u>If V is 18 or older</u> Class D Felony</p> <p><u>If V is under 18</u> Class C Felony</p>	<p>1-5 years</p> <p>5-10 yrs</p>

Sexual Exploitation of Minors			
Crime	Elements	Classification	Penalty
Incest KRS 530.020	<ul style="list-style-type: none"> <input type="checkbox"/> Sexual intercourse OR deviate sexual intercourse and <input type="checkbox"/> With an ancestor, descendant, uncle, aunt brother, or sister <p>Note: Relationships include whole or half blood, without regard to legitimacy, relation by adoption, relationship of stepparent to stepchild, and relationship of step-grandparent and step-grandchild.</p>	<p>Class A Felony if V < 12 or V has serious physical injury</p> <p>Class B Felony if by forcible compulsion; or if V < 18; or if V is physically helpless or mentally incapacitate</p> <p>Class C Felony if “acts committed by consenting adults”</p>	<p>20-50 yrs</p> <p>10-20 yrs</p> <p>5-10 yrs</p>
Unlawful transaction with a minor - 1 st degree KRS 530.064(a)	<ul style="list-style-type: none"> <input type="checkbox"/> Knowingly induces, assists, or causes and <input type="checkbox"/> A minor to engage in illegal sexual activity <p>Note: Except offenses involving minors in KRS Ch. 531 and KRS 529.100 when involves commercial sexual activity.</p>	<p>Class C Felony if minor < 18</p> <p>Class B Felony if minor < 16</p> <p>Class A Felony if minor is physically injured</p>	<p>5-10 yrs</p> <p>10-20 yrs</p> <p>20-50 yrs or life</p>
Use of minor in a sexual performance KRS 531.310	<ul style="list-style-type: none"> <input type="checkbox"/> Employs, consents to, authorizes, or induces and <input type="checkbox"/> A minor to engage in a sexual performance 	<p>Class C Felony if minor < 18</p> <p>Class B Felony if minor < 16</p> <p>Class A Felony if minor is physically injured</p>	<p>5-10 years</p> <p>10-20 yrs</p> <p>20-50 yrs or life</p>
Promoting a sexual performance by a minor KRS 531.320	<ul style="list-style-type: none"> <input type="checkbox"/> when, knowing the character and content thereof, <input type="checkbox"/> he produces, directs or promotes <input type="checkbox"/> any performance which includes sexual conduct by a minor 	<p>Class C Felony if minor < 18</p> <p>Class B Felony if minor < 16</p> <p>Class A Felony if minor is physically injured</p>	<p>5-10 years</p> <p>10-20 yrs</p> <p>20-50 yrs or life</p>
Possession of matter portraying a sexual performance by minor KRS 531.335	<ul style="list-style-type: none"> <input type="checkbox"/> when, having knowledge of its content, character, and that the sexual performance is by a minor, <input type="checkbox"/> Knowingly has in possession or control any matter which visually depicts an actual sexual performance by a minor person; OR <input type="checkbox"/> Intentionally views any matter which visually depicts an actual sexual performance by a minor person. 	Class D Felony	1-5 years
Distribution of matter portraying a sexual performance by minor KRS 531.340	<ul style="list-style-type: none"> <input type="checkbox"/> When, having knowledge of its content and character <ul style="list-style-type: none"> o Sends or causes to be sent into this state for sale or distribution; OR o Brings or causes to be brought into this state for sale or distribution; OR o In this state, he or she: <ul style="list-style-type: none"> ▪ Exhibits for profit or gain; OR ▪ Distributes; OR ▪ Offers to distribute; OR ▪ Has in his or her possession with intent to distribute, exhibit for profit or gain or offer to distribute, any matter portraying a sexual performance by a minor. <p>Note: rebuttable presumption of intent to distribute if possess more than one (1) unit of material</p>	<p>Class D Felony (1st)</p> <p>Class C Felony (2nd, 3rd, etc)</p>	<p>1-5 yrs</p> <p>5-10 yrs</p>
Using minors to distribute material portraying a sexual performance by a minor KRS 531.370	<ul style="list-style-type: none"> <input type="checkbox"/> Knowing a person to be a minor, or having possession of such facts that he should reasonably know such person is a minor, and <input type="checkbox"/> knowing of the content and character of the material, he knowingly: <input type="checkbox"/> Hires OR Employs OR Uses, a minor to do or assist in doing any of the acts prohibited by KRS 531.340. 	<p>Class D Felony</p> <p>Class C Felony if the defendant has previously been convicted of violation of this section or KRS 531.030</p>	<p>1-5 years</p> <p>5-10 years</p>

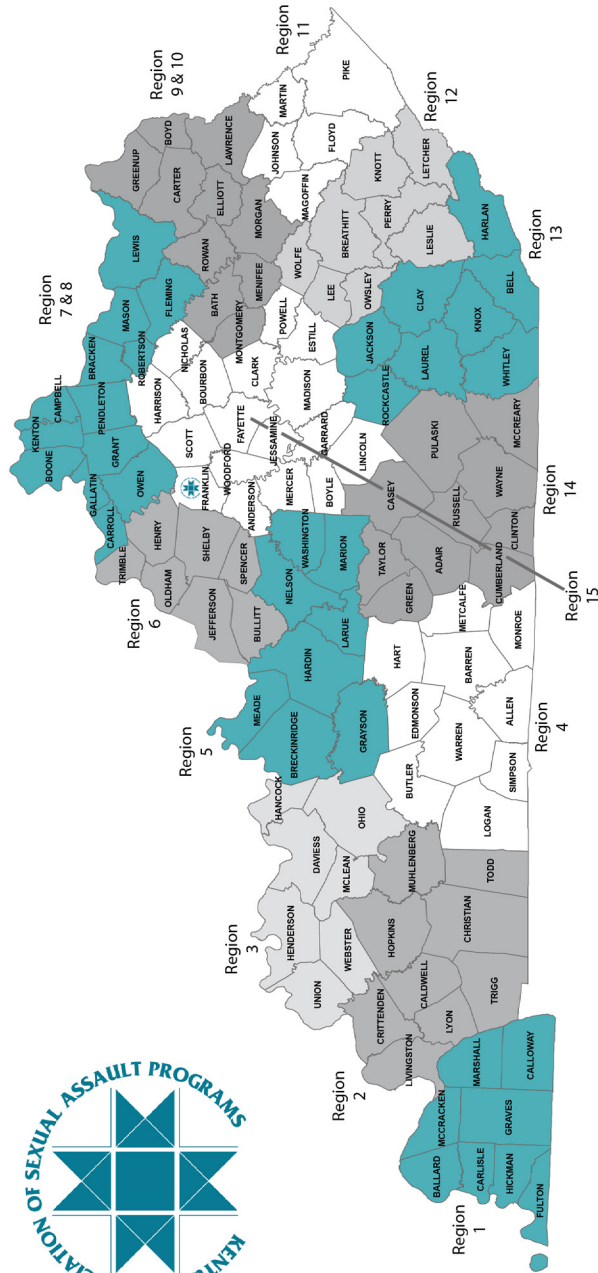
Crime	Elements	Classification	Penalty
Promoting sale of material portraying sexual performance by minor KRS 531.350	<input type="checkbox"/> knowingly, as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication or other merchandise, and <input type="checkbox"/> requires that the purchaser or consignee receive any matter portraying a sexual performance by a minor, OR <input type="checkbox"/> denies or threatens to deny a franchise, revokes or threatens to revoke, or imposes any penalty, financial or otherwise, by reason of the failure of any person to accept such matter, or by reason of the return of such matter.	Class A misdemeanor (1 st) Class D Felony (2 nd) Class C Felony (subsequent)	Max 12 months 1-5 yrs 5-10 yrs
Advertising material portraying a sexual performance by minor KRS 531.360	<input type="checkbox"/> when, having knowledge of its content and character thereof, and <input type="checkbox"/> writes or creates advertising or solicits anyone to publish such advertising or otherwise promotes the sale or distribution of matter portraying a sexual performance by a minor.	Class D Felony (1 st) Class C Felony (2 nd , 3 rd , etc)	1-5 years 5-10 yrs

Other Related Crimes				
Crime	Mental State	Elements	Classification	Penalty
Stalking First Degree KRS 508.140	Intentional	<input type="checkbox"/> All elements of Second Degree Stalking and <input type="checkbox"/> Has received notice of protective order against him concerning same victim... OR <input type="checkbox"/> Has received notice of criminal complaint against him concerning same victim... OR <input type="checkbox"/> Has been convicted of a Felony or Class A misdemeanor concerning same victim w/in past 5 years... OR <input type="checkbox"/> Has committed stalking with deadly weapon	Class D Felony	1-5 years
Stalking 2nd Degree KRS 508.150	Intentional	<input type="checkbox"/> At least 2 acts and <input type="checkbox"/> Acts directed at a specific victim(s) and <input type="checkbox"/> Acts seriously alarm, annoy, intimidate, or harass the victim and <input type="checkbox"/> Acts must be something which would cause a reasonable person to suffer substantial mental distress and <input type="checkbox"/> Explicit or implicit threat with intent to place V in fear of sexual contact, death or physical injury	Class A Misdemeanor	Max 12 months
Menacing KRS 508.050	Intentional	<input type="checkbox"/> Intentionally places another person in reasonable apprehension of imminent physical injury	Class B Misdemeanor	Max 90 days
Terroristic Threatening 3 rd Degree KRS 508.080	Intentional	<input type="checkbox"/> Threat to commit crime likely to result in <input type="checkbox"/> Serious physical injury or death to another person OR <input type="checkbox"/> Substantial property damage to another person	Class A Misdemeanor	Max 12 months
Unlawful Imprisonment 1 st Degree KRS 509.020	Knowing	<input type="checkbox"/> Knowingly and unlawfully restrains another person <input type="checkbox"/> under circumstances which expose that person to a risk of serious physical injury	Class D Felony	1-5 years
Unlawful Imprisonment 2 nd Degree KRS 509.030	Knowing	<input type="checkbox"/> Knowingly and unlawfully restrains another person	Class A Misdemeanor	Max 12 months

Crime	Mental State	Elements	Classification	Penalty
Kidnapping KRS 509.040	Intentional	<input type="checkbox"/> Unlawfully restrains another person with the intent to <input type="checkbox"/> Hold the person for ransom or reward OR <input type="checkbox"/> Accomplish or advance the commission of a felony OR <input type="checkbox"/> Inflict bodily injury or to terrorize the victim or another OR <input type="checkbox"/> To interfere with the performance of a governmental or political function OR <input type="checkbox"/> To use the person as a shield or hostage OR <input type="checkbox"/> To deprive the parents or guardian of custody of a minor, when the person taking the minor is not a person exercising custodial control or supervision	Capitol offense if victim is not released alive or consequently dies after release Class A felony if victim is released alive, but suffered serious physical injury Class B Felony if victim is released alive and is safe prior to trial	Death, life w/o parole, life w/out parole for 25 years, or 20-50 yrs 20-50 yrs or life 10 – 20 years
Assault 1 st Degree KRS 508.010	Intentional	<input type="checkbox"/> Serious physical injury and <input type="checkbox"/> Deadly weapon or dangerous instrument	Class B Felony	10-20 years
	Wanton	<input type="checkbox"/> Serious physical injury and <input type="checkbox"/> Conduct which causes grave risk of death to another	Class B Felony	10-20 years
Assault 2 nd Degree KRS 508.020	Intentional	<input type="checkbox"/> Serious physical injury	Class C Felony	5-10 years
	Intentional	<input type="checkbox"/> Physical injury and <input type="checkbox"/> Deadly weapon or dangerous instrument	Class C Felony	5-10 years
	Wanton	<input type="checkbox"/> Serious physical injury and <input type="checkbox"/> Deadly weapon or dangerous instrument	Class C Felony	5-10 years
Assault 3 rd Degree KRS 508.025	Reckless	<input type="checkbox"/> Dangerous instrument or deadly weapon and <input type="checkbox"/> Physical injury or attempt to physically injure and <input type="checkbox"/> Peace officer or employee of detention center or residential treatment facility or DCBS social worker who is performing job or probation or parole officers or paid/volunteer EMS personnel/fire dept member/rescue squad personnel while performing job or inmate transportation officer or school employee/volunteer in course of job	Class D Felony	1-5 years
	Intentional	<input type="checkbox"/> Physical injury or attempt to physically injure and <input type="checkbox"/> Same list of people as above for “reckless”	Class D Felony	1-5 years
	Intentional	<input type="checkbox"/> Person in detention or juvenile in residential treatment <input type="checkbox"/> Inflicts physical injury or <input type="checkbox"/> Throws or causes feces, urine, other bodily fluid to be thrown upon employee of facility	Class D Felony	1-5 years
	Intentional	<input type="checkbox"/> Causes person, whom actor knows or reasonably should know to be a peace officer discharging official duties, <input type="checkbox"/> to come into contact with saliva, vomit, mucus, blood, seminal fluid, urine, or feces <input type="checkbox"/> Without consent of peace officer	Class B Misdemeanor Class A Misdemnr. if adult uses bodily fluid and knows they have a serious communicable disease	Max 90 days Max 12 months
Assault 4 th Degree KRS 508.030	Intentional or Wanton	<input type="checkbox"/> Physical injury	Class A Misdemeanor	Max 12 Months
	Reckless	<input type="checkbox"/> Physical injury and <input type="checkbox"/> Deadly weapon or dangerous instrument	Class A Misdemeanor	Max 12 Months
Assault of Family Member or Member of an Unmarried Couple KRS 508.032		<input type="checkbox"/> Same as Assault Fourth Degree and <input type="checkbox"/> Third or subsequent Assault IV offense and within 5 years and <input type="checkbox"/> current and previous assaults are against a family member or member of an unmarried couple Note: this charge is for enhancement of penalty	Class D Felony but jury/judge may convict of misdemeanor	1-5 years or Up to 12 months

Crime	Mental State	Elements	Classification	Penalty
Harassment KRS 525.070	Intentional	<input type="checkbox"/> With intent to intimidate, harass, annoy, or alarm another person and <input type="checkbox"/> Strikes, shoves, kicks, or otherwise subjects a person to physical contact	Class B Misdemeanor	Max 90 days
	Intentional	<input type="checkbox"/> With intent to intimidate, harass, annoy, or alarm another person and <input type="checkbox"/> Attempts or threatens to strike, shove, kick, or otherwise subject the person to physical contact OR <input type="checkbox"/> In a public place, makes an offensively coarse utterance, gesture, or display, or addresses abusive language to any person present OR <input type="checkbox"/> Follows a person in or about a public place or places OR <input type="checkbox"/> Engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy another person and serve no legitimate purpose OR <input type="checkbox"/> Being a student on school premise, school transportation, or school event: <ol style="list-style-type: none"> 1. Damages or commits a theft of the property of another student; or 2. Substantially disrupts the operation of the school; or 3. Creates a hostile environment by means of any gestures, written communications, oral statements, or physical acts that a reasonable person under the circumstances should know would cause another student to suffer fear of physical harm, intimidation, humiliation, or embarrassment. 	Violation	Fine only
Harassing Communications KRS 525.080	Intentional	<input type="checkbox"/> With intent to intimidate, harass, annoy, or alarm another person and <input type="checkbox"/> Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail or any other form of electronic or written communication in a manner which causes annoyance or alarm and serves no purpose of legitimate communication OR <input type="checkbox"/> Makes a telephone call, whether or not conversation ensues, with no purpose of legitimate communication OR <input type="checkbox"/> Communicates, while a student, with or about another school student, anonymously or otherwise, by telephone, Internet, mail, or any form of electronic or written communication in a manner which a reasonable person should know would cause the other student to suffer fear of physical harm, intimidation, humiliation, or embarrassment and which serves no purpose of legitimate communication.	Class B Misdemeanor	Max 90 days
Violations of Protective Orders EPO/DVO KRS 403.763	Intentional	<input type="checkbox"/> P intentionally violates the provisions of an order of protection and <input type="checkbox"/> Occurs after the person has been served or given notice of the order	Class A Misdemeanor	Max 12 months
Violations of Interpersonal Protective Orders TIPO/IPO KRS 456.180	Intentional	<input type="checkbox"/> P intentionally violates the provisions of an interpersonal protective order and <input type="checkbox"/> Occurs after the person has been served or given notice of the order	Class A Misdemeanor	Max 12 months

B. KASAP PROGRAM MAP



- Region 7 & 8: Women's Crisis Center**
(Covington & Maysville)
111 East Third Street, Maysville, KY 41056
(800) 928-3335 | wccky.org
- Region 9 & 10: Pathways Victim Services**
(Ashland & Morehead)
P.O. Box 790, Ashland, KY 41101
(800) 562-8909 | www.pathways-ky.org
- Region 11: Mountain Comprehensive Care Center's Healing Program for Survivors of Sexual Assault & Domestic Violence**
104 South Front Ave., Prestonsburg, KY 41653
(800) 422-1060 | mtcomp.org
- Region 12: The Rising Center**
637 Morton Blvd., Hazard, KY 41701
(800) 375-7273 | therisingcenter.org
- Region 13: Cumberland River Behavioral Health Rape Victim Services**
P.O. Box 568, Corbin, KY 40701
(800) 656-HOPE (4673) | crrvs.org
- Region 14: Adanta Sexual Assault Resource Center (ASARC)**
259 Parkers Mill Road, Somerset, Kentucky 42501
(800) 656-HOPE (4673)
- Region 15: Ampersand Sexual Violence Resource Center of the Bluegrass**
P.O. Box 1603, Lexington, KY 40588
(800) 656-HOPE (4673) | ampersandky.org

- Region 1: Purchase Area Sexual Assault & Child Advocacy Center**
P.O. Box 8506, Paducah, KY 42002-8506
(800) 928-7273 | hopehealgrow.org
- Region 2: Sanctuary, Inc.**
P.O. Box 1165, Hopkinsville, KY 42241
(800) 766-0000 | sanctuaryinc.net
- Region 3: New Beginnings Sexual Assault Support Services**
1716 Scherm Road, Owensboro, KY 42301
(800) 226-7273 | nbowensboro.org
- Region 4: Hope Harbor, Inc.**
913 Broadway Ave, Bowling Green, KY 42101
(800) 656-HOPE (4673) | hopeharbor.net
- Region 5: Silverleaf Sexual Trauma Recovery Services**
751 S Provident Way, Elizabethtown, KY 42701
(877) 672-2124 | silverleafky.org
- Region 6: The Center for Women & Families Support Services**
P.O. Box 2048, Louisville, KY 40201
(844) BE-SAFE-1 | (844) 237-2331
thecenteronline.org

KENTUCKY ASSOCIATION OF SEXUAL ASSAULT PROGRAMS
P.O. Box 4028 | Frankfort, KY 40604 | (800) 656-HOPE (4673) | www.kasap.org

D. KY GENERAL MANDATORY REPORTING CHART

WHAT?	WHO must report?	WHEN?	TO WHOM?
Child Abuse, Dependency, Neglect¹	Everyone, except for attorney-client and clergy-penitent for communications made within those relationships	If harm/abuse/neglect is caused or allowed by: <ul style="list-style-type: none"> parent/caregiver person in position of authority or special trust person 21 y.o. or older when victim <16 y.o. for sexual abuse/exploitation any person for human trafficking (labor and sex) 	Must report to one of the following: <ul style="list-style-type: none"> Cabinet² – Child Protective Services, Local law enforcement, Kentucky State Police, OR County or Commonwealth Attorney
Vulnerable Adult Abuse or Neglect³	Everyone, no exceptions	If any person harms/neglects an individual who is 18 y.o. or older who has a mental or physical disability that limits ability to care and/or protect themselves.	Must report to: <ul style="list-style-type: none"> Cabinet⁴ – Adult Protective Services

*The chart above is applicable to the general population, however, there are additional mandates for reporting or providing information based on certain professions.

¹ Ky. Rev. Stat. §600.020 and §620
² Statewide Abuse Reporting Hotline, 1-877-KYSAFE1 or 1-877-597-2331
³ Ky. Rev. Stat. §209
⁴ Statewide Abuse Reporting Hotline, 1-877-KYSAFE1 or 1-877-597-2331

What if I am not sure?

- The law requires reporting when “any person knows or has reasonable cause to believe that a child is dependent, neglected, or abused...” and “any person...having reasonable cause to suspect that an adult has suffered abuse, neglect, or exploitation...” So, you don’t have to be sure.
- Furthermore, “failure to report” is a crime. Therefore, reporting is the safest thing to do if you suspect abuse or neglect.
- Also, if the report was made “in good faith,” the person who reported is immune from legal liability.

Tips for Fulfilling Your Duty to Report

- When reporting is required, it should be done immediately.
- You should not investigate prior to making a report.
- The duty to report abuse overrides most professional “privileges” that generally protect confidential communications. So, when you have a duty to report, you must do so regardless of privilege. The only exception is for child abuse reporting, when the communication is made within the attorney-client or clergy-penitent relationship.
- Since the duty to report applies to individuals, you should make all reports directly to appropriate government officials, even if you are told that a report has already been made. Though your institution’s policies and procedures may require you to tell someone inside your organization, internal reporting does not fulfill your legal duty to report.
- In many cases, it is difficult to “substantiate” reports of abuse, especially sexual abuse. Therefore, it can be critical to file additional reports if you learn of violence that occurred after a report was made. You may also ask to speak directly with a supervisor and/or contact the Office of Ombudsman at 1-800-372-2973.
- Reports can be made anonymously. However, if you do not give your name, it may be especially important to document the reporting in your own records.
- The law requires that the source of a report of abuse, neglect or exploitation is kept confidential unless court ordered to be released.
- Kentucky’s mandatory reporting laws are codified in: KRS 600.020 and KRS 620 for child abuse and KRS 209 for adults with disabilities.

NOTE: DO NOT report all sexual assaults based on the fact that a sexual assault occurred. Reporting sexual assaults follows the same reporting guidelines as above. Remember, reporting without client/patient/victim consent, except where the law requires, is a violation of Kentucky state law as well as federal laws such as HIPAA and VAWA.

*Outside of mandatory reporting, anytime a victim consents to contacting police or others for services, it is best practice to have them sign a consent/release form.

This document is not legal advice and should only be used for guidance.

E. KY PROFESSION-SPECIFIC REPORTING AND INFORMATION CHART

WHAT?	WHO?	WHEN?	TO WHOM?
<p align="center">Duty to Provide Educational Materials to Victims of Domestic and Dating Violence and Abuse⁵</p>	<p>“Professionals” include:</p> <ul style="list-style-type: none"> • physician, medical resident, medical intern, osteopathic physician • coroner, medical examiner • chiropractor, dentist, optometrist • nurse • emergency medical technician, paramedic • licensed mental health professional, therapist • cabinet employee • child-care personnel • teacher, school personnel • ordained minister or the denominational equivalent • victim advocate • or any organization or agency employing any of these professionals 	<p>When “a professional has reasonable cause to believe that a victim with whom [they have] had a professional interaction has experienced <i>domestic violence and abuse or dating violence and abuse</i>.”</p> <p><u>What is “domestic and dating violence and abuse”?</u></p> <p>Domestic and dating violence and abuse occurs when:</p> <ul style="list-style-type: none"> • A spouse or former spouse, a person with whom they share a child in common, live or have lived together as a couple, or are or have been in a dating relationship <ul style="list-style-type: none"> ○ Inflicts a physical injury, serious physical injury, stalking, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault upon the other 	<p>No report made here⁶, instead, must provide victim with:</p> <ul style="list-style-type: none"> • educational materials related to domestic or dating violence and abuse, • referral information for accessing regional domestic violence programs or rape crisis centers, and • information about how to access protective orders <p>Materials may be accessed online or provided in print by contacting your local domestic violence center or the Kentucky Coalition Against Domestic Violence at (502) 209-5382 or kcadv.org.</p>

⁵ [KRS Chapter 209A](#)

⁶ Exceptions: When victim requests contacting police [KRS 209A.100](#) AND if death of victim is related to abuse, [KRS 209A.110](#)

WHAT?	WHO?	WHEN?	TO WHOM?
<p>Duty of Mental Health Professional to Warn Intended Victim of Patient's Threat of Violence⁷</p>	<p>"Mental health professionals"</p> <ul style="list-style-type: none"> • Licensed physician • Licensed psychiatrist • Licensed/certified psychologist • Registered nurse providing mental health services • Licensed clinical social worker • Licensed marriage and family therapist • Credentialed professional counselor • Certified art therapist • Licensed pastoral counselor <p>In addition to above list, for juveniles:</p> <ul style="list-style-type: none"> • Person acting in role of counselor⁸ 	<ul style="list-style-type: none"> • Patient communicates an actual threat of physical violence against a clearly identified or reasonably identifiable victim • Or communicates actual threat of specific violent actor 	<p>When victim is identifiable:</p> <ul style="list-style-type: none"> • Reasonable efforts to communicate threat to victim • And notify police department <p>If no identifiable victim:</p> <ul style="list-style-type: none"> • Communicate threat to law enforcement • May also take reasonable efforts to seek civil commitment
<p>Sexual offenses at school⁹</p>	<p>Principals</p>	<ul style="list-style-type: none"> • Reasonable belief that a sexual offense occurred on school property or at a school-sponsored function 	<p>Report to local law enforcement</p>

Note: Professional-specific duties do NOT change the duties of mandatory reporting of child or vulnerable adult abuse and neglect, when appropriate.

This document is not legal advice and should only be used for guidance.

⁷ [KRS 202A.400](#) and [645.270](#)

⁸ [KRS 645.270](#)

⁹ [KRS 158.154](#)

