

# 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](http://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.