

CHAPTER 4 MANDATORY REPORTING, INFORMATION, & SCHOOL REQUIREMENTS

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

A. CHILD ABUSE, NEGLECT, AND EXPLOITATION

1. *Reporting and Investigation Standards*

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

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

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

- ...
- (9) "Child" means any person who has not reached his or her eighteenth birthday, unless otherwise provided;
- ...
- (20) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;
- ...
- (26) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his or her age, development, culture, and environment as testified to by a qualified mental health professional;
- ...
- (42) "Nonoffender" means a child alleged to be dependent, neglected, or abused and who has not been otherwise charged with a status or public offense;
- (43) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;
- (44) "Nonsecure setting" means a nonsecure facility or a residential home, including a child's own home, where a child may be temporarily placed pending further court action. Children before the court in a county that is served by a state operated secure detention facility, who are in the detention custody of the Department of Juvenile Justice, and who are placed in a nonsecure alternative by the Department of Juvenile Justice, shall be supervised by the Department of Juvenile Justice;
- ...
- (46) "Parent" means the biological or adoptive mother or father of a child;
- (47) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;
- ...
- (49) "Physical injury" means substantial physical pain or any impairment of physical condition;
- ...
- (60) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;
- (61) "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions in which the parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person having custodial control or supervision of the child or responsibility for his or her welfare, uses or allows, permits, or encourages the use of the child for purposes of the sexual stimulation of the perpetrator or another person;
- (62) "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person having custodial control or supervision of a child or responsible for his or her welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person having custodial control or supervision of a child or responsible for his or her welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;
- (63) "Social service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who

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

KRS 620.010 Legislative purpose.

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

KRS 620.020 Definitions for chapter.

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

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

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

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

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

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

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

620.030(3);

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

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

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

furtherance of the purpose of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

KRS 620.160 Motion to seal child's record.

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

KRS 620.990 Penalty.

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

922 KAR 1:330. Child protective services.

Section 1. Definitions.

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

remedying conditions detrimental to the welfare of the child.

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

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

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

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

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

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

Section 3. Initial Investigation or Assessment.

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

accordance with 42 U.S.C. 5106a(b)(2)(B)(xviii).

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

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

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

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

Section 5. Child Fatality or Near Fatality Investigations.

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

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

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

Section 7. Interviewing a Child in a School Setting.

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

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

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

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

Section 9. Written Notice of Findings of Investigation.

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

Section 10. Substantiation Criteria and Submission of Findings.

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

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

Section 11. Appeals.

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

Section 12. Closure and Aftercare Planning.

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

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

Section 13. Incorporation by Reference.

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

922 KAR 1:470 Central registry.

Section 1. Definitions.

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

Section 2. Central Registry.

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

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

Section 3. Procedure for Requesting a Central Registry Check.

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

Section 4. Administrative Review.

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

Section 5. Incorporation by Reference.

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

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

Section 1. Definitions.

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

Section 2. Right to Appeal.

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

Section 3. Notification and Request for Appeal.

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

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

Section 4. Matters Not Appealable Through an Administrative Hearing.

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

Section 5. Investigative Findings.

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

Section 6. Administrative Hearing.

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

Section 7. Recommended Order.

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

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

Section 8. Final Order.

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

Section 9. Incorporation by Reference.

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

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

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

2. Placement of Juvenile Sex Offenders & Required Disclosures

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

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

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

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

KRS 620.090 Temporary custody orders.

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

placement for the child.

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

KRS 620.230 Case permanency plans.

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

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

B. VULNERABLE ADULT ABUSE, NEGLECT, AND EXPLOITATION

KRS 209.010 Purpose and application of chapter.

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

KRS 209.020 Definitions for chapter.

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

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

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

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

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

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

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

(1) As used in this section:

(a) "Employee" means a person who:

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

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

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

(c) "Vulnerable adult service provider" means:

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

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

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

services of the querying individual.

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

KRS 209.040 Remedies - Injunctive relief.

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

KRS 209.050 Immunity from civil or criminal liability.

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

KRS 209.060 Privileged relationships not ground for excluding evidence.

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

KRS 209.090 Legislative intent.

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

KRS 209.100 Emergency protective services.

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

KRS 209.140 Confidentiality of information.

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

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

KRS 209.150 Who may make criminal complaint.

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

KRS 209.990 Penalties.

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

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

922 KAR 5:070. Adult protective services.

Section 1. Definitions.

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

Section 2. Receiving a Report.

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

- care as a result of:
 - a. An act or omission by a caretaker; or
 - b. The absence of a caretaker;
 - 2. Supervision neglect, if the reporting source has observed a physical health and safety risk to an adult resulting from a lack of necessary and appropriate supervision;
 - 3. Food neglect, if an adult shows symptoms of:
 - a. Malnutrition;
 - b. Dehydration;
 - c. Food poisoning; or
 - d. Lack of adequate food for a period of time that:
 - (i) Results in physical symptoms; or
 - (ii) Requires treatment;
 - 4. Environmental neglect, if a serious health and safety hazard is present, and the adult or the adult's caretaker is not taking appropriate action to eliminate the problem; or
 - 5. Medical neglect, if the adult is not receiving treatment for an injury, illness, or disability that:
 - a. Results in an observable decline in the adult's health and welfare;
 - b. May be life threatening; or
 - c. May result in permanent impairment;
 - (c) Exploitation of an adult, as defined in KRS 209.020(9), if the report alleges:
 - 1. Isolation from friends, relatives, or important information, such as:
 - a. Screening telephone calls;
 - b. Denying visitors; or
 - c. Intercepting mail;
 - 2. Physical or emotional dependency;
 - 3. Manipulation;
 - 4. Acquiescence; and
 - 5. Loss of resources; or
 - (d) An adult in need of protective services as defined in KRS 209.020(5).
- (8) If a report alleging the exploitation of an adult does not meet criteria established in subsection (7)(c) of this section, the report may be referred to an appropriate authorized agency or community resource.
- (9) The following criteria shall be used in identifying a report of adult abuse, neglect, or exploitation not requiring an adult protective service investigation:
- (a) The report does not meet the statutory definitions of:
 - 1. Adult; and
 - 2. a. Abuse;
 - b. Neglect; or
 - c. Exploitation; or
 - (b) There is insufficient information to:
 - 1. Identify or locate the adult; or
 - 2. Explore leads to identify or locate the adult.
- (10) For a report accepted for investigation of alleged adult abuse, neglect, or exploitation, designated regional cabinet staff shall provide the information specified in KRS 209.030(4):
- (a) For a determination of investigation assignment by cabinet supervisory staff;
 - (b) To the local guardianship office, if the adult is a state guardianship client; and
 - (c) To appropriate authorized agencies, as specified in KRS 209.030(5).

Section 3. Adult Protective Service Investigations.

- (1) The cabinet shall coordinate its investigation in accordance with KRS 209.030(6).
- (2) An adult protective service investigation may include contact with the alleged perpetrator and collaterals, if the contact does not pose a safety concern for the adult or cabinet staff.

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

Section 4. Results of the Investigation.

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

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

Section 5. Substantiation Criteria and Submission of Findings.

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

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

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

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

Section 7. Opening a Case.

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

Section 8. Referrals for Criminal Prosecution.

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

accordance with KRS 209.180.

Section 9. Restraining Order or Injunctive Relief.

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

Section 10. Guardianship or Conservatorship of Disabled Persons.

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

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

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

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

Section 11. Involuntary Hospitalization.

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

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

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

Section 12. Reporting.

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

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

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

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

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

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

Section 13. Case Closure and Aftercare Planning.

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

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

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

Section 14. Appeal Rights.

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

922 KAR 5:090. General adult services.

Section 1. Definitions.

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

Section 2. Criteria for Intake and Assessment.

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

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

Section 3. Time Frame.

An adult services assessment shall be:

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

Section 4. Service Provision.

Appropriate and necessary service provision shall include:

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

Section 5. Placement and Movement.

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

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

922 KAR 5:120 Caregiver misconduct registry and appeals.

Section 1. Definitions.

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

Section 2. Caregiver Misconduct Registry.

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

- (a) The department's main webpage; or
 - (b) Another cabinet system, such as the Kentucky Applicant Registry and Employment Screening (KARES) Program established in accordance with 906 KAR 1:190.
- (5) If an individual or a vulnerable adult service provider described in KRS 209.032(1)(c)11 does not have access to the internet, the individual or provider shall submit a signed and completed DPP-246, Caregiver Misconduct Registry Self-Query, to conduct a self-query in accordance with KRS 209.032(2) or (3).

Section 3. Notification of Finding.

- (1) If the cabinet finds that an employee or a person acting with the expectation of compensation has committed adult abuse, neglect, or exploitation in accordance with 922 KAR 5:070, the cabinet shall send notice of the finding to the perpetrator by certified mail to the perpetrator's last known address.
- (2) The cabinet's notice of a finding of adult abuse, neglect, or exploitation to an employee or a person acting with the expectation of compensation shall include:
 - (a) The factual basis for the finding of adult abuse, neglect, or exploitation;
 - (b) The results of the investigation;
 - (c) The perpetrator's right to appeal the substantiated finding in accordance with KRS 209.032 and this administrative regulation;
 - (d) A statement that a finding shall become a validated substantiated finding of adult abuse, neglect, or exploitation in accordance with KRS 209.032 and Section 5 of this administrative regulation; and
 - (e) A statement that a perpetrator of a validated substantiated finding of adult abuse, neglect, or exploitation shall be added to the caregiver misconduct registry.
- (3) (a) The cabinet shall reserve the right, in its sole discretion, to amend, modify, or reverse its investigative finding of adult abuse, neglect, or exploitation at any time if the finding appears to be improper based upon:
 - 1. A review of the cabinet's records; or
 - 2. Subsequent discovery of additional information.
 (b) If amendment, modification, or reversal of an investigative finding results in a substantiated finding of abuse or neglect of an adult, the cabinet shall act in accordance with Section 3(1) and(2) of this administrative regulation.

Section 4. Request for Appeal.

- (1) In accordance with KRS 209.032, if the cabinet makes a finding that an employee or a person acting with the expectation of compensation has committed adult abuse, neglect, or exploitation, the individual shall have the right to appeal the substantiated finding through an administrative hearing.
- (2) A request for appeal shall:
 - (a) Be submitted:
 - 1. In writing by the appellant, with the assistance of the cabinet if the appellant is unable to comply without assistance; and
 - 2. To the cabinet no later than thirty (30) calendar days from the individual's receipt of the notice in accordance with Section 3(1) of this administrative regulation;
 - (b) Describe the nature of the investigative finding;
 - (c) Specify the reason the individual disputes the cabinet's substantiated finding; and
 - (d) Include a copy of the notice of a substantiated finding in accordance with Section 3 of this administrative regulation, if available.
- (3) The cabinet shall not dismiss a request for appeal as untimely if an appellant demonstrates good cause.
- (4) A final administrative decision made by the cabinet or cabinet's designee as a result of a previous appeal on the same issue or an unsubstantiated finding of adult abuse, neglect, or exploitation shall not be subject to review through an administrative hearing.

Section 5. Administrative Hearing.

- (1) An administrative hearing conducted by the cabinet or its designee shall be in accordance with KRS Chapter 13B and 209.032.
- (2) The cabinet's investigative finding shall become a validated substantiated finding of adult abuse, neglect, or exploitation if the:
 - (a) Perpetrator does not request an administrative hearing in accordance with Section 4 of this administrative regulation;
 - (b) Perpetrator fails to:
 1. Participate in any stage of the proceedings after requesting an appeal in accordance with Section 4 of this administrative regulation; and
 2. Demonstrate good cause; or
 - (c) Cabinet's substantiated finding is upheld through the administrative hearing process.
- (3) The secretary or designee shall issue the final order in accordance with KRS 13B.120 and 209.032.
- (4) A party aggrieved by the secretary's decision shall have the right to pursue judicial review in accordance with KRS 13B.140, 13B.150, and 209.032(1)(b).
- (5) The proceedings of the administrative hearing shall be disclosed only in accordance with KRS 194A.060, 205.140, 42 U.S.C. 1320d-1320d-9, 42 U.S.C. 1397-1397e, 1397m-1, 920 KAR 1:060, and 922 KAR 1:510.
- (6) If the matter is not subject to the requirements of this section, the cabinet shall inform the person that the matter may be pursued through:
 - (a) A service complaint process described in 920 KAR 1:030 or 922 KAR 1:320; or
 - (b) The error resolution process in accordance with Section 6 of this administrative regulation.

Section 6. Error Resolution.

- (1) In accordance with KRS 209.032(5)(a), an individual seeking error resolution shall:
 - (a) Submit a written request for record correction to the Commissioner of the Department for Community Based Services, 275 East Main Street (3W-A), Frankfort, Kentucky 40621;
 - (b) Specify the:
 1. Date of the caregiver misconduct registry query which resulted in the error being identified; and
 2. Error contained in the caregiver misconduct registry query results; and
 - (c) Provide documentation that verifies the error, if available.
- (2) Within thirty (30) days of receipt of a request in accordance with subsection (1) of this section, the commissioner or designee shall:
 - (a) Determine whether an error exists; and
 - (b)
 1. If the cabinet confirms an error:
 - a. Correct the records; and
 - b. Notify the requesting individual that the records have been corrected; or
 2. If the cabinet cannot confirm an error:
 - a. Notify the individual that an error cannot be confirmed based upon the information and documentation submitted with the request; and
 - b. Outline information or documentation that may verify an error pursuant to the individual's request, if any.

Section 7. Incorporation by Reference.

- (1) The "DPP-246, Caregiver Misconduct Registry Self-Query", 11/14, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621; Monday through Friday, 8 a.m. to 4:30 p.m.

C. DUTIES TO VICTIMS OF DOMESTIC AND DATING VIOLENCE

KRS 209A.010 Purpose of chapter.

The purpose of this chapter is to identify victims of domestic violence and abuse and dating violence and abuse, to link those victims to services, and to provide protective or therapeutic services for those who choose to accept them.

KRS 209A.020 Definitions for chapter.

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

- (1) "Cabinet" means the Cabinet for Health and Family Services;
- (2) "Dating violence and abuse" has the same meaning as in KRS 456.010;
- (3) "Domestic violence and abuse" has the same meaning as in KRS 403.720;
- (4) "Law enforcement officer" means a member of a lawfully organized police unit or police force of county, city, or metropolitan government who is responsible for the detection of crime and the enforcement of the general criminal laws of the state, as well as a sheriff, sworn deputy sheriff, campus police officer, law enforcement support personnel, public airport authority security officer, other public and federal peace officer responsible for law enforcement, special local peace officer appointed pursuant to KRS 61.360, school resource officer, public school district security officer, and any other enforcement officer as defined by law;
- (5) "Professional" means a physician, osteopathic physician, coroner, medical examiner, medical resident, medical intern, chiropractor, nurse, dentist, optometrist, emergency medical technician, paramedic, licensed mental health professional, therapist, cabinet employee, child-care personnel, teacher, school personnel, ordained minister or the denominational equivalent, victim advocate, or any organization or agency employing any of these professionals;
- (6) "Victim" means an individual who is or has been abused by a spouse or former spouse or an intimate partner who meets the definition of a member of an unmarried couple as defined in KRS 403.720, or a member of a dating relationship as defined in KRS 456.010; and
- (7) "Victim advocate" has the same meaning as in KRS 421.570.

KRS 209A.030 Penalty.

A professional knowingly or wantonly violating the provisions of this chapter shall be guilty of a Class B misdemeanor and penalized in accordance with KRS 532.090. Each violation shall constitute a separate offense.

KRS 209A.050 Immunity from civil or criminal liability for good faith performance of duties.

Anyone acting upon reasonable cause in complying with the provisions of this chapter shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such compliance.

KRS 209A.060 Privileged relationships not ground for excluding evidence.

Neither the psychotherapist-patient privilege nor the husband-wife privilege shall be a ground for excluding evidence regarding the domestic violence and abuse or dating violence and abuse or the cause thereof in any judicial proceeding resulting from a report pursuant to this chapter.

KRS 209A.070 Confidentiality of the identity of domestic violence program clients or former clients.

All information that identifies a current or former client of a domestic violence program is confidential and shall not be disclosed by any person except as provided by law. The cabinet shall have access to client information relating to any domestic violence program for the limited purpose of monitoring the program.

KRS 209A.100 Report by professional of act of domestic violence and abuse or dating violence and abuse to law enforcement.

- (1) Upon the request of a victim, a professional shall report an act of domestic violence and abuse or dating violence and abuse to a law enforcement officer.
- (2) A professional who makes a report under this chapter shall discuss the report with the victim prior to contacting a law enforcement officer.

KRS 209A.110 Report by professional to law enforcement concerning belief that client's or patient's death is related to domestic violence and abuse or dating violence and abuse.

- (1) A professional shall report to a law enforcement officer his or her belief that the death of a victim with whom he or she has had a professional interaction is related to domestic violence and abuse or dating violence and abuse.
- (2) Nothing in this chapter shall relieve a professional of the duty pursuant to KRS 620.030 to report any known or suspected abuse, neglect, or dependency of a child.
- (3) Nothing in this chapter shall relieve a professional of the duty pursuant to KRS 209.030 to report to the cabinet any known or suspected abuse, neglect, or exploitation of a person eighteen (18) years of age or older who because of mental or physical dysfunction is unable to manage his or her own resources, carry out the activity of daily living, or protect himself or herself from neglect, exploitation, or a hazardous or abusive situation without assistance from others.

KRS 209A.120 Duty of law enforcement to provide assistance as required under KRS 403.785 and 456.090 -- Use of JC-3 form.

- (1) If a law enforcement officer receives a report of domestic violence and abuse or dating violence and abuse, the officer shall use all reasonable means to provide assistance as required under KRS 403.785 and 456.090.
- (2) A law enforcement officer who responds to a report of domestic violence and abuse or dating violence and abuse shall use the JC-3 form, or its equivalent replacement, as provided by the Justice and Public Safety Cabinet to document any information or injuries related to the domestic violence and abuse or dating violence and abuse.
- (3) A completed JC-3 form, or its equivalent replacement, shall be kept in the records of the law enforcement officer's agency of employment.
- (4) If the JC-3 form, or its equivalent replacement, includes information that only relates to a victim as defined in KRS 209A.020, the form shall not be forwarded to the cabinet.
- (5) If the JC-3 form, or its equivalent replacement, includes information on known or suspected child abuse or neglect or the abuse or neglect of an elderly or disabled adult, the form shall be forwarded to the cabinet.

KRS 209A.130 Educational materials to be provided suspected victim of domestic violence and abuse or dating violence and abuse -- Availability of online materials.

- (1) If a professional has reasonable cause to believe that a victim with whom he or she has had a professional interaction has experienced domestic violence and abuse or dating violence and abuse, the professional shall provide the victim with educational materials related to domestic violence and abuse or dating violence and abuse including information about how he or she may access regional domestic violence programs under KRS 209A.045 or rape crisis centers under KRS 211.600 and information about how to access protective orders.
- (2) A nonprofit corporation designated by the cabinet pursuant to KRS 209A.045 as a primary service provider for domestic violence shelter, crisis, and advocacy services in the district in which the provider is located shall make the educational materials required under this section available on its Web site or in print form for professionals to provide to possible victims of domestic violence and abuse or dating violence and abuse.

KRS 403.785 Duties of law enforcement officers and agencies.

- (1) A court issuing an order of protection shall direct the appropriate law enforcement agency to assist the petitioner in having the provisions of the order complied with.
- (2) When a law enforcement officer has reason to suspect that a person has been the victim of domestic violence and abuse, the officer shall use all reasonable means to prevent further abuse, including but not limited to:
 - (a) Remaining at the location of the call for assistance so long as the officer reasonably suspects there is danger to the physical safety of individuals present without the presence of a law enforcement officer;
 - (b) Assisting the victim in obtaining medical treatment, including transporting the victim to the nearest medical facility capable of providing the necessary treatment; and
 - (c) Advising the victim immediately of the rights available to them, including the provisions of KRS 421.500, including the provisions of this chapter.
- (3) Orders of protection shall be enforced in any county of the Commonwealth.
- (4) Officers acting in good faith under this section shall be immune from criminal and civil liability.

D. DUTY TO WARN OF DANGER OR THREAT

1. *Threat by Adult*

KRS 202A.011(2) Definitions for chapter "Danger" or "Threat of Danger".

"Danger" or "threat of danger to self, family, or others" means substantial physical harm or threat of substantial physical harm upon self, family, or others, including actions which deprive self, family, or others of the basic means of survival including provision for reasonable shelter, food, or clothing;

KRS 202A.400 Duty of mental health professional to warn intended victim of patient's threat of violence.

- (1) No monetary liability and no cause of action shall arise against any mental health professional for failing to predict, warn of or take precautions to provide protection from a patient's violent behavior, unless the patient has communicated to the mental health professional an actual threat of physical violence against a clearly identified or reasonably identifiable victim, or unless the patient has communicated to the mental health professional an actual threat of some specific violent act.
- (2) The duty to warn of or to take reasonable precautions to provide protection from violent behavior arises only under the limited circumstances specified in subsection (1) of this section. The duty to warn a clearly or reasonably identifiable victim shall be discharged by the mental health professional if reasonable efforts are made to communicate the threat to the victim, and to notify the police department closest to the patient's and the victim's residence of the threat of violence. When the patient has communicated to the mental health professional an actual threat of some specific violent act and no particular victim is identifiable, the duty to warn has been discharged if reasonable efforts are made to communicate the threat to law enforcement authorities. The duty to take reasonable precaution to provide protection from violent behavior shall be satisfied if reasonable efforts are made to seek civil commitment of the patient under this chapter.
- (3) No monetary liability and no cause of action shall arise against any mental health professional for confidences disclosed to third parties in an effort to discharge a duty arising under subsection (1) of this section according to the provisions of subsection (2) of this section.

(4) For purposes of this section:

(a) “Mental health professional” means:

1. A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in conducting mental health services;
2. A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States engaged in conducting mental health services;
3. A psychologist, a psychological practitioner, a certified psychologist, or a psychological associate, licensed under the provisions of KRS Chapter 319;
4. A registered nurse licensed under the provisions of KRS Chapter 314 engaged in providing mental health services;
5. A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 engaged in providing mental health services;
6. A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 engaged in providing mental health services;
7. A professional counselor credentialed under the provisions of KRS Chapter 335.500 to 335.599 engaged in providing mental health services;
8. An art therapist certified under KRS 309.130 engaged in providing mental health services; or
9. A pastoral counselor licensed under the provisions of KRS 335.600 to 335.699 engaged in providing mental health services; and

(b) “Patient” has the same meaning as in KRS 202A.011, except that it also includes a person currently under the outpatient care or treatment of a mental health professional.

KRS 202A.410 Duty of administrator to warn law enforcement agency, prosecutor, and Department of Corrections upon discharge, transfer, or escape of involuntarily committed patient charged or convicted of a violent crime - Immunity for acting in good faith - Notification of victim - Administrative regulations.

- (1) When a patient who has been involuntarily committed to a psychiatric facility or forensic psychiatric facility and who has been charged with or convicted of a violent crime as defined in KRS 439.3401 is discharged or transferred from the facility, the administrator shall notify the law enforcement agency in the county to which the person is to be released, the prosecutor in the county where the violent crime was committed, and the Department of Corrections.
- (2) If a patient who has been involuntarily committed to a psychiatric facility or forensic psychiatric facility and who has been charged with or convicted of a violent crime as defined in KRS 439.3401 escapes from the facility, the administrator shall notify the law enforcement agency in the county in which the facility is located, the prosecutor in the county where the violent crime was committed, and the Department of Corrections.
- (3) The administrator of a psychiatric facility or forensic psychiatric facility, or the administrator’s designee, who acts in good faith in making the notifications required in this section or is unable to provide the release information required, is immune from any civil liability.
- (4) The Department of Corrections shall notify, or contract with a private entity to notify, victims of crime, judges, and witnesses involved in the hearing that resulted in the involuntary commitment who have made a notification request of the discharge or escape of a patient from a psychiatric facility or forensic psychiatric facility.
- (5) The Department of Corrections and the Cabinet for Health and Family Services shall each promulgate administrative regulations under KRS Chapter 13A to carry out the duties set forth in this statute

2. Threat by Juvenile

KRS 645.020(2) Definition for chapter “danger to self or others”.

“Danger to self or others” means that it is shown by substantial proof that in the near future the child may attempt suicide or may cause substantial physical harm or threat of substantial physical harm to self or others, as evidenced by recent threats or overt acts, including acts by which the child deprives self or others of the basic means of survival, including reasonable shelter, food or clothing. In determining whether a child presents a danger to self, factors to be considered shall include, but shall not be limited to, an established pattern of past dangerous behavior

KRS 645.020(7) Definitions for chapter “mental health professional”.

“Mental health professional” means:

- (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in conducting mental health services;
- (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States engaged in conducting mental health services;
- (c) A psychologist, a psychological practitioner, a certified psychologist, or a psychological associate, licensed under the provisions of KRS Chapter 319;
- (d) A registered nurse licensed under the provisions of KRS Chapter 314 engaged in providing mental health services;
- (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 engaged in providing mental health services;
- (f) A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 engaged in providing mental health services;
- (g) A professional counselor credentialed under the provisions of KRS Chapter 335.500 to 335.599 engaged in providing mental health services;
- (h) An art therapist certified under KRS 309.130 engaged in providing mental health services;
or
- (i) A pastoral counselor licensed under the provisions of KRS 335.600 to 335.699 engaged in providing mental health services;

KRS 645.270 Duty of mental health professional to warn intended victim of patient’s threat of violence.

- (1) No monetary liability and no cause of action shall arise against any mental health professional or person serving in a counselor role for failing to predict, warn or take precautions to provide protection from a patient’s violent behavior, unless the patient has communicated to the mental health professional or person serving in a counselor role an actual threat of physical violence against a clearly identified or reasonably identified victim, or unless the patient has communicated to the mental health professional or other person serving in a counselor role an actual threat of some specific violent act.
- (2) The duty to warn or to take reasonable precautions to provide protection from violent behavior arises only under limited circumstances specified in subsection (1) of this section. The duty to warn a clearly or reasonably identifiable victim shall be discharged by the mental health professional or person serving in a counselor role if reasonable efforts are made to communicate the threat to the victim and to notify the law enforcement office closest to the patient’s and the victim’s residence of the threat of violence. If the patient has communicated to the mental health professional or person serving in a counselor role an actual threat of some specific violent act and no particular victim is identifiable, the duty to warn has been discharged

if reasonable efforts are made to communicate the threat to law enforcement authorities. The duty to take reasonable precautions to provide protection from violent behavior shall be satisfied if reasonable efforts are made to seek civil commitment of the child under KRS Chapter 645.

- (3) No monetary liability and no cause of action shall arise against any mental health professional or person serving in a counselor role for confidences disclosed to third parties in an effort to discharge a duty arising under this section.

E. SCHOOL REQUIREMENTS

1. Primary & Secondary Institutions

a. Bullying and Reporting Violent Behavior

KRS 158.148 Definition of "bullying" -- discipline guidelines and model policy -- Local code of acceptable behavior and discipline -- Required contents of code.

- (1)
- (a) As used in this section, "bullying" means any unwanted verbal, physical, or social behavior among students that involves a real or perceived power imbalance and is repeated or has the potential to be repeated:
 - 1. That occurs on school premises, on school-sponsored transportation, or at a school-sponsored event; or
 - 2. That disrupts the education process.
 - (b) This definition shall not be interpreted to prohibit civil exchange of opinions or debate or cultural practices protected under the state or federal Constitution where the opinion expressed does not otherwise materially or substantially disrupt the education process.
- (2) In cooperation with the Kentucky Education Association, the Kentucky School Boards Association, the Kentucky Association of School Administrators, the Kentucky Association of Professional Educators, the Kentucky Association of School Superintendents, the Parent-Teachers Association, the Kentucky Chamber of Commerce, the Farm Bureau, members of the Interim Joint Committee on Education, and other interested groups, and in collaboration with the Center for School Safety, the Department of Education shall develop or update as needed and distribute to all districts by August 31 of each even-numbered year, beginning August 31, 2008:
- (a) Statewide student discipline guidelines to ensure safe schools, including the definition of serious incident for the reporting purposes as identified in KRS 158.444;
 - (b) Recommendations designed to improve the learning environment and school climate, parental and community involvement in the schools, and student achievement; and
 - (c) A model policy to implement the provisions of this section and KRS 158.156, 158.444, 525.070, and 525.080.
- (3) The department shall obtain statewide data on major discipline problems and reasons why students drop out of school. In addition, the department, in collaboration with the Center for School Safety, shall identify successful strategies currently being used in programs in Kentucky and in other states and shall incorporate those strategies into the statewide guidelines and the recommendations under subsection (2) of this section.
- (4) Copies of the discipline guidelines shall be distributed to all school districts. The statewide guidelines shall contain broad principles and legal requirements to guide local districts in developing their own discipline code and school councils in the selection of discipline and classroom management techniques under KRS 158.154; and in the development of the district-wide safety plan.

- (5) (a) Each local board of education shall be responsible for formulating a code of acceptable behavior and discipline to apply to the students in each school operated by the board. The code shall be updated no less frequently than every two (2) years, with the first update being completed by November 30, 2008.
- (b) The superintendent, or designee, shall be responsible for overall implementation and supervision, and each school principal shall be responsible for administration and implementation within each school. Each school council shall select and implement the appropriate discipline and classroom management techniques necessary to carry out the code. The board shall establish a process for a two-way communication system for teachers and other employees to notify a principal, supervisor, or other administrator of an existing emergency.
- (c) The code shall prohibit bullying.
- (d) The code shall contain the type of behavior expected from each student, the consequences of failure to obey the standards, and the importance of the standards to the maintenance of a safe learning environment where orderly learning is possible and encouraged.
- (e) The code shall contain:
1. Procedures for identifying, documenting, and reporting incidents of bullying, incidents of violations of the code, and incidents for which reporting is required under KRS 158.156;
 2. Procedures for investigating and responding to a complaint or a report of bullying or a violation of the code, or of an incident for which reporting is required under KRS 158.156, including reporting incidents to the parents, legal guardians, or other persons exercising custodial control or supervision of the students involved;
 3. A strategy or method of protecting from retaliation a complainant or person reporting an incident of bullying, a violation of the code, or an incident for which reporting is required under KRS 158.156;
 4. A process for informing students, parents, legal guardians, or other persons exercising custodial control or supervision, and school employees of the requirements of the code and the provisions of this section and KRS 158.156, 158.444, 525.070, and 525.080, including training for school employees; and
 5. Information regarding the consequences of bullying and violating the code and violations reportable under KRS 158.154, 158.156, or 158.444.
- (f) The principal of each school shall apply the code of behavior and discipline uniformly and fairly to each student at the school without partiality or discrimination.
- (g) A copy of the code of behavior and discipline adopted by the board of education shall be posted at each school. Guidance counselors shall be provided copies for discussion with students. The code shall be referenced in all school handbooks. All school employees and parents, legal guardians, or other persons exercising custodial control or supervision shall be provided copies of the code.

KRS 158.154 Principal's duty to report certain acts to local law enforcement agency.

When the principal has a reasonable belief that an act has occurred on school property or at a school-sponsored function involving assault resulting in serious physical injury, a sexual offense, kidnapping, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a controlled substance in violation of the law, or damage to the property, the principal shall immediately report the act to the appropriate local law enforcement agency. For purposes of this section, "school property" means any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal.

KRS 158.155 Reporting of specified incidents of student conduct - Notation on school records - Report to law enforcement of certain student conduct - Immunity.

- (1) If a student has been adjudicated guilty of an offense specified in this subsection or has been expelled from school for an offense specified in this subsection, prior to a student's admission to any school, the parent, guardian, principal, or other person or agency responsible for a student shall provide to the school a sworn statement or affirmation indicating on a form provided by the Kentucky Board of Education that the student has been adjudicated guilty or expelled from school attendance at a public or private school in this state or another state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs. The sworn statement or affirmation shall be sent to the receiving school within five (5) working days of the time when the student requests enrollment in the new school.
- (2) If any student who has been expelled from attendance at a public or private school in this state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs requests transfer of his records, those records shall reflect the charges and final disposition of the expulsion proceedings.
- (3) If any student who is subject to an expulsion proceeding at a public or private school in this state for homicide, assault, or an offense in violation of state law or school regulations relating to weapons, alcohol, or drugs requests transfer of his records to a new school, the records shall not be transferred until that proceeding has been terminated and shall reflect the charges and any final disposition of the expulsion proceedings.
- (4) A person who is an administrator, teacher, or other employee of a public or private school shall promptly make a report to the local police department, sheriff, or the Department of Kentucky State Police, by telephone or otherwise, if:
 - (a) The person knows or has reasonable cause to believe that conduct has occurred which constitutes:
 1. A misdemeanor or violation offense under the laws of this Commonwealth and relates to:
 - a. Carrying, possession, or use of a deadly weapon; or
 - b. Use, possession, or sale of controlled substances; or
 2. Any felony offense under the laws of this Commonwealth; and
 - (b) The conduct occurred on the school premises or within one thousand (1,000) feet of school premises, on a school bus, or at a school-sponsored or sanctioned event.
- (5) A person who is an administrator, teacher, supervisor, or other employee of a public or private school who receives information from a student or other person of conduct which is required to be reported under subsection (1) of this section shall report the conduct in the same manner as required by that subsection.
- (6) Neither the husband-wife privilege of KRE 504 nor any professional-client privilege, including those set forth in KRE 506 and 507, shall be a ground for refusing to make a report required under this section or for excluding evidence in a judicial proceeding of the making of a report and of the conduct giving rise to the making of a report. However, the attorney-client privilege of KRE 503 and the religious privilege of KRE 505 are grounds for refusing to make a report or for excluding evidence as to the report and the underlying conduct.
- (7) Nothing in this section shall be construed as to require self-incrimination.
- (8) A person acting upon reasonable cause in the making of a report under this section in good faith shall be immune from any civil or criminal liability that might otherwise be incurred or imposed from:
 - (a) Making the report; and
 - (b) Participating in any judicial proceeding that resulted from the report.

KRS 158.156 Reporting of commission of felony KRS 508 (Assault) offense against a student - Investigation - Immunity from liability for reporting - Privileges no bar to reporting.

- (1) Any employee of a school or a local board of education who knows or has reasonable cause to believe that a school student has been the victim of a violation of any felony offense specified in KRS Chapter 508 committed by another student while on school premises, on school-sponsored transportation, or at a school-sponsored event shall immediately cause an oral or written report to be made to the principal of the school attended by the victim. The principal shall notify the parents, legal guardians, or other persons exercising custodial control or supervision of the student when the student is involved in an incident reportable under this section. The principal shall file with the local school board and the local law enforcement agency or the Department of Kentucky State Police or the county attorney within forty-eight (48) hours of the original report a written report containing:
 - (a) The names and addresses of the student and his or her parents, legal guardians, or other persons exercising custodial control or supervision;
 - (b) The student's age;
 - (c) The nature and extent of the violation;
 - (d) The name and address of the student allegedly responsible for the violation; and
 - (e) Any other information that the principal making the report believes may be helpful in the furtherance of the purpose of this section.
- (2) An agency receiving a report under subsection (1) of this section shall investigate the matter referred to it. The school board and school personnel shall participate in the investigation at the request of the agency.
- (3) Anyone acting upon reasonable cause in the making of a report required under this section in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action.
- (4) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding student harassment, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding student harassment.

KRS 158.444 - Administrative Regulations - Role of Department of Education.

- (1) The Kentucky Board of Education shall promulgate appropriate administrative regulations relating to school safety, student discipline, and related matters.
- (2) The Kentucky Department of Education shall:
 - (a) Collaborate with the Center for School Safety in carrying out the center's mission;
 - (b) Establish and maintain a statewide data collection system by which school districts shall report by sex, race, and grade level:
 1. a. All incidents of violence and assault against school employees and students;
 - b. All incidents of possession of guns or other deadly weapons on school property or at school functions;
 - c. All incidents of the possession or use of alcohol, prescription drugs, or controlled substances on school property or at school functions; and
 - d. All incidents in which a student has been disciplined by the school for a serious incident, including the nature of the discipline, or charged criminally for conduct constituting a violation of any offense specified in KRS Chapter 508, or KRS 525.070 occurring on school premises, on school-sponsored transportation, or at school functions, or KRS 525.080;
 2. The number of arrests, the charges, and whether civil damages were pursued by the injured party;

3. The number of suspensions, expulsions, and corporal punishments; and
 4. Data required during the assessment process under KRS 158.445; and
 - (c) Provide all data collected relating to this subsection to the Center for School Safety according to timelines established by the center.
- (3) The Department of Education shall provide the Office of Education Accountability and the Education Assessment and Accountability Review Subcommittee with an annual statistical report of the number and types of incidents reported under subsection (2)(b) of this section. The report shall include all monthly data and cumulative data for each reporting year. Reportable incidents shall be grouped in the report in the same manner that the reportable incidents are grouped in subsection (2)(b)1. of this section. Data in the report shall be sorted by individual school district, then by individual schools within that district, and then by individual grades within each school. The report shall not contain information personally identifying any student. The reporting period shall be for an academic year, and shall be delivered no later than August 31 of each year.
 - (4) All personally identifiable student data collected pursuant to subsection (2)(b) of this section shall be subject to the confidentiality provisions of the Kentucky Family Education Rights and Privacy Act, KRS 160.700 to 160.730, and to the federal Family Educational Rights and Privacy Act, 20 U.S.C. sec. 1232g, and its implementing regulations.
 - (5) Parents, legal guardians, or other persons exercising custodial control or supervision shall have the right to inspect or challenge the personally identifiable student records as permitted under the Kentucky Family Education Rights and Privacy Act and the federal Family Educational Rights and Privacy Act and implementing regulations.
 - (6) Data collected under this section on an individual student committing an incident reportable under subsection (2)(b)1. of this section shall be placed in the student's disciplinary record.

Note: The following Criminal Statutes also specifically address Bullying:

KRS 525.070 Harassment - Text included in Chapter V, Section A., 6

KRS 525.080 Harassing Communications - Text included in Chapter V, Section A., 6

b. Restrictions Related to Registered Sex Offenders

KRS 17.545 Registrant prohibited from residing or being present in certain areas - Violations - Exception.

- (1) No registrant, as defined in KRS 17.500, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility. The measurement shall be taken in a straight line from the nearest property line of the school to the nearest property line of the registrant's place of residence.
- (2) No registrant, as defined in KRS 17.500, nor any person residing outside of Kentucky who would be required to register under KRS 17.510 if the person resided in Kentucky, shall be on the clearly defined grounds of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility, except with the advance written permission of the school principal, the school board, the local legislative body with jurisdiction over the publicly owned playground, or the day care director that has been given after full disclosure of the person's status as a registrant or sex offender from another state and all registrant information as required in KRS 17.500. As used in this subsection, "local legislative body" means the chief governing body of a city, county, urban-county government, consolidated local government, charter county government, or unified local government that has legislative powers.

- (3) For purposes of this section:
 - (a) The registrant shall have the duty to ascertain whether any property listed in subsection (1) of this section is within one thousand (1,000) feet of the registrant's residence; and
 - (b) If a new facility opens, the registrant shall be presumed to know and, within ninety (90) days, shall comply with this section.
- (4) (a) Except as provided in paragraph (b) of this subsection, no registrant who is eighteen (18) years of age or older and has committed a criminal offense against a victim who is a minor shall have the same residence as a minor.
 - (b) A registrant who is eighteen (18) years of age or older and has committed a criminal offense against a victim who is a minor may have the same residence as a minor if the registrant is the spouse, parent, grandparent, stepparent, sibling, stepsibling, or court-appointed guardian of the minor, unless the spouse, child, grandchild, stepchild, sibling, stepsibling, or ward was a victim of the registrant.
 - (c) This subsection shall not operate retroactively and shall apply only to a registrant that committed a criminal offense against a victim who is a minor after July 14, 2018.
- (5) Any person who violates subsection (1) or (4) of this section shall be guilty of: (a) A Class A misdemeanor for a first offense; and (b) A Class D felony for the second and each subsequent offense.
- (6) Any registrant residing within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility on July 12, 2006, shall move and comply with this section within ninety (90) days of July 12, 2006, and thereafter, shall be subject to the penalties set forth under subsection (5) of this section.
- (7) This section shall not apply to a youthful offender probated or paroled during his or her minority or while enrolled in an elementary or secondary education program.

KRS 160.151 Criminal background check and letter verifying no finding of abuse or neglect for certified employees and student teachers in private, parochial, and church schools -- New criminal checks permitted every five years -- Fingerprinting -- Disclosure -- Contractors, volunteers, and visitors subject to check -- Employment of offenders by nonpublic schools.

- (1) (a)
 1. A private, parochial, or church school that has voluntarily been certified by the Kentucky Board of Education in accordance with KRS 156.160(3) may require a national and state criminal background check and require a letter from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services on all new certified hires in the school and student teachers assigned to the school and may require a new national and state criminal background check and require a letter from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services on each certified teacher once every five (5) years of employment.
 2. Certified individuals who were employed in another certified position in a Kentucky school within six (6) months of the date of the hire and who had previously submitted to a national and state criminal background check and require a letter from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services for previous employment may be excluded from the initial national or state criminal background checks.
- (b) The national criminal history background check shall be conducted by the Federal Bureau of Investigation. The state criminal history background check shall be conducted by the

Department of Kentucky State Police or the Administrative Office of the Courts.

- (c) All fingerprints requested under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation by the Department of Kentucky State Police after a state criminal background check has been conducted. Any fee charged by the Department of Kentucky State Police, the Administrative Office of the Courts, or the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (2) If a school requires a criminal background check or requires a letter from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services for a new hire, the school shall conspicuously include the following disclosure statement on each application or renewal form provided by the employer to an applicant for a certified position: "STATE LAW AUTHORIZES THIS SCHOOL TO REQUIRE A CRIMINAL HISTORY BACKGROUND CHECK AND A LETTER FROM THE CABINET FOR HEALTH AND FAMILY SERVICES STATING THE EMPLOYEE IS CLEAR TO HIRE BASED ON NO FINDINGS OF SUBSTANTIATED CHILD ABUSE OR NEGLECT FOUND THROUGH A BACKGROUND CHECK OF CHILD ABUSE AND NEGLECT RECORDS AS A CONDITION OF EMPLOYMENT FOR THIS TYPE OF POSITION."
 - (a) For purposes of this subsection, "contractor" means an adult who is permitted access to school grounds pursuant to a current or prospective contractual agreement with the school, school board, school district, or school-affiliated entity, at times when students are present. The term "contractor" includes an employee of a contractor.
 - (b)
 - 1. The school or school board may require a contractor who works on school premises during school hours and may require a contractor who does not have contact with students, a volunteer, or a visitor to submit to a national criminal history check by the Federal Bureau of Investigation and state criminal history background check by the Department of Kentucky State Police or Administrative Office of the Courts and require a letter from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
 - 2. Any request for records under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police if required. The results of the state criminal background check and the results of the national criminal history background check, if requested, shall be sent to the hiring superintendent. If a background check of child abuse and neglect records is requested, the person seeking employment shall provide to the hiring superintendent a letter from the Cabinet for Health and Family Services stating the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
 - 3. Any fee charged by the Department of Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (3) (a) A nonpublic school voluntarily implementing the provisions of this chapter may choose not to employ any person who is a violent offender as defined by KRS 17.165(2), has been convicted of a sex crime which is classified as a felony as defined by KRS 17.165(1), or has committed a violent crime as defined in KRS 17.165(3) or persons with a substantiated finding of child abuse or neglect in records maintained by the Cabinet for Health and Family Services. A nonpublic school may employ, at its discretion, persons convicted of sex crimes classified as a misdemeanor.
 - (b) If a school term has begun and a certified position remains unfilled or if a vacancy occurs

during a school term, a nonpublic school implementing this chapter may employ an individual who will have supervisory or disciplinary authority over minors on probationary status pending receipt of a criminal history background check or the receipt of a letter, provided by the individual, from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.

- (c) Employment at a nonpublic school implementing this chapter may be contingent on the receipt of a criminal history background check documenting a record as a violent offender, of a sex crime, or of a violent crime as defined in KRS 17.165 or the receipt of a letter, provided by the individual, from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
 - (d) Nonpublic schools implementing this chapter may terminate probationary employment under this section upon receipt of a criminal history background check documenting a record as a violent offender, of a sex crime, or of a violent crime as defined in KRS 17.165 or the receipt of a letter, provided by the individual, from the Cabinet for Health and Family Services stating that the person has no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- (4) The form for requesting a letter, required by this section, stating an employee is clear to hire based on a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services shall be made available on the Cabinet for Health and Family Services Web site.

KRS 160.380 (4-14) School employees -- Restrictions on appointment of relatives, violent offenders, and persons convicted of sex crimes -- Restriction on assignment to alternative education program as disciplinary action -- National and state criminal history background checks and letter verifying no finding of abuse or neglect for applicants, new hires, and school-based decision-making council parent members -- Application and renewal forms -- Employees charged with felony offenses.

- ...
- (4) No superintendent shall employ in any position in the district any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony or persons with a substantiated finding of child abuse or neglect in records maintained by the Cabinet for Health and Family Services. The superintendent may employ, at his discretion, except at a Kentucky Educational Collaborative for State Agency Children program, persons convicted of sex crimes classified as a misdemeanor.
 - (5)
 - (a) A superintendent shall require a national and state criminal background check and require a letter, provided by the individual, from the Cabinet for Health and Family Services indicating the individual is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services on all new certified hires in the school district and student teachers assigned within the district. Excluded are certified individuals who were employed in another certified position in a Kentucky school district within six (6) months of the date of hire and who had previously submitted to a national and state criminal background check and who have a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect records maintained by the Cabinet for

Health and Family Services for the previous employment.

- (b) The superintendent shall require that each new certified hire and student teacher, as set forth in paragraph (a) of this subsection, submit to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
 - (c) All fingerprints requested under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation from the Department of Kentucky State Police after a state criminal background check is conducted. The results of the state and federal criminal background check shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police, the Federal Bureau of Investigation, and the Cabinet for Health and Family Services shall be an amount no greater than the actual cost of processing the request and conducting the search.
 - (d) The Education Professional Standards Board may promulgate administrative regulations to impose additional qualifications to meet the requirements of Public Law 92-544.
- (6)
- (a) A superintendent shall require a national and state criminal background check and require a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services on all classified initial hires.
 - (b) The superintendent shall require that each classified initial hire submit to a national and state criminal history background check by the Department of Kentucky State Police and require a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
 - (c) Any request for any criminal background records under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The results of the state criminal background check and the results of the national criminal history background check, if requested under paragraph (b) of this subsection, shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police and the Cabinet for Health and Family Services shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (7)
- (a) The superintendent shall require a contractor who works on school premises during school hours and may require a contractor who does not have contact with students, a volunteer, or a visitor to submit to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
 - (b) Any request for records under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. If requested, the results of the state criminal background check and the results of the national criminal history background check and a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child

abuse or neglect found through the results of a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police and the Cabinet for Health and Family Services shall be an amount no greater than the actual cost of processing the request and conducting the search.

- (8)
- (a) If a school term has begun and a certified or classified position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the criminal history background check and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services. Application for the criminal record and a request for a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services of a probationary employee shall be made no later than the date probationary employment begins.
 - (b) Employment shall be contingent on the receipt of the criminal history background check documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165 and receipt of a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
 - (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the school district of a criminal history background check documenting a record of a sex crime or as a violent offender as defined in KRS 17.165 and no further procedures shall be required.
 - (d) The provisions of KRS 161.790 shall apply to terminate employment of a certified employee on the basis of a criminal record other than a record of a sex crime or as a violent offender as defined in KRS 17.165.
- (9)
- (a) Each application or renewal form, provided by the employer to an applicant for a classified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE CRIMINAL HISTORY BACKGROUND CHECK AND HAVE A LETTER, PROVIDED BY THE INDIVIDUAL, FROM THE CABINET FOR HEALTH AND FAMILY SERVICES STATING THE EMPLOYEE IS CLEAR TO HIRE BASED ON NO FINDINGS OF SUBSTANTIATED CHILD ABUSE OR NEGLECT FOUND THROUGH A BACKGROUND CHECK OF CHILD ABUSE AND NEGLECT RECORDS MAINTAINED BY THE CABINET FOR HEALTH AND FAMILY SERVICES AS A CONDITION OF EMPLOYMENT. UNDER CERTAIN CIRCUMSTANCES, A NATIONAL CRIMINAL HISTORY BACKGROUND CHECK MAY BE REQUIRED AS A CONDITION OF EMPLOYMENT."
 - (b) Each application or renewal form, provided by the employer to an applicant for a certified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND STATE CRIMINAL HISTORY BACKGROUND CHECK AND HAVE A LETTER, PROVIDED BY THE INDIVIDUAL, FROM THE CABINET FOR HEALTH AND FAMILY SERVICES STATING THE EMPLOYEE IS CLEAR TO HIRE BASED ON NO FINDINGS OF SUBSTANTIATED CHILD ABUSE OR NEGLECT FOUND THROUGH A BACKGROUND CHECK OF CHILD ABUSE AND NEGLECT RECORDS MAINTAINED BY THE CABINET FOR HEALTH AND FAMILY SERVICES AS A CONDITION OF EMPLOYMENT."

- (c) Each application form for a district position shall require the applicant to:
 - 1. Identify the states in which he or she has maintained residency, including the dates of residency; and
 - 2. Provide picture identification.
- (10) The provisions of subsections (5), (6), (7), (8) and (9) of this section shall apply to a nonfaculty coach or nonfaculty assistant as defined under KRS 161.185.
- (11)
 - (a) A school-based decision-making council parent member, as defined under KRS 160.345, shall submit to a state and national fingerprint-supported criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
 - (b) The results of the state criminal history background check and the results of the national criminal history background check, if requested, and a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no findings of substantiated child abuse or neglect found through the results of a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services shall be sent to the district superintendent. Any fee charged by the Department of Kentucky State Police and the Cabinet for Health and Family Services shall be an amount no greater than the actual cost of processing the request and conducting the search. A parent member may serve prior to the receipt of the criminal history background check report but shall be removed from the council on receipt by the school district of a report documenting a record of a sex crime or criminal offense against a victim who is a minor as defined in KRS 17.500 or as a violent offender as defined in KRS 17.165, and no further procedures shall be required.
- (12) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, when an employee of the school district is charged with any offense which is classified as a felony, the superintendent may transfer the employee to a second position until such time as the employee is found not guilty, the charges are dismissed, the employee is terminated, or the superintendent determines that further personnel action is not required. The employee shall continue to be paid at the same rate of pay he or she received prior to the transfer. If an employee is charged with an offense outside of the Commonwealth, this provision may also be applied if the charge would have been treated as a felony if committed within the Commonwealth. Transfers shall be made to prevent disruption of the educational process and district operations and in the interest of students and staff and shall not be construed as evidence of misconduct.
- (13) Notwithstanding any law to the contrary, each certified and classified employee of the school district shall notify the superintendent if he or she has been found by the Cabinet for Health and Family Services to have abused or neglected a child, and if he or she has waived the right to appeal a substantiated finding of child abuse or neglect or if the substantiated incident was upheld upon appeal. Any failure to report this finding shall result in the certified or classified employee being subject to dismissal or termination.
- (14) The form for requesting a letter, required by this section, stating an employee is clear to hire based on a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services shall be made available on the Cabinet for Health and Family Services Web site.

KRS 161.148 Use of volunteer personnel - Criminal records check -- Orientation - Exception.

- (1) As used in this section, "volunteers" means adults who assist teachers, administrators, or other staff in public school classrooms, schools, or school district programs, and who do not receive compensation for their work.
- (2) Local school districts may utilize adult volunteers in supplementary instructional and noninstructional activities with pupils under the direction and supervision of the professional administrative and teaching staff.
- (3) Each board of education shall develop policies and procedures that encourage volunteers to assist in school or district programs.
- (4) Each local board of education shall develop and adopt a policy requiring a state criminal records check on all volunteers who have contact with students on a regularly scheduled or continuing basis, or who have supervisory responsibility for children at a school site or on school-sponsored trips. The request for records may be from the Justice and Public Safety Cabinet or the Administrative Office of the Courts, or both, and shall include records of all available convictions as described in KRS 17.160(1). Any request for a criminal records check of a volunteer under this subsection shall be on a form or through a process approved by the Justice and Public Safety Cabinet or the Administrative Office of the Courts. If the cabinet or the Administrative Office of the Courts charges fees, the local board of education shall arrange to pay the cost which may be from local funds or donations from any source including volunteers.
- (5) The local board of education shall provide orientation material to all volunteers who have contact with students on a regularly scheduled or continuing basis, including school policies, safety and emergency procedures, and other information deemed appropriate by the local board of education.
- (6) The provisions of this section shall not apply to students enrolled in an educational institution and who participate in observations and educational activities under direct supervision of a local school teacher or administrator in a public school.

c. Human Sexuality Instruction

KRS 158.1415 Curriculum for instruction on human sexuality or sexually transmitted diseases.

If a school council or, if none exists, the principal adopts a curriculum for human sexuality or sexually transmitted diseases, instruction shall include but not be limited to the following content:

- (1) Abstinence from sexual activity is the desirable goal for all school-age children;
- (2) Abstinence from sexual activity is the only certain way to avoid unintended pregnancy, sexually transmitted diseases, and other associated health problems; and
- (3) The best way to avoid sexually transmitted diseases and other associated health problems is to establish a permanent mutually faithful monogamous relationship.

2. Post-Secondary Institutions

a. Tracking and Reporting Crimes

KRS 164.9489 Short title for KRS 164.948 to 164.9489 and KRS 164.993.

KRS 164.948 to 164.9489 and KRS 164.993 may be cited as the Michael Minger Act Safety Act.

KRS 164.948 Definitions for KRS 164.9481, 164.9483, and 164.9485.

As used in KRS 164.9481, 164.9483, and 164.9485, unless the context requires otherwise:

- (1) "Campus" has the same meaning as in 20 U.S.C. sec. 1092(f)(6)(A)(ii) as amended;
- (2) "Campus security authority" means campus police, security officers, and any official at a postsecondary education institution who has significant responsibility for student and campus activities, including student discipline, student housing, student judicial affairs, and student

life administration. Professional mental health, pastoral, and other licensed counselors when functioning in that capacity are not considered campus security authorities;

- (3) "Crime" means any crime listed in 20 U.S.C. sec. 1092(f)(1)(F) as amended;
- (4) "Immediately" means before the last fire unit has left the scene in order for the state fire marshal to have the opportunity to speak with fire unit personnel before they leave the scene, but no later than two (2) hours following the time the fire or threat of fire is discovered. In the event of a minor fire to which the local fire officials are not called or do not respond, "immediately" means no later than one (1) hour following the discovery of the fire;
- (5) "Noncampus building or property" has the same meaning as in 20 U.S.C. sec. 1092(f)(6)(A)(iii) as amended;
- (6) "Postsecondary education institution" means any Kentucky public four (4) year institution or two (2) year community college or technical college that grants a postsecondary education credential, and any private college or university that is licensed by the Council on Postsecondary Education under KRS 164.945 to 164.947; and
- (7) "Public property" has the same meaning as in 20 U.S.C. sec. 1092(f)(6)(A)(iv) as amended.

KRS 164.9481 Duty of postsecondary institution to maintain crime log - Duty to report to campus community on crimes and threats to safety or security of students and employees.

(1) Crime log:

- (a) Each postsecondary education institution shall make, keep, and maintain a daily log, written in a form approved by the Council on Postsecondary Education that can be easily understood, recording all crimes occurring on campus and reported to campus security authorities or local law enforcement agencies, including:
 1. The category of crime, and a description of the incident, date, time, and general location of each crime; and
 2. The disposition of the complaint if known, including referral for prosecution, institutional disciplinary proceedings, or investigation by another state agency. The disposition shall include a reference to an investigation or incident report number.
 - (b) All entries in the campus crime log shall be made available for public inspection within twenty-four (24) hours after the first report of an incident was made to any campus security authority or local law enforcement officials.
 1. If there is clear and convincing evidence that the release of the information would cause a suspect to flee or evade detection, would result in the destruction of evidence, or is prohibited from release by law, the information may be withheld until that damage is no longer likely to occur from the release of the information. Only the information that is absolutely necessary to withhold for the reasons stated in this paragraph may be withheld; all other information shall be released.
 2. In the event information is withheld under the provisions of paragraph (a) of this subsection, the crime shall still be reported and made available for public inspection.
 - (c) The campus crime log required by this section shall be readily accessible and open for public inspection at all times and shall be made available on campus computer networks to which students, employees, and other campus community members have access. Each semester the institution shall notify currently enrolled students, students applying to the institution, and employees of the availability of the campus crime log, where it can be accessed, and the exact electronic address on the computer network.
- (2) Special reports: In addition to the campus crime log, each postsecondary education institution shall make timely reports to the campus community on crimes reported to campus security authorities or local law enforcement authorities determined by those authorities to present a safety or security threat to students or employees.
- (a) The reports shall be made available to students and employees within twenty-four (24)

- hours after an incident is first reported.
- (b) The information shall be reported in a manner that will aid in the prevention of similar occurrences.
 - (c) Institutions shall use computer networks and post the reports in each residential facility. The institution may also use flyers and other campus publications including newspapers, and other media.
 - (d) Each institution shall adopt a policy to comply with this requirement and the policy shall be included in the postsecondary education institution's annual campus safety and security report published in compliance with KRS 164.9485.

KRS 164.9485 Duty of postsecondary institution to submit statement of policies concerning campus safety and security.

Effective September 1, 2000, and each year thereafter, each postsecondary education institution shall submit to the Council on Postsecondary Education a statement of current policies concerning campus safety and security including, but not limited to:

- (1) The enforcement authority of security personnel, including their working relationship with state and local police agencies;
- (2) A description of programs designed to inform students and employees about the campus safety and security procedures and practices, how to report crimes, and how to prevent crimes; and
- (3) Statistics concerning the occurrence of crimes on campus during the most recent calendar year. The statistical data shall be reported by the number of occurrences based on:
 - (a) Location, broken down in the following classifications:
 - 1. Total number on campus;
 - 2. On public property; and
 - 3. Noncampus buildings and property
 - (b) Category of crime committed:
 - 1. As defined in KRS 164.948; and
 - 2. By category of prejudice, as described in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. sec. 1092(f)(1)(F)(ii) as amended.

KRS 164.9487 Duty of postsecondary institution to obtain statistics and crime reports - Limitation of liability - Reporting formats.

- (1) In complying with the statistical and reporting requirements mandated in KRS 164.948 to 164.9489 and KRS 164.993, an institution shall make a reasonable, good-faith effort to obtain statistics and crime reports from outside agencies. An institution that makes such an effort is not responsible for an outside agency's failure to provide statistics or crime reports or for verifying the accuracy of the statistics or reports that are provided.
- (2) The Council on Postsecondary Education shall specify formats for reporting to ensure uniformity.

13 KAR 1:030 Campus security, private institutions.

Section 1. Definitions.

- (1) "Annual report" means the report submitted by an institution to the council that satisfies the requirements of KRS 164.9485.
- (2) "Campus" is defined in KRS 164.948(1).
- (3) "Campus crime log" means the daily log maintained by an institution and developed by the council consistent with the provisions of KRS 164.9481(1).
- (4) "Campus security authority" is defined in KRS 164.948(2).
- (5) "Clery Act" means the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 USC 1092(f) and as implemented in 34 CFR 668.46.

- (6) "Council" means the Council on Postsecondary Education as established by KRS 164.011.
- (7) "Crime" is defined in KRS 164.948(3).
- (8) "Fire scene" means the immediate area necessary for a local fire department or the State Fire Marshal's Office to investigate an actual fire.
- (9) "Immediately" is defined in KRS 164.948(4).
- (10) "Institution" means a postsecondary education institution as defined in KRS 164.948(5).
- (11) "State Fire Marshal" means the officer described in KRS 227.220.

Section 2. Property Subject to Reporting.

- (1) An institution shall establish a list of all property the institution:
 - (a) Owns; or
 - (b) Manages or controls.
- (2) The list of property shall include the areas described in KRS 164.948(1) and in 34 CFR 668.46(a), "Campus:" (1) and (2) and "Noncampus Building or Property:" (1) and (2).
- (3) The list shall be updated as necessary but not less than annually.
- (4) An institution shall provide the property list to the council upon the council's request.

Section 3. Campus Crime Log.

- (1) An institution shall maintain a campus crime log as required by KRS 164.9481(1).
- (2) The campus crime log shall include each data element required by KRS 164.9481(1).
- (3) An institution shall develop and maintain a written policy that:
 - (a) Ensures crime log information is available to the public as soon as possible, but no later than the time frame specified in KRS 164.9481(1)(b); and
 - (b) Is subject to the limitations established in KRS 164.9481(1).
- (4) The policy shall state that the institution shall not withhold information except as provided in KRS 164.9481(1).
- (5) (a) An institution may archive campus crime log entries after sixty (60) days have elapsed from the date when an incident report was reported.
 - (b) An institution that elects to archive campus crime log entries shall respond, within two (2) business days, to a request for material that has been archived.

Section 4. Special Reports.

An institution shall report, in writing, to the council on how it shall comply with the provisions of KRS 164.9481(2).

Section 5. Crime.

The meaning of a crime listed in KRS 164.948(3) shall be consistent, to the extent possible, with the definitions and standards established in the Uniform Crime Reporting System of the federal government, and with the Kentucky Revised Statutes, where appropriate.

Section 6. State Fire Marshal and Threat of Fire.

- (1) A threat of fire includes:
 - (a) A fire alarm, except as provided in subsection (2) of this section; and
 - (b) An expression of an intention by a person to engage in destructive burning or explosion.
- (2) A threat of fire does not include an alarm triggered for the purpose of:
 - (a) Maintenance testing; or
 - (b) Fire drill.
- (3) A threat of fire or fire shall be reported immediately by the campus security authority designated pursuant to KRS 164.9483(4) to:
 - (a) The State Fire Marshal; and
 - (b) The local fire department.
- (4) An institution shall maintain a fire scene until cleared by the State Fire Marshal's Office in accordance with KRS 164.9483(4).

Section 7. Annual Report.

Each institution shall file an annual report, as required by KRS 164.9485, using Form MMA1.

Section 8. Enforcement.

- (1) KRS 164.993 provides civil and criminal penalties for a violation of KRS 164.9481 and 164.9483.
- (2) (a) A person, including campus personnel, who has reason to believe that any person has violated, or knowingly induced another person, directly or indirectly, to violate KRS 164.9481 or 164.9483 may register a complaint with the State Fire Marshal's Office.
- (b) A person who has reason to believe that any person has violated KRS 164.9481 or 164.9483 may register a complaint with the county attorney in the county where the institution is located.

Section 9. Incorporation by Reference.

- (1) "MMA1, 1/2001" is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

13 KAR 2:100. Campus security, public institutions.

Section 1. Definitions.

- (1) "Annual report" means the report submitted by an institution to the council that satisfies the requirements of KRS 164.9485.
- (2) "Campus" is defined in KRS 164.948(1).
- (3) "Campus crime log" means the daily log maintained by an institution and developed by the council consistent with the provisions of KRS 164.9481(1).
- (4) "Campus security authority" is defined in KRS 164.948(2).
- (5) "Clery Act" means the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Acts, 20 USC 1092(f) and as implemented in 34 CFR 668.46.
- (6) "Council" means the Council on Postsecondary Education as established by KRS 164.011.
- (7) "Crime" is defined in KRS 164.948(3).
- (8) "Fire scene" means the immediate area necessary for a local fire department or the State Fire Marshal's Office to investigate an actual fire.
- (9) "Immediately" is defined in KRS 164.948(4).
- (10) "Institution" means a postsecondary education institution as defined in KRS 164.948(5).
- (11) "State Fire Marshal" means the officer described in KRS 227.220.

Section 2. Property Subject to Reporting.

- (1) An institution shall establish a list of all property the institution:
 - (a) Owns; or
 - (b) Manages or controls.
- (2) The list of property shall include the areas described in KRS 164.948(1) and in 34 CFR 668.46(a), "Campus:" (1) and (2) and "Noncampus Building or Property:" (1) and (2).
- (3) The list shall be updated as necessary but not less than annually.
- (4) An institution shall provide the property list to the council upon the council's request.

Section 3. Campus Crime Log.

- (1) An institution shall maintain a campus crime log as required by KRS 164.9481(1).
- (2) The campus crime log shall include each data element required by KRS 164.9481(1).
- (3) An institution shall develop and maintain a written policy that:
 - (a) Ensures crime log information is available to the public as soon as possible, but no later than the time frame specified in KRS 164.9481(1)(b); and
 - (b) Is subject to the limitations established in KRS 164.9481(1).
- (4) The policy shall state that the institution shall not withhold information except as provided in KRS 164.9481(1).

- (5) (a) An institution may archive campus crime log entries after sixty (60) days have elapsed from the date when an incident was reported.
- (b) An institution that elects to archive campus crime log entries shall respond, within two (2) business days, to a request for material that has been archived.

Section 4. Special Reports.

An institution shall report, in writing, to the council on how it shall comply with the provisions of KRS 164.9481(2).

Section 5. Crime.

The meaning of a crime listed in KRS 164.948(3) shall be consistent, to the extent possible, with the definitions and standards established in the Uniform Crime Reporting System of the federal government, and with the Kentucky Revised Statutes, where appropriate.

Section 6. State Fire Marshal and Threat of Fire.

- (1) A threat of fire includes:
 - (a) A fire alarm, except as provided in subsection (2) of this section; and
 - (b) An expression of an intention by a person to engage in destructive burning or explosion.
- (2) A threat of fire does not include an alarm triggered for the purpose of:
 - (a) Maintenance testing; or
 - (b) Fire drill.
- (3) A threat of fire or fire shall be reported immediately by the campus security authority designated pursuant to KRS 164.9483(4) to:
 - (a) The State Fire Marshal; and
 - (b) The local fire department.
- (4) An institution shall maintain a fire scene until cleared by the State Fire Marshal's Office in accordance with KRS 164.9483(4).

Section 7. Annual Report.

Each institution shall file an annual report, as required by KRS 164.9485, using Form MMA1.

Section 8. Enforcement.

- (1) KRS 164.993 provides civil and criminal penalties for a violation of KRS 164.9481 and 164.9483.
- (2) (a) A person, including campus personnel who has reason to believe that any person has violated, or knowingly induced another person, directly or indirectly, to violate KRS 164.9481 or 164.9483 may register a complaint with the State Fire Marshal's Office.
- (b) A person who has reason to believe that any person has violated KRS 164.9481 or 164.9483 may register a complaint with the county attorney in the county where the institution is located.

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b. Restrictions related to registered sex offenders

KRS 164.281 Public institution of postsecondary education criminal history background checks - Initial hires, contractors, employees, volunteers, visitors - Disclosures - Termination.

- (1) Each public institution of postsecondary education shall require a criminal history background check on all initial hires.
 - (a) The background check shall consist of a state criminal history background check and a national criminal history background check.
 - (b) Applications shall authorize the appropriate agency to search police records for convictions and make results known to the institution, and the institution may require the applicant to bear the cost of the criminal history background check.

- (2) Each public institution of postsecondary education may require a criminal history background check on a contractor, employee of a contractor, volunteer for the institution or a program of the institution, or visitor, subject to the same terms and conditions as in subsection (1) of this section.
- (3) If, upon review of the results of the criminal history background check, a public institution of postsecondary education finds that the applicant, contractor, employee of a contractor, volunteer, or visitor has been convicted of, pled guilty to, or entered an Alford plea to a sex crime as specified in KRS 17.500 or a violent offense as specified in KRS 439.3401, the institution may:
 - (a) Deny employment or modify the conditions of employment to provide for appropriate supervision;
 - (b) Deny a contractor or a contractor's employee a permit to enter the institution or its grounds, or modify the contract to provide for appropriate supervision;
 - (c) Prohibit a person from volunteering or require the person to agree to appropriate supervision; or
 - (d) Prohibit a person from visiting the institution or its grounds, or require that person to agree to appropriate supervision.
- (4) Each application or renewal form, provided by the institution to an applicant for employment, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE AND NATIONAL CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT."
- (5) If the institution requires a criminal history background check for contractors, employees of contractors, volunteers, or visitors, the institution shall provide to the prospective person or organization the following statement: "FOR THIS TYPE OF CONTRACT OR FOR BEING AN EMPLOYEE OF A CONTRACTOR, A VOLUNTEER FOR THE INSTITUTION OR AN INSTITUTIONAL PROGRAM, OR A VISITOR OF THE INSTITUTION, THIS INSTITUTION REQUIRES A STATE AND NATIONAL CRIMINAL HISTORY BACKGROUND CHECK."
- (6) If an employee of the public institution of postsecondary education is convicted of, pleads guilty to, enters an Alford plea to, or is adjudicated guilty of an offense specified in subsection (3) of this section, the employment of that person may, at the discretion of the institution, be terminated as of the date of the conviction.
- (7) A private college or university located in the Commonwealth may utilize at its discretion any of the provisions of this section, providing that it does so in a written institutional document.