

CHAPTER 2 VICTIM SERVICES & SERVICE PROVIDERS

A. SEXUAL ASSAULT MEDICAL-FORENSIC EXAMS

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

Purpose of SAFE Exam

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

1. Examination Requirements

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

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

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

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

502 KAR 12:010. Sexual assault medical protocol.

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

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

Section 1. Definitions.

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

Section 2. Preforensic Examination Procedure.

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

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

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

Section 3. The Forensic Examination.

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

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

Section 4. Post-forensic Examination Procedures.

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

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

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

1. ~~107 KAR 1:005;~~
2. ~~107 KAR 1:010;~~
3. ~~107 KAR 1:015;~~
4. ~~107 KAR 1:025;~~ and
5. ~~107 KAR 1:040.~~ (107 KAR was repealed. Updated to 802 KAR 3:010 and 802 KAR 3:020)

Section 5. Storage and Transfer of Samples.

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

Section 6. Removal of Samples from Secure Storage.

Samples shall not be permanently removed from storage except if:

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

Section 7. Destruction of Samples.

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

2. Payment for Exams

KRS 49.490 Sexual assault victim assistance fund.

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

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

Section 1. Sexual Assault Examination Program.

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

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

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

Section 1. Definitions.

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

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

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

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

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

Section 3. Funding Requirements.

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

Section 4. Funding Criteria.

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

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

Section 5. Reporting Requirements.

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

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

Section 6. Appeals.

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

Section 7. Incorporation by Reference.

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

3. Sexual Assault Nurse Examiners

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

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

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

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

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

Section 2. SANE Course Approval Application.

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

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

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

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

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

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

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

Section 3.

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

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

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

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

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

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

Section 4. Continued Board Approval of a SANE Course.

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

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

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

Section 5.

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

Section 6. Appeal.

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

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

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

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

Section 8. Renewal.

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

Section 9. Reinstatement.

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

apply to reinstate the credential by:

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

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

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

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

Section 11. Incorporation by Reference.

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

4. Facilities

216B.401 Designation of SANE-ready hospitals.

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

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

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

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

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

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

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

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

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

5. Timelines for Hospitals, Law Enforcement, and Lab

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

(10)...

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

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

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

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

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

(1) As used in this section:

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

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

(b) "Following trial" means after:

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

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

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

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

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

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

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

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

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

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

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

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

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

...

B. RAPE CRISIS CENTERS

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

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

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

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

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

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

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

211.603 Rape crisis center trust fund.

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

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

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

KRS 211.608 Confidentiality of rape crisis center clients' records.

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

920 KAR 2:010 Standards for rape crisis centers.

Section 1. Definitions.

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

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

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

Section 3. Requirements for a Board.

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

Section 4. Personnel Administration.

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

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

Section 5. Required personnel.

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

Section 6. Qualifications of Service Providers.

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

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

Section 7. Requirements for Crisis Services.

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

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

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

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

Section 9. Requirements for Advocacy Services.

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

Section 10. Requirements for Consultation Services.

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

Section 11. Requirements for Public Education Services.

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

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

Section 12. Volunteer Program.

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

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

Section 13. Client Files.

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

Section 14. Client Satisfaction and Grievances.

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

Section 15 Monitoring.

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

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

Section 16. Funding.

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

Section 17. Administrative Hearing Procedure.

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

Section 18. Material Incorporated by Reference.

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

C. Children’s Advocacy Centers

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

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

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

KRS 620.045 Funding for regional children’s advocacy center.

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

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

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

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

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

Section 1. Definitions.

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

Section 2. Governing Board of Directors.

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

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

Section 3. Personnel Management.

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

justice field.

2. Therapist. A therapist shall:

- a. Have a doctorate or master degree from an accredited college or university in a mental health discipline and two (2) years post-degree counseling or clinical experience; and
- b. Possess a certificate or license to practice under the laws of the Commonwealth of Kentucky in a mental health discipline.

3. Forensic interviewer. A forensic interviewer, if employed by the center, shall have:

- a. A doctorate or master degree from an accredited college or university in a mental health discipline;
- b. Two (2) years of post-degree counseling or clinical experience; and
- c. Three (3) years of experience interviewing children.

4. Multidisciplinary team facilitator. A multidisciplinary team facilitator shall have a bachelor's degree from an accredited college or university and two (2) years of experience in a human services or criminal justice field.

5. Other staff necessary to support the administration or service delivery of the agency.

(b) The qualifications established in paragraph (a)1-4 of this subsection shall not apply to center staff hired prior to December 17, 2007.

(c) Within three (3) months of employment, staff providing direct services to a child shall have received twenty-four (24) hours of training on issues related to child abuse.

(d) Within three (3) months of beginning service, a center volunteer who has access to or contact with a child shall have received twenty-four (24) hours of training on issues related to child abuse.

(e) An employee of a center shall receive at least eight (8) hours of the training required by paragraph (c) of this subsection before providing services to a child.

(f) A center volunteer who has access to or contact with a child shall receive at least eight (8) hours of training required by paragraph (d) of this subsection before providing services at the center.

(g) 1. A center contracting for direct services to a child by a professional not on the staff of the center shall document that the professional meets the qualifications outlined in this section.

2. An agreement for provision of service shall: a. Be on file at the center; and b. Specify the qualifications of the staff.

(h) An employee of a children's advocacy center shall be at least twenty-one (21) years of age.

(i) An applicant for employment shall submit to a criminal records check in accordance with KRS 17.165 during the application process and every two (2) years thereafter while employed by the center.

(j) A center volunteer who has access to or contact with a child shall submit to a criminal records check in accordance with KRS 17.165 prior to beginning service to the center and every two (2) year thereafter while service is being provided to the center.

(k) An employee of a center under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with children in the center until the employee is cleared of the charge.

(l) A center volunteer under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with children in the center until the center volunteer is cleared of the charge.

(m) An employee or designated agent shall have immunity from civil liability and shall be provided a defense in civil actions pursuant to KRS 620.050(2).

Section 4. Center Services and Responsibilities.

(1) A center shall:

(a) Provide:

1. Advocacy services;
2. Counseling services;

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

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

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

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

Section 5. Client Files and Documentation.

- (1) A center shall open a client file for a child who is provided a service, excluding service that is limited to a telephone conversation.
- (2) A client file shall include information sufficient to document the services provided or referral made by the center and shall include:
 - (a) The names of the client and primary caregiver;
 - (b) The name of the recipient of service;
 - (c) The client's address;
 - (d) The client's date of birth;
 - (e) Each date of service provided by the center;
 - (f) The name and title of each service provider of the center;
 - (g) A description of any services provided by the center;
 - (h) The referral sources used;
 - (i) A description of any follow-up services provided; and
 - (j) Descriptions of contacts with, report to, and referrals from the cabinet and law enforcement agency.
- (3) (a) A center shall maintain a system for tracking:
 1. Services rendered by region, except that comprehensive medical services and forensic interviewing shall be tracked by county of the client's residence;
 2. Clients seen by county of client's residence;
 3. Referrals made; and
 4. Contacts with other community agencies on behalf of clients.(b) Documentation shall be sufficient to support statistics reported to the cabinet.

Section 6. Funding.

- (1) (a) The cabinet shall designate one (1) regional children's advocacy center in each area development district.
(b) A children's advocacy center designated on or after July 1, 2007, shall retain the designation unless it has been rescinded by the cabinet based on:
 1. Periodic review of the center's performance; or
 2. The annual plan and budget submitted by the center to the cabinet for funding for the next fiscal year.(c) The cabinet shall notify the Office of the Attorney General, the Department for Medicaid Services, and the Justice and Public Safety Cabinet of any designation of a regional children's advocacy center made pursuant to this administrative regulation.
- (2) The requirements of this administrative regulation shall not prohibit the center from applying for nongovernmental grants or fundraising to support efforts consistent with the mission of the center.
- (3) (a) In addition to the provisions of subsection 1(b) of this Section, the Commissioner of the Department for Community Based Services may rescind the designation of a center if a determination is made that the center failed to:
 1. Submit a budget and plan for services which shall substantiate the capacity to provide services specified in KRS 620.020(4) and in accordance with this administrative regulation;
 2. Operate in accordance with a budget and plan for services approved by the cabinet; or
 3. Operate in accordance with the requirements of this administrative regulation.(b) Any notice of rescission of a designation shall:
 1. Be in writing;
 2. Be mailed to the center's last known mailing address;
 3. State the basis for the rescission;

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

Section 7. Audit and Monitoring.

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

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

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

D. DOMESTIC VIOLENCE PROGRAMS

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

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

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

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

Section 1. Definitions.

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

Section 2. Management.

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

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

Section 3. Staff.

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

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

Section 4. Physical Facilities.

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

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

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

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

Section 7. Services.

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

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

Section 8. Records.

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

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

Section 1. Definitions.

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

its designee by each domestic violence shelter.

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

(4) "Client" means a:

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

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

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

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

Section 3. Service Provider.

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

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

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

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

(c) The application for funding shall:

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

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

(b) The service provider shall:

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

Section 4. Trust and Agency Funds.

(1) The cabinet or its designee shall:

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

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

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

(2) The cabinet or its designee may:

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

E. PROSECUTORS & AFFILIATES

1. Prosecution-Based Victim Advocates

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

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

KRS 69.350 Employment of victim advocate (county attorneys).

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

human services field or court system.

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

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

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

2. Prosecuting Attorneys

a. Duties and Roles

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

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

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

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

KRS 15.020 Attorney General as Chief law officer and adviser.

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

b. Intervention by Attorney General

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

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

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

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

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

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

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

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

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

(1) For the purposes of this section the following words or phrases shall have the meaning indicated:

- (a) “Proceeding” includes pretrial, trial, appellate review, or other stages of litigation;
- (b) “Fiduciary” includes such relationships as executor, administrator, conservator, trustee, and

guardian;

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

3. Prosecutors Advisory Council

KRS 15.705 Prosecutors Advisory Council.

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

pleasure of the Governor

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

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

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

4. Victim, Witness, & Family Protection Program

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

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

victims and witnesses and their families.

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

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

Section 1. Definitions.

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

Section 2. Eligible Costs.

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

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

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

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

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

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

Section 4. Prosecutor's Application for Reimbursement.

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

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

Section 5. Application for Advance of Funds.

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

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

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

Section 6. Notice of Estimated Costs.

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

Section 7. Material Incorporated by Reference.

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

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

F. CRIME VICTIMS' COMPENSATION FUND

KRS 49.270 Public purpose of indemnifying crime victims.

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

KRS 49.280 Definitions for chapter.

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

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

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

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

KRS 49.300 Powers and duties of commission.

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

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

KRS 49.310 Eligibility for awards.

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

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

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

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

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

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

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

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

49.490 in which that condition is an element.

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

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

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

KRS 49.360 Emergency award pending final decision.

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

KRS 49.370 Awards, findings, and amounts.

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

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

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

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

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

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

KRS 49.400 Effect of filing false information.

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

KRS 49.410. Manner of payment -- Annual reconsideration.

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

KRS 49.430 Federal participation.

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

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

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

KRS 49.460 Subrogation.

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

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

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

KRS 49.480 Crime victims' compensation fund.

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

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Section 1. Filing Claims.

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

Section 2. Kentucky Medical Assistance Program.

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

Section 3. Incorporation by Reference.

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

G. MINORS' CONSENT FOR SERVICES

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

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

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

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

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

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

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

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

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

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

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