

CHAPTER 5 CRIMINAL LAW

A. LAW ENFORCEMENT REQUIRED SEXUAL ASSAULT TRAINING

KRS 15.334 Mandatory training courses for law enforcement students and certified peace officers -- Administrative regulations -- Annual report.

- (1) The Kentucky Law Enforcement Council shall approve mandatory training subjects to be taught to all students attending a law enforcement basic training course that include but are not limited to:
- (a) Abuse, neglect, and exploitation of the elderly and other crimes against the elderly, including the use of multidisciplinary teams in the investigation and prosecution of crimes against the elderly;
 - (b) The dynamics of domestic violence, pediatric abusive head trauma, as defined in KRS 620.020, child physical and sexual abuse, and rape; child development; the effects of abuse and crime on adult and child victims, including the impact of abuse and violence on child development; legal remedies for protection; lethality and risk issues; profiles of offenders and offender treatment; model protocols for addressing domestic violence, rape, pediatric abusive head trauma, as defined in KRS 620.020, and child abuse; available community resources and victim services; and reporting requirements. This training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with expertise in domestic violence, child abuse, and rape. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services;
 - (c) Human immunodeficiency virus infection and acquired immunodeficiency virus syndrome;
 - (d) Identification and investigation of, responding to, and reporting bias-related crime, victimization, or intimidation that is a result of or reasonably related to race, color, religion, sex, or national origin;
 - (e) The characteristics and dynamics of human trafficking, state and federal laws relating to human trafficking, the investigation of cases involving human trafficking, including but not limited to screening for human trafficking, and resources for assistance to the victims of human trafficking; and
 - (f) Beginning January 1, 2017, the council shall require that a law enforcement basic training course include at least eight (8) hours of training relevant to sexual assault.
- (2)
- (a) The council shall develop and approve mandatory professional development training courses to be presented to all certified peace officers. A mandatory professional development training course shall be first taken by a certified peace officer in the training year following its approval by the council and biennially thereafter. A certified peace officer shall be required to take these courses no more than two (2) times in eight (8) years.
 - (b) Beginning January 1, 2011, the council shall require that one and one-half (1.5) hours of professional development covering the recognition and prevention of pediatric abusive head trauma be included in the curriculum of all mandatory professional development training courses such that all officers shall receive this training at least once by December 31, 2013. The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours.

- (c) Beginning January 1, 2017, the council shall establish a forty (40) hour sexual assault investigation training course. By January 1, 2019, agencies shall have one (1) or more officers trained in this curriculum, as follows:
1. Agencies with five (5) or fewer officers shall have at least one (1) officer trained in sexual assault investigation;
 2. Agencies with more than five (5) officers but fewer than thirty (30) officers shall have at least two (2) officers trained in sexual assault investigation; and
 3. Agencies with thirty (30) or more officers shall have at least four (4) officers trained in sexual assault investigation.
- (3) The Justice and Public Safety Cabinet shall provide training on the subjects of domestic violence and abuse and may do so utilizing currently available technology. All certified peace officers shall be required to complete this training at least once every two (2) years.
- (4) The council shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish mandatory basic training and professional development training courses.
- (5) The council shall make an annual report by December 31 each year to the Legislative Research Commission that details the subjects and content of mandatory professional development training courses established during the past year and the subjects under consideration for future mandatory training.

B. OFFENSES

1. Statutes of Limitations

KRS 500.050 Time Limitation. (on bringing criminal charges)

- (1) Except as otherwise expressly provided, the prosecution of a felony is not subject to a period of limitation and may be commenced at any time.
- (2) Except as otherwise expressly provided, the prosecution of an offense other than a felony must be commenced within one (1) year after it is committed.
- (3) For a misdemeanor offense under KRS Chapter 510 when the victim is under the age of eighteen (18) at the time of the offense, the prosecution of the offense shall be commenced within five (5) years after the victim attains the age of eighteen (18) years.
- (4) For purposes of this section, an offense is committed either when every element occurs, or if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated.

Note: A chart including the elements of Kentucky sex crimes and related offenses is included in Chapter 7.

2. Continuing Course of Conduct

KRS 501.100 Offense against a vulnerable victim.

- (1) As used in this section, "offense against a vulnerable victim" means any violation of:
 - (a) KRS 508.100;
 - (b) KRS 508.110;
 - (c) KRS 508.120;
 - (d) KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, or 530.020, if the victim is under the age of fourteen (14), or if the victim is an individual with an intellectual disability, physically helpless, or mentally incapacitated, as those terms are defined in KRS 510.010;

- (e) KRS 529.100 or 529.110 if the victim is a minor;
 - (f) KRS 530.064(1)(a);
 - (g) KRS 531.310;
 - (h) KRS 531.320; or
 - (i) Any felony in KRS Chapter 209.
- (2) A person may be charged with committing an offense against a vulnerable victim in a continuing course of conduct if the unlawful act was committed against the same person two (2) or more times over a specified period of time.
 - (3) If a person is charged as committing the crime in a continuing course of conduct, the indictment shall clearly charge that the crime was committed in a continuing course of conduct.
 - (4) To convict a person of an offense against a vulnerable victim in a continuing course of conduct, the jury shall unanimously agree that two (2) or more acts in violation of the same statute occurred during the specified period of time. The jury need not agree on which specific acts occurred.
 - (5) If a person is convicted of an offense against a vulnerable victim in a continuing course of conduct, that person may not also be convicted of charges based on the individual unlawful acts that were part of the continuing course of conduct.
 - (6) The penalty, probation and parole eligibility, and other consequences of an offense charged under this section shall be the same as for the offense when charged based on an individual act.
 - (7) The applicability of this section shall be governed by the age of the victim at the time of the offense.

3. "Sex Offenses" (KRS 510)

KRS 510.010 Definitions for chapter.

NOTE: Effective July 14, 2018 -- Amended definitions of "deviate sexual intercourse" and "sexual intercourse" to include the language "any body part". i.e. penetration of the vagina or anus with a finger or hand.

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "Deviate sexual intercourse" means any act of sexual gratification involving the sex organs of one person and the mouth or anus of another; or penetration of the anus of one person by any body part or a foreign object manipulated by another person. "Deviate sexual intercourse" does not include penetration of the anus by any body part or a foreign object in the course of the performance of generally recognized health-care practices;
- (2) "Forcible compulsion" means physical force or threat of physical force, express or implied, which places a person in fear of immediate death, physical injury to self or another person, fear of the immediate kidnap of self or another person, or fear of any offense under this chapter. Physical resistance on the part of the victim shall not be necessary to meet this definition;
- (3) "Mental illness" means a diagnostic term that covers many clinical categories, typically including behavioral or psychological symptoms, or both, along with impairment of personal and social function, and specifically defined and clinically interpreted through reference to criteria contained in the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) and any subsequent revision thereto, of the American Psychiatric Association;
- (4) "Individual with an intellectual disability" means a person with significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, as defined in KRS Chapter 202B;
- (5) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct as a result of the influence of an intoxicating substance administered to him without his consent or as a result of any other act committed upon him without his consent;

- (6) "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. "Physically helpless" also includes a person who has been rendered unconscious or for any other reason is physically unable to communicate an unwillingness to an act as a result of the influence of a controlled substance or legend drug;
- (7) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party;
- (8) "Sexual intercourse" means sexual intercourse in its ordinary sense and includes penetration of the sex organs of one person by any body part or a foreign object manipulated by another person. Sexual intercourse occurs upon any penetration, however slight; emission is not required. "Sexual intercourse" does not include penetration of the sex organ by any body part or a foreign object in the course of the performance of generally recognized health-care practices; and
- (9) "Foreign object" means anything used in commission of a sexual act other than the person of the actor.

Note: KRS 532.045 includes definitions of "Position of Authority" and "Position of Special Trust" - Text is included in Chapter 5, Section E, 3.

KRS 510.015 Treatment of third or subsequent misdemeanor under KRS Chapter 510 as Class D felony.

Unless a higher penalty is otherwise prescribed and notwithstanding any provision of this chapter to the contrary, a person who commits a third or subsequent misdemeanor offense under this chapter, except for violations of KRS 510.150, may be convicted of a Class D felony. If the Commonwealth desires to utilize the provisions of this section, the Commonwealth shall indict the defendant and the case shall be tried in the Circuit Court as a felony case. The jury, or judge if the trial is without a jury, may decline to assess a felony penalty in a case under this section and may convict the defendant of a misdemeanor.

KRS 510.020 Lack of consent.

NOTE: Effective July 14, 2018 -- Amended to include victims age 16 and 17.

- (1) Whether or not specifically stated, it is an element of every offense defined in this chapter that the sexual act was committed without consent of the victim.
- (2) Lack of consent results from:
 - (a) Forcible compulsion;
 - (b) Incapacity to consent; or
 - (c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.
- (3) A person is deemed incapable of consent when he or she is:
 - (a) Less than sixteen (16) years old;
 - (b) Sixteen (16) or seventeen (17) years old and the actor is at least ten (10) years older than the victim at the time of the sexual act;
 - (c) An individual unable to communicate consent or lack of consent, or unable to understand the nature of the act or its consequences, due to an intellectual disability or a mental illness;
 - (d) Mentally incapacitated;
 - (e) Physically helpless; or
 - (f) Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.

(4) The provisions of subsection (3)(f) of this section shall not apply to persons who are lawfully married to each other and no court order is in effect prohibiting contact between the parties.

KRS 510.030 Defenses to prosecution based on victim's lack of consent.

In any prosecution under this chapter in which the victim's lack of consent is based solely on his incapacity to consent because he was less than sixteen (16) years old, an individual with an intellectual disability, mentally incapacitated, or physically helpless, the defendant may prove in exculpation that at the time he engaged in the conduct constituting the offense he did not know of the facts or conditions responsible for such incapacity to consent.

KRS 510.035 Exception to KRS 510.020.

A person who engages in sexual intercourse or deviate sexual intercourse with another person to whom the person is married, or subjects another person to whom the person is married to sexual contact, does not commit an offense under this chapter regardless of the person's age solely because the other person is less than sixteen (16) years old or an individual with an intellectual disability.

KRS 510.037 Conviction for rape, sodomy, or sexual abuse triggers application for interpersonal protective order.

The entering of a judgment of conviction for any degree of rape, sodomy, or sexual abuse under this chapter shall operate as an application for an interpersonal protective order issued under KRS Chapter 456, unless the victim requests otherwise. Notwithstanding the provisions of KRS Chapter 456:

- (1) An interpersonal protective order requested under this subsection may be issued by the court that entered the judgment of conviction;
- (2) The judgment of conviction shall constitute sufficient cause for the entry of the order without the necessity of further proof being taken; and
- (3) The order may be effective for up to ten (10) years, with further renewals in increments of up to ten (10) years.

KRS 510.040 Rape in the first degree.

- (1) A person is guilty of rape in the first degree when:
 - (a) He engages in sexual intercourse with another person by forcible compulsion; or
 - (b) He engages in sexual intercourse with another person who is incapable of consent because he:
 1. Is physically helpless; or
 2. Is less than twelve (12) years old.
- (2) Rape in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

KRS 510.050 Rape in the second degree.

NOTE: Amended, effective July 14, 2018.

- (1) A person is guilty of rape in the second degree when:
 - (a) Being eighteen (18) years old or more, he or she engages in sexual intercourse with another person less than fourteen (14) years old; or
 - (b) He or she engages in sexual intercourse with another person who is mentally incapacitated or who is incapable of consent because he or she is an individual with an intellectual disability.
- (2) Rape in the second degree is a Class C felony.

KRS 510.060 Rape in the third degree.

NOTE: Effective July 14, 2018 -- Amended to include victims age 16 and 17.

- (1) A person is guilty of rape in the third degree when:
- (a) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than sixteen (16) years old;
 - (b) Being at least ten (10) years older than a person who is sixteen (16) or seventeen (17) years old at the time of sexual intercourse, he or she engages in sexual intercourse with the person;
 - (c) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020;
 - (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in sexual intercourse with a minor under eighteen (18) years old with whom he or she comes into contact as a result of that position; or
 - (e) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual intercourse.
- (2) Rape in the third degree is a Class D felony.

KRS 510.070 Sodomy in the first degree.

- (1) A person is guilty of sodomy in the first degree when:
- (a) He engages in deviate sexual intercourse with another person by forcible compulsion; or
 - (b) He engages in deviate sexual intercourse with another person who is incapable of consent because he:
 - 1. Is physically helpless; or
 - 2. Is less than twelve (12) years old.
- (2) Sodomy in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

KRS 510.080 Sodomy in the second degree.

- (1) A person is guilty of sodomy in the second degree when:
- (a) Being eighteen (18) years old or more, he engages in deviate sexual intercourse with another person less than fourteen (14) years old; or
 - (b) He engages in deviate sexual intercourse with another person who is mentally incapacitated or who is incapable of consent because he or she is an individual with an intellectual disability.
- (2) Sodomy in the second degree is a Class C felony.

KRS 510.090 Sodomy in the third degree.

NOTE: Effective July 14, 2018 -- Amended to include victims age 16 and 17.

- (1) A person is guilty of sodomy in the third degree when:
- (a) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than sixteen (16) years old;
 - (b) Being at least ten (10) years older than a person who is sixteen (16) or seventeen (17) years old at the time of deviate sexual intercourse, he or she engages in deviate sexual intercourse with the person;

- (c) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020;
 - (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in deviate sexual intercourse with a minor less than eighteen (18) years old with whom he or she comes into contact as a result of that position; or
 - (e) Being a jailer, or an employee, contractor, vendor, or volunteer of the Dept of Corrections, Dept of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either dept or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Dept of Corrections, Dept of Juvenile Justice, detention facility, or contracting entity, to deviate sexual intercourse.
- (2) Sodomy in the third degree is a Class D felony.

KRS 510.110 Sexual abuse in the first degree.

- (1) A person is guilty of sexual abuse in the first degree when:
- (a) He or she subjects another person to sexual contact by forcible compulsion; or
 - (b) He or she subjects another person to sexual contact who is incapable of consent because he or she:
 - 1. Is physically helpless;
 - 2. Is less than twelve (12) years old;
 - 3. Is mentally incapacitated; or
 - 4. Is an individual with an intellectual disability; or
 - (c) Being twenty-one (21) years old or more, he or she:
 - 1. Subjects another person who is less than sixteen (16) years old to sexual contact;
 - 2. Engages in masturbation in the presence of another person who is less than sixteen (16) years old and knows or has reason to know the other person is present; or
 - 3. Engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate; or
 - (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she comes into contact as a result of that position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present or engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate.
- (2) Sexual abuse in the first degree is a Class D felony, unless the victim is less than twelve (12) years old, in which case the offense shall be a Class C felony.

KRS 510.120 Sexual abuse in the second degree.

- (1) A person is guilty of sexual abuse in the second degree when:
- (a) He or she is at least eighteen (18) years old but less than twenty-one (21) years old and subjects another person who is less than sixteen (16) years old to sexual contact; or
 - (b) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who is at least eighteen (18) years old and who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice,

detention facility, or contracting entity, to sexual contact.

- (2) In any prosecution under subsection (1)(a) of this section, it is a defense that:
 - (a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and
 - (b) The other person was at least fourteen (14) years old; and
 - (c) The actor was less than five (5) years older than the other person.
- (3) Sexual abuse in the second degree is a Class A misdemeanor.

KRS 510.130 Sexual abuse in the third degree.

- (1) A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent.
- (2) In any prosecution under this section, it is a defense that:
 - (a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and
 - (b) The other person was at least fourteen (14) years old; and
 - (c) The actor was less than eighteen (18) years old.
- (3) Sexual abuse in the third degree is a Class B misdemeanor.

KRS 510.140 Sexual misconduct.

- (1) A person is guilty of sexual misconduct when he engages in sexual intercourse or deviate sexual intercourse with another person without the latter's consent.
- (2) Sexual misconduct is a Class A misdemeanor.

KRS 510.148 Indecent exposure in the first degree.

- (1) A person is guilty of indecent exposure in the first degree when he intentionally exposes his genitals under circumstances in which he knows or should know that his conduct is likely to cause affront or alarm to a person under the age of eighteen (18) years.
- (2) Indecent exposure in the first degree is a:
 - (a) Class B misdemeanor for the first offense;
 - (b) Class A misdemeanor for the second offense, if it was committed within three (3) years of the first conviction;
 - (c) Class D felony for the third offense, if it was committed within three (3) years of the second conviction; and
 - (d) Class D felony for any subsequent offense, if it was committed within three (3) years of the prior conviction.

KRS 510.150 Indecent exposure in the second degree.

- (1) A person is guilty of indecent exposure in the second degree when he intentionally exposes his genitals under circumstances in which he knows or should know that his conduct is likely to cause affront or alarm to a person eighteen (18) years of age or older.
- (2) Indecent exposure in the second degree is a Class B misdemeanor.

KRS 510.155 Unlawful use of electronic means originating or received within the Commonwealth to induce a minor to engage in sexual or other prohibited activities -- Prohibition of multiple convictions arising from single course of conduct -- Solicitation as evidence of intent.

- (1) It shall be unlawful for any person to knowingly use a communications system, including computers, computer networks, computer bulletin boards, cellular telephones, or any other electronic means, for the purpose of procuring or promoting the use of a minor, or a peace officer posing as a minor if the person believes that the peace officer is a minor or is wanton or reckless in that belief, for any activity in violation of KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 529.100 where that offense involves commercial sexual activity, or

530.064(1)(a), or KRS Chapter 531.

- (2) No person shall be convicted of this offense and an offense specified in KRS 506.010, 506.030, 506.040, or 506.080 for a single course of conduct intended to consummate in the commission of the same offense with the same minor or peace officer.
- (3) The solicitation of a minor through electronic communication under subsection (1) of this section shall be prima facie evidence of the person's intent to commit the offense, and the offense is complete at that point without regard to whether the person met or attempted to meet the minor.
- (4) This section shall apply to electronic communications originating within or received within the Commonwealth.
- (5) A violation of this section is punishable as a Class D felony.

KRS 510.300 Expungement of record.

- (1) The arrest record of anyone accused by his spouse of an offense under this chapter shall be expunged if said charge was either dismissed with prejudice or a verdict of not guilty on said charge was entered.
- (2) If the charges brought against a defendant under this chapter are dismissed with prejudice or the defendant is found not guilty, the court shall order all law enforcement and other public agencies holding records of the offense to expunge the records.
- (3) No person whose records have been expunged pursuant to this section shall have to answer "Yes" and may answer "No" to the question "Have you ever been arrested?" or any similar question with regard to the offense for which the records were expunged

4. Sexual Exploitation of Minors

KRS 531.300 Definitions for KRS 531.080 and 531.310 to 531.370.

As used in KRS 531.080 and 531.310 to 531.370:

- (1) "Distribute" means to transfer possession of, whether with or without consideration;
- (2) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, live image transmitted over the Internet or other electronic network, or other pictorial representation or any statue or other figure, or any recording transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines, or materials;
- (3) "Obscene" means the predominate appeal of the matter taken as a whole is to a prurient interest in sexual conduct involving minors;
- (4) "Sexual conduct by a minor" means:
 - (a) Acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse, actual or simulated;
 - (b) Physical contact with, or willful or intentional exhibition of the genitals;
 - (c) Flagellation or excretion for the purpose of sexual stimulation or gratification; or
 - (d) The exposure, in an obscene manner, of the unclothed or apparently unclothed human male or female genitals, pubic area or buttocks, or the female breast, whether or not subsequently obscured by a mark placed thereon, or otherwise altered, in any resulting motion picture, photograph or other visual representation, exclusive of exposure portrayed in matter of a private, family nature not intended for distribution outside the family;
- (5) "Performance" means any play, motion picture, photograph or dance. Performance also means any other visual representation exhibited before an audience;
- (6) "Sexual performance" means any performance or part thereof which includes sexual conduct by a minor; and
- (7) "Promote" means to prepare, publish, print, procure or manufacture, or to offer or agree to do the same.

KRS 531.305 Treatment in criminal or civil proceeding of property or material portraying child pornography or a sexual performance by a minor.

- (1) In a criminal or civil proceeding, any property or material that portrays child pornography or a sexual performance by a minor as defined in this chapter shall remain secured or locked in the care, custody, and control of a law enforcement agency, or the prosecutor. Any property or material that portrays child pornography or a sexual performance by a minor shall not be filed with or stored by the court unless introduced as an exhibit for trial. Storage of trial court exhibits portraying child pornography or a sexual performance by a minor shall be in accordance with a court order.
- (2) Notwithstanding any other law or rule of court, a court shall deny, in any proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that portrays a sexual performance by a minor or constitutes child pornography so long as law enforcement, the prosecutor, or the court, if the matter was introduced as an exhibit at trial, makes the property or material reasonably available to the defendant.
- (3) For the purposes of this section, property or material shall be deemed reasonably available to the defendant if the prosecutor provides ample opportunity at a designated facility for the inspection, viewing, and examination of the property or material that portrays a sexual performance by a child or constitutes child pornography by the defendant, his or her attorney, or any individual whom the defendant uses as an expert during either the discovery process or a court proceeding.

KRS 531.310 Use of a minor in a sexual performance.

- (1) A person is guilty of the use of a minor in a sexual performance if he employs, consents to, authorizes or induces a minor to engage in a sexual performance.
- (2) Use of a minor in a sexual performance is:
 - (a) A Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity;
 - (b) A Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and
 - (c) A Class A felony if the minor so used incurs physical injury thereby.

KRS 531.320 Promoting a sexual performance by a minor.

- (1) A person is guilty of promoting a sexual performance by a minor when, knowing the character and content thereof, he produces, directs or promotes any performance which includes sexual conduct by a minor.
- (2) Promoting a sexual performance by a minor is:
 - (a) A Class C felony if the minor involved in the sexual performance is less than eighteen (18) years old at the time the minor engages in the prohibited activity;
 - (b) A Class B felony if the minor involved in the sexual performance is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and
 - (c) A Class A felony if the minor involved in the sexual performance incurs physical injury thereby.

KRS 531.330 Presumption as to minority.

- (1) For purposes of KRS 529.040 where the offense involves commercial sexual activity and for the purposes of KRS 530.070, 531.080, and 531.300 to 531.370, any person who appears to be under the age of eighteen (18), or under the age of sixteen (16), shall be presumed to be under the age of eighteen (18), or under the age of sixteen (16), as the case may be.
- (2) In any prosecution under KRS 529.040 where the offense involves commercial sexual activity by a minor and in any prosecution under KRS 530.070, 531.080, and 531.300 to 531.370, the

defendant may prove in exculpation that he in good faith reasonably believed that the person involved in the performance was not a minor.

- (3) The presumption raised in subsection (1) of this section may be rebutted by any competent evidence.

KRS 531.335 Possession or viewing of matter portraying a sexual performance by a minor -- Applicability.

- (1) A person is guilty of possession or viewing of matter portraying a sexual performance by a minor when, having knowledge of its content, character, and that the sexual performance is by a minor, he or she:
- (a) Knowingly has in his or her possession or control any matter which visually depicts an actual sexual performance by a minor person; or
 - (b) Intentionally views any matter which visually depicts an actual sexual performance by a minor person.
- (2) The provisions of subsection (1)(b) of this section:
- (a) Shall only apply to the deliberate, purposeful, and voluntary viewing of matter depicting sexual conduct by a minor person and not to the accidental or inadvertent viewing of such matter;
 - (b) Shall not apply to persons viewing the matter in the course of a law enforcement investigation or criminal or civil litigation involving the matter; and
 - (c) Shall not apply to viewing the matter by a minor or the minor's parents or guardians, or to school administrators investigating violations of subsection (1)(b) of this section.
- (3) Possession or viewing of matter portraying a sexual performance by a minor is a Class D felony.

KRS 531.340 Distribution of matter portraying a sexual performance by a minor.

- (1) A person is guilty of distribution of matter portraying a sexual performance by a minor when, having knowledge of its content and character, he or she:
- (a) Sends or causes to be sent into this state for sale or distribution; or
 - (b) Brings or causes to be brought into this state for sale or distribution; or
 - (c) In this state, he or she:
 - 1. Exhibits for profit or gain; or
 - 2. Distributes; or
 - 3. Offers to distribute; or
 - 4. Has in his or her possession with intent to distribute, exhibit for profit or gain or offer to distribute, any matter portraying a sexual performance by a minor.
- (2) Any person who has in his or her possession more than one (1) unit of material coming within the provision of KRS 531.300(2) shall be rebuttably presumed to have such material in his or her possession with the intent to distribute it.
- (3) Distribution of matter portraying a sexual performance by a minor is a Class D felony for the first offense and a Class C felony for each subsequent offense.

KRS 531.350 Promoting sale of material portraying a sexual performance by a minor.

- (1) A person is guilty of promoting sale of material portraying a sexual performance by a minor when he knowingly, as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication or other merchandise, requires that the purchaser or consignee receive any matter portraying a sexual performance by a minor, or he denies or threatens to deny a franchise, revokes or threatens to revoke, or imposes any penalty, financial or otherwise, by reason of the failure of any person to accept such matter, or by reason of the return of such matter.

- (2) Promoting sale of matter portraying a sexual performance by a minor is a Class A misdemeanor for the first offense, a Class D felony for the second offense, and a Class C felony for each subsequent offense.

KRS 531.360 Advertising material portraying a sexual performance by a minor.

- (1) A person is guilty of advertising material portraying a sexual performance by a minor when, having knowledge of its content and character thereof, he or she writes or creates advertising or solicits anyone to publish such advertising or otherwise promotes the sale or distribution of matter portraying a sexual performance by a minor.
- (2) Advertising material portraying a sexual performance by a minor is a Class D felony for the first offense and a Class C felony for each subsequent offense.

KRS 531.370 Using minors to distribute material portraying a sexual performance by a minor.

- (1) A person is guilty of using minors to distribute material portraying a sexual performance by a minor when knowing a person to be a minor, or having possession of such facts that he should reasonably know such person is a minor, and knowing of the content and character of the material, he knowingly:
- (a) Hires; or
 - (b) Employs; or
 - (c) Uses,
- a minor to do or assist in doing any of the acts prohibited by KRS 531.340.
- (2) Using minors to distribute material portraying a sexual performance by a minor is a Class D felony unless the defendant has previously been convicted of violation of this section or KRS 531.030, in which case it shall be a Class C felony.

5. Other Offenses Involving Sexual Contact and/or Gratification

KRS 530.020 Incest.

- (1) A person is guilty of incest when he or she has sexual intercourse or deviate sexual intercourse, as defined in KRS 510.010, with a person whom he or she knows to be an ancestor, descendant, uncle, aunt, brother, or sister. The relationships referred to herein include blood relationships of either the whole or half-blood without regard to legitimacy, relationship of parent and child by adoption, relationship of stepparent and stepchild, and relationship of step-grandparent and step-grandchild.
- (2) (a) Incest is a Class C felony if the act is committed by consenting adults.
- (b) Incest is a Class B felony if committed:
- 1. By forcible compulsion as defined in KRS 510.010(2); or
 - 2. On a victim who is:
 - a. Less than eighteen (18) years of age; or
 - b. Incapable of consent because he or she is physically helpless or mentally incapacitated.
- (c) Incest is a Class A felony if:
- 1. Committed on a victim less than twelve (12) years of age; or
 - 2. The victim receives serious physical injury.

KRS 530.064 Unlawful transaction with a minor in the first degree.

- (1) A person is guilty of unlawful transaction with a minor in the first degree when he or she knowingly induces, assists, or causes a minor to engage in:
- (a) Illegal sexual activity; or
 - (b) Illegal controlled substances activity other than activity involving marijuana or salvia, as defined in KRS 218A.010;

Except those offenses involving minors in KRS Chapter 531 and in KRS 529.100 where that offense involves commercial sexual activity.

- (2) Unlawful transaction with a minor in the first degree is a:
 - (a) Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity;
 - (b) Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and
 - (c) Class A felony if the minor so used incurs physical injury thereby.

KRS 530.080 Endangering the welfare of an incompetent person.

- (1) A person is guilty of endangering the welfare of an incompetent person when he knowingly acts in a manner which results in an injury to the physical or mental welfare of a person who is unable to care for himself because of mental illness or intellectual disability.
- (2) Endangering the welfare of an incompetent person is a Class A misdemeanor.

KRS 531.090 Voyeurism.

- (1) A person is guilty of voyeurism when:
 - (a) He or she intentionally:
 - 1. Uses or causes the use of any camera, videotape, photo-optical, photoelectric, or other image recording device for the purpose of observing, viewing, photographing, filming, or videotaping the sexual conduct, genitals, an undergarment worn without being publicly visible, or nipple of the female breast of another person without that person's consent; or
 - 2. Uses the unaided eye or any device designed to improve visual acuity for the purpose of observing or viewing the sexual conduct, genitals, an undergarment worn without being publicly visible, or nipple of the female breast of another person without that person's consent; or
 - 3. Enters or remains unlawfully in or upon the premises of another for the purpose of observing or viewing the sexual conduct, genitals, an undergarment worn without being publicly visible, or nipple of the female breast of another person without the person's consent; and
 - (b) The other person is in a place where a reasonable person would believe that his or her sexual conduct, genitals, undergarments, or nipple of the female breast will not be observed, viewed, photographed, filmed, or videotaped without his or her knowledge.
- (2) The provisions of subsection (1) of this section shall not apply to:
 - (a) A law enforcement officer during a lawful criminal investigation; or
 - (b) An employee of the Department of Corrections, the Department of Juvenile Justice, a private prison, a local jail, or a local correctional facility whose actions have been authorized for security or investigative purposes.
- (3) Unless objected to by the victim or victims of voyeurism, the court on its own motion or on motion of the Commonwealth's attorney shall:
 - (a) Order the sealing of all photographs, film, videotapes, or other images that are introduced into evidence during a prosecution under this section or are in the possession of law enforcement, the prosecution, or the court as the result of a prosecution under this section; and
 - (b) At the conclusion of a prosecution under this section, unless required for additional prosecutions, order the destruction of all of the photographs, film, videotapes, or other images that are in possession of law enforcement, the prosecution, or the court.
- (4) Voyeurism is a Class A misdemeanor.

KRS 531.100 Video voyeurism.

- (1) A person is guilty of video voyeurism when he or she intentionally:
 - (a) Uses or causes the use of any camera, videotape, photo-optical, photoelectric, or other image recording device for the purpose of observing, viewing, photographing, filming, or videotaping the sexual conduct, genitals, or nipple of the female breast of another person without that person's consent; and
 - (b) Uses or divulges any image so obtained for consideration; or
 - (c) Distributes any image so obtained by live or recorded visual medium, electronic mail, the Internet, or a commercial on-line service.
- (2) Video voyeurism is a Class D felony.

KRS 531.105 Application of KRS 531.100.

The provisions of KRS 531.100 shall not apply to the transference of prohibited images by a telephone company, a cable television company or any of its affiliates, an Internet provider, or a commercial on-line service provider, or to the carrying, broadcasting, or performing of related activities in providing telephone, cable television, Internet, or commercial on-line services.

KRS 531.110 Sealing and destruction of images in cases of video voyeurism.

Unless objected to by the victim or victims of the video voyeurism, the court, on its own motion, or on motion of the attorney for the Commonwealth shall:

- (1) Order all photographs, film, videotapes, or other images that are introduced into evidence or are in the possession of law enforcement, the prosecution, or the court to be sealed; and
- (2) At the conclusion of the case, unless required for additional prosecutions, order all of the photographs, film, videotapes, or other images that are in the possession of law enforcement, the prosecution, or the court to be destroyed.

KRS 531.120 Distribution of sexually explicit images without consent.

NOTE: Effective: July 14, 2018

- (1) A person is guilty of distribution of sexually explicit images without consent when:
 - (a) He or she intentionally distributes to any third party private erotic matter without the written consent of the person depicted, and does so with the intent to profit, or to harm, harass, intimidate, threaten, or coerce the person depicted; and
 - (b) The disclosure would cause a reasonable person to suffer harm.
- (2) This section shall not apply to:
 - (a) Images involving voluntary nudity or sexual conduct in public, commercial settings, or in a place where a person does not have a reasonable expectation of privacy;
 - (b) Disclosures made in the public interest, including the reporting of unlawful conduct, or lawful and common practices of law enforcement, criminal reporting, corrections, legal proceedings, or medical treatment;
 - (c) Disclosures of materials that constitute a matter of public concern; or
 - (d) Internet service providers or telecommunications services, or interactive computer services, as defined in 47 U.S.C. sec. 230(f)(2), for content solely provided by another person.
- (3) A person who maintains an Internet Web site, online service, online application, or mobile application that distributes private erotic matter shall remove any such image if requested by a person depicted, and shall not solicit or accept a fee or other consideration to remove the visual image.
- (4) Distribution of sexually explicit images without consent is a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense, unless the person distributes the private erotic matter for profit or gain, in which case it is a Class D felony for the first offense and a Class C felony for each subsequent offense.

- (5) In this section, "consent" means the consent to transmission of images to a specific recipient or recipients. Consent to the creation of the visual image does not, by itself, constitute consent to the distribution of the visual image.
- (6) Notwithstanding KRS 17.500 to 17.580, a conviction under this section shall not result in the offender being deemed a registrant or being required to register as a sex offender.

KRS 525.120 Abuse of corpse.

- (1) A person is guilty of abuse of a corpse when except as authorized by law he intentionally treats a corpse in a way that would outrage ordinary family sensibilities. A person shall also be guilty of abuse of a corpse if that person enters into a contract and accepts remuneration for the preparation of a corpse for burial or the burial or cremation of a corpse and then deliberately fails to prepare, bury, or cremate that corpse in accordance with that contract.
- (2) Abuse of a corpse is a Class A misdemeanor, unless the act attempted or committed involved sexual intercourse or deviate sexual intercourse with the corpse or the deliberate failure to prepare, bury, or cremate a corpse after the acceptance of remuneration in accordance with any contract negotiated, in which case it is a Class D felony.

6. Stalking and Harassment

KRS 508.130 Definitions for KRS 508.130 to 508.150.

As used in KRS 508.130 to 508.150, unless the context requires otherwise:

- (1) (a) To "stalk" means to engage in an intentional course of conduct:
1. Directed at a specific person or persons;
 2. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and
 3. Which serves no legitimate purpose.
- (b) The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.
- (2) "Course of conduct" means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. One (1) or more of these acts may include the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device. Constitutionally protected activity is not included within the meaning of "course of conduct." If the defendant claims that he was engaged in constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence.
- (3) "Protective order" means:
- (a) An emergency protective order or domestic violence order issued under KRS 403.715 to 403.785;
 - (b) A foreign protective order, as defined in KRS 403.720 and 456.010;
 - (c) An order issued under KRS 431.064;
 - (d) A restraining order issued in accordance with KRS 508.155;
 - (e) An order of protection as defined in KRS 403.720 and 456.010; and
 - (f) Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender.

KRS 508.140 Stalking in the first degree.

- (1) A person is guilty of stalking in the first degree,
- (a) When he intentionally:
 - 1. Stalks another person; and
 - 2. Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:
 - a. Sexual contact as defined in KRS 510.010;
 - b. Serious physical injury; or
 - c. Death; and
 - (b) 1. A protective order has been issued by the court to protect the same victim or victims and the defendant has been served with the summons or order or has been given actual notice; or
 - 2. A criminal complaint is currently pending with a court, law enforcement agency, or prosecutor by the same victim or victims and the defendant has been served with a summons or warrant or has been given actual notice; or
 - 3. The defendant has been convicted of or pled guilty within the previous five (5) years to a felony or to a Class A misdemeanor against the same victim or victims; or
 - 4. The act or acts were committed while the defendant had a deadly weapon on or about his person.
- (2) Stalking in the first degree is a Class D felony.

KRS 508.150 Stalking in the second degree.

- (1) A person is guilty of stalking in the second degree when he intentionally:
- (a) Stalks another person; and
 - (b) Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:
 - 1. Sexual contact as defined in KRS 510.010;
 - 2. Physical injury; or
 - 3. Death.
- (2) Stalking in the second degree is a Class A misdemeanor.

KRS 508.155 Restraining order or interpersonal protective order to be issued upon violation of KRS 508.140 or 508.150.

- (1)
- (a) Before January 1, 2016, a verdict of guilty or a plea of guilty to KRS 508.140 (stalking 1st) or 508.150 (stalking 2nd) shall operate as an application for a restraining order utilizing the provisions of this section and limiting the contact of the defendant and the victim who was stalked, unless the victim requests otherwise.
 - (b) Beginning January 1, 2016, a verdict of guilty or a plea of guilty to KRS 508.140 (stalking 1st) or 508.150 (stalking 2nd) shall operate as an application for an interpersonal protective order issued under KRS Chapter 456, unless the victim requests otherwise. Notwithstanding the provisions of KRS Chapter 456:
 - 1. An interpersonal protective order requested under this subsection may be issued by the court that entered the judgment of conviction;
 - 2. The judgment of conviction shall constitute sufficient cause for the entry of the order without the necessity of further proof being taken; and
 - 3. The order may be effective for up to ten (10) years, with further renewals in increments of up to ten (10) years.
- (2) The court shall give the defendant notice of his or her right to request a hearing on the application for a restraining order. If the defendant waives his or her right to a hearing on this matter, then the court may issue the restraining order without a hearing.
- (3) If the defendant requests a hearing, it shall be held at the time of the verdict or plea of guilty,

unless the victim or defendant requests otherwise. The hearing shall be held in the court where the verdict or plea of guilty was entered.

- (4) A restraining order may grant the following specific relief:
- (a) An order restraining the defendant from entering the residence, property, school, or place of employment of the victim; or
 - (b) An order restraining the defendant from making contact with the victim, including an order forbidding the defendant from personally, or through an agent, initiating any communication likely to cause serious alarm, annoyance, intimidation, or harassment, including but not limited to personal, written, telephonic, or any other form of written or electronic communication or contact with the victim. An order issued pursuant to this subsection relating to a school, place of business, or similar nonresidential location shall be sufficiently limited to protect the stalking victim but shall also protect the defendant's right to employment, education, or the right to do legitimate business with the employer of a stalking victim as long as the defendant does not have contact with the stalking victim. The provisions of this subsection shall not apply to a contact by an attorney regarding a legal matter.
- (5) A restraining order issued pursuant to this section shall be valid for a period of not more than ten (10) years, the specific duration of which shall be determined by the court. Any restraining order shall be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim, his or her immediate family, or both.
- (6) Unless the defendant has been convicted of a felony, or is otherwise ineligible to purchase or possess a firearm under federal law, a restraining order issued pursuant to this section shall not operate as a ban on the purchase or possession of firearms or ammunition by the defendant.
- (7) The restraining order shall be issued on a form prescribed by the Administrative Office of the Courts and may be lifted upon application of the stalking victim to the court which granted the order.
- (8) Within twenty-four (24) hours of entry of a restraining order or entry of an order rescinding a restraining order, the circuit clerk shall forward a copy of the order to the Law Information Network of Kentucky (LINK).
- (9) A restraining order issued under this section shall be enforced in any county of the Commonwealth. Law enforcement officers acting in good faith in enforcing a restraining order shall be immune from criminal and civil liability.
- (10) A violation by the defendant of an order issued pursuant to this section shall be a Class A misdemeanor. Nothing in this section shall preclude the filing of a criminal complaint for stalking based on the same act which is the basis for the violation of the restraining order.

KRS 525.070 Harassment.

- (1) A person is guilty of harassment when, with intent to intimidate, harass, annoy, or alarm another person, he or she:
- (a) Strikes, shoves, kicks, or otherwise subjects him to physical contact;
 - (b) Attempts or threatens to strike, shove, kick, or otherwise subject the person to physical contact;
 - (c) In a public place, makes an offensively coarse utterance, gesture, or display, or addresses abusive language to any person present;
 - (d) Follows a person in or about a public place or places;
 - (e) Engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose; or
 - (f) Being enrolled as a student in a local school district, and while on school premises, on school-sponsored transportation, or at a school-sponsored event:
 - 1. Damages or commits a theft of the property of another student;
 - 2. Substantially disrupts the operation of the school; or

3. Creates a hostile environment by means of any gestures, written communications, oral statements, or physical acts that a reasonable person under the circumstances should know would cause another student to suffer fear of physical harm, intimidation, humiliation, or embarrassment.
- (2) (a) Except as provided in paragraph (b) of this subsection, harassment is a violation.
(b) Harassment, as defined in paragraph (a) of subsection (1) of this section, is a Class B misdemeanor.

KRS 525.080 Harassing communications.

- (1) A person is guilty of harassing communications when, with intent to intimidate, harass, annoy, or alarm another person, he or she:
 - (a) Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, or any other form of electronic or written communication in a manner which causes annoyance or alarm and serves no purpose of legitimate communication;
 - (b) Makes a telephone call, whether or not conversation ensues, with no purpose of legitimate communication; or
 - (c) Communicates, while enrolled as a student in a local school district, with or about another school student, anonymously or otherwise, by telephone, the Internet, telegraph, mail, or any other form of electronic or written communication in a manner which a reasonable person under the circumstances should know would cause the other student to suffer fear of physical harm, intimidation, humiliation, or embarrassment and which serves no purpose of legitimate communication.
- (2) Harassing communications is a Class B misdemeanor.

7. Human Trafficking

a. Criminal Statutes Addressing Trafficking

KRS 16.173 Unit of department to receive and investigate complaints of human trafficking.

The Department of Kentucky State Police shall designate a unit within the department to receive and investigate complaints of human trafficking. The unit shall cooperate with and assist prosecutorial agencies and local and federal law enforcement, as well as law enforcement from other states, in the receipt and investigation of complaints of human trafficking.

KRS 506.120 Engaging in organized crime.

- (1) A person, with the purpose to establish or maintain a criminal syndicate or to facilitate any of its activities, shall not do any of the following:
 - (a) Organize or participate in organizing a criminal syndicate or any of its activities;
 - (b) Provide material aid to a criminal syndicate or any of its activities, whether such aid is in the form of money or other property, or credit;
 - (c) Manage, supervise, or direct any of the activities of a criminal syndicate, at any level of responsibility;
 - (d) Knowingly furnish legal, accounting, or other managerial services to a criminal syndicate;
 - (e) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of, any offense of a type in which a criminal syndicate engages on a continuing basis;
 - (f) Commit, or conspire or attempt to commit or act as an accomplice in the commission of, any offense of violence;
 - (g) Commit, or conspire or attempt to commit, or act as an accomplice in the commission of bribery in violation of KRS Chapters 518 or 521, or KRS 119.205, 121.025, 121.055, 524.070, 156.465, 45A.340, 63.090, 6.080, 18A.145, or 244.600.
 - (h) Commit, or conspire or attempt to commit, or act as an accomplice in the commission

of more than one (1) theft of retail merchandise with the intent to resell the stolen merchandise; or

- (i) Acquire stolen retail merchandise for the purpose of reselling it where the person knew or should have known that the merchandise had been stolen.
- (2) Whoever violates this section is guilty of engaging in organized crime, which shall be a Class B felony, unless the offense involves only the theft or acquisition of retail merchandise for the purpose of reselling it, in which case it shall be a Class C felony.
- (3) As used in this section "criminal syndicate" means three (3) or more persons, or, in cases of merchandise theft from a retail store for the purpose of reselling the stolen merchandise, two (2) or more persons, collaborating to promote or engage in any of the criminal acts provided in subsection (4)(a) to (f) of this section on a continuing basis.
- (4) As used in this section, "criminal gang syndicate" means three (3) or more persons acting as a part of or members of a criminal gang and collaborating to promote or engage in any of the following on a continuing basis:
 - (a) Extortion or coercion in violation of KRS 514.080 or 521.020;
 - (b) Engaging in, promoting, or permitting prostitution or human trafficking in violation of KRS Chapter 529;
 - (c) Any theft offense as defined in KRS Chapter 514;
 - (d) Any gambling offense as defined in KRS 411.090, KRS Chapter 528, or Section 226 of the Constitution;
 - (e) Illegal trafficking in controlled substances as prohibited by KRS Chapter 218A, in intoxicating or spirituous liquor as defined in KRS Chapters 242 or 244, or in destructive devices or booby traps as defined in KRS Chapter 237; or
 - (f) Lending at usurious interest, and enforcing repayment by illegal means in violation of KRS Chapter 360.
- (5) Any person found to have been a member of a criminal gang syndicate while engaging in the criminal acts listed in subsection (4) of this section shall not be released on probation or parole until he or she has served at least eighty-five percent (85%) of the sentence imposed

KRS 529.010 Definitions.

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "Advancing prostitution" -- A person "advances prostitution" when acting other than as a prostitute or as a patron thereof, he or she knowingly causes or aids a person to engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any conduct designed to institute, aid or facilitate an act or enterprise of prostitution;
- (2) "Commercial sexual activity" means prostitution, regardless of whether the trafficked person can be charged with prostitution, participation in the production of obscene material as set out in KRS Chapter 531, or engaging in a sexually explicit performance;
- (3) "Forced labor or services" means labor or services that are performed or provided by another person and that are obtained through force, fraud, or coercion;
- (4) "Force, fraud, or coercion" may only be accomplished by the same means and methods as a person may be restrained under KRS 509.010;
- (5) "Human trafficking" refers to criminal activity whereby one (1) or more persons are subjected to engaging in:
 - (a) Forced labor or services; or
 - (b) Commercial sexual activity through the use of force, fraud, or coercion, except that if the trafficked person is under the age of eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion;
- (6) "Human trafficking victims fund" is the fund created in KRS 529.140;

- (7) "Labor" means work of economic or financial value;
- (8) "Minor" means a person under the age of eighteen (18) years;
- (9) "Profiting from prostitution" -- A person "profits from prostitution" when acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she knowingly accepts or receives or agrees to accept or receive money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in proceeds of prostitution activity;
- (10) "Services" means an ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor;
- (11) "Sexual conduct" means sexual intercourse or any act of sexual gratification involving the sex organs; and
- (12) "Sexually explicit performance" means a performance of sexual conduct involving:
 - (a) Acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse, actual or simulated;
 - (b) Physical contact with, or willful or intentional exhibition of, the genitals;
 - (c) Flagellation or excretion for the purpose of sexual stimulation or gratification; or
 - (d) The exposure, in an obscene manner, of the unclothed or apparently unclothed human male or female genitals, pubic area, or buttocks, or the female breast, whether or not subsequently obscured by a mark placed thereon, or otherwise altered, in any resulting motion picture, photograph, or other visual representation, exclusive of exposure portrayed in matter of a private, family nature not intended for distribution outside the family.
- (13) "Victim of human trafficking" is a person who has been subjected to human trafficking.

KRS 529.020 Prostitution.

- (1) Except as provided in KRS 529.120, a person is guilty of prostitution when he engages or agrees or offers to engage in sexual conduct with another person in return for a fee.
- (2) Prostitution is a Class B misdemeanor.

KRS 529.040 Promoting prostitution.

- (1) A person is guilty of promoting prostitution when he knowingly advances or profits from prostitution.
- (2) Promoting prostitution is a Class A misdemeanor unless the person managed, supervised, controlled, or owned, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two (2) or more prostitutes, in which case it is a Class D felony.

KRS 529.070 Permitting prostitution.

- (1) A person is guilty of permitting prostitution when, having possession or control of premises which he knows or has reasonable cause to know are being used for prostitution purposes, he fails to make reasonable and timely effort to halt or abate such use.
- (2) Permitting prostitution is a Class B misdemeanor.

KRS 529.080 Loitering for prostitution purposes.

- (1) Except as provided in KRS 529.120, a person is guilty of loitering for prostitution purposes when he loiters or remains in a public place for the purpose of engaging or agreeing or offering to engage in prostitution.
- (2) Loitering for prostitution purposes is a:
 - (a) Violation for the first offense;
 - (b) Class B misdemeanor for the second offense and for each subsequent offense.

KRS 529.100 Human trafficking.

- (1) A person is guilty of human trafficking when the person intentionally subjects one (1) or more persons to human trafficking.
- (2) (a) Human trafficking is a Class C felony unless it involves serious physical injury to a trafficked person, in which case it is a Class B felony.
(b) If the victim of human trafficking is under eighteen (18) years of age, the penalty for the offense shall be one (1) level higher than the level otherwise specified in this section.

KRS 529.110 Promoting human trafficking.

- (1) A person is guilty of promoting human trafficking when the person intentionally:
 - (a) Benefits financially or receives anything of value from knowing participation in human trafficking; or
 - (b) Recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit entice, harbor, transport, provide, or obtain by any means, another person, knowing that the person will be subject to human trafficking.
- (2) Promoting human trafficking is a Class D felony unless a victim of the trafficking is under eighteen (18), in which case it is a Class C felony.

KRS 529.120 Treatment of minor suspected of prostitution offense.

- (1) Notwithstanding KRS 529.020 or 529.080, if it is determined after a reasonable period of custody for investigative purposes, that the person suspected of prostitution or loitering for prostitution is under the age of eighteen (18), then the minor shall not be prosecuted for an offense under KRS 529.020 or 529.080.
- (2) A law enforcement officer who takes a minor into custody under subsection (1) of this section shall immediately make a report to the Cabinet for Health and Family Services pursuant to KRS 620.030. Pursuant to KRS 620.040, the officer may take the minor into protective custody.
- (3) The Cabinet for Health and Family Services shall commence an investigation into child dependency, neglect, or abuse pursuant to KRS 620.029.

KRS 529.130 Human trafficking victims service fee.

Any person convicted of an offense in KRS 529.100 or 529.110 shall be ordered to pay, in addition to any other fines, penalties, or applicable forfeitures, a human trafficking victims service fee of ten thousand dollars (\$10,000) to be remitted to the fund created in KRS 529.140 (Human Trafficking Victims Fund).

KRS 529.140 Human trafficking victims fund.

- (1) The "human trafficking victims fund," referred to in this section as the "fund," is created as a separate revolving fund within the Justice and Public Safety Cabinet.
- (2) The fund shall consist of proceeds from assets seized and forfeited pursuant to KRS 529.150, proceeds from the fee in KRS 529.130, grants, contributions, appropriations, and any other moneys that may be made available for purposes of the fund.
- (3) Moneys in the fund shall be distributed to agencies serving victims of human trafficking, including but not limited to law enforcement agencies, prosecutorial agencies, and victim service agencies in accordance with procedures developed by the Justice and Public Safety Cabinet pursuant to administrative regulation. The administrative regulation shall require that the Cabinet for Health and Family Services receive adequate funding allocation under this subsection to meet the responsibilities imposed upon it to serve minor victims of human trafficking under KRS 620.029.
- (4) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this section.

- (5) Any interest earnings on moneys in the fund shall become a part of the fund and shall not lapse to the general fund.
- (6) Moneys in the fund are hereby appropriated for the purposes set forth in this section.

KRS 529.150 Forfeiture of property used in connection with human trafficking -- Distribution of proceeds.

- (1) All property used in connection with or acquired as a result of a violation of KRS 529.100 or 529.110 shall be subject to forfeiture under the same terms, conditions, and defenses and using the same process as set out in KRS 218A.405 to 218A.460, with the exception of the distribution of proceeds, which shall be distributed as required in this section.
- (2) Proceeds from the assets seized and forfeited shall be distributed as follows:
- (a) Fifty percent (50%) shall be paid to the human trafficking victims fund;
 - (b) Forty-two and one-half percent (42.5%) shall be paid to the law enforcement agency or agencies that seized the property, to be used for direct law enforcement purposes; and
 - (c) Seven and one-half percent (7.5%) shall be paid to the Office of the Attorney General or, in the alternative, to the Prosecutors Advisory Council for deposit on behalf of the Commonwealth's attorney or county attorney who has participated in the forfeiture proceeding, as determined by the court pursuant to KRS 218A.420(9). Notwithstanding KRS Chapter 48, these funds shall be exempt from any state budget reduction acts.
- The moneys identified in this subsection are intended to supplement any funds otherwise appropriated to the recipient and shall not supplant other funding of any recipient.

KRS 529.170 Being victim of human trafficking is affirmative defense to violation of chapter.

A person charged under this chapter, or charged with an offense which is not a violent crime as defined in KRS 17.165, may assert being a victim of human trafficking as an affirmative defense to the charge.

KRS 529.180 Ignorance of human trafficking minor victim's actual age not a defense.

In any prosecution under KRS 529.100 or 529.110 involving commercial sexual activity with a minor, it shall not be a defense that the defendant was unaware of the minor's actual age.

b. Rights of Trafficking Victims

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

- Text included in Chapter 1, Section B, 4.

KRS 422.295 Confidentiality of communications between human trafficking victim and caseworker. *- Text included in Chapter 1, Section B, 4.*

KRS 431.063 Human Trafficking victim not to be incarcerated pending trial-exceptions. *- Text included in Chapter 1, Section B, 4.*

KRS 630.125 Child not to be charged with or found guilty of status offense related to human trafficking. *- Text included in Chapter 1, Section B, 4.*

8. Kidnapping and Related Offenses

KRS 509.010 Definitions.

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "Relative" means a parent, ancestor, brother, sister, uncle or aunt.
- (2) "Restrain" means to restrict another person's movements in such a manner as to cause a substantial interference with his liberty by moving him from one place to another or by confining him either in the place where the restriction commences or in a place to which he has been moved without consent. A person is moved or confined "without consent" when the movement or confinement is accomplished by physical force, intimidation, or deception, or by any means, including acquiescence of a victim, if he is under the age of sixteen (16) years, or is substantially incapable of appraising or controlling his own behavior.

KRS 509.020 Unlawful imprisonment in the first degree.

- (1) A person is guilty of unlawful imprisonment in the first degree when he knowingly and unlawfully restrains another person under circumstances which expose that person to a risk of serious physical injury.
- (2) Unlawful imprisonment in the first degree is a Class D felony.

KRS 509.030 Unlawful imprisonment in the second degree.

- (1) A person is guilty of unlawful imprisonment in the second degree when he knowingly and unlawfully restrains another person.
- (2) Unlawful imprisonment in the second degree is a Class A misdemeanor.

KRS 509.040 Kidnapping.

- (1) A person is guilty of kidnapping when he unlawfully restrains another person and when his intent is:
 - (a) To hold him for ransom or reward; or
 - (b) To accomplish or to advance the commission of a felony; or
 - (c) To inflict bodily injury or to terrorize the victim or another; or
 - (d) To interfere with the performance of a governmental or political function; or
 - (e) To use him as a shield or hostage; or
 - (f) To deprive the parents or guardian of the custody of a minor, when the person taking the minor is not a person exercising custodial control or supervision of the minor as the term "person exercising custodial control or supervision" is defined in KRS 600.020.
- (2) Kidnapping is a Class B felony when the victim is released alive and in a safe place prior to trial, except as provided in this section. Kidnapping is a Class A felony when the victim is released alive but the victim has suffered serious physical injury during the kidnapping, or as a result of not being released in a safe place, or as a result of being released in any circumstances which are intended, known or should have been known to cause or lead to serious physical injury. Kidnapping is a capital offense when the victim is not released alive or when the victim is released alive but subsequently dies as a result of:
 - (a) Serious physical injuries suffered during the kidnapping; or
 - (b) Not being released in a safe place; or
 - (c) Being released in any circumstances which are intended, known or should have been known to cause or lead to the victim's death.

KRS 509.050 Exemption.

A person may not be convicted of unlawful imprisonment in the first degree, unlawful imprisonment in the second degree, or kidnapping when his criminal purpose is the commission of an offense defined outside this chapter and his interference with the victim's liberty occurs immediately with and incidental to the commission of that offense, unless the interference exceeds that which is ordinarily incident to commission of the offense which is the objective of his criminal purpose. The exemption provided by this section is not applicable to a charge of kidnapping that arises from an interference with another's liberty that occurs incidental to the commission of a criminal escape.

KRS 509.060 Defense.

In any prosecution for unlawful imprisonment or kidnapping it is a defense that the defendant was a relative of the victim and his sole purpose was to assume custody of the victim.

KRS 509.070 Custodial Interference.

- (1) A person is guilty of custodial interference when, knowing that he has no legal right to do so, he takes, entices or keeps from lawful custody any mentally disabled or other person entrusted by authority of law to the custody of another person or to an institution.
- (2) It is a defense to custodial interference that the person taken from lawful custody was returned by the defendant voluntarily and before arrest or the issuance of a warrant for arrest.
- (3) Custodial interference is a Class D felony unless the person taken from lawful custody is returned voluntarily by the defendant.

KRS 509.080 Criminal coercion.

- (1) A person is guilty of criminal coercion when with intent to compel another person to engage in or refrain from conduct, he unlawfully threatens to:
 - (a) Commit any crime; or
 - (b) Accuse anyone of a crime; or
 - (c) Expose any secret tending to subject any person to hatred, contempt or ridicule or to impair another's credit or business repute; or
 - (d) Take or withhold action as an official or cause an official to take or withhold action.
- (2) A defendant may prove in exculpation of criminal coercion committed under subsection (1) (b), (c) or (d) that he believed the accusation or secret to be true or the proposed official action justified and that his sole purpose was to compel or induce the victim to desist from misbehavior or to make good a wrong done by him.
- (3) Criminal coercion is a Class A misdemeanor.

9. Assault and Related Offenses

KRS. 508.010 Assault in the first degree.

- (1) A person is guilty of assault in the first degree when:
 - (a) He intentionally causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or
 - (b) Under circumstances manifesting extreme indifference to the value of human life he wantonly engages in conduct which creates a grave risk of death to another and thereby causes serious physical injury to another person.
- (2) Assault in the first degree is a Class B felony.

KRS 508.020 Assault in the second degree.

- (1) A person is guilty of assault in the second degree when:
- (a) He intentionally causes serious physical injury to another person; or
 - (b) He intentionally causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or
 - (c) He wantonly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument.
- (2) Assault in the second degree is a Class C felony.

KRS 508.025 Assault in the third degree.

- (1) A person is guilty of assault in the third degree when the actor:
- (a) Recklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury to:
 - 1. A state, county, city, or federal peace officer;
 - 2. An employee of a detention facility, or state residential treatment facility or state staff secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender;
 - 3. An employee of the Department for Community Based Services employed as a social worker to provide direct client services, if the event occurs while the worker is performing job-related duties;
 - 4. Paid or volunteer emergency medical services personnel certified or licensed pursuant to KRS Chapter 311A, if the event occurs while personnel are performing job-related duties;
 - 5. A paid or volunteer member of an organized fire department, if the event occurs while the member is performing job-related duties;
 - 6. Paid or volunteer rescue squad personnel affiliated with the Division of Emergency Management of the Department of Military Affairs or a local disaster and emergency services organization pursuant to KRS Chapter 39F, if the event occurs while personnel are performing job-related duties;
 - 7. A probation and parole officer;
 - 8. A transportation officer appointed by a county fiscal court or legislative body of a consolidated local government, urban-county government, or charter government to transport inmates when the county jail or county correctional facility is closed while the transportation officer is performing job-related duties;
 - 9. A public or private elementary or secondary school or school district classified or certified employee, school bus driver, or other school employee acting in the course and scope of the employee's employment; or
 - 10. A public or private elementary or secondary school or school district volunteer acting in the course and scope of that person's volunteer service for the school or school district; or
 - (b) Being a person confined in a detention facility, or a juvenile in a state residential treatment facility or state staff secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender, inflicts physical injury upon or throws or causes feces, or urine, or other bodily fluid to be thrown upon an employee of the facility.
 - (c) Intentionally causes a person, whom the actor knows or reasonably should know to be a peace officer discharging official duties, to come into contact with saliva, vomit, mucus, blood, seminal fluid, urine, or feces without the consent of the peace officer.
- (2) (a) For violations of subsection (1)(a) and (b) of this section, assault in the third degree is a Class D felony.

- (b) For violations of subsection (1)(c) of this section, assault in the third degree is a Class B misdemeanor, unless the assault is with saliva, vomit, mucus, blood, seminal fluid, urine, or feces from an adult who knows that he or she has a serious communicable disease and competent medical or epidemiological evidence demonstrates that the specific type of contact caused by the actor is likely to cause transmission of the disease or condition, in which case it is a Class A misdemeanor.
- (c) As used in paragraph (b) of this subsection, "serious communicable disease" means a non-airborne disease that is transmitted from person to person and determined to have significant, long-term consequences on the physical health or life activities of the person infected.

KRS 508.030 Assault in the fourth degree.

- (1) A person is guilty of assault in the fourth degree when:
 - (a) He intentionally or wantonly causes physical injury to another person; or
 - (b) With recklessness he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.
- (2) Assault in the fourth degree is a Class A misdemeanor.

KRS 508.032 Assault of family member or member of an unmarried couple -- Enhancement of penalty.

- (1) If a person commits a third or subsequent offense of assault in the fourth degree under KRS 508.030 within five (5) years, and the relationship between the perpetrator and the victim in each of the offenses meets the definition of family member or member of an unmarried couple, as defined in KRS 403.720, then the person may be convicted of a Class D felony. If the Commonwealth desires to utilize the provisions of this section, the Commonwealth shall indict the defendant and the case shall be tried in the Circuit Court as a felony case. The jury, or judge if the trial is without a jury, may decline to assess a felony penalty in a case under this section and may convict the defendant of a misdemeanor. The victim in the second or subsequent offense is not required to be the same person who was assaulted in the prior offenses in order for the provisions of this section to apply.
- (2) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered by a court of competent jurisdiction.

KRS 508.040 Assault under extreme emotional disturbance.

- (1) In any prosecution under KRS 508.010, 508.020 or 508.030 in which intentionally causing physical injury or serious physical injury is an element of the offense, the defendant may establish in mitigation that he acted under the influence of extreme emotional disturbance, as defined in subsection (1)(a) of KRS 507.020.
- (2) An assault committed under the influence of extreme emotional disturbance is:
 - (a) A Class D felony when it would constitute an assault in the first degree or an assault in the second degree if not committed under the influence of an extreme emotional disturbance; or
 - (b) A Class B misdemeanor when it would constitute an assault in the fourth degree if not committed under the influence of an extreme emotional disturbance.

KRS 508.050 Menacing.

- (1) A person is guilty of menacing when he intentionally places another person in reasonable apprehension of imminent physical injury.
- (2) Menacing is a Class B misdemeanor.

KRS 508.060 Wanton endangerment in the first degree.

- (1) A person is guilty of wanton endangerment in the first degree when, under circumstances manifesting extreme indifference to the value of human life, he wantonly engages in conduct which creates a substantial danger of death or serious physical injury to another person.
- (2) Wanton endangerment in the first degree is a Class D felony.

KRS 508.070 Wanton endangerment in the second degree.

- (1) A person is guilty of wanton endangerment in the second degree when he wantonly engages in conduct which creates a substantial danger of physical injury to another person.
- (2) Wanton endangerment in the second degree is a Class A misdemeanor.

KRS 508.080 Terroristic threatening in the third degree.

- (1) Except as provided in KRS 508.075 or 508.078, a person is guilty of terroristic threatening in the third degree when:
 - (a) He threatens to commit any crime likely to result in death or serious physical injury to another person or likely to result in substantial property damage to another person; or
 - (b) He intentionally makes false statements for the purpose of causing evacuation of a building, place of assembly, or facility of public transportation.
- (2) Terroristic threatening in the third degree is a Class A misdemeanor

KRS 508.090 Definitions for KRS 508.100 to 508.120.

The following definitions apply in KRS 508.100 to 508.120 unless the context otherwise requires:

- (1) "Abuse" means the infliction of physical pain, injury, or mental injury, or the deprivation of services by a person which are necessary to maintain the health and welfare of a person, or a situation in which an adult, living alone, is unable to provide or obtain for himself the services which are necessary to maintain his health or welfare.
- (2) "Physically helpless" and "mentally helpless" means a person who lacks substantial capacity to defend himself or solicit protection from law enforcement agencies.

KRS 508.100 Criminal abuse in the first degree.

- (1) A person is guilty of criminal abuse in the first degree when he intentionally abuses another person or permits another person of whom he has actual custody to be abused and thereby:
 - (a) Causes serious physical injury; or
 - (b) Places him in a situation that may cause him serious physical injury; or
 - (c) Causes torture, cruel confinement or cruel punishment; to a person twelve (12) years of age or less, or who is physically helpless or mentally helpless.
- (2) Criminal abuse in the first degree is a Class C felony.

KRS 508.110 Criminal abuse in the second degree.

- (1) A person is guilty of criminal abuse in the second degree when he wantonly abuses another person or permits another person of whom he has actual custody to be abused and thereby:
 - (a) Causes serious physical injury; or
 - (b) Places him in a situation that may cause him serious physical injury; or
 - (c) Causes torture, cruel confinement or cruel punishment; to a person twelve (12) years of age or less, or who is physically helpless or mentally helpless.
- (2) Criminal abuse in the second degree is a Class D felony.

KRS 508.120 Criminal abuse in the third degree.

- (1) A person is guilty of criminal abuse in the third degree when he recklessly abuses another person or permits another person of whom he has actual custody to be abused and thereby:
 - (a) Causes serious physical injury; or

- (b) Places him in a situation that may cause him serious physical injury; or
 - (c) Causes torture, cruel confinement or cruel punishment; to a person twelve (12) years of age or less, or who is physically helpless or mentally helpless.
- (2) Criminal abuse in the third degree is a Class A misdemeanor.

10. Other 'Non-Sex-Specific' Offenses

KRS 502.020 Liability for conduct of another - Complicity.

- (1) A person is guilty of an offense committed by another person when, with the intention of promoting or facilitating the commission of the offense, he:
- (a) Solicits, commands, or engages in a conspiracy with such other person to commit the offense; or
 - (b) Aids, counsels, or attempts to aid such person in planning or committing the offense; or
 - (c) Having a legal duty to prevent the commission of the offense, fails to make a proper effort to do so.
- (2) When causing a particular result is an element of an offense, a person who acts with the kind of culpability with respect to the result that is sufficient for the commission of the offense is guilty of that offense when he:
- (a) Solicits or engages in a conspiracy with another person to engage in the conduct causing such result; or
 - (b) Aids, counsels, or attempts to aid another person in planning, or engaging in the conduct causing such result; or
 - (c) Having a legal duty to prevent the conduct causing the result, fails to make a proper effort to do so.

KRS 511.020 Burglary in the first degree.

- (1) A person is guilty of burglary in the first degree when, with the intent to commit a crime, he knowingly enters or remains unlawfully in a building, and when in effecting entry or while in the building or in the immediate flight therefrom, he or another participant in the crime:
- (a) Is armed with explosives or a deadly weapon; or
 - (b) Causes physical injury to any person who is not a participant in the crime; or
 - (c) Uses or threatens the use of a dangerous instrument against any person who is not a participant in the crime.
- (2) Burglary in the first degree is a Class B felony.

KRS 511.030 Burglary in the second degree.

- (1) A person is guilty of burglary in the second degree when, with the intent to commit a crime, he knowingly enters or remains unlawfully in a dwelling.
- (2) Burglary in the second degree is a Class C felony.

KRS 511.040 Burglary in the third degree.

- (1) A person is guilty of burglary in the third degree when, with the intent to commit a crime, he knowingly enters or remains unlawfully in a building.
- (2) Burglary in the third degree is a Class D felony.

KRS 511.085 Domestic violence shelter trespass.

- (1) As used in this section, "domestic violence shelter" means a residential facility providing protective shelter services for domestic violence victims.
- (2) A person is guilty of domestic violence shelter trespass when:
- (a) The person enters the buildings or premises of a domestic violence shelter that the person knows or should know is a domestic violence shelter or which is clearly marked on the

- building or premises as being a domestic violence shelter; and
- (b) At the time of the entering, the person is the subject of an order of protection as defined in KRS 403.720 and 456.010.
- (3) It shall be a defense to a prosecution under this section that the person entered the shelter with the permission of the operator of the shelter after disclosing to the operator that the person is the subject of an order of protection or a foreign protective order. Authority to enter under this subsection may not be granted by a person taking shelter at the facility.
- (4) A person shall not be convicted of a violation of this section and a violation of KRS 511.060, 511.070, or 511.080 arising from the same act of trespass.
- (5) Domestic violence shelter trespass is a Class A misdemeanor.

KRS 519.040 Falsely reporting an incident.

- (1) A person is guilty of falsely reporting an incident when he:
- (a) Knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, that deals with emergencies involving danger to life or property; or
- (b) Reports to law enforcement authorities an offense or incident within their official concern knowing that it did not occur; or
- (c) Furnishes law enforcement authorities with information allegedly relating to an offense or incident within their official concern when he knows he has no information relating to such offense or incident; or
- (d) Knowingly gives false information to any law enforcement officer with intent to implicate another; or
- (e) Initiates or circulates a report or warning of an alleged occurrence or impending occurrence of a fire or other emergency under circumstances likely to cause public inconvenience or alarm when he knows the information reported, conveyed or circulated is false or baseless.
- (2) Falsely reporting an incident is a Class A misdemeanor.

11. Violence Toward Animals

525.125 Cruelty to animals in the first degree.

- (1) As used in this section:
- (a) "Dog" means a domesticated canid of the genus *canis lupus familiaris*; and
- (b) "Dog fight" or "dog fighting" means any event that involves a fight conducted or to be conducted between at least two (2) dogs for purposes of sport, wagering, or entertainment, except that the term "dog fight" or "dog fighting" shall not be deemed to include any activity the purpose of which involves the use of one (1) or more dogs in hunting or taking another animal.
- (2) The following persons are guilty of cruelty to animals in the first degree:
- (a) Whenever a dog is knowingly caused to dog fight for pleasure or profit:
1. The owner of the dog;
 2. The owner of the property on which the fight is conducted if the owner knows of the dog fight; and
 3. Anyone who participates in the organization of the dog fight; and
- (b) Any person who knowingly owns, possesses, keeps, trains, sells, or otherwise transfers a dog for the purpose of dog fighting.
- (3) Activities of dogs engaged in hunting, field trials, dog training, and other activities authorized either by a hunting license or by the Department of Fish and Wildlife Resources shall not constitute a violation of this section.

- (4) Activities of dogs engaged in working or guarding livestock shall not constitute a violation of this section.
- (5) Cruelty to animals in the first degree is a Class D felony.

KRS 525.135 Torture of dog or cat.

- (1) As used in this section, unless the context otherwise requires, “torture” means the intentional infliction of or subjection to extreme physical pain or injury, motivated by an intent to increase or prolong the pain of the animal.
- (2) A person is guilty of torture of a dog or cat when he or she without legal justification intentionally tortures a domestic dog or cat.
- (3) Torture of a dog or cat is a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense if the dog or cat suffers physical injury as a result of the torture, and a Class D felony if the dog or cat suffers serious physical injury or death as a result of the torture.
- (4) Nothing in this section shall apply to the killing or injuring of a dog or cat:
 - (a) In accordance with a license to hunt, fish, or trap;
 - (b) For humane purposes;
 - (c) For veterinary, agricultural, spaying or neutering, or cosmetic purposes;
 - (d) For purposes relating to sporting activities including but not limited to training for organized dog or cat shows, or other animal shows in which a dog or a cat, or both, participate;
 - (e) For bona fide animal research activities, using dogs or cats, of institutions of higher education; or a business entity registered with the United States Department of Agriculture under the Animal Welfare Act or subject to other federal laws governing animal research;
 - (f) In defense of self or another person against an aggressive or diseased dog or cat;
 - (g) In defense of a domestic animal against an aggressive or diseased dog or cat;
 - (h) For animal or pest control; or
 - (i) For any other purpose authorized by law.
- (5) Activities of animals engaged in hunting, field trials, dog training other than training a dog to fight for pleasure or profit, and other activities authorized either by a hunting license or by the Department of Fish and Wildlife Resources shall not constitute a violation of this section.
- (6) The acts specified in this section shall not constitute cruelty to animals under KRS 525.125 or 525.130.

C. TRIAL PROCEDURE AND RELATED ISSUES

1. Rules of Criminal Procedure (RCr)

RCr 3.10 Preliminary Hearing: waiver.

- (1) The defendant may waive a preliminary hearing.
- (2) If the defendant does not waive the preliminary hearing, such hearing shall be held within a reasonable time but no later than 10 days following the initial appearance if the defendant is in custody and no later than 20 days if the defendant is not in custody, provided, however, that the preliminary hearing shall not be held if the defendant is indicted before the date set for the hearing. In the event the preliminary hearing is not held within the above time period, the defendant shall be discharged from custody, and he or she shall thereafter be proceeded against on that charge by indictment only. Unless the defendant consents to an extension, time limits may be extended by the court only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

- (3) Notwithstanding waiver of the preliminary hearing, at any time before the defendant has been indicted the attorney for the Commonwealth shall, upon demand, be entitled to a preliminary hearing for the purpose of examining witnesses. The defendant may cross-examine the witnesses offered by the Commonwealth.

RCr 3.14 Probable Cause finding.

- (1) If the defendant waives the preliminary hearing or if from the evidence it appears to the judge that there is probable cause to believe that an offense required to be prosecuted by indictment pursuant to Section 12 of the Kentucky Constitution has been committed and that the defendant committed it, the judge shall hold the defendant to answer in the circuit court and commit the defendant to jail, release the defendant on personal recognizance or admit the defendant to bail if the offense is bailable; otherwise the defendant shall be discharged.
- (2) The finding of probable cause may be based upon hearsay evidence in whole or in part. The defendant may cross-examine witnesses against him or her and may introduce evidence in his or her own behalf.
- (3) Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary hearing. Motions to suppress must be made to the trial court as provided in Rule 9.78.

RCr 4.02 Bailable offenses; eligibility for pretrial release.

- (1) All persons shall be bailable before conviction, except when death is a possible punishment for the offense or offenses charged and the proof is evident or the presumption is great that the defendant is guilty.
- (2) All defendants charged with bailable offenses shall be considered for pre-trial release without making formal application except when a capital offense is charged. A person charged with a capital offense must make an application for pre-trial release.
- (3) On the hearing of an application for admission to pre-trial release made before or after indictment for a capital offense, the burden of showing that the proof is evident or the presumption is great that the defendant is guilty is on the Commonwealth.

RCr 4.10 Release on personal recognizance; unsecured bail bond.

A defendant shall be released on personal recognizance or upon an unsecured bail bond unless the court determines, in the exercise of its discretion, that such release will not reasonably assure the appearance of the defendant as required. In the exercise of such discretion the court shall give due consideration to recommendations of the local pre-trial services agency when made as authorized by order of the Supreme Court.

RCr 4.12 Release on nonfinancial conditions.

If a defendant's promise to appear or his or her execution of an unsecured bail bond alone is not deemed sufficient to insure his or her appearance when required, the court shall impose the least onerous conditions reasonably likely to insure the defendant's appearance as required. Such conditions of release may include but are not limited to placing the defendant in the custody of a designated person or organization agreeing to supervise the defendant or to placing restrictions on the defendant's travel, association or place of abode during the period of release. Commensurate with the risk of nonappearance the court may impose any other condition including a condition requiring the defendant to return to custody after specified hours.

RCr 4.14 Nonfinancial conditions on release.

The court shall cause the issuance of an order containing a statement of any conditions imposed upon the defendant for his or her release. The defendant shall sign the statement of conditions and receive a copy thereof. The order shall inform the defendant of penalties applicable to violation of conditions and advise that a warrant for the defendant's arrest will be issued if conditions are violated. The court shall also inform the local pre-trial services agency of the conditions of release.

RCr 4.16 Amount of bail.

- (1) The amount of bail shall be sufficient to insure compliance with the conditions of release set by the court. It shall not be oppressive and shall be commensurate with the gravity of the offense charged. In determining such amount the court shall consider the defendant's past criminal acts, if any, the defendant's reasonably anticipated conduct if released and the defendant's financial ability to give bail.
- (2) If a defendant is charged with an offense punishable by fine only, the amount of bail shall not exceed the amount of the maximum penalty and costs.
- (3) Amount of bail may also be set in accordance with the uniform schedule of bail prescribed for designated misdemeanors and violations in Appendix A - Uniform Schedule of Bail, of these rules.

a. The Grand Jury

RCr 5.02 Charge to grand jury.

The court shall swear the grand jurors and charge them to inquire into every offense for which any person has been held to answer and for which an indictment or information has not been filed, or other offenses which come to their attention or of which any of them has knowledge. The court shall further instruct the grand jurors concerning (a) their right to exclude the attorney for the Commonwealth while questioning witnesses, (b) their rights and duties to juvenile cases as provided in KRS 640.010, and (c) any other matter affecting their rights and duties as grand jurors which the court believes will assist them in the conduct of their business.

RCr 5.06 Attendance of witnesses before the Grand Jury.

The Clerk, upon request of the foreperson of the Grand Jury or of the attorney for the Commonwealth, shall issue subpoenas for witnesses. The attendance of witnesses may be coerced as in other judicial proceedings, unless, and until, excused, or modified, by the requesting party. RCr 7.02 shall apply to Grand Jury subpoenas except that a subpoena issued pursuant to this rule may command the person to whom it is directed to produce the books, papers, documents or other objects designated therein to the foreperson of the Grand Jury or the Commonwealth's Attorney or his/her agent, without requiring the personal appearance of the witness before the Grand Jury.

RCr 5.08 Evidence for defendant.

If the defendant notifies the attorney for the Commonwealth in writing of his or her desire to present evidence before the grand jury, the attorney for the Commonwealth shall so inform the grand jury. The grand jurors may hear evidence for the defendant, but are not required to do so.

RCr 5.10 Evidence supporting indictment.

The grand jurors shall find an indictment where they have received what they believe to be sufficient evidence to support it, but no indictment shall be quashed or judgment of conviction reversed on the ground that there was not sufficient evidence before the grand jury to support the indictment.

RCr 5.12 Compelling testimony.

When a witness before the grand jury refuses to testify or to answer a question put to him or her, the foreperson shall state the refusal to the court in the presence of the witness. After hearing the witness, if the court decides that the witness is bound to testify or answer and the witness persists in his or her refusal, the court shall proceed against the witness as in cases of similar refusal in open court.

RCr 5.14 Duties of the prosecuting attorney.

- (1) The attorney for the Commonwealth, or an assistant, designated by the attorney for the Commonwealth, shall attend the grand jurors when requested by them, and he or she may do so on his or her own initiative, for the purpose of examining witnesses in their presence, or of giving the grand jurors legal advice regarding any matter cognizable by them. The attorney for the Commonwealth or designated assistant shall also, when requested by them, draft indictments.
- (2) At the time of the return of the indictment of a defendant the attorney for the Commonwealth shall inform the court of the defendant's status with respect to bail.

RCr 5.18 Presence of other persons with grand jury.

No person except the attorney or attorneys for the Commonwealth, a stenographer or operator of a recording device appointed by the attorney for the Commonwealth, the witness under examination, an interpreter, if needed, a parent, guardian or custodian of a minor witness or other person under disability, and the grand jurors shall be present while the grand jury is in session. No person other than the grand jurors shall be present while the grand jury is deliberating or voting. Any person violating this Rule may be held in contempt of court.

RCr 5.22 Procedure upon failure to indict.

- (1) If the defendant has been held to answer pursuant to RCr 3.14(1) and the votes of the grand jurors are insufficient in number to find an indictment as to any one or more charges or counts presented to the grand jury, the foreperson shall forthwith so report in writing to the circuit court. The circuit court shall thereupon make an order dismissing any such charges or counts without prejudice, discharging the defendant from custody as to any such charges or counts, exonerating the defendant's bail and any conditions thereon as to any such charges or counts or directing a refund of any money or bonds deposited as bail as to any such charges or counts, as the case may be.
- (2) If the defendant has been held to answer pursuant to RCr 3.14(1), and the grand jury finally adjourns without having either indicted such defendant or referred the matter to the next grand jury by a writing filed with the circuit court, the circuit court shall thereupon make an order dismissing all charges or counts against such defendant without prejudice, discharging such defendant from custody as to any such charges or counts; or, if such defendant is free on bail that has not been forfeited, exonerating such defendant's bail and any conditions thereon as to any such charges or counts or directing a refund of any money or bonds deposited as bail as to any such charges or counts, as the case may be.
- (3) In any event, if a defendant has been held to answer, without being indicted, for longer than 60 days from the finding of probable cause pursuant to RCr 3.14(1), the circuit court shall, upon motion, thereupon make an order discharging such defendant from custody; or, if such defendant is free on bail that has not been forfeited, exonerating such defendant's bail and any conditions thereon or directing a refund of any money or bonds deposited as bail, as the case may be.
- (4) Failure of the grand jury to return an indictment against a defendant does not prevent any charge against such defendant from being submitted to another grand jury.

RCr 5.24 Secrecy of proceedings; disclosure.

- (1) Subject to the right of a person indicted to procure a transcript or recording as provided by Rule 5.16(3), and subject to the authority of the court at any time to direct otherwise, all persons present during any part of the proceedings of a grand jury shall keep its proceedings and the testimony given before it secret, except that counsel may divulge such information as may be necessary in preparing the case for trial or other disposition.
- (2) The court may direct that an indictment be kept secret until the defendant is in custody or has given bail, in which event the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.
- (3) A violation of this Rule 5.24 shall be punishable as a contempt of court.

b. Arraignment and other pre-trial matters

RCr 8.02 Arraignment.

Arraignment shall be conducted in open court and shall consist of reading or stating to the defendant the substance of the charge and calling upon the defendant to plead in response to it. Defendants who are jointly charged may be arraigned separately or together, in the discretion of the court.

RCr 8.06 Incapacity to stand trial.

If upon arraignment or during the proceedings there are reasonable grounds to believe that the defendant lacks the capacity to appreciate the nature and consequences of the proceedings against him or her, or to participate rationally in his or her defense, all proceedings shall be postponed until the issue of incapacity is determined as provided by KRS 504.100.

RCr 8.08 Pleas.

A defendant may plead not guilty, guilty or guilty but mentally ill. The court may refuse to accept a plea of guilty or guilty but mentally ill, and shall not accept the plea without first determining that the plea is made voluntarily with understanding of the nature of the charge. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or guilty but mentally ill or if a defendant corporation fails to appear, the court shall enter a plea of not guilty

RCr 9.42 Order of Proceeding (at Trial).

The jury shall be sworn to try the issue after which the trial shall proceed in the following order, unless the court for special reasons otherwise directs:

- (1) The attorney for the Commonwealth shall state to the jury the nature of the charge and the evidence upon which the Commonwealth relies to support it;
- (2) The defendant or the defendant's attorney may state the defense and the evidence upon which the defendant relies to support it or the defendant may reserve opening statement until the conclusion of the evidence for the Commonwealth;
- (3) The attorney for the Commonwealth must offer the evidence in support of the charge;
- (4) The defendant or the defendant's attorney may make opening statement, if reserved, and offer evidence in support of the defense;
- (5) The parties respectively may offer rebutting evidence, unless the court, for good reason in furtherance of justice, permits them to offer evidence-in-chief;
- (6) The parties may submit or argue the case to the jury. In the argument, the attorney for the Commonwealth shall have the conclusion and the defendant or the defendant's attorney the opening. If more than one (1) counsel is to take part in the closing argument on either side, or if several defendants have separate defenses and appear by different counsel, the court shall arrange the order of argument, always giving the attorney for the Commonwealth the closing argument.

RCr 9.56 Reasonable Doubt.

- (1) In every case the jury shall be instructed substantially as follows: "The law presumes a defendant to be innocent of a crime, and the indictment shall not be considered as evidence or as having any weight against him or her. You shall find the defendant not guilty unless you are satisfied from the evidence alone, and beyond a reasonable doubt, that he or she is guilty. If upon the whole case you have a reasonable doubt that he or she is guilty, you shall find him or her not guilty."
- (2) The instructions should not attempt to define the term "reasonable doubt."

2. Additional Procedures for Juvenile Offenders

a. Confidentiality of Court Proceedings & Required Disclosures

KRS 610.060 Duty of court upon formal proceeding-Right to attend proceeding-Payment for counsel (requires victim to be notified and be allowed to be present).

- (1) If the Circuit or District Court determines that a formal proceeding is required in the interest of the child or to determine the truth or falsity of the allegations against the child, a petition shall be required pursuant to KRS 610.020, and the court shall, when the child is brought before the court:
 - (a) Explain to the child and his parents, guardian, or person exercising custodial control their respective rights to counsel and, if the child and his parents, guardian, or person exercising custodial control are unable to obtain counsel, shall appoint counsel for the child, as provided in subsection (2) of this section, and, unless specified to the contrary by other provisions of KRS Chapters 600 to 645, may appoint counsel for the parents, guardian, or person exercising custodial control;
 - (b) Explain the right against self-incrimination by saying that the child, parents, relative, guardian, or custodian may remain silent concerning the charges against the child, and that anything said may be used against the child;
 - (c) Unless limited by statute, explain the right to confront anyone who has accused the child and to cross-examine that person on the allegations made against the child;
 - (d) Advise the child and his parents, guardian, or person exercising custodial control of the right to appeal from a determination of the court; and
 - (e) Advise the child that these rights belong to him and may not be waived by his parents, guardian, or person exercising custodial control.
- (2)
 - (a) No court shall accept a plea or admission or conduct an adjudication hearing involving a child accused of committing any felony offense, any offense under KRS Chapter 510, or any offense for which the court intends to impose detention or commitment as a disposition unless that child is represented by counsel
 - (b) For a child accused of committing any other offense, before a court permits the child to proceed beyond notification of the right to counsel required by paragraph (a) of subsection (1) of this subsection without representation, the court shall:
 1. Conduct a hearing about the child's waiver of counsel; and
 2. Make specific findings of fact that the child knowingly, intelligently and voluntarily waived his right to counsel.
- (3) Unless otherwise exempted in KRS Chapters 600 to 645, a child and his parents or person exercising custodial control shall have a right to attend the hearing if such attendance will not unnecessarily delay the hearing.
- (4) Subject to the provisions of KRS 31.125, the court may order a parent to pay for counsel for the child if the court determines that the parent has the ability to pay for such counsel. The fact that a child is committed to a state agency shall not be cause for the court to order that agency to

pay for counsel.

- (5) Subject to Rule 43.09 of the Rules of Civil Procedure, the court shall permit the victim, the victim's parents or legal guardian, or, if emancipated, the victim's spouse, or the legal representative of any of these, to attend all proceedings under this section.
- (6) An attempt shall be made to notify the persons specified in subsection (5) of this section of the time, date, and place of all proceedings under this section. Each District Court shall, by rule, establish the means of notification and the person or agency responsible for making the notifications. The failure of a victim or other person specified in subsection (5) of this section to receive notice shall not delay the proceedings in the case.

KRS 610.070 Hearings (authorizes victim to be present).

- (1) All cases involving children brought before the court whose cases are under the jurisdiction of the court shall be granted a speedy hearing and shall be dealt with by the court without a jury.
- (2) The hearings shall be conducted in a formal manner, unless specified to the contrary by other provisions of KRS Chapters 600 to 645.
- (3) The general public shall be excluded and only the immediate families or guardians of the parties before the court, witnesses necessary for the prosecution and defense of the case, the probation worker with direct interest in the case, a representative from the Department of Juvenile Justice, the victim, his parent or legal guardian, or if emancipated, his spouse, or a legal representative of either, such persons admitted as the judge shall find have a direct interest in the case or in the work of the court, and such other persons as agreed to by the child and his attorney may be admitted to the hearing. A parent, legal guardian, or spouse if a witness shall be admitted to the hearing only during and after his testimony at the hearing, and witnesses shall be admitted to the hearing only for the duration of their testimony. The court may order the exclusion of a parent, legal guardian, or spouse, if it is shown to the satisfaction of the court that the parent, legal guardian, or spouse may physically disrupt the proceedings or may do violence to any participant therein. The mere presence of a parent, legal guardian, or spouse shall not be deemed to be a disruption of the proceedings merely because their presence may make the defendant uncomfortable; the court shall find a potential for actual physical disruption of the proceedings before an exclusion may be granted for this reason.
- (4) The court may order the parents, guardians, or persons exercising custodial control over the child to be present at any hearing or other proceeding involving the child.

KRS 610.320 Juvenile record and juvenile docket -- Disclosure of information in court and police records concerning juvenile prohibited -- Exceptions -- Use of juvenile records in court.

- (1) A special record book shall be kept by the court for all cases, to be known as the "juvenile record," and the docket or calendar of such cases shall be called the "juvenile docket."
- (2) No probation officer, nor employee of a probation officer, shall, without the consent of the District Judge sitting in juvenile session, divulge or communicate to any persons other than the court, law enforcement, the Department of Juvenile Justice, an officer of the court interested in the case, a member of the advisory board of the court, or a representative of the cabinet, any information obtained pursuant to the discharge of his duties, nor shall any record of the action of the probation officer be made public except by leave of the District Judge; provided, that nothing in this subsection shall prohibit the probation officer from divulging or communicating such information to the court, to his colleagues or superiors in his own department, or to another probation officer having a direct interest in the record or social history of the child.
- (3) All law enforcement and court records regarding children who have not reached their eighteenth birthday shall not be opened to scrutiny by the public, except that a separate public record shall be kept by the clerk of the court which shall be accessible to the public for court records, limited to the petition, order of the adjudication, and disposition in juvenile delinquency proceedings concerning a child who is fourteen (14) years of age or older at the

time of the commission of the offense, and who is adjudicated a juvenile delinquent for the commission of an offense that would constitute a capital offense or a Class A, B, or C felony if the juvenile were an adult, or any offense involving a deadly weapon, or an offense wherein a deadly weapon is used or displayed.

- (4) Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act is also prohibited. Otherwise, the law enforcement records shall be made available to the child, family, guardian, or legal representative of the child involved. The records shall also be made available to the court, probation officers, prosecutors, the Department of Juvenile Justice, and law enforcement agencies or representatives of the cabinet. Records, limited to the child's adjudication of delinquency, and disposition of a criminal activity covered by KRS 610.345, shall also be made available to public or private elementary and secondary school administrative, transportation, and counseling personnel, and to any teacher to whose class the student has been assigned for instruction, subject to the provisions of KRS 610.340 and 610.345.
- (5) Subject to the Kentucky Rules of Evidence, juvenile court records of adjudications of guilt of a child for an offense which would be a felony if committed by an adult shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial, and may be used during the sentencing phase of a criminal trial. However, the fact that a juvenile has been adjudicated delinquent of an offense which would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication.
- (6) This section shall not relieve the probation officer or peace officer from divulging such facts as a witness in a trial or hearing involving any cases falling under KRS Chapters 600 to 645 or the production of juvenile records for use in the trial or proceedings.
- (7) This section shall not prohibit release of information regarding juvenile proceedings in the District Court which do not reveal the identity of the child or its parents or guardians, or which relate to the child's eligibility for services under Title IV-E or IV-B of the Federal Social Security Act. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court.

KRS 610.340 Confidentiality of juvenile court records.

- (1)
 - (a) Unless a specific provision of KRS Chapters 600 to 645 specifies otherwise, all juvenile court records of any nature generated pursuant to KRS Chapters 600 to 645 by any agency or instrumentality, public or private, shall be deemed to be confidential and shall not be disclosed except to the child, parent, victims, or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070 unless ordered by the court for good cause.
 - (b) Juvenile court records which contain information pertaining to arrests, petitions, adjudications, and dispositions of a child may be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.
 - (c) Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV- B of the Federal Social Security Act shall not be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.
 - (d) Victim access under this subsection to juvenile court records shall include access to records of adjudications that occurred prior to July 15, 1998.

- (2) The provisions of this section shall not apply to public officers or employees engaged in the investigation of and in the prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes. Any record obtained pursuant to this subsection shall be used for official use only, shall not be disclosed publicly, and shall be exempt from disclosure under the Open Records Act, KRS 61.870 to 61.884.
- (3) The provisions of this section shall not apply to any peace officer, as defined in KRS 446.010, who is engaged in the investigation or prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes. Any record obtained pursuant to this subsection shall be used for official use only, shall not be disclosed publicly, and shall be exempt from disclosure under the Open Records Act, KRS 61.870 to 61.884.
- (4) The provisions of this section shall not apply to employees of the Department of Juvenile Justice or cabinet or its designees responsible for any services under KRS Chapters 600 to 645 or to attorneys for parties involved in actions relating to KRS Chapters 600 to 645 or other prosecutions authorized by the Kentucky Revised Statutes.
- (5) The provisions of this section shall not apply to records disclosed pursuant to KRS 610.320 or to public or private elementary and secondary school administrative, transportation, and counseling personnel, to any teacher or school employee with whom the student may come in contact, or to persons entitled to have juvenile records under KRS 610.345, if the possession and use of the records is in compliance with the provisions of KRS 610.345 and this section.
- (6) No person, including school personnel, shall disclose any confidential record or any information contained therein except as permitted by this section or other specific section of KRS Chapters 600 to 645, or except as permitted by specific order of the court.
- (7) No person, including school personnel, authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain confidential records to which he is not entitled or for purposes for which he is not permitted to obtain them pursuant to KRS Chapters 600 to 645.
- (8) No person, including school personnel, not authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records which are made confidential pursuant to KRS Chapters 600 to 645 except upon proper motion to a court of competent jurisdiction.
- (9) No person shall destroy or attempt to destroy any record required to be kept pursuant to KRS Chapters 600 to 645 unless the destruction is permitted pursuant to KRS Chapters 600 to 645 and is authorized by the court upon proper motion and good cause for the destruction being shown.
- (10) As used in this section the term "KRS Chapters 600 to 645" includes any administrative regulations which are lawfully promulgated pursuant to KRS Chapters 600 to 645.
- (11) Nothing in this section shall be construed to prohibit a crime victim from speaking publicly after the adjudication about his or her case on matters within his or her knowledge or on matters disclosed to the victim during any aspect of a juvenile court proceeding.

KRS 610.345 School superintendent or principal to be notified when child found guilty or when petition is filed -- Disclosure of records -- Provision of offense history to school superintendent.

- (1) When a child is adjudicated guilty of an offense which classifies him or her as a youthful offender, the judge in the court in which the matter was tried shall direct the clerk to notify the superintendent of the public school district in which the child is enrolled or the principal of any private elementary or secondary school which the child attends of the adjudication and the petition and disposition of the case. The name of the complainant shall be deleted. The court shall direct the appropriate prosecuting entity to give the school district or the school a statement of facts in the case. The superintendent shall notify the principal of the school in which the child is enrolled.
- (2) When a child is adjudicated guilty of an offense which would classify him or her as a violent offender under KRS 439.3401, or be a felony under KRS Chapter 218A, 508, 510, or 527 if

committed by an adult, but which would not classify him or her as a youthful offender, the judge in the court in which the matter was tried shall direct the clerk to notify within five (5) days of the order the superintendent of the public school district in which the child is enrolled or the principal of any private elementary or secondary school which the child attends of the charge, the adjudication, and the disposition of the case. The name of the complainant shall be deleted. The court shall authorize the county attorney to give the school district or the school a statement of facts in the case. The superintendent shall notify the principal of the school in which the child is enrolled.

- (3) When a petition is filed against a child, or a child is adjudicated guilty of an offense that would be a felony or misdemeanor if committed by an adult, and the misdemeanor involves a controlled substance or the possession, carrying, or use of a deadly weapon, or physical injury to another person, the judge in the court in which the matter is considered shall direct the clerk to notify the superintendent of the public school district in which the child is enrolled or the principal of any private elementary or secondary school that the child attends of the charge, the adjudication, and the disposition of the case. The notification shall be made within twenty-four (24) hours of the time when the petition is filed. The name of the complainant shall be deleted. The court shall authorize the county attorney to give the school district or the school a statement of the facts in the case, not to include the complainant's name. If the petition is dismissed, all records of the incident or notification created in the school district or the school under this subsection shall be destroyed, and shall not be included in the child's school records.
- (4) Notice of adjudication to a district superintendent referenced in subsections (2) and (3) of this section shall be released by the superintendent to the principal. A principal of a public or private school receiving notice of adjudication shall release the information to employees of the school having responsibility for classroom instruction or counseling of the child and may release it to other school personnel as described in subsection (5) of this section, but the information shall otherwise be confidential and shall not be shared by school personnel with any other person or agency except as may otherwise be required by law. The notification in writing of the nature of the offense committed by the child and any probation requirements shall not become a part of the child's student record.
- (5) Records or information disclosed pursuant to this section shall be limited to records of that student's criminal petition and the disposition thereof covered by this section, shall be subject to the provisions of KRS 610.320 and 610.340, and shall not be disclosed to any other person, including school personnel, except to a district superintendent, public or private elementary and secondary school administrative, transportation, and counseling personnel, and to any teacher or school employee with whom the student may come in contact. This section shall not authorize the disclosure of any other juvenile record or information relating to the child.
- (6) The Department of Juvenile Justice shall provide a child's offense history information pursuant to this section to the superintendent of the local school district in which the child, who is committed to the department, is placed.
- (7) Records or information received by the school pursuant to this section shall be kept in a locked file, when not in use, to be opened only on permission of the administrator.

b. Placement of Juvenile Sex Offenders and Required Disclosures

KRS 605.090 Alternative treatment for committed children - Notice of inappropriate behavior of child - Procedures for removal of child committed as dependent, neglected, or abused - Reports - Written transfer summary - Placement of public offenders. - Text included in Chapter 4, Section A, 2.

KRS 620.090 Temporary custody orders. - Text included in Chapter 4, Section A, 2.

KRS 620.230 Case permanency plans. - Text included in Chapter 4, Section A, 2.

c. Trying a Minor as Youthful Offender, i.e. subject to same penalties as an adult

KRS 610.015 Procedure when child tried as an adult-Matters to be tried by Circuit Court-Release of Records.

- (1) A child who is charged with an offense which classifies him for trial as an adult in the Circuit Court or the adult session of the District Court shall, at the time the decision is made by the court to try the child as an adult, be subject to the arrest, post-arrest, and criminal procedures that apply to an adult, except for the place of confinement, as provided in the Kentucky Revised Statutes and the Rules of Criminal Procedure.
- (2) The Circuit Court shall try all misdemeanor, violation, traffic offense, and status offense matters included in or which arise from the act or series of acts which result in the trial of a child as an adult in the Circuit Court.
- (3) Records, limited to the records of the present case in which the child has been charged, relating to a child charged under this section shall not be made public until after the child has been indicted and arraigned on the offense for trial of the child as an adult. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act is also prohibited.
- (4) This section shall not be construed as permitting the release of the child's treatment, medical, mental, or psychological records unless those records are presented as evidence in open court. The release of information relative to the child's eligibility for services under Title IV-E or IV-B of the Federal Social Security Act is prohibited.

KRS 635.020 Criteria for determining how child is to be tried.

- (1) If, prior to an adjudicatory hearing, there is a reasonable cause to believe that a child before the court has committed a felony other than those described in subsections (2) and (3) of this section, a misdemeanor, or a violation, the court shall initially proceed in accordance with the provisions of this chapter.
- (2) If a child charged with a capital offense, Class A felony, or Class B felony, had attained age fourteen (14) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (3) If a child charged with a Class C or Class D felony has on one (1) prior separate occasion been adjudicated a public offender for a felony offense and had attained the age of sixteen (16) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (4) Any other provision of KRS Chapters 610 to 645 to the contrary notwithstanding, if a child charged with a felony in which a firearm, whether functional or not, was used in the commission of the offense had attained the age of fourteen (14) years at the time of the commission of the alleged offense, he shall be transferred to the Circuit Court for trial as an adult if, following a preliminary hearing, the District Court finds probable cause to believe that the child committed a felony, that a firearm was used in the commission of that felony, and that the child was fourteen (14) years of age or older at the time of the commission of the alleged felony. If convicted in the Circuit Court, he shall be subject to the same penalties as an adult offender, except that until he reaches the age of eighteen (18) years, he shall be confined in a facility or program for juveniles or for youthful offenders, unless the provisions of KRS 635.025 apply or unless he is released pursuant to expiration of sentence or parole, and at age eighteen (18) he shall be returned to the sentencing Circuit Court for proceedings consistent with KRS 640.030(2).

- (5) If a child previously convicted as a youthful offender under the provisions of KRS Chapter 640 is charged with a felony allegedly committed prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (6) A child who is charged as is provided in subsection (2) of this section and is also charged with a Class C or D felony, a misdemeanor, or a violation arising from the same course of conduct shall have all charges included in the same proceedings; and the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (7) If a person who is eighteen (18) or older and before the court is charged with a felony that occurred prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (8) All offenses arising out of the same course of conduct shall be tried with the felony arising from that course of conduct, whether the charges are adjudicated under this chapter or under KRS Chapter 640 and transferred to Circuit Court.

KRS 640.010 Preliminary hearing - Proof required to try child as youthful offender in Circuit Court.

- (1) For children who are alleged to be youthful offenders by falling in the purview of KRS 635.020(2), (3), (5), (6), (7), or (8), the court shall at arraignment assure that the child's rights as specified in KRS 610.060 have been explained and followed.
- (2) In the case of a child alleged to be a youthful offender by falling within the purview of KRS 635.020(2), (3), (5), (6), (7), or (8), the District Court shall, upon motion by the county attorney to proceed under this chapter, and after the county attorney has consulted with the Commonwealth's attorney, conduct a preliminary hearing to determine if the child should be transferred to Circuit Court as a youthful offender. The preliminary hearing shall be conducted in accordance with the Rules of Criminal Procedure.
 - (a) At the preliminary hearing, the court shall determine if there is probable cause to believe that a offense was committed, that the child committed the offense, and that the child is of sufficient age and has the requisite number of prior adjudications, if any, necessary to fall within the purview of KRS 635.020.
 - (b) If the District Court determines probable cause exists, the court shall consider the following factors before determining whether the child's case shall be transferred to the Circuit Court:
 1. The seriousness of the alleged offense;
 2. Whether the offense was against persons or property, with greater weight being given to offenses against persons;
 3. The maturity of the child as determined by his environment;
 4. The child's prior record;
 5. The best interest of the child and community;
 6. The prospects of adequate protection of the public;
 7. The likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available to the juvenile justice system; and
 8. Evidence of a child's participation in a gang.
 - (c) If, following the completion of the preliminary hearing, the District Court finds, after considering the factors enumerated in paragraph (b) of this subsection, that two (2) or more of the factors specified in paragraph (b) of this subsection are determined to favor transfer, the child may be transferred to Circuit Court, and if the child is transferred the District

Court shall issue an order transferring the child as a youthful offender and shall state on the record the reasons for the transfer. The child shall then be proceeded against in the Circuit Court as an adult, except as otherwise provided in this chapter.

- (d) If, following completion of the preliminary hearing, the District Court is of the opinion, after considering the factors enumerated in paragraph (b) of this subsection, that the child shall not be transferred to the Circuit Court, the case shall be dealt with as provided in KRS Chapter 635.
- (3) If the child is transferred to Circuit Court under this section and the grand jury does not find that there is probable cause to indict the child as a youthful offender, as defined in KRS 635.020(2), (3), (5), (6), (7), and (8), but does find that there is probable cause to indict the child for another criminal offense, the child shall not be tried as a youthful offender in Circuit Court but shall be returned to District Court to be dealt with as provided in KRS Chapter 635.

KRS 640.030 Sentencing after conviction or plea of guilty.

A youthful offender, who is convicted of, or pleads guilty to, a felony offense in Circuit Court, shall be subject to the same type of sentencing procedures and duration of sentence, including probation and conditional discharge, as an adult convicted of a felony offense, except that:

- (1) The presentence investigation required by KRS 532.050 shall be prepared by the Department of Juvenile Justice or by its designated representative;
- (2) Except as provided in KRS 640.070, any sentence imposed upon the youthful offender shall be served in a facility or program operated or contracted by the Department of Juvenile Justice until the expiration of the sentence, the youthful offender is paroled, the youthful offender is probated, or the youthful offender reaches the age of eighteen (18), whichever first occurs. The Department of Juvenile Justice shall take custody of a youthful offender, remanded into its custody, within sixty (60) days following sentencing. If an individual sentenced as a youthful offender attains the age of eighteen (18) prior to the expiration of his sentence, and has not been probated or released on parole, that individual shall be returned to the sentencing court. At that time, the sentencing court shall make one (1) of the following determinations:
- (a) Whether the youthful offender shall be placed on probation or conditional discharge;
- (b) Whether the youthful offender shall be returned to the Department of Juvenile Justice to complete a treatment program, which treatment program shall not exceed the youthful offender's attainment of the age of eighteen (18) years and five (5) months. At the conclusion of the treatment program, the individual shall be returned to the sentencing court for a determination under paragraph (a) or (c) of this subsection; or
- (c) Whether the youthful offender shall be incarcerated in an institution operated by the Department of Corrections;
- (3) If a youthful offender has attained the age of eighteen (18) years but less than eighteen (18) years and five (5) months prior to sentencing, that individual shall be returned to the sentencing court upon attaining the age of eighteen (18) years and five (5) months if that individual has been sentenced to a period of placement or treatment with the Department of Juvenile Justice. The court shall have the same dispositional options as currently provided in subsection (2)(a) and (c) of this section;
- (4) The Department of Juvenile Justice shall inform the sentencing court of any youthful offender in their custody pursuant to this section who has attained the age of eighteen (18) years and five (5) months, and the court shall enter a court order directing the sheriff or jailer to transport the youthful offender to the county jail to await sentencing pursuant to subsection (2)(a) or (c) of this section; and
- (5) KRS 197.420 to the contrary notwithstanding, a youthful offender who has committed a sex crime, as defined in KRS 17.500, or any similar offense in another jurisdiction shall be provided a sexual offender treatment program by the Department of Juvenile Justice pursuant to KRS 635.500 and as mandated by KRS 439.340(11) unless the youthful offender has been transferred to the Department of Corrections.

D. SENTENCING GUIDELINES AND PROCEDURES

KRS 532.031 Hate crimes -- Finding Effect -- Definitions.

- (1) A person may be found by the sentencing judge to have committed an offense specified below as a result of a hate crime if the person intentionally because of race, color, religion, sexual orientation, or national origin of another individual or group of individuals or because of a person's actual or perceived employment as a state, city, county, or federal peace officer, member of an organized fire department, or emergency medical services personnel, violates a provision of any one (1) of the following:
 - (a) KRS 508.010, 508.020, 508.025, or 508.030;
 - (b) KRS 508.050 or 508.060;
 - (c) KRS 508.100 or 508.110;
 - (d) KRS 509.020;
 - (e) KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.100, or 510.110;
 - (f) KRS 512.020, 512.050, or 512.060;
 - (g) KRS 513.020, 513.030, or 513.040; or
 - (h) KRS 525.020, 525.050, 525.060, 525.070, or 525.080.
- (2) At sentencing, the sentencing judge shall determine if, by a preponderance of the evidence presented at the trial, a hate crime was a primary factor in the commission of the crime by the defendant. If so, the judge shall make a written finding of fact and enter that in the court record and in the judgment rendered against the defendant.
- (3) The finding that a hate crime was a primary factor in the commission of the crime by the defendant may be utilized by the sentencing judge as the sole factor for denial of probation, shock probation, conditional discharge, or other form of nonimposition of a sentence of incarceration.
- (4) The finding by the sentencing judge that a hate crime was a primary factor in the commission of the crime by the defendant may be utilized by the Parole Board in delaying or denying parole to a defendant.
- (5) As used in this section:
 - (a) "Emergency medical services personnel" has the same meaning as in KRS 311A.010; and
 - (b) "Member of an organized fire department, or emergency medical services personnel" includes volunteers, if the violation occurs while the volunteer is performing duties with an organized fire department or as emergency medical services personnel.

KRS 532.032 Restitution.

- (1) Restitution to a named victim, if there is a named victim, shall be ordered in a manner consistent, insofar as possible, with the provisions of this section and KRS 439.563, 532.033, 533.020, and 533.030 in addition to any other part of the penalty for any offense under this chapter. The provisions of this section shall not be subject to suspension or nonimposition.
- (2) If pretrial diversion is granted, restitution shall be a part of the diversion agreement.
- (3) If probation, shock probation, conditional discharge, or other alternative sentence is granted, restitution shall be a condition of the sentence.
- (4) If a person is sentenced to incarceration and paroled, restitution shall be made a condition of parole.
- (5) Restitution payments ordered under this section shall be paid by the defendant to the clerk or a court-authorized program run by the county attorney or the Commonwealth's attorney of the county

KRS 532.040 Probation and conditional discharge.

When a person is convicted of an offense, other than a capital offense or having been designated a violent offender as defined in KRS 439.3401, the court, where authorized by KRS Chapter 533 and where not prohibited by other provisions of applicable law, may sentence such person to a period of probation or to a period of conditional discharge as provided in that chapter. A sentence to probation or conditional discharge shall be deemed a tentative one to the extent that it may be altered or revoked in accordance with KRS Chapter 533, but for purposes of appeal shall be deemed to be a final judgment of conviction. In any case where the court imposes a sentence of probation or conditional discharge, it may also impose a fine as authorized by KRS Chapter 534.

KRS 532.050 Presentence procedure for felony conviction.

- (1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody.
- (2) The report shall be prepared and presented by a probation officer and shall include:
 - (a) The results of the defendant's risk and needs assessment;
 - (b) An analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits;
 - (c) A preliminary calculation of the credit allowed the defendant for time spent in custody prior to the commencement of a sentence under KRS 532.120; and
 - (d) Any other matters that the court directs to be included.
- (3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.
- (4) If the defendant has been convicted of a sex crime, as defined in KRS 17.500, prior to determining the sentence or prior to final sentencing for youthful offenders, the court shall order a comprehensive sex offender presentence evaluation of the defendant to be conducted by an approved provider, as defined in KRS 17.500, the Department of Corrections, or the Department of Juvenile Justice if the defendant is a youthful offender. The comprehensive sex offender presentence evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment and shall be considered by the court in determining the appropriate sentence. A copy of the comprehensive sex offender presentence evaluation shall be furnished to the court, the Commonwealth's attorney, and to counsel for the defendant. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the comprehensive sex offender presentence evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any comprehensive sex offender presentence evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.
- (5) The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community- based and correctional- institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.

- (6) Before imposing sentence, the court shall advise the defendant or his or her counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

KRS 532.055 Verdicts and sentencing by jury in felony cases.

- (1) In all felony cases, the jury in its initial verdict will make a determination of not guilty, guilty, guilty but mentally ill, or not guilty by virtue of insanity, and no more.
- (2) Upon return of a verdict of guilty or guilty but mentally ill against a defendant, the court shall conduct a sentencing hearing before the jury, if such case was tried before a jury. In the hearing the jury will determine the punishment to be imposed within the range provided elsewhere by law. The jury shall recommend whether the sentences shall be served concurrently or consecutively.
- (a) Evidence may be offered by the Commonwealth relevant to sentencing including:
1. Minimum parole eligibility, prior convictions of the defendant, both felony and misdemeanor;
 2. The nature of prior offenses for which he was convicted;
 3. The date of the commission, date of sentencing, and date of release from confinement or supervision from all prior offenses;
 4. The maximum expiration of sentence as determined by the division of probation and parole for all such current and prior offenses;
 5. The defendant's status if on probation, parole, post-incarceration supervision, conditional discharge, or any other form of legal release;
 6. Juvenile court records of adjudications of guilt of a child for an offense that would be a felony if committed by an adult. Subject to the Kentucky Rules of Evidence, these records shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial and may be used during the sentencing phase of a criminal trial; however, the fact that a juvenile has been adjudicated delinquent of an offense that would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the federal Social Security Act is also prohibited; and
 7. The impact of the crime upon the victim or victims, as defined in KRS 421.500, including a description of the nature and extent of any physical, psychological, or financial harm suffered by the victim or victims;
- (b) The defendant may introduce evidence in mitigation or in support of leniency; and
- (c) Upon conclusion of the proof, the court shall instruct the jury on the range of punishment and counsel for the defendant may present arguments followed by the counsel for the Commonwealth. The jury shall then retire and recommend a sentence for the defendant.
- (3) All hearings held pursuant to this section shall be combined with any hearing provided for by KRS 532.080.
- (4) In the event that the jury is unable to agree as to the sentence or any portion thereof and so reports to the judge, the judge shall impose the sentence within the range provided elsewhere by law.

KRS 532.060 Sentence of imprisonment for felony.

- (1) A sentence of imprisonment for a felony shall be an indeterminate sentence, the maximum of which shall be fixed within the limits provided by subsection (2), and subject to modification by the trial judge pursuant to KRS 532.070.
- (2) Unless otherwise provided by law, the authorized maximum terms of imprisonment for felonies are:
 - (a) For a Class A felony, not less than twenty (20) years nor more than fifty (50) years, or life imprisonment;
 - (b) For a Class B felony, not less than ten (10) years nor more than twenty (20) years;
 - (c) For a Class C felony, not less than five (5) years nor more than ten (10) years; and
 - (d) For a Class D felony, not less than one (1) year nor more than five (5) years.
- (3) For any felony specified in KRS Chapter 510, KRS 530.020, 530.064(1)(a), or 531.310, the sentence shall include an additional five (5) year period of post-incarceration supervision which shall be added to the maximum sentence rendered for the offense. During this period of post-incarceration supervision, if a defendant violates the provisions of post-incarceration supervision, the defendant may be reincarcerated for:
 - (a) The remaining period of his initial sentence, if any is remaining; and
 - (b) The entire period of post-incarceration supervision, or if the initial sentence has been served, for the remaining period of post-incarceration supervision.
- (4) In addition to the penalties provided in this section, for any person subject to a period of post-incarceration supervision pursuant to KRS 532.400 his or her sentence shall include an additional one (1) year period of post-incarceration supervision following release from incarceration upon expiration of sentence if the offender is not otherwise subject to another form of post-incarceration supervision. During this period of post-incarceration supervision, if an offender violates the provisions of supervision, the offender may be reincarcerated for the remaining period of his or her post-incarceration supervision
- (5) The actual time of release within the maximum established by subsection (1), or as modified pursuant to KRS 532.070, shall be determined under procedures established elsewhere by law.

KRS 532.070 Court modification of felony sentence.

- (1) When a sentence of imprisonment for a felony is fixed by a jury pursuant to KRS 532.060 and the trial court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that the maximum term fixed by the jury is unduly harsh, the court may modify that sentence and fix a maximum term within the limits provided in KRS 532.060 for the offense for which the defendant presently stands convicted.
- (2) When a sentence of imprisonment for a Class D felony is fixed by a jury pursuant to KRS 532.060 and the trial court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose such a sentence, the court may sentence the defendant to a definite term of imprisonment in a county or a regional correctional institution for a term of one (1) year or less.

KRS 532.080 Persistent felony offender sentencing.

- (1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the sentence of imprisonment assessed under KRS 532.060 for the crime of which such person presently stands convicted, shall fix a sentence of imprisonment as authorized by subsection (5) or (6) of this section. When a defendant is charged with being a persistent felony offender, the determination of whether or not he is such an offender and the punishment to be imposed pursuant to subsection (5) or (6) of this section shall be determined in a separate proceeding from that proceeding which resulted in his last conviction. Such proceeding shall be conducted before

the court sitting with the jury that found the defendant guilty of his most recent offense unless the court for good cause discharges that jury and impanels a new jury for that purpose.

- (2) A persistent felony offender in the second degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of one (1) previous felony. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:
- (a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and
 - (b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and
 - (c) That the offender:
 - 1. Completed service of the sentence imposed on the previous felony conviction within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
 - 2. Was on probation, parole, post-incarceration supervision, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
 - 3. Was discharged from probation, parole, post-incarceration supervision, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
 - 4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or
 - 5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.
- (3) A persistent felony offender in the first degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of two (2) or more felonies, or one (1) or more felony sex crimes against a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more felonies. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:
- (a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and
 - (b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and
 - (c) That the offender:
 - 1. Completed service of the sentence imposed on any of the previous felony convictions within five (5) years prior to the date of the commission of the felony for which he now stands convicted; or
 - 2. Was on probation, parole, post-incarceration supervision, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
 - 3. Was discharged from probation, parole, postincarceration supervision, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
 - 4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or
 - 5. Had escaped from custody while serving any of the previous felony convictions at the

time of commission of the felony for which he now stands convicted.

- (4) For the purpose of determining whether a person has two (2) or more previous felony convictions, two (2) or more convictions of crime for which that person served concurrent or uninterrupted consecutive terms of imprisonment shall be deemed to be only one (1) conviction, unless one (1) of the convictions was for an offense committed while that person was imprisoned.
- (5) A person who is found to be a persistent felony offender in the second degree shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing provisions of KRS 532.060(2) for the next highest degree than the offense for which convicted. A person who is found to be a persistent felony offender in the second degree shall not be eligible for probation, shock probation, or conditional discharge, unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person, in which case probation, shock probation, or conditional discharge may be granted. A violent offender who is found to be a persistent felony offender in the second degree shall not be eligible for parole except as provided in KRS 439.3401.
- (6) A person who is found to be a persistent felony offender in the first degree shall be sentenced to imprisonment as follows:
 - (a) If the offense for which he presently stands convicted is a Class A or Class B felony, or if the person was previously convicted of one (1) or more sex crimes committed against a minor as defined in KRS 17.500 and presently stands convicted of a subsequent sex crime, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than twenty (20) years nor more than fifty (50) years, or life imprisonment, or life imprisonment without parole for twenty-five (25) years for a sex crime committed against a minor;
 - (b) If the offense for which he presently stands convicted is a Class C or Class D felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten (10) years nor more than twenty (20) years.
- (7) A person who is found to be a persistent felony offender in the first degree shall not be eligible for probation, shock probation, or conditional discharge, unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person or a sex crime as that term is defined in KRS 17.500, in which case, probation, shock probation, or conditional discharge may be granted. If the offense the person presently stands convicted of is a Class A, B, or C felony, the person shall not be eligible for parole until the person has served a minimum term of incarceration of not less than ten (10) years, unless another sentencing scheme applies. A violent offender who is found to be a persistent felony offender in the first degree shall not be eligible for parole except as provided in KRS 439.3401.
- (8) No conviction, plea of guilty, or Alford plea to a violation of KRS 218A.500 shall bring a defendant within the purview of or be used as a conviction eligible for making a person a persistent felony offender under this section.
- (9) The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be retroactive.
- (10)
 - (a) Except as provided in paragraph (b) of this subsection, this section shall not apply to a person convicted of a criminal offense if the penalty for that offense was increased from a misdemeanor to a felony, or from a lower felony classification to a higher felony classification, because the conviction constituted a second or subsequent violation of that offense.
 - (b) This subsection shall not prohibit the application of this section to a person convicted of:
 1. A felony offense arising out of KRS 189A.010, 189A.090, 506.140, 508.032, 508.140, or 510.015; or
 2. Any other felony offense if the penalty was not enhanced to a higher level because the Commonwealth elected to prosecute the person as a first-time violator of that offense.

KRS 532.090 Sentence of imprisonment for misdemeanor.

A sentence of imprisonment for a misdemeanor shall be a definite term and shall be fixed within the following maximum limitations:

- (1) For a Class A misdemeanor, the term shall not exceed twelve (12) months; and
- (2) For a Class B misdemeanor, the term shall not exceed ninety (90) days.

KRS 532.100 Place of imprisonment -- Commitment when death sentence imposed -- Housing for female state inmates -- Incarceration of certain Class C and D felons and felons convicted of sex crimes -- Work release for certain inmates.

NOTE: Statute effective January 1, 2019, subsequent to the publishing of this manual.

- (1) When an indeterminate term of imprisonment is imposed, the court shall commit the defendant to the custody of the Department of Corrections for the term of his sentence and until released in accordance with the law.
- (2) When a definite term of imprisonment is imposed, the court shall commit the defendant to the county or city correctional institution or to a regional correctional institution for the term of his sentence and until released in accordance with the law.
- (3) When a sentence of death is imposed, the court shall commit the defendant to the custody of the Department of Corrections with directions that the sentence be carried out according to law.
- (4)
 - (a) The provisions of KRS 500.080(5) notwithstanding, if a Class D felon is sentenced to an indeterminate term of imprisonment of five (5) years or less, he shall serve that term in a county jail in a county in which the fiscal court has agreed to house state prisoners; except that, when an indeterminate sentence of two (2) years or more is imposed on a Class D felon convicted of a sexual offense enumerated in KRS 197.410(1), or a crime under KRS 17.510(11) or (12), the sentence shall be served in a state institution. Counties choosing not to comply with the provisions of this paragraph shall be granted a waiver by the commissioner of the Department of Corrections.
 - (b) The provisions of KRS 500.080(5) notwithstanding, a Class D felon who received a sentence of more than five (5) years for nonviolent, nonsexual offenses, but who currently has less than five (5) years remaining to be served, may serve the remainder of his or her term in a county jail in a county in which the fiscal court has agreed to house state prisoners.
 - (c)
 1. The provisions of KRS 500.080(5) notwithstanding, and except as provided in subparagraph 2. of this paragraph, a Class C or D felon with a sentence of more than five (5) years who is classified by the Department of Corrections as community custody shall serve that term in a county jail in a county in which the fiscal court has agreed to house state prisoners if:
 - a. Beds are available in the county jail;
 - b. State facilities are at capacity; and
 - c. Halfway house beds are being utilized at the contract level as of July 15, 2000.
 2. When an indeterminate sentence of two (2) years or more is imposed on a felon convicted of a sex crime, as defined in KRS 17.500, or any similar offense in another jurisdiction, the sentence shall be served in a state institution.
 3. Counties choosing not to comply with the provisions of this paragraph shall be granted a waiver by the commissioner of the Department of Corrections.
 - (d) Any jail that houses state inmates under this subsection shall offer programs as recommended by the Jail Standards Commission. The Department of Corrections shall adopt the recommendations of the Jail Standards Commission and promulgate administrative regulations establishing required programs for a jail that houses state inmates under this subsection.
 - (e) Before housing any female state inmate, a county jail shall be certified pursuant to KRS 197.020.

- (5) The jailer of a county in which a Class D felon or a Class C felon is incarcerated may request the commissioner of the Department of Corrections to incarcerate the felon in a state corrections institution if the jailer has reasons to believe that the felon is an escape risk, a danger to himself or other inmates, an extreme security risk, or needs protective custody beyond that which can be provided in a county jail. The commissioner of the Department of Corrections shall evaluate the request and transfer the inmate if he deems it necessary. If the commissioner refuses to accept the felon inmate, and the Circuit Judge of the county that has jurisdiction of the offense charged is of the opinion that the felon cannot be safely kept in a county jail, the Circuit Judge, with the consent of the Governor, may order the felon transferred to the custody of the Department of Corrections.
- (6) Class D felons and Class C felons serving their time in a local jail shall be considered state prisoners, and the Department of Corrections shall pay the jail in which the prisoner is incarcerated a per diem amount determined according to KRS 431.215(2). For other state prisoners and parole violator prisoners, the per diem payments shall also begin on the date prescribed in KRS 431.215(2).
- (7) State prisoners, excluding the Class D felons and Class C felons qualifying to serve time in county jails, shall be transferred to the state institution within forty-five (45) days of final sentencing.
- (8)
- (a) Class D felons eligible for placement in a local jail may be permitted by the warden or jailer to participate in any approved community work program or other form of work release with the approval of the commissioner of the Department of Corrections.
 - (b) The authority to release an inmate to work under this subsection may be exercised at any time during the inmate's sentence, including the period when the court has concurrent authority to permit work release pursuant to KRS 439.265.
 - (c) The warden or jailer may require an inmate participating in the program to pay a fee to reimburse the warden or jailer for the cost of operating the community work program or any other work release program. The fee shall not exceed the lesser of fifty-five dollars (\$55) per week or twenty percent (20%) of the prisoner's weekly net pay earned from the community work program or work release participation. In addition, the inmate may be required to pay for any drug testing performed on the inmate as a requirement of the community work program or work release participation.
 - (d) This subsection shall not apply to an inmate who:
 1. Is not eligible for work release pursuant to KRS 197.140;
 2. Has a maximum or close security classification as defined by administrative regulations promulgated by the Department of Corrections;
 3. Is subject to the provisions of KRS 532.043; or
 4. Is in a reentry center as defined in KRS 441.005.

KRS 533.010 Criteria for utilizing chapter -- Alternative sentences -- Monitoring by private agency -- Work release.

- (1) Any person who has been convicted of a crime and who has not been sentenced to death may be sentenced to probation, probation with an alternative sentencing plan, or conditional discharge as provided in this chapter.
- (2) Before imposition of a sentence of imprisonment, the court shall consider probation, probation with an alternative sentencing plan, or conditional discharge. Unless the defendant is a violent felon as defined in KRS 439.3401 or a statute prohibits probation, shock probation, or conditional discharge, after due consideration of the defendant's risk and needs assessment, nature and circumstances of the crime, and the history, character, and condition of the defendant, probation or conditional discharge shall be granted, unless the court is of the opinion that imprisonment is necessary for protection of the public because:

- (a) There is substantial risk that during a period of probation or conditional discharge the defendant will commit another crime;
 - (b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution; or
 - (c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.
- (3) In the event the court determines that probation is not appropriate after due consideration of the defendant's risk and needs assessment, nature and circumstances of the crime, and the history, character, and condition of the defendant, probation with an alternative sentencing plan shall be granted unless the court is of the opinion that imprisonment is necessary for the protection of the public because:
- (a) There is a likelihood that during a period of probation with an alternative sentencing plan or conditional discharge the defendant will commit a Class D or Class C felony or a substantial risk that the defendant will commit a Class B or Class A felony;
 - (b) The defendant is in need of correctional treatment that can be provided most effectively by commitment to a correctional institution; or
 - (c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.
- (4) The court shall not determine that there is a likelihood that the defendant will commit a Class C or Class D felony based upon the defendant's risk and needs assessment and the fact that:
- (a) The defendant has never been convicted of, pled guilty to, or entered an Alford plea to a felony offense;
 - (b) If convicted of, having pled guilty to, or entered an Alford plea to a felony offense, the defendant successfully completed probation more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period; or
 - (c) The defendant has been released from incarceration for the commission of a felony offense more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period.
- (5) In making a determination under subsection (4) of this section, the court may determine that the greater weight of the evidence indicates that there is a likelihood that the defendant will commit a Class C or Class D felony.
- (6) Upon initial sentencing of a defendant or upon modification or revocation of probation, when the court deems it in the best interest of the public and the defendant, the court may order probation with the defendant to serve one (1) of the following alternative sentences:
- (a) To a halfway house for no more than twelve (12) months;
 - (b) To home incarceration with or without work release for no more than twelve (12) months;
 - (c) To jail for a period not to exceed twelve (12) months with or without work release, community service and other programs as required by the court;
 - (d) To a residential treatment program for the abuse of alcohol or controlled substances; or
 - (e) To a reentry center for no more than twelve (12) months
 - (f) To any other specified counseling program, rehabilitation or treatment program, or facility.
- (7) If during the term of the alternative sentence the defendant fails to adhere to and complete the conditions of the alternative sentence, the court may modify the terms of the alternative sentence or may modify or revoke probation and alternative sentence and commit the defendant to an institution.
- (8) In addition to those conditions that the court may impose, the conditions of alternative sentence shall include the following and, if the court determines that the defendant cannot comply with them, then they shall not be made available:

- (a) A defendant sentenced to a halfway house shall:
 1. Be working or pursuing his or her education or be enrolled in a full-time treatment program;
 2. Pay restitution during the term of probation; and
 3. Have no contact with the victim of the defendant's crime;
- (b) A defendant sentenced to home incarceration shall:
 1. Be employed by another person or self-employed at the time of sentencing to home incarceration and continue the employment throughout the period of home incarceration, unless the court determines that there is a compelling reason to allow home incarceration while the defendant is unemployed;
 2. Pay restitution during the term of home incarceration;
 3. Enter a treatment program, if appropriate;
 4. Pay all or some portion of the cost of home incarceration as determined by the court;
 5. Comply with other conditions as specified; and
 6. Have no contact with the victim of the defendant's crime;
- (c) A defendant sentenced to jail with community service shall:
 1. Pay restitution during all or some part of the defendant's term of probation; and
 2. Have no contact with the victim of the defendant's crime; or
- (d) A defendant sentenced to a residential treatment program for drug and alcohol abuse shall:
 1. Undergo mandatory drug screening during term of probation;
 2. Be subject to active, supervised probation for a term of five (5) years;
 3. Undergo aftercare as required by the treatment program;
 4. Pay restitution during the term of probation; and
 5. Have no contact with the victim of the defendant's crime; or
- (e) A defendant sentenced to a reentry center shall:
 1. Be employed in the community or working in a vocational program at the reentry center;
 2. Be enrolled in a treatment program;
 3. Pay restitution, fees, and fines during the term of probation; and
 4. Comply with other conditions as specified.
- (9) When the court deems it in the best interest of the defendant and the public, the court may order the person to work at community service related projects under the terms and conditions specified in KRS 533.070. Work at community service related projects shall be considered as a form of conditional discharge.
- (10) Probation with alternative sentence shall not be available as set out in KRS 532.045 and 533.060, except as provided in KRS 533.030(6).
- (11) The court may utilize a community corrections program authorized or funded under KRS Chapter 196 to provide services to any person released under this section.
- (12) When the court deems it in the best interest of the defendant and the public, the court may order the defendant to placement for probation monitoring by a private agency. The private agency shall report to the court on the defendant's compliance with his terms of probation or conditional discharge. The defendant shall be responsible for any reasonable charges which the private agency charges.
- (13) The jailer in each county incarcerating Class D felons may deny work release privileges to any defendant for violating standards of discipline or other jail regulations. The jailer shall report the action taken and the details of the violation on which the action was based to the court of jurisdiction within five (5) days of the violation.
- (14) The Department of Corrections shall, by administrative regulation, develop written criteria for work release privileges granted under this section.
- (15) Reimbursement of incarceration costs shall be paid directly to the jailer in the amount specified by written order of the court. Incarceration costs owed to the Department of

Corrections shall be paid through the circuit clerk.

(16) The court shall enter into the record written findings of fact and conclusions of law when considering implementation of any sentence under this section.

KRS 533.015 Alternatives to incarceration.

Whenever a statute mentions probation, shock probation, conditional discharge, home incarceration, or other form of alternative to incarceration, that alternative may include a community-based, faith-based, charitable, church-sponsored, or nonprofit residential or nonresidential counseling and treatment program or drug court, and, upon petition by the defendant, the court may sentence or permit the defendant to attend that program. This program may also be used for pretrial release and pretrial diversion.

501 KAR 6:200 Comprehensive sex offender presentence evaluation procedure.

Section 1. Definitions.

- (1) "Amenability to treatment" means the offender is free from organic or psychological impairment that would prevent the offender from engaging meaningfully in sex offender treatment and he is, at least minimally, receptive to the treatment process.
- (2) "Appropriate setting" means a secure institutional setting or a community-based setting.
- (3) "Approved provider" is defined by KRS 17.550(3).
- (4) "Board" is defined by KRS 17.550(1).
- (5) "Clinically adjusted" means changing the risk level recommendation based on facts or evidence which indicate to an approved provider that the probability of recidivism ranges are inappropriate for a sex offender.
- (6) "Comprehensive sex offender presentence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the four (4) factors listed in KRS 17.554(2).
- (7) "Nature of required sex offender treatment" means the treatment management issues including recommendations for the focus of treatment, special treatment considerations, further evaluation, and restrictions to minimize the risk of recidivism.
- (8) "Risk of recommitting a sex crime" means a designation of high or not high risk based on the finding of the instrument and other clinically relevant data where sexual reoffense is more likely than not.
- (9) "Sex offender" is defined by KRS 17.550(2).

Section 2. Comprehensive Sex Offender Presentence Evaluation Procedures.

- (1)
 - (a) An approved provider shall conduct a comprehensive mental health evaluation following the professional standards of care in the area of his certification or licensure.
 - (b) The evaluation shall include a face-to-face interview and a review of collateral information. The face-to-face interview may be conducted by videoconferencing if it allows the approved provider to see the offender at all times during the interview.
 - (c) If the results of initial mental health screening procedure dictate, additional appropriate psychological testing addressing cognitive functioning, mental illness, and severe characterological impairment shall be employed as circumstances allow.
- (2) Risk of recommitting a sex crime shall be determined in the following manner:
 - (a) If applicable, an actuarial instrument shall be used which is appropriate to the sex offender. An actuarial instrument shall be appropriate for use if:
 1. The instrument's developmental sample or subsequent study samples contained individuals with characteristics similar to the offender being evaluated; and
 2. The instrument's reliability and validity has been demonstrated through research. The results of the instrument may be clinically adjusted at the discretion of the approved provider.

- (b) If an actuarial instrument is not appropriate, an empirically guided approach shall be used. An empirically-guided approach shall mean that the approved provider shall consider risk factors that research has demonstrated to be associated with risk for recidivism.
- (3) The threat to public safety shall be determined in the following manner:
 - (a) The approved provider shall consider the following domains in assessing the sex offender's immediate threat to public safety and in arriving at a recommendation regarding an appropriate treatment setting:
 - 1. The sex offender's amenability to treatment;
 - 2. The degree of threat of harm or actual force employed in the index offense and in prior offenses;
 - 3. The nature and duration of the offending;
 - 4. The sex offender's psychological adjustment;
 - 5. The sex offender's social and occupational adjustment; and
 - 6. The sex offender's statements or indications of harm directed to another.
 - (b) The approved provider shall make a recommendation as to the appropriate setting in which treatment, if indicated, should be provided for the sex offender.
- (4) To assess amenability, the approved provider shall address the following factors. The sex offender shall:
 - (a) Not exhibit symptoms of a psychological disturbance that may significantly inhibit treatment effectiveness.
 - (b) Exhibit a level of intellectual functioning sufficient to complete the task assigned in the treatment program to which he shall be referred.
 - (c) Acknowledge involvement in the sex offense for which he is charged.
 - (d) Consider his involvement in the sex offense to be a problematic behavior that he does not want to repeat.
 - (e) Verbalize a willingness to enter and fully participate in treatment.
- (5) In assessing the nature of required sex offender treatment, the approved provider shall address management issues including:
 - (a) Recommendations for the focus of treatment;
 - (b) Special treatment considerations;
 - (c) Further evaluation; and
 - (d) Restrictions to minimize the risk of recidivism.

Section 3. Evaluation Report.

- (1) An approved provider shall prepare a comprehensive sex offender presentence evaluation report to the court in the form of a bifurcated document.
- (2) The first section of the report shall consist of information prepared specifically for the court and contain the following headings:
 - (a) Identifying information including name, Social Security number, date of birth and age, indictment number or county;
 - (b) Referral information, including reason for referral, informed consent, and procedures;
 - (c) Information sources; and
 - (d) Summary, conclusions, and recommendations.
- (3) The second section shall include the following information from which the summary and conclusions were reached:
 - (a) Criminal justice information, including index offense, prior sex offense, or other legal history;
 - (b) Psychosocial history including: family of origin, education, military, occupational, and financial history; sexual and relationship history; and mental health and medical history;
 - (c) Behavioral observations and mental status;
 - (d) Psychological testing;
 - (e) Diagnosis impressions;

- (f) Treatment considerations; and
 - (g) The statutory factors found in KRS 17.554(2).
- (4) The report shall be entitled "Comprehensive Sex Offender Presentence Evaluation."
- (5) An approved provider shall place his signature at the end of the recommendation report if he:
- (a) Conducted the comprehensive sex offender presentence evaluation; or
 - (b) Reviewed and approved the evaluation.
- (6) If the approved provider previously provided treatment to the sex offender, he shall not perform a sex offender presentence evaluation for the offender.

Section 4. Recordkeeping.

- (1) An approved provider shall:
- (a) Transmit all comprehensive sex offender presentence evaluation information to the board;
 - or
 - (b) Maintain the information for a period of fifteen (15) years.
- (2) The original or a copy of all comprehensive sex offender presentence evaluation information shall be provided to the board:
- (a) Upon request; or
 - (b) At the death of the approved provider.

E. RELEASE

1. Pre-Trial Release

KRS 431.064 Pretrial release of person arrested for assault, sexual offense, or violation of protective order -- Conditions -- Hearing -- Victim entitled to copy of conditions of release -- Entry of conditions into Law Information Network -- Penalty.

- (1) In making a decision concerning pretrial release of a person who is arrested for a violation of KRS Chapter 508 or 510, or charged with a crime involving a violation of an order of protection as defined in KRS 403.720 and 456.010, the court or agency having authority to make a decision concerning pretrial release shall review the facts of the arrest and detention of the person and determine whether the person:
- (a) Is a threat to the alleged victim or other family or household member; and
 - (b) Is reasonably likely to appear in court.
- (2) Before releasing a person arrested for or charged with a crime specified in subsection (1) of this section, the court shall make findings, on the record if possible, concerning the determination made in accordance with subsection (1) of this section, and may impose conditions of release or bail on the person to protect the alleged victim of domestic violence or abuse and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:
- (a) An order enjoining the person from threatening to commit or committing acts of domestic violence or abuse against the alleged victim or other family or household member;
 - (b) An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly;
 - (c) An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;
 - (d) An order prohibiting the person from using or possessing a firearm or other weapon specified by the court;
 - (e) An order prohibiting the person from possession or consumption of alcohol or controlled substances;
 - (f) Any other order required to protect the safety of the alleged victim and to ensure the appearance of the person in court; or
 - (g) Any combination of the orders set out in paragraphs (a) to (f) of this subsection.
- (3) If conditions of release are imposed, the court imposing the conditions on the arrested or

charged person shall:

- (a) Issue a written order for conditional release; and
 - (b) Immediately distribute a copy of the order to pretrial services.
- (4) The court shall provide a copy of the conditions to the arrested or charged person upon release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.
 - (5) If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the court to review the conditions. Upon request, the court shall hold a prompt hearing to review the conditions.
 - (6) The victim, as defined in KRS 421.500, of the defendant's alleged crime, or an individual designated by the victim in writing, shall be entitled to a free certified copy of the defendant's conditions of release, or modified conditions of release, upon request to the clerk of the court which issued the order releasing the defendant. The victim or the victim's designee may personally obtain the document at the clerk's office or may have it delivered by mail.
 - (7) The circuit clerk or the circuit clerk's designee, in cooperation with the court that issued the order releasing the defendant, shall cause the conditions of release to be entered into the computer system maintained by the clerk and the Administrative Office of the Courts within twenty-four (24) hours following its filing, excluding weekends and holidays. Any modification of the release conditions shall likewise be entered by the circuit clerk, or the circuit clerk's designee.
 - (8) The information entered under this section shall be accessible to any agency designated by the Department of Kentucky State Police as a terminal agency for the Law Information Network of Kentucky.
 - (9) All orders issued under this section which require entry into the Law Information Network of Kentucky shall be entered on forms prescribed by the Administrative Office of the Courts. If the conditions of pretrial release are contained in an order which is narrative in nature, the prescribed form shall be used in addition to the narrative order.
 - (10) Any person who violates any condition of an order issued pursuant to this section is guilty of a Class A misdemeanor.

2. Pre-Trial Diversion

KRS 533.250 Pretrial diversion program in each judicial circuit - Elements - Fee.

- (1) A pretrial diversion program shall be operated in each judicial circuit. The chief judge of each judicial circuit, in cooperation with the Commonwealth's attorney, shall submit a plan for the pretrial diversion program to the Supreme Court for approval on or before December 1, 1999. The pretrial diversion program shall contain the following elements:
 - (a) The program may be utilized for a person charged with a Class D felony offense who has not, within ten (10) years immediately preceding the commission of this offense, been convicted of a felony under the laws of this state, another state, or of the United States, or has not been on probation or parole or who has not been released from the service of any felony sentence within ten (10) years immediately preceding the commission of the offense.
 - (b) The program shall not be utilized for persons charged with offenses for which probation, parole, or conditional discharge is prohibited under KRS 532.045.
 - (c) No person shall be eligible for pretrial diversion more than once in a five (5) year period.
 - (d) No person shall be eligible for pretrial diversion who has committed a sex crime as defined in KRS 17.500. A person who is on pretrial diversion on July 12, 2006, may remain on pretrial diversion if the person continues to meet the requirements of the pretrial diversion and the registration requirements of KRS 17.510.
 - (e) Any person charged with an offense not specified as precluding a person from pretrial diversion under paragraph (b) of this subsection may apply in writing to the trial court and

- the Commonwealth's attorney for entry into a pretrial diversion program.
- (f) Any person shall be required to enter an Alford plea or a plea of guilty as a condition of pretrial diversion.
 - (g) The provisions of KRS 533.251 shall be observed; and
 - (h) The program may include as a component referral to the intensive secured substance abuse treatment program developed under KRS 196.285 for persons charged with a felony offense under KRS Chapter 218A and persons charged with a felony offense whose record indicates a history of recent and relevant substance abuse who have not previously been referred to the program under KRS 533.251.
- (2) Upon the request of the Commonwealth's attorney, a court ordering pretrial diversion may order the person to:
- (a) Participate in a global positioning monitoring system program through the use of a county-operated program pursuant to KRS 67.372 and 67.374 for all or part of the time during which a pretrial diversion agreement is in effect; or
 - (b) Use and pay all costs, including administrative and operating costs, associated with the alcohol monitoring device as defined in KRS 431.068. If the court determines that the defendant is indigent, and a person, county, or other organization has not agreed to pay the costs for the defendant in an attempt to reduce incarceration expenses and increase public safety, the court shall consider other conditions of pretrial diversion.
- (3) A court ordering global positioning monitoring system for a person pursuant to this section shall:
- (a) Require the person to pay all or a part of the monitoring costs based upon the sliding scale determined by the Supreme Court of Kentucky pursuant to KRS 403.761 or 456.100 and administrative costs for participating in the system;
 - (b) Provide the monitoring system with a written or electronic copy of the conditions of release; and
 - (c) Provide the monitoring system with a contact at the office of the Commonwealth's attorney for reporting violations of the monitoring order.
- (4) A person, county, or other organization may voluntarily agree to pay all or a portion of a person's monitoring costs specified in subsection (3) of this section.
- (5) The court shall not order a person to participate in a global positioning monitoring system program unless the person agrees to the monitoring in open court or the court determines that public safety and the nature of the person's crime require the use of a global positioning monitoring system program.
- (6) The Commonwealth's attorney shall make a recommendation upon each application for pretrial diversion to the Circuit Judge in the court in which the case would be tried. The court may approve or disapprove the diversion.
- (7) The court shall assess a diversion supervision fee of a sufficient amount to defray all or part of the cost of participating in the diversion program. Unless the fee is waived by the court in the case of indigency, the fee shall be assessed against each person placed in the diversion program. The fee may be based upon ability to pay.

KRS 533.252 Requirements of Commonwealth's Attorney when considering application for pretrial diversion.

When considering an application for pretrial diversion, the attorney for the Commonwealth shall:

- (1) Have a criminal record check made to ascertain if the person is eligible for pretrial diversion.
- (2) Interview the victim of the crime, if there is an identified victim, and, when the victim of the crime is deceased or the attorney for the Commonwealth deems it necessary, interview a member of the family of the victim of the crime. The attorney for the Commonwealth shall explain to the victim the diversion program, the proposed diversion conditions, and any other matters that the attorney for the Commonwealth deems to be appropriate. The results of the interview

and recommendations of the victim may be presented to the court when it is considering the application for pretrial diversion. If the application for diversion is approved by the court, the approval shall be in open court and may be attended by the victim and the victim's family. The attorney for the Commonwealth shall attempt to notify them of this fact and the time, date, and place of the hearing.

- (3) Conduct any other investigation that the attorney for the Commonwealth determines may be necessary with regard to the defendant and the circumstances of the crime so as to enable him or her to set proper conditions of pretrial diversion, or to make a decision whether to recommend pretrial diversion.

KRS 533.254 Application of probation and restitution.

- (1) The provisions of KRS 533.020 relating to the period of probation shall, in so far as possible, be applicable to the period of pretrial diversion except that supervision of the participants in the programs shall be done by the Division of Probation and Parole.
- (2) The provisions of KRS 533.030 relating to conditions of probation and restitution shall, in so far as possible, be applicable to pretrial diversion. Restitution shall be ordered in all cases where a victim has suffered monetary damage as a result of the alleged crime. Restitution to the state or the victim, or both, may be ordered in any pretrial diversion program.

KRS 533.256 Failure to complete provisions of pretrial diversion agreement.

- (1) If the defendant fails to complete the provisions of the pretrial diversion agreement within the time specified, or is not making satisfactory progress toward the completion of the provisions of the agreement, the Division of Probation and Parole, the victim, or a peace officer may inform the attorney for the Commonwealth of the alleged violation or noncompliance, and the attorney for the Commonwealth may apply to the court for a hearing to determine whether or not the pretrial diversion agreement should be voided and the court should proceed on the defendant's plea of guilty in accordance with the law.
- (2) In making a determination as to whether or not a pretrial diversion agreement should be voided, the court shall use the same criteria as for the revocation of probation, and the defendant shall have the same rights as he or she would if probation revocation was sought.
- (3) Making application for a pretrial diversion agreement tolls any statute of limitations relative to the criminal offenses for which the application is made for the period until the application is granted or denied. Approval of the application for pretrial diversion by the court tolls any statute of limitations relative to criminal offenses diverted for the period of the diversion agreement.
- (4) If the court voids the pretrial diversion agreement, the court shall notify the applicable prosecutor in writing that the pretrial diversion agreement has been voided and the reasons for the action. The prosecutor shall decide whether or not to proceed on the plea of guilty in accordance with the law.

KRS 533.258 Effects of successful completion of pretrial diversion agreement.

- (1) If the defendant successfully completes the provisions of the pretrial diversion agreement, the charges against the defendant shall be listed as "dismissed-diverted" and shall not constitute a criminal conviction.
- (2) The defendant shall not be required to list this disposition on any application for employment, licensure, or otherwise unless required to do so by federal law.
- (3) Pretrial diversion records shall not be introduced as evidence in any court in a civil, criminal, or other matter without the consent of the defendant.

KRS 533.262 Other program before and after July 15, 1998.

- (1) The pretrial diversion program authorized by KRS 533.250 to 533.260 shall be the sole program utilized in the Circuit Courts of the Commonwealth except for drug court diversion as approved by the Supreme Court and the Department of Corrections.
- (2) As of July 15, 1998, the only other pretrial diversion programs utilized by the Commonwealth shall be those authorized by the Kentucky Supreme Court and providing for the pretrial diversion of misdemeanants. Programs existing as of July 15, 1998, may continue for the purpose of supervising persons granted pretrial diversion prior to July 15, 1998, however no new persons shall be admitted to these programs.
- (3) A person who is in a pretrial diversion program as of July 15, 1998, may continue in that program until he or she successfully completes the program or is removed from the program for other reasons, whichever occurs earlier

3. Probation and Conditional Discharge

KRS 532.040 Probation and conditional discharge. – *Text included in Chapter 5, Section D.*

KRS 532.043 Requirement of post-incarceration supervision for certain felonies.

- (1) In addition to the penalties authorized by law, any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510 (sex offenses), 529.100 (prostitution, human trafficking) involving commercial sexual activity, 530.020 (incest), 530.064(1)(a), 531.310 (use of a minor in a sexual performance), or 531.320 (promoting a sexual performance by a minor) shall be subject to a period of post-incarceration supervision following release from:
 - (a) Incarceration upon expiration of sentence; or
 - (b) Completion of parole.
- (2) The period of post-incarceration supervision shall be five (5) years.
- (3) During the period of post-incarceration supervision, the defendant shall:
 - (a) Be subject to all orders specified by the Department of Corrections; and
 - (b) Comply with all education, treatment, testing, or combination thereof required by the Department of Corrections.
- (4) Persons under post-incarceration supervision pursuant to this section shall be subject to the supervision of the Division of Probation and Parole and under the authority of the Parole Board.
- (5) If a person violates a provision specified in subsection (3) of this section, the violation shall be reported in writing by the Division of Probation and Parole. Notice of the violation shall be sent to the Parole Board to determine whether probable cause exists to revoke the defendant's post-incarceration supervision and re-incarcerate the defendant as set forth in KRS 532.060.
- (6) The provisions of this section shall apply only to persons convicted, pleading guilty, or entering an Alford plea after July 15, 1998.

KRS 532.045 Persons prohibited from probation or post-incarceration supervision -- Procedure when probation or post-incarceration supervision not prohibited.

- (1) As used in this section:
 - (a) "Position of authority" means but is not limited to the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff, or volunteer who is an adult, adult athletic manager, adult coach, teacher, classified school employee, certified school employee, counselor, staff, or volunteer for either a residential treatment facility or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health-care provider, or employer;

- (b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and
 - (c) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or the victim, by any foreign object; oral copulation; or masturbation of either the minor or the offender.
- (2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for a person convicted of violating: 510.050 (Rape 2nd), 510.080 (Sodomy 2nd), 529.040 (Promoting prostitution), 529.070 (Permitting prostitution), 529.100 (Human trafficking) where the offense involves commercial sexual activity, 530.020 (incest), 531.310 (Use of a minor in a sexual performance), 531.320 (Promoting a sexual performance by a minor), or 531.370 (Using minors to distribute material portraying a sexual performance by a minor), or criminal attempt to commit any of these offenses under KRS 506.010, AND, who meets one (1) or more of the following criteria:
- (a) A person who commits any of the offenses enumerated in this subsection against a minor by the use of force, violence, duress, menace, or threat of bodily harm;
 - (b) A person who, in committing any of the offenses enumerated in this subsection, caused bodily injury to the minor;
 - (c) A person convicted of any of the offenses enumerated in this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;
 - (d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in this subsection;
 - (e) A person convicted of any of the offenses enumerated in this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in this subsection;
 - (f) A person convicted of kidnapping a minor in violation of the Kentucky Penal Code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection;
 - (g) A person who is convicted of committing any of the offenses enumerated in this subsection on more than one (1) minor at the same time or in the same course of conduct;
 - (h) A person who in committing any of the offenses enumerated in this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or
 - (i) A person who occupies a position of special trust and commits an act of substantial sexual conduct.

Nothing in this section shall be construed to prohibit the additional period of five (5) years' post-incarceration supervision required by KRS 532.043.

- (3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of the comprehensive sex offender presentence evaluation of the offender performed by an approved provider, as defined in KRS 17.500 or the Department of Corrections. The court shall use the comprehensive sex offender presentence evaluation in determining the appropriateness of probation or conditional discharge.
- (4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community-based sexual offender treatment program operated or approved by the Department of Corrections or the Sex Offender Risk Assessment Advisory Board.

- (5) The offender shall pay for any evaluation or treatment required pursuant to this section up to the offender's ability to pay but not more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.
- (6) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.
- (7) The comprehensive sex offender presentence evaluation and all communications relative to the comprehensive sex offender presentence evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440. The comprehensive sex offender presentence evaluation shall be filed under seal and shall not be made a part of the court record subject to review in appellate proceedings and shall not be made available to the public.
- (8) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any comprehensive sex offender presentence evaluation performed pursuant to this section and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel and the Commonwealth's attorney a copy of the comprehensive sex offender presentence evaluation. It shall not be necessary to disclose the sources of confidential information.
- (9) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

KRS 532.047 Nonavailability of probation or suspension of sentence to violent offender --

Exception.

Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, a person who has been designated as a violent offender as defined in KRS 439.3401, unless such probation is granted in accordance with KRS 439.3401.

KRS 533.020 Probation and conditional discharge.

- (1) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court shall place him on probation if he is in need of the supervision, guidance, assistance, or direction that the probation service can provide. Conditions of probation shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of probation. When setting conditions under this subsection, the court shall not order any defendant to pay incarceration costs or any other cost permitted to be ordered under KRS 533.010 or other statute, except restitution and any costs owed to the Department of Corrections, through the circuit clerk.
- (2) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him to probation with an alternative sentence if it is of the opinion that the defendant should conduct himself according to conditions determined by the court and that probationary supervision alone is insufficient. The court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the alternative sentence.
- (3) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him to conditional discharge if it is of the opinion that the defendant should conduct himself according to conditions determined by the court but that probationary supervision is inappropriate. Conditions of conditional discharge shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of conditional discharge.

- (4) The period of probation, probation with an alternative sentence, or conditional discharge shall be fixed by the court and at any time may be extended or shortened by duly entered court order. Such period, with extensions thereof, shall not exceed five (5) years, or the time necessary to complete restitution, whichever is longer, upon conviction of a felony nor two (2) years, or the time necessary to complete restitution, whichever is longer, upon conviction of a misdemeanor. Upon completion of the probationary period, probation with an alternative sentence, or the period of conditional discharge, the defendant shall be deemed finally discharged, provided no warrant issued by the court is pending against him, and probation, probation with an alternative sentence, or conditional discharge has not been revoked.
- (5) Notwithstanding the fact that a sentence to probation, probation with an alternative sentence, or conditional discharge can subsequently be modified or revoked, a judgment which includes such a sentence shall constitute a final judgment for purposes of appeal.

KRS 533.030 Conditions of probation and conditional discharge -- Restitution to victim.

- (1) The conditions of probation and conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation or conditional discharge that the defendant not commit another offense during the period for which the sentence remains subject to revocation.
- (2) When imposing a sentence of probation or conditional discharge, the court may, in addition to any other reasonable condition, require that the defendant:
 - (a) Avoid injurious or vicious habits;
 - (b) Avoid persons or places of disreputable or harmful character;
 - (c) Work faithfully at suitable employment as far as possible;
 - (d) Undergo available medical or psychiatric treatment and remain in a specific institution as required for that purpose;
 - (e) Post a bond, without surety, conditioned on performance of any of the prescribed conditions;
 - (f) Support his dependents and meet other family responsibilities;
 - (g) Pay the cost of the proceeding as set by the court;
 - (h) Remain within a specified area;
 - (i) Report to the probation officer as directed;
 - (j) Permit the probation officer to visit him at his home or elsewhere;
 - (k) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment;
 - (l) Submit to periodic testing for the use of controlled substances or alcohol, if the defendant's record indicates a controlled substance or alcohol problem, and to pay a reasonable fee, as determined by the court, which fee shall not exceed the actual cost of the test and analysis and shall be paid directly to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis, as specified by written order of the court, performed under this subsection. For good cause shown, the testing fee may be waived by the court;
 - (m) Use an alcohol monitoring device, as defined in KRS 431.068. All costs associated with the device, including administrative and operating costs, shall be paid by the defendant. If the court determines that the defendant is indigent, and a person, county, or other organization has not agreed to pay the costs for the defendant in an attempt to reduce incarceration expenses and increase public safety, the court shall consider other conditions of probation or conditional discharge provided for in this section; or
 - (n) During all or part of the period of probation or conditional discharge, participate in a global positioning monitoring system program operated by a county pursuant to KRS 67.372 and 67.374 under the same terms and conditions as provided in KRS 431.517.

- (3) When imposing a sentence of probation or conditional discharge in a case where a victim of a crime has suffered monetary damage as a result of the crime due to his property having been converted, stolen, or unlawfully obtained, or its value substantially decreased as a result of the crime, or where the victim suffered actual medical expenses, direct out-of-pocket losses, or loss of earning as a direct result of the crime, or where the victim incurred expenses in relocating for the purpose of the victim's safety or the safety of a member of the victim's household, or if as a direct result of the crime the victim incurred medical expenses that were paid by the Cabinet for Health and Family Services, the Kentucky Claims Commission, or any other governmental entity, the court shall order the defendant to make restitution in addition to any other penalty provided for the commission of the offense. Payment of restitution to the victim shall have priority over payment of restitution to any government agency. Restitution shall be ordered in the full amount of the damages, unless the damages exceed one hundred thousand dollars (\$100,000) or twice the amount of the gain from the commission of the offense, whichever is greater, in which case the higher of these two (2) amounts shall be awarded. The court may, in lieu of ordering monetary restitution, order the defendant to make restitution by working for or on behalf of the victim. The court shall determine the number of hours of work necessary by applying the then-prevailing federal minimum wage to the total amount of monetary damage caused by or incidental to the commission of the crime. The court may, with the consent of the agency, order the defendant to work as specified in KRS 533.070. Any work ordered pursuant to this section shall not be deemed employment for any purpose, nor shall the person performing the work be deemed an employee for any purpose. Where there is more than one (1) defendant or more than one (1) victim, restitution may be apportioned. Restitution shall be subject to the following additional terms and conditions:
- (a) Where property which is unlawfully in the possession of the defendant is in substantially undamaged condition from its condition at the time of the taking, return of the property shall be ordered in lieu of monetary restitution;
 - (b) The circuit clerk shall assess an additional fee of five percent (5%) to defray the administrative costs of collection of payments or property. This fee shall be paid by the defendant and shall inure to a trust and agency account which shall not lapse and which shall be used to hire additional deputy clerks and office personnel or increase deputy clerk or office personnel salaries, or combination thereof;
 - (c) When a defendant fails to make restitution ordered to be paid through the circuit clerk or a court-authorized program run by the county attorney or the Commonwealth's attorney, the circuit clerk or court-authorized program shall notify the court; and
 - (d) An order of restitution shall not preclude the owner of property or the victim who suffered personal physical or mental injury or out-of-pocket loss of earnings or support or other damages from proceeding in a civil action to recover damages from the defendant. A civil verdict shall be reduced by the amount paid under the criminal restitution order.
- (4) When requiring fees for controlled substances or alcohol tests, or other fees and payments authorized by this section or other statute, except restitution, to be paid by the defendant, the court shall not order the payments to be paid through the circuit clerk.
- (5) When a defendant is sentenced to probation or conditional discharge, he shall be given a written statement explicitly setting forth the conditions under which he is being released.
- (6) When imposing a sentence of probation or conditional discharge, the court, in addition to conditions imposed under this section, may require as a condition of the sentence that the defendant submit to a period of imprisonment in the county jail or to a period of home incarceration at whatever time or intervals, consecutive or nonconsecutive, the court shall determine. The time actually spent in confinement or home incarceration pursuant to this provision shall not exceed twelve (12) months or the maximum term of imprisonment assessed pursuant to KRS Chapter 532, whichever is the shorter. Time spent in confinement or home incarceration under this subsection shall be credited against the maximum term

of imprisonment assessed for the defendant pursuant to KRS Chapter 532, if probation or conditional discharge is revoked and the defendant is sentenced to imprisonment. Any prohibitions against probation, shock probation, or conditional discharge under KRS 533.060(2) or 532.045 shall not apply to persons convicted of a misdemeanor or Class D felony and sentenced to a period of confinement or home incarceration under this section.

4. Shock Probation

KRS 439.265 Shock probation in felony conviction -- Procedure -- Availability for violent offenders and sexual offenders -- Comprehensive sex offender presentence evaluation -- Exercise of authority.

- (1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any Circuit Court may, upon motion of the defendant made not earlier than thirty (30) days nor later than one hundred eighty (180) days after the defendant has been incarcerated in a county jail following his conviction and sentencing pending delivery to the institution to which he has been sentenced, or delivered to the keeper of the institution to which he has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon terms the court determines. Time spent on any form of release following conviction shall not count toward time required under this section.
- (2) The court shall consider any motion filed in accordance with subsection (1) of this section within sixty (60) days of the filing date of that motion, and shall enter its ruling within ten (10) days after considering the motion. The defendant may, in the discretion of the trial court, have the right to a hearing on any motion he may file, or have filed for him, that would suspend further execution of sentence. Any court order granting or denying a motion to suspend further execution of sentence is not reviewable.
- (3) (a) During the period in which the defendant may file a motion pursuant to this statute, the sentencing judge, within his or her discretion, may order that the defendant be held in a local detention facility that is not at or above maximum capacity until such time as the court rules on said motion. During this period of detention, and prior to the court's ruling on said motion, the court may require the defendant to participate in any approved community work program or other forms of work release. Persons held in the county jail pursuant to this subsection shall not be subject to transfer to a state correctional facility until the decision is made not to place the petitioner on shock probation.
(b) The provisions concerning community work programs or other forms of work release shall apply only to persons convicted of Class C or Class D felonies, and may be granted only after a hearing at which the Commonwealth's attorney has the opportunity to present arguments in favor or opposition thereto.
- (4) If the defendant is a violent offender as defined in KRS 439.3401, the sentence shall not be probated under this section.
- (5) If the defendant has been convicted of an offense under KRS 510.050, 510.080, 530.020, 530.064(1)(a), or 531.310, or criminal attempt to commit any of these offenses under KRS 506.010, the sentence shall not be suspended, in accordance with KRS 532.045.
- (6) When a defendant has been convicted of a sex crime, as defined in KRS 17.500, the court shall order a comprehensive sex offender presentence evaluation, unless one has been provided within the past six (6) months, in which case the court may order an update of the comprehensive sex offender presentence evaluation of the defendant conducted by the sex offender treatment program operated or approved by the Department of Corrections or the Sex Offender Risk Assessment Advisory Board. The comprehensive sex offender presentence evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining whether to suspend the sentence. If the court suspends the sentence and

places the defendant on probation, the provisions of KRS 532.045(3) to (7) shall apply.

- (7) The authority granted in this section shall be exercised by the judge who imposed sentence on the defendant, unless he is unable to act and it appears that his inability to act should continue beyond the expiration of the term of the court. In such case, the judge who imposed sentence shall assign a judge to dispose of a motion filed under this section, or as prescribed by the rules and practices concerning the responsibility for disposition of criminal matters.
- (8) The provisions of this section shall not apply where a sentence of death has been imposed.

KRS 439.267 Shock probation in misdemeanor convictions -- Procedure -- Exercise of authority -- Availability for sexual offenders.

- (1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any District Court, or any Circuit Court with respect to a defendant convicted in Circuit Court of a misdemeanor, may, upon motion of the defendant made not earlier than thirty (30) days after the defendant has been delivered to the keeper of the institution to which he has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon terms as the court determines.
- (2) The court shall consider any motion filed in accordance with subsection (1) of this section within sixty (60) days of the filing date of that motion, and shall enter its ruling within ten (10) days after considering the motion. The defendant may, in the discretion of the trial court, have the right to a hearing on any motion he may file, or have filed for him, that would suspend further execution of sentence. Any court order granting or denying a motion to suspend further execution of sentence is not reviewable.
- (3) The authority granted in this section shall be exercised by the judge who imposed sentence on the defendant, unless he is unable to act and it appears that his inability to act should continue beyond the expiration of the term of the court. In this case, the judge who imposed sentence shall assign a judge to dispose of a motion filed under this section, or as prescribed by the rules and practices concerning the responsibility for disposition of criminal matters.
- (4) If the defendant has been convicted of a misdemeanor offense under KRS Chapter 510 (sex offenses), or criminal attempt to commit any of these offenses under KRS 506.010, prior to considering the motion to suspend the sentence, the court may, for a misdemeanor offense specified herein, and shall, for any felony offense specified in this subsection order an evaluation of the defendant to be conducted by the sex offender treatment program operated or approved by the Department of Corrections or the Department for Behavioral Health, Developmental and Intellectual Disabilities. The evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining whether to suspend the sentence. If the court suspends the sentence and places the defendant on probation, the provisions of KRS 532.045(3) to (7) shall apply.

5. Conditional Release

KRS 439.555 Conditional release of certain prisoners.

Any prisoner having served the term for which he has been sentenced for a crime he committed after June 16, 1972, less good time deduction, if any has been accumulated, shall be released by minimum expiration of sentence.

KRS 197.045 Credit on sentence for prior confinement, educational accomplishment, good behavior, or meritorious service -- Requirement of completion of sex offender treatment program for eligible sexual offenders -- Forfeiture of credit for certain dismissals of inmates' civil actions.

- (1) Any person convicted and sentenced to a state penal institution
 - (a) Shall receive a credit on his or her sentence for:
 1. Prior confinement as specified in KRS 532.120;
 2. Successfully receiving a general equivalency diploma or a high school diploma, a two (2) or four (4) year college degree, a two (2) year or four (4) year degree in applied sciences, a completed technical education program, or an online or correspondence education program, each as provided and defined by the department, or a civics education program that requires passing a final exam, in the amount of ninety (90) days per diploma, degree, or technical education program completed; and
 3. Successfully completing a drug treatment program or other evidence-based program approved by the department, in the amount of ninety (90) days for each program completed; and
 - (b) May receive a credit on his or her sentence for:
 1. Good behavior in an amount not exceeding ten (10) days for each month served, to be determined by the department from the conduct of the prisoner;
 2. Performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs, awarded at the discretion of the commissioner in an amount not to exceed seven (7) days per month; and
 3. Acts of exceptional service during times of emergency, awarded at the discretion of the commissioner in an amount not to exceed seven (7) days per month.
- (2) Except for a sentencing credit awarded for prior confinement, the department may forfeit any sentencing credit awarded under subsection (1) of this section previously earned by the prisoner or deny the prisoner the right to earn future sentencing credit in any amount if during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.
- (3) When two (2) or more consecutive sentences are to be served, the several sentences shall be merged and served in the aggregate for the purposes of the sentencing credit computation or in computing dates of expiration of sentence.
- (4) Until successful completion of the sex offender treatment program, an eligible sexual offender may earn sentencing credit. However, the sentencing credit shall not be credited to the eligible sexual offender's sentence. Upon the successful completion of the sex offender treatment program, as determined by the program director, the offender shall be eligible for all sentencing credit earned but not otherwise forfeited under administrative regulations promulgated by the Department of Corrections. After successful completion of the sex offender treatment program, an eligible sexual offender may continue to earn sentencing credit in the manner provided by administrative regulations promulgated by the Department of Corrections. Any eligible sexual offender, as defined in KRS 197.410, who has not successfully completed the sex offender treatment program as determined by the program director shall not be entitled to the benefit of any credit on his or her sentence. A sexual offender who does not complete the sex offender treatment program for any reason shall serve his or her entire sentence without benefit of sentencing credit, parole, or other form of early release. The provisions of this section shall not apply to any sexual offender convicted before July 15, 1998, or to any sexual offender with an intellectual disability.
- (5)
 - (a) The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of sentencing credit and the ability to earn sentencing credit in the future for those inmates who have civil actions dismissed because the court found the action to be malicious, harassing, or factually frivolous.

- (b) Penalties set by administrative regulation pursuant to this subsection shall be as uniform as practicable throughout all institutions operated by, under contract to, or under the control of the department and shall specify a specific number of days or months of sentencing credit forfeited as well as any prohibition imposed on the future earning of sentencing credit.
- (6) The provisions in subsection (1)(a)2. of this section shall apply retroactively to July 15, 2011.

6. Parole

KRS 439.340 Parole of prisoners confined in adult penal or correctional institutions.

- (1) The board may release on parole persons confined in any adult state penal or correctional institution of Kentucky or sentenced felons incarcerated in county jails eligible for parole. All paroles shall issue upon order of the board duly adopted. As soon as practicable after his or her admission to an adult state penal or correctional institution or county jail if he or she is a sentenced felon, and at such intervals thereafter as it may determine, the Department of Corrections shall obtain all pertinent information regarding each prisoner, except those not eligible for parole. The information shall include the results of his or her most recent risk and needs assessment, his or her criminal record, his or her conduct, employment, and the reports of physical and mental examinations that have been made. The Department of Corrections shall furnish the circumstances of his or her offense, the results of his or her most recent risk and needs assessment, and his or her previous social history to the board. The Department of Corrections shall prepare a report on any information it obtains. It shall be the duty of the Department of Corrections to supplement this report with any material the board may request and submit the report to the board.
- (2) Before granting the parole of any prisoner, the board shall consider the pertinent information regarding the prisoner, including the results of his or her most recent risk and needs assessment, and shall have him or her appear before it for interview and hearing. The board in its discretion may hold interviews and hearings for prisoners convicted of Class C felonies not included within the definition of "violent offender" in KRS 439.3401 and Class D felonies. The board in its discretion may request the parole board of another state confining prisoners pursuant to KRS 196.610 to interview eligible prisoners and make a parole recommendation to the board. A parole shall be ordered only for the best interest of society and not as an award of clemency, and it shall not be considered a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his or her proper employment or for his or her maintenance and care, and when the board believes he or she is able and willing to fulfill the obligations of a law abiding citizen. Notwithstanding any statute to the contrary, including KRS 440.330, when a prisoner is otherwise eligible for parole and the board has recommended parole for that prisoner for the reasons set forth in this subsection, the board may grant parole to any prisoner wanted as a fugitive by any other jurisdiction, and the prisoner shall be released to the detainer from that jurisdiction. Such parole shall not constitute a relinquishment of jurisdiction over the prisoner, and the board in all cases expressly reserves the right to return the prisoner to confinement in a correctional institution of the Commonwealth if the prisoner violates the terms of his or her parole.
- (3) (a) A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years who is confined to a state penal institution or county jail shall have his or her case reviewed by the Parole Board after serving fifteen percent (15%) or two (2) months of the original sentence, whichever is longer.
- (b) Except as provided in this section, the board shall adopt administrative regulations with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings and all other matters that come before it, or conditions to be imposed upon parolees. Regulations governing the eligibility of prisoners for parole shall be in accordance

with professionally accepted ideas of correction and reform and may utilize in part objective, performance-based criteria and risk and needs assessment information; however, nothing herein contained shall preclude the board from utilizing its present regulations in conjunction with other factors involved that would relate to the inmate's needs and the safety of the public.

- (4) The board shall insure that all sentenced felons who have longer than ninety (90) days to serve in state penal institutions, halfway houses, and county jails are considered for parole not less than sixty (60) days prior to their parole eligibility date, and the Department of Corrections shall provide the necessary assistance and information to the board in order for it to conduct timely parole reviews.
- (5) In addition to or in conjunction with each hearing conducted under subsection (2) of this section for any prisoner convicted of a Class A, B, or C felony and prior to the granting of a parole to any such prisoner, the parole board shall conduct a hearing of which the following persons shall receive not less than forty-five (45) nor more than ninety (90) days' notice: the Commonwealth's attorney who shall notify the sheriff of every county and the chief of police of every city and county in which the prisoner committed any Class A, B, or C felony for which he or she is imprisoned, and all identified victims of the crimes or the next of kin of any victim who is deceased. Notice to the Commonwealth's attorney shall be by mail, fax, or electronic means at the discretion of the board, and shall be in a manner that ensures receipt at the Commonwealth attorney's business office. Notices received by chiefs of police and sheriffs shall be posted in a conspicuous location where police employed by the department may see it. Notices shall be posted in a manner and at a time that will allow officers to make comment thereon to the Parole Board. Notice to victims or their next of kin shall be made, for prisoners incarcerated prior to July 15, 1986, by mail, fax, or electronic means at the discretion of the board, and shall be in a manner that ensures receipt by the Commonwealth's attorney, who shall forward the notice promptly to the victims or their next of kin at their last known address. For prisoners incarcerated on or after July 15, 1986, notice to the victims or their next of kin shall be by mail from the Parole Board to their last known address as provided by the Commonwealth's attorney to the Parole Board at the time of incarceration of the prisoner. Notice to the victim or the next of kin of subsequent considerations for parole after the initial consideration shall not be sent if the victim or the next of kin gives notice to the board that he or she no longer wants to receive such notices. The notice shall include the time, date, and place of the hearing provided for in this subsection, and the name and address of a person to write if the recipient of the notice desires to attend the hearing or to submit written comments.
- (6) Persons receiving notice as provided for in subsection (5) of this section may submit comments, in person or in writing, to the board upon all issues relating to the parole of the prisoner. The board shall read and consider all comments prior to making its parole decision, if they are received by the board not less than seven (7) days before the date for the hearing. The board shall retain all comments in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decisions affecting the prisoner. In addition to officers listed in subsection (5) of this section, the crime victims or the next of kin of any victim who is deceased or who is disabled and cannot attend the hearing or the parent or legal guardian of any victim who is a minor may attend the hearing provided for in subsection (5) of this section and present oral and written comments upon all issues relating to the parole of the prisoner, if they have advised the board, in writing received by the board not less than seven (7) days prior to the date set for the hearing, of their intention to attend the hearing. The board shall receive and consider all comments, shall make a record of them which it shall retain in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decision affecting the prisoner. Persons appearing before the Parole Board pursuant to this subsection may elect to make their presentations outside of the presence of the prisoner.

- (7) Victims of Class D felonies may submit comments in person or in writing to the board upon all issues relating to the parole of a prisoner.
- (8) Any hearing provided for in subsections (5), (6), and (7) of this section shall be open to the public unless the persons having a right to appear before the board as specified in those subsections request closure of hearing for reasons of personal safety, in which event the hearing shall be closed. The time, date, and location of closed hearings shall not be disclosed to the public.
- (9) Except as specifically set forth in this section, nothing in this section shall be deemed to expand or abridge any existing rights of persons to contact and communicate with the Parole Board or any of its members, agents, or employees.
- (10) The unintentional failure by the Parole Board, sheriff, chief of police, or any of its members, agents, or employees or by a Commonwealth's attorney or any of his or her agents or employees to comply with any of the provisions of subsections (5), (6), and (8) of this section shall not affect the validity of any parole decision or give rise to any right or cause of action by the crime victim, the prisoner, or any other person.
- (11) No eligible sexual offender within the meaning of KRS 197.400 to 197.440 shall be granted parole unless he or she has successfully completed the Sexual Offender Treatment Program.
- (12) Any prisoner who is granted parole after completion of the Sexual Offender Treatment Program shall be required, as a condition of his or her parole, to participate in regular treatment in a mental health program approved or operated by the Department of Corrections.
- (13) When the board grants parole contingent upon completion of a program, the commissioner, or his or her designee, shall determine the most appropriate placement in a program operated by the department or a residential or nonresidential program within the community approved by the department. If the department releases a parolee to a nonresidential program, the department shall release the parolee only if he or she will have appropriate community housing pursuant to KRS 439.3408.
- (14) If the parole board does not grant parole to a prisoner, the maximum deferment for a prisoner convicted of a non-violent, non-sexual Class C or Class D felony shall be twenty-four (24) months. For all other prisoners who are eligible for parole:
 - (a) No parole deferment greater than five (5) years shall be ordered unless approved by a majority vote of the full board; and
 - (b) No deferment shall exceed ten (10) years, except for life sentences.
- (15) When an order for parole is issued, it shall recite the conditions thereof.

KRS 439.3401 Parole for violent offenders -- Applicability of section to victim of domestic violence or abuse -- Time of offense -- Prohibition against award of credit.

- (1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of:
 - (a) A capital offense;
 - (b) A Class A felony;
 - (c) A Class B felony involving the death of the victim or serious physical injury to a victim;
 - (d) An offense described in KRS 507.040 or 507.050 where the offense involves the killing of a peace officer or firefighter while the officer or firefighter was acting in the line of duty;
 - (e) A Class B felony involving criminal attempt to commit murder under KRS 506.010 if the victim of the offense is a clearly identifiable peace officer or fire fighter acting in the line of duty, regardless of whether an injury results;
 - (f) The commission or attempted commission of a felony sexual offense described in KRS Chapter 510;
 - (g) Use of a minor in a sexual performance as described in KRS 531.310;
 - (h) Promoting a sexual performance by a minor as described in KRS 531.320;
 - (i) Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a);

- (j) Human trafficking under KRS 529.100 involving commercial sexual activity where the victim is a minor;
- (k) Criminal abuse in the first degree as described in KRS 508.100;
- (l) Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;
- (m) Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or
- (n) Robbery in the first degree.

The court shall designate in its judgment if the victim suffered death or serious physical injury.

- (2) A violent offender who has been convicted of a capital offense and who has received a life sentence (and has not been sentenced to twenty-five (25) years without parole or imprisonment for life without benefit of probation or parole), or a Class A felony and receives a life sentence, or to death and his or her sentence is commuted to a life sentence shall not be released on probation or parole until he or she has served at least twenty (20) years in the penitentiary. Violent offenders may have a greater minimum parole eligibility date than other offenders who receive longer sentences, including a sentence of life imprisonment.
- (3)
 - (a) A violent offender who has been convicted of a capital offense or Class A felony with a sentence of a term of years or Class B felony shall not be released on probation or parole until he has served at least eighty-five percent (85%) of the sentence imposed.
 - (b) A violent offender who has been convicted of a violation of KRS 507.040 where the victim of the offense was clearly identifiable as a peace officer or a firefighter and the victim was acting in the line of duty shall not be released on probation or parole until he or she has served at least eighty-five percent (85%) of the sentence imposed.
 - (c) A violent offender who has been convicted of a violation of KRS 507.040 or 507.050 where the victim of the offense was a peace officer or a firefighter and the victim was acting in the line of duty shall not be released on probation or parole until he or she has served at least fifty percent (50%) of the sentence imposed.
 - (d) Any offender who has been convicted of a homicide or fetal homicide offense under KRS Chapter 507 or 507A in which the victim of the offense died as the result of an overdose of a Schedule I controlled substance and who is not otherwise subject to paragraph (a), (b), or (c) of this subsection shall not be released on probation, shock probation, parole, conditional discharge, or other form of early release until he or she has served at least fifty percent (50%) of the sentence imposed
- (4) A violent offender shall not be awarded any credit on his sentence authorized by KRS 197.045(1)(b)1. In no event shall a violent offender be given credit on his or her sentence if the credit reduces the term of imprisonment to less than eighty-five percent (85%) of the sentence.
- (5) This section shall not apply to a person who has been determined by a court to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or serious physical injury to the victim. The provisions of this subsection shall not extend to rape in the first degree or sodomy in the first degree by the defendant.
- (6) This section shall apply only to those persons who commit offenses after July 15, 1998.
- (7) For offenses committed prior to July 15, 1998, the version of this statute in effect immediately prior to that date shall continue to apply.
- (8) The provisions of subsection (1) of this section extending the definition of "violent offender" to persons convicted of or pleading guilty to robbery in the first degree shall apply only to persons whose crime was committed after July 15, 2002.

KRS 439.3402 Exemption from KRS 439.3401 for victims of domestic violence and abuse - Procedures - Effect.

- (1) Any violent offender as defined in KRS 439.3401 who was convicted prior to July 14, 1992, who claims to come within the definitions of KRS 503.050 and 533.060 and the purview of this section as the victim of domestic violence and abuse may be exempt from KRS 439.3401 under the conditions set forth in this section.
- (2) (a) The offender shall file a motion in the Circuit Court in which the offender was convicted stating the facts which qualify the offender for exemption under this section.
(b) The motion shall state whether the offender requests an evidentiary hearing, or whether the offender relies on the record of evidence already on file with the Circuit Court.
(c) If the offender requests an evidentiary hearing the motion shall state what witnesses the offender wishes to testify and a brief summary of each witness' expected testimony.
(d) The motion shall state whether the offender wishes the court to appoint counsel to represent the offender or what attorney, if any, will represent the offender at the hearing. The appointment of counsel by the court shall be made in conformity with the provisions of KRS Chapter 31.
- (3) (a) The Commonwealth shall respond to the motion within twenty (20) days after the motion was filed.
(b) If the Commonwealth requests an evidentiary hearing and the offender did not, the Commonwealth's response shall state what witnesses and evidence the Commonwealth intends to introduce.
(c) The Commonwealth may stipulate to the offender's evidence stated in the motion in lieu of the evidentiary hearing.
- (4) The Circuit Court shall hold any evidentiary hearing within thirty (30) days after the Commonwealth's response was filed, or if the Commonwealth did not respond, within sixty (60) days.
- (5) The Circuit Court shall issue findings of fact and an order ruling upon the motion within thirty (30) days after the evidentiary hearing, or if no hearing was held, within sixty (60) days after the Commonwealth's response was filed or due to be filed.
- (6) The order of the Circuit Court may be appealed in the manner as authorized for judgments in criminal cases.
- (7) Only one (1) motion under this section may be filed by the same offender regarding the same conviction.
- (8) The effect of granting a motion under this section is to remove the status as a violent offender for the offense for which the motion was filed and permit the offender to be eligible for parole in the manner specified in KRS 439.340.

KRS 439.3405 Parole of prisoners with documented terminal medical conditions - Hearing.

- (1) Notwithstanding any statute eliminating parole or establishing minimum time for parole eligibility for a certain class or status of offender, including KRS 439.340(11), 439.3401, 532.080(7), and 533.060, the board, with the written consent of a majority of the full board, may review the case of any prisoner and release that prisoner on parole despite any elimination of or minimum time for parole eligibility, when the prisoner has a documented terminal medical condition likely to result in death within one (1) year or severe chronic lung disease, end-stage heart disease, severe neuro-muscular disease such as multiple sclerosis; or has severely limited mobility as a result of stroke, disease, or trauma; or is dependent on external life support systems and would not pose a threat to society if paroled.
- (2) Medical information considered under this section shall be limited to the medical findings supplied by Department of Corrections medical staff. The medical staff shall provide in writing the prisoner's diagnosis and prognosis in support of the conclusion that the prisoner suffers from a terminal medical condition likely to result in death within one (1) year or because of the

conditions set forth in subsection (1) of this section he or she is substantially dependent on others for the activities of daily living.

- (3) The medical information prepared by the Department of Corrections medical staff under this section shall be forwarded to the medical director of the Department of Corrections who shall submit that information and a recommendation for or against parole review under this section to the commissioner of the Department of Corrections or his or her designee. With the approval of the commissioner of the Department of Corrections, a request for parole review under this section, along with the medical information and medical director's recommendation, shall be submitted to the board.
- (4) Medical information presented under this section shall be considered along with other information relevant to a decision regarding the granting of parole and shall not constitute the only reason for granting parole.
- (5) Notwithstanding KRS 439.340(5), in addition to or in conjunction with each review conducted under subsection (1) of this section for any prisoner convicted of a Class A or B felony, or of a Class C felony involving violence or a sexual offense and prior to the granting of parole to any such prisoner, the Parole Board shall conduct a hearing of which the following persons shall receive not less than fifteen (15) nor more than thirty (30) days' notice:
 - (a) The Commonwealth's attorney, who shall notify the sheriff of every county and the chief of police of every city and county in which the prisoner committed any Class A, B, or C felony for which he or she is imprisoned; and
 - (b) All identified victims of the crimes or the next of kin of any victim who is deceased.

Notice to the Commonwealth's attorney shall be by mail, fax, or electronic means, at the discretion of the board, and shall be in a manner that ensures receipt at the Commonwealth attorney's business office. Notices received by chiefs of police and sheriffs shall be posted in a conspicuous location where police employed by the department may see it. Notices shall be posted in a manner and at a time that will allow officers to make comment thereon to the Parole Board. Notice to victims or their next of kin shall be made by mail, fax, or electronic means, at the discretion of the board, to their last known address or telephone number as provided by the Commonwealth's attorney to the Parole Board at the time of incarceration of the prisoner. Notice to the victim or the next of kin of subsequent considerations for parole after the initial consideration shall not be sent if the victim or the next of kin gives notice to the board that he or she no longer wants to receive such notices. The notice shall include the time, date, and place of the hearing provided for in this subsection, and the name and address of a person to write if the recipient of the notice desires to attend the hearing or to submit written comments.

501 KAR 1:030 Determining Parole Eligibility.

Section 1. Definitions.

- (1) "Board" is defined by KRS 439.250(5).
- (2) "Deferment" means a decision by the board that an inmate shall serve a specific number of months before further parole consideration.
- (3) "Detainer" means a document issued or made by a legal authority, authorizing the keeper of a prison or jail to keep the person named in the document in custody.
- (4) "Parole" means the release of an inmate with a signed parole certificate to:
 - (a) The community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision;
 - (b) Answer the detainer.
- (5) "Parole eligibility date" means the date set by the board for conducting parole hearings at the location designated for an inmate's parole release hearing to take place during the month the inmate becomes eligible for parole.

- (6) "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence..
- (7) "Parole for violent offender" is defined in KRS 439.3401.
- (8) "Physical injury" is defined in KRS 500.080(13)
- (9) "Serious physical injury" is defined in KRS 500.080(15).
- (10) "Serve-out", "SOT", or "serve-out-time" means a decision of the board that an inmate shall serve until the completion of his sentence.
- (11) "SOTP" means Sex Offender Treatment Program.

Section 2. Ineligibility.

- (1) An eligible sex offender, as defined in KRS 197.410(2), convicted prior to July 15, 1998 shall not be eligible for a parole consideration hearing unless:
 - (a) He has been denied entrance into the Sex Offender Treatment Program;
 - (b) He has been terminated from the SOTP; or
 - (c) He has successfully completed the SOTP.
- (2) On or after July 15, 1998, a sex offender's eligibility shall be governed by KRS 197.045(4).
- (3) On or after July 15, 1998, a person confined to a state penal institution or county jail as a result of the revocation of his conditional discharge by the court pursuant to KRS 532.043 and 532.060 shall not be eligible for parole consideration.
- (4) If an inmate is within sixty (60) days of being released by minimum expiration, administrative release, or maximum expiration at the time of his next scheduled parole hearing, the inmate shall not be eligible for parole.

Section 3. Parole Eligibility.

- (1) Initial parole review date. Except as provided by Section 2 of this administrative regulation, a person confined to a state penal institution or county jail shall have his case reviewed by the board, in accordance with the following schedules:
 - (a) A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years shall have his or her case reviewed by the Parole Board upon reaching his or her parole eligibility date as established in KRS 439.340(3)(a).
 - (b) For a felony offense committed prior to December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and including 15 years	2 years
More than 15 years, up to and including 21 years	4 years
More than 21 years, up to and including life	6 years

(c) For a felony offense committed after December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years
Persistent felony offender I in conjunction with a Class A, B, or C felony	10 years

(d) For any crime, committed on or after July 15, 1986, but prior to July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:

Sentences of a number of years	50% of the sentence received or 12 years, whichever is less
Sentence of life	12 years

(e) For a crime:

1. Committed on or after July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1;
2. Committed on or after July 15, 2002, which is:
 - a. Burglary in the first degree accompanied by the commission or attempted commission of a felony sexual offense in KRS Chapter 510;
 - b. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;
 - c. Burglary in the first degree accompanied by commission or attempted commission of kid-napping as prohibited by KRS 509.040; or
 - d. Robbery in the first degree;
3. Committed on or after July 12, 2006, which is:
 - a. A capital offense;
 - b. Class A felony;
 - c. Complicity to a Class A felony;
 - d. Class B felony involving the death of the victim or serious physical injury to a victim;
 - e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;
 - f. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);
 - g. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);
 - h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;
 - i. Promoting prostitution in the first degree as described in KRS 529.030(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;
 - j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;
 - k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

- l. Robbery in the first degree; or
- 4. Committed on or after June 26, 2007, which is:
 - a. A capital offense;
 - b. Class A felony;
 - c. Complicity to a Class A felony;
 - d. Class B felony involving the death of the victim or serious physical injury to a victim;
 - e. The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;
 - f. The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);
 - g. Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);
 - h. Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;
 - i. Human trafficking as described in KRS 529.010(5)(b) when the victim is a minor;
 - j. Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;
 - k. Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or
 - l. Robbery in the first degree:

Sentences of a number of years	85% of sentence received or 20 years, whichever is less
Sentence of life	20 years

- (f) For an individual serving multiple sentences, if one (1) or more of the crimes resulted in a conviction committed under paragraph (e) of this subsection and one (1) or more of the crimes resulted in a conviction committed under paragraph (c) of this subsection, parole eligibility shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.
- (2) Subsequent parole review. Except as provided in KRS 439.340(14)
 - (a) After the initial review for parole, a subsequent review, during confinement, shall be at the discretion of the board; and
 - (b) The board, at the initial or a subsequent review, may order a serve-out on a sentence.
- (3) Parole review with new felony conviction.
 - (a) If a confined prisoner is sentenced for a felony committed prior to the date of his current incarceration, he has not been discharged since his original admission, and if this new conviction will be served consecutively, the sentence received for the latter conviction shall be added to the sentence currently being served to determine his parole eligibility.
 - (b)
 - 1. If a confined prisoner is a returned parole violator who receives an additional consecutive sentence, his parole eligibility shall be set on the length on the new sentence only, beginning from the date of his final sentencing, unless the board has previously set a new parole eligibility date.
 - 2. If the board has previously set a new parole eligibility date, the parole eligibility date shall be the date which last occurs.
 - (c) If parole is recommended, and a confined prisoner receives an additional sentence after board consideration, but before his release:
 - 1. The recommendation of parole shall automatically be voided; and
 - 2. The new parole eligibility date shall be set based upon the date of original admission on the aggregate sentences.

- (4) Parole review for crimes committed while in an institution or while on escape. If an inmate commits a crime while confined in an institution or while on an escape and receives a concurrent or consecutive sentence for this crime, eligibility time towards parole consideration on the latter sentence shall not begin to accrue until he becomes eligible for parole on his original sentence. This shall include a life sentence.
- (a) Except as provided by paragraph (b) of this subsection, in determining parole eligibility for an inmate who receives a sentence for an escape, a sentence for a crime committed while in the institution, or on a sentence for a crime committed while on an escape, the total parole eligibility shall be set by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively:
1. The amount of time to be served for parole eligibility on the original sentence;
 2. If the inmate has an additional sentence for escape, the amount of time to be served for parole eligibility on the additional sentence for the escape;
 3. If the inmate has an additional sentence for a crime committed while in the institution, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while in the institution; and
 4. If the inmate has an additional sentence for a crime committed while on escape, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while on escape.
- (b) If the board has previously set a parole eligibility date for an inmate described in paragraph (a) of this subsection, and that date is later than that set under paragraph (a) of this subsection, the later date shall be the parole eligibility date.
- (c)
1. Except as provided by paragraph (b) of this subsection, if a confined prisoner who has previously met the board is given a deferment, escapes during the period of the deferment, and returns from that escape without a new sentence for the escape, the time out on the escape shall be added to the original deferment date to arrive at the new adjusted date.
 2. (a) If the prisoner later receives a sentence for the escape, the previous deferment shall be automatically voided and the new parole eligibility date shall be set based on the new sentence beginning from the date of sentencing for the new sentence, unless the deferment date set by the board is a later date than that set based on the new sentence.
(b) If the deferment date set by the board is a later date, the parole eligibility date shall be the date which last occurs.
- (d) If an inmate receives a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence for a crime committed while on escape or confined in an institution, his parole eligibility date shall be set from the date of his new sentence or from the date previously set by the board, whichever occurs last.
- (e) If an inmate receives a parole recommendation but escapes prior to being released, the parole recommendation shall be void. Upon return to a state institution, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines it may conduct a face-to-face hearing with this person at the institution with a three (3) member panel.
- (5) Parole reviews for persons on shock probation or on prerelease probation. If a person is shock probated, or on prerelease probation, and is later returned to the institution as a shock probation violator or prerelease probation violator, his new parole eligibility shall be calculated by adding the period of time the inmate is on shock probation or prerelease probation to his original parole eligibility date.
- (a) If a person on shock probation or prerelease probation is returned to the institution with a new consecutive sentence acquired while on shock probation or prerelease probation, he

shall be eligible for a parole hearing if he has reached parole eligibility on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation or prerelease probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences. The time spent out on shock probation or prerelease probation shall not be included as part of the total period of time to be served for parole eligibility.

- (b) If a person on parole is returned to the institution, has received a new sentence for a crime committed while on parole, and is probated or shock probated on the new sentence, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines, it may conduct a face-to-face hearing with this person at the institution with a panel of at least two (2) members.

Section 4. Emergency Authority.

If the Commissioner of the Department of Corrections gives notice to the board of a need to relieve state prison or local jail overpopulation, the board may authorize the Commissioner to release one (1) or more persons who have been granted parole but who remain in custody solely to meet the time service requirements of this administrative regulation, if:

- (1) Sixty (60) or fewer days remain between the date of the actual release and the date on which the inmate would otherwise be physically released on parole;
- (2) The release would not result in a violation of a statutorily set minimum service of time requirement, including that set out for violent offenders under KRS 439.3401; and
- (3) All other release requirements, including victim notification and re-entry planning, are completed.

KRS 439.341 Preliminary revocation hearings of probation, parole, and post-incarceration supervision violators.

Preliminary revocation hearings of probation, parole, and post-incarceration supervision violators shall be conducted by hearing officers. These hearing officers shall be attorneys, appointed by the board and admitted to practice in Kentucky, who shall perform the aforementioned duties and any others assigned by the board.

KRS 439.344 Effect of parole time on sentence -- Exceptions.

The period of time spent on parole shall count as a part of the prisoner's sentence, except when a parolee is:

- (1) Returned to prison as a parole violator for a new felony conviction;
- (2) Returned to prison as a parole violator after charges have been filed or an indictment has been returned for a felony offense committed while on parole and the prisoner is subsequently convicted of that offense;
- (3) Returned to prison as a parole violator and is subsequently convicted of a felony offense committed while on parole;
- (4) Returned to prison as a parole violator for absconding from parole supervision, except that the time spent on parole prior to absconding shall count as part of the prisoner's sentence;
- (5) Returned to prison as a parole violator and it is subsequently determined that he or she owes restitution pursuant to KRS 439.563 and has an arrearage on that restitution. Any credit withheld pursuant to this subsection shall be reinstated when the arrearage is paid in full;
- (6) Classified as a violent offender pursuant to KRS 439.3401; or
- (7) A registered sex offender pursuant to KRS 17.500 to 17.580.

KRS 439.346 Paroled prisoner or under post-incarceration supervision subject to orders of board.

During the period of his or her parole or post-incarceration supervision, the prisoner shall be amenable to the orders of the board and the department.

KRS 439.510 Information obtained by probation or parole officer to be privileged -Exception.

All information obtained in the discharge of official duty by any probation or parole officer shall be privileged and shall not be received as evidence in any court. Such information shall not be disclosed directly or indirectly to any person other than the court, board, cabinet, or others entitled under KRS 439.250 to 439.560 to receive such information, unless otherwise ordered by such court, board or cabinet. Information shall be made available to sex offender treatment programs operated or approved by the Department of Corrections or the Department for Behavioral Health, Developmental and Intellectual Disabilities who request the information in the course of conducting an evaluation or treatment pursuant to KRS 439.265(6), 532.045(3), or 532.050(4).

KRS 439.563 Restitution as condition of parole -- Board order -- Effect on length of parole.

- (1) When there is an identified victim of a defendant's crime to whom restitution has been ordered but not yet paid in full, or restitution has been ordered paid to a government agency and has not yet been paid in full, the Parole Board shall order the defendant to pay restitution as a condition of parole.
- (2) When the Parole Board orders restitution, the board shall:
 - (a) Order the restitution to be paid to a specific person or organization through the Division of Probation and Parole, which shall disburse the moneys as ordered by the board;
 - (b) Set the amount of restitution to be paid, if not already set;
 - (c) Set the amount and frequency of each restitution payment or require the payment to be made in a lump sum.
- (3) When the Parole Board orders restitution, the Department of Probation and Parole shall:
 - (a) Monitor and oversee the collection of the restitution;
 - (b) Institute parole violation proceedings if the restitution is not being paid;
 - (c) Institute sanctions against the defendant if restitution is not being paid and good cause is not shown for the nonpayment; and
 - (d) Maintain parole supervision over the defendant until restitution has been paid in full.
- (4) The board, in addition to any other sanctions which may be imposed on the defendant, ask a court to hold a defendant who is not paying restitution in the manner or amount prescribed in contempt of court.
- (5) Any statute relating to the length of parole supervision notwithstanding, the parole for a person owing restitution shall be until the restitution is paid in full, even if this would lengthen the period of supervision beyond the statutory limit of parole supervision or the statutory limit for serving out the sentence imposed.
- (6) Payment of restitution in full prior to the end of the period of parole supervision shall not shorten the period of parole supervision.

KRS 439.575 Prerelease probation of inmates program.

- (1) There is hereby created a program for prerelease probation of inmates confined in correctional facilities under the jurisdiction of or under contract to the Department of Corrections.
- (2) Any inmate who is in a prerelease program or eligible for a prerelease program as specified by administrative regulations of the Department of Corrections may apply to the sentencing court for prerelease probation.
- (3) The court, upon favorable recommendation of the Department of Corrections, may place the inmate on probation under those terms and conditions the court deems necessary, which may include but not need to be limited to those specified in KRS 533.030.
- (4) In particular, the court may require that an inmate placed on prerelease probation remain in a halfway house approved by the Department of Corrections and that the probationer pay the cost of his or her lodging in the halfway house and the costs of probation supervision in accordance with applicable statutes for probation supervision and persons granted work release from jail. Costs for lodging in a halfway house or other facility approved, but not

operated, by the Department of Corrections shall be paid by the defendant directly to the halfway house or other

facility at the rate specified by court order or by the Department of Corrections.

- (5) An inmate placed on prerelease probation shall no longer be considered as an inmate of the Department of Corrections but shall be considered as a defendant placed on probation, subject to supervision by the Division of Probation and Parole, or other agency approved by the court, and the orders of the court.
- (6) A person placed on prerelease probation by the court who violates the conditions of his or her probation may be dealt with by the court in the same manner as any other person who violates the conditions of probation.
- (7) The period of probation under this section shall not exceed the maximum expiration date of the inmate applying for the probation.

F. SEX OFFENDER TREATMENT AND HIV TESTING

1. Adult Sex Offender Risk Assessment and Treatment

KRS 17.550 Definitions for KRS 17.550 to 17.991.

As used in KRS 17.550 to 17.991, the following definitions shall apply:

- (1) "The board" means the Sex Offender Risk Assessment Advisory Board created under KRS 17.554;
- (2) "Sex offender" means a person who has been convicted of a sex crime as defined in KRS 17.500;
- (3) "Approved provider" means a mental health professional licensed or certified in Kentucky whose scope of practice includes providing mental health treatment services and who is approved by the Sex Offender Risk Assessment Advisory Board, under administrative regulations promulgated by the board, to provide comprehensive sex offender presentence evaluations or treatment to adults and youthful offenders, as defined in KRS 600.020; and
- (4) "Victim" means victim as defined by KRS 421.500.

KRS 17.552 Approval requirement for sexual offender risk evaluations or treatment - Exemptions.

No person shall conduct comprehensive sex offender presentence evaluations or treatment without first obtaining approval from the Sex Offender Risk Assessment Advisory Board, except that the Department of Corrections sex offender treatment program shall be regulated under KRS 197.400 to 197.440 and excluded from the application of this statute, and the Department of Juvenile Justice sex offender treatment program shall be regulated under KRS 635.500 and 635.520 and excluded from the application of this statute.

KRS 17.554 Sex Offender Risk Assessment Advisory Board - Risk assessment procedure.

- (1) A Sex Offender Risk Assessment Advisory Board is hereby created. The board shall approve providers who shall conduct comprehensive sex offender presentence evaluations and treatment.
- (2) The board shall develop a comprehensive sex offender presentence evaluation that shall be used by approved providers in assessing the risk of recommitting a sex crime by a sex offender, the threat posed to public safety, amenability to sex offender treatment, and the nature of the required sex offender treatment. The evaluation shall be based upon, but not limited to the following factors:
 - (a) Criminal history;
 - (b) Nature of the offense;
 - (c) Conditions of release that minimize risk;
 - (d) Physical conditions that minimize risk;

- (e) Psychological or psychiatric profiles;
- (f) Recent behavior that indicates an increased risk of recommitting a sex crime;
- (g) Recent threats or gestures against persons or expressions of an intent to commit additional offenses; and
- (h) Review of the victim impact statement.

KRS 17.556 Membership of board -- Chair -- Terms - Committees.

The board shall consist of the members named in subsections (1) and (2) of this section:

- (1) (a) The commissioner of the Department of Corrections, or the commissioner's designee;
- (b) The commissioner of the Department of Juvenile Justice, or the commissioner's designee;
- (c) The program administrator of the Sex Offender Treatment Program created pursuant to KRS 197.400; and
- (d) The commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities, or the commissioner's designee.
- (2) The following members, appointed by the Governor:
 - (a) One (1) probation and parole officer;
 - (b) Four (4) mental health professionals licensed or certified pursuant to KRS Chapter 309, 311, 314, 319, or 335 who demonstrated expertise in working with sex offenders;
 - (c) One (1) professional working in an agency which provides services to adult or child victims of sex offenses; and
 - (d) One (1) representative of an advocacy group with a demonstrated interest in the welfare of victims of sex offenses.
- (3) The Governor shall appoint the first chair of the board who shall serve for a term of two (2) years after which the chair shall be elected by the members of the board.
- (4) The probation and parole officer and the members identified in subsection (2) of this section shall serve for the remainder of the term of office of the Governor during whose incumbency they were appointed, unless removed sooner for cause, but they shall remain on the board until their successors are appointed or until they are reappointed.
- (5) No member appointed pursuant to subsection (4) of this section may be represented by a designee.
- (6) No member appointed pursuant to subsection (4) of this section shall serve more than four (4) years unless reappointed.
- (7) All members identified under subsection (1) of this section shall serve during their terms of office.
- (8) All members of the board shall be reimbursed for their necessary travel and other expenses actually incurred in the discharge of their duties on the board.
- (9) The board shall be empowered to create committees for the purpose of carrying out its statutory duties.
- (10) The board shall be attached to the Department of Corrections for administrative purposes.

KRS 17.558 Issuance of approvals.

- (1) The board may issue, refuse to issue, reissue, or renew a provider approval, or may probate, suspend, or revoke the approval of a provider.
- (2) The board shall revoke the approval of a provider while his or her approval is suspended.

KRS 17.566 Use of "approved provider" designation restricted.

Only persons approved under KRS 17.500 to 17.580 and 17.991 may be known as approved providers in the Commonwealth of Kentucky, or use any words or letters or assume any titles or description tending to convey the impression that they are approved providers.

KRS 17.574 Forwarding of relevant information by certain facilities to approved provider for review prior to release - Confidentiality.

- (1) Any statutes to the contrary notwithstanding, all state or local detention or correctional facilities, hospitals, or institutions shall forward all relevant information pertaining to a sexual offender to be discharged, paroled, or released to the approved provider for review prior to the release or discharge for consideration in making recommendations to the sentencing court. The relevant information shall include but is not limited to:
- (a) The institutional record;
 - (b) The medical record including all psychological records; and
 - (c) The treatment record.
- (2) All confidential records provided pursuant to this section shall remain confidential, unless otherwise ordered by a court or by another person duly authorized to release the information.

KRS 17.576 Privileged communications - Written waiver.

Communications made in the course of comprehensive sex offender presentence evaluations or treatment to the approved provider and any employee of the approved provider who is assigned to assist in the assessments shall be privileged from disclosure in any civil or criminal proceeding, other than to determine sentence, unless the offender consents in writing to the disclosure or the communication is related to an ongoing criminal investigation. The sexual offender shall be informed in writing of the limits of the privilege created in this section.

KRS 197.440 Sexual offender's communications which are privileged.

Communications made in the application for or in the course of a sexual offender's diagnosis and treatment in the program between a sexual offender or member of the offender's family and any employee of the department who is assigned to work in the program, or approved provider, as defined in KRS 17.500, shall be privileged from disclosure in any civil or criminal proceeding, other than proceedings to determine the sentence, unless the offender consents in writing to the disclosure or the communication is related to an ongoing criminal investigation. The privilege created by this section shall not extend to disclosures made for the purpose of determining whether the offender should continue to participate in the program. The provisions of KRS 620.030 shall not apply to a communication made, received, or overheard if the communication is made pursuant to this section. The offender shall be informed in writing of the limits of the privilege created in this section.

KRS 635.527 Disclosure of communications made in course of sexual offender's diagnosis and treatment.

Communications made in the application for or in the course of a child sexual offender's diagnosis and treatment in the program, between a sexual offender or member of the sexual offender's family and any employee of the department who is assigned to work in the program, or any approved provider as defined in KRS 17.500, shall be privileged from disclosure in any civil or criminal proceeding, other than proceedings to determine the sentence, unless the sexual offender consents in writing to the disclosure or the communication is related to an ongoing criminal investigation. The privilege created by this section shall not extend to disclosures made for the purpose of determining whether the sexual offender should continue to participate in the program. The provisions of KRS 620.030 shall not apply to a communication made, received, or overheard if the communication is made pursuant to this section. The child sexual offender shall be informed in writing of the limits of the privilege created by this section.

501 KAR 6:200 Comprehensive sex offender presentence evaluation procedure - *Text included in Chapter 5, Section D.*

501 KAR 6:220 Treatment for sex offenders.

Section 1. Definitions.

- (1) "Approved provider" is defined in KRS 17.550(3).
- (2) "Board" is defined in KRS 17.550(1).
- (3) "Community standards of care" means the standards of care generally accepted by sex offender treatment professionals within the commonwealth of Kentucky and taking into account the general standards of care for the mental health profession for which the approved provider is licensed or certified.
- (4) "Treatment services" is defined in KRS 197.420(2)(b).

Section 2. Procedures for Treatment of Sex Offenders.

- (1) Treatment shall conform to community standards of care, and shall include:
 - (a) A diagnosis; and
 - (b) A written treatment plan, which shall include:
 1. Goals and objectives; and
 2. Modalities of treatment and the rationale therefor.
- (2) Treatment shall be conducted in a psychotherapy format.
- (3) Treatment may utilize psychoeducational components if indicated.
- (4) Prior to providing treatment, an approved provider shall:
 - (a) Obtain written informed consent for treatment from the offender;
 - (b) Contact the offender's supervising probation and parole officer to discuss the offender and obtain offender information; and
 - (c) Make a good faith effort to obtain the offender's mental health records; and
 - (d) Submit a general treatment curriculum to the board that includes the required elements in Section 3(1) of this administrative regulation. If the approved provider intends to treat an offender who has already completed a sex offender treatment program, then the approved provider shall also submit a treatment curriculum that includes the required elements in Section 4(2) of this administrative regulation. If an approved provider proposes changes in his submitted treatment curriculum, the approved provider shall submit a treatment curriculum with the changes to the board for approval.
- (5) An approved provider shall:
 - (a) Provide psychological or pharmaco-therapy services or testing as needed or make the appropriate referral and act as liaison for the provision of services;
 - (b) Provide treatment consistent with current professional literature which minimizes the risk of reoffending and emphasizes community safety;
 - (c) Maintain an individual record which shall include documentation of the offender's attendance and evaluative progress notes;
 - (d) Obtain a release of information signed by the sex offender which allows the approved provider to release information to probation and parole personnel responsible for the sex offender's supervision and the Sex Offender Risk Assessment Advisory Board;
 - (e) Notify the offender's supervising probation and parole officer in writing if the offender fails to attend a treatment session or fails to make a good faith effort to participate in the treatment;
 - (f) Provide the Required Monthly Progress Report to the supervising probation and parole officer each month;
 - (g) Cooperate fully with the probation and parole supervision team responsible for a sex offender under the approved provider's treatment;
 - (h) Prepare a treatment summary at discharge from treatment; and
 - (i) Provide written notice of the sex-offender's discharge from treatment and the reason for discharge to the supervising probation and parole officer within ten (10) days of discharge.

Section 3. Procedures for Treatment of Sex Offenders Who Have Not Completed a Sex Offender Treatment Program.

If a sex offender has not completed a sex offender treatment program, an approved provider shall:

- (1) Use a treatment curriculum which, at a minimum, shall include:
 - (a) Treatment services as may be necessary to meet the needs of the individual offender;
 - (b) An emphasis on acceptance of responsibility by the offender for present and past sexual offending behavior;
 - (c) Gender and culture specific programming; and
 - (d) Education of the offender in:
 1. The cycle of sexual abuse;
 2. Human sexuality;
 3. Deviant arousal and its reduction;
 4. Cognitive restructuring;
 5. Relapse prevention;
 6. Partner and family interactions and support, if applicable;
 7. Victim empathy awareness; and
 8. Relationship skills; and
- (2) Provide a minimum of eighty (80) face-to-face sessions of at least forty-five (45) minutes for an individual session or ninety (90) minutes for a group session for at least twenty-four (24) months with a minimum of forty (40) face-to-face sessions conducted during the first twelve (12) months.

Section 4. Procedures For Treatment of Sex Offenders Who Have Completed a Sex Offender Treatment Program.

- (1) If a sex offender has completed a sex offender treatment program, an approved provider shall:
 - (a) Obtain documentation from the sex offender treatment program showing completion of the program;
 - (b) Assess and document whether the offender can demonstrate acceptable levels of skills and knowledge of treatment areas listed in Section 3(1)(d) of this administrative regulation;
 - (c) Require the offender to repeat the areas in Section 3(1)(d) of this administrative regulation in which he has not demonstrated competence; and
 - (d) Provide a minimum of fifty (50) face-to-face sessions of at least forty-five(45) minutes for an individual session or ninety (90) minutes for a group session for at least eighteen (18) months with a minimum of forty (40) face-to-face sessions conducted during the first twelve (12) months;
- (2) If an offender has completed a sex offender treatment program, the approved provider shall use a treatment curriculum which, at a minimum, shall include:
 - (a) Dynamic risk factors assessment;
 - (b) Basic ownership, which means a component for offender responsibility for sexual offending behavior;
 - (c) Relapse prevention;
 - (d) Development of treatment partner relationship, including partner alert sessions;
 - (e) Collaborative development of a practical living skills plan;
 - (f) Commitment to follow-up with adjunct therapies where needed, including the following:
Substance abuse; Domestic violence; Anger management; and Psychotropic medications;
and
 - (g) A plan for family and children reintegration.
- (3) Reintegration.
 - (a) Reintegration with a victim shall not comply with treatment requirements unless it is approved by the approved provider and the probation and parole officer.
 - (b) If the offender victimized a child, reintegration with other children shall not comply with treatment requirements unless approved by the approved provider and the probation and parole officer.

- (c) The approved provider and probation and parole officer shall address at a minimum the following when considering reintegration of an offender with a child victim or other children:
1. Assessment of age and sex of child victims and offender potential for cross-over;
 2. Assessment of how the offender accessed prior child victims and similarities to situations and persons with whom he is currently considering to reside;
 3. Assessment of adult partner's knowledge and insight into offender's dynamics; and
 4. A gradual reintegration process plan.

Section 5. Incorporation by Reference.

- (1) The Sex Offender Risk Assessment Advisory Board form "Required Monthly Progress Report", 4/12/05, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, KY 40601, phone (502) 564-3279, fax (502) 564-6686, Mon - Fri, 8am - 4:30pm.

2. Juvenile Sex Offender Risk Assessment and Treatment

KRS 635.500 Operation of treatment program for juvenile sexual offenders -- Purpose.

- (1) The Department of Juvenile Justice shall operate a program for the treatment of juvenile sexual offenders, referred to in KRS 635.500 to 635.545 as the "program."
- (2) The general purpose of the program shall be to provide early intervention and treatment of the juvenile sexual offender in an effort to affect the progression to adult criminal activity. Recognizing the significance of these offenses, the program shall endeavor to deter repeat offenses through mandatory follow-up and serve to protect potential victims in the community.

KRS 635.505 Definitions for Chapter.

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

- (1) The "treatment program" means a continuum of services provided in community and institutional settings designed to provide early intervention and treatment services for juvenile sexual offenders.
- (2) A "juvenile sexual offender" as used in this chapter means an individual who was at the time of the commission of the offense under the age of eighteen (18) years who is not actively psychotic or an individual with an intellectual disability and who has been adjudicated guilty of or has been convicted of or pled guilty to:
 - (a) A felony under KRS Chapter 510;
 - (b) Any other felony committed in conjunction with a misdemeanor described in KRS Chapter 510;
 - (c) Any felony under KRS 506.010 when the crime attempted is a felony or misdemeanor described in KRS Chapter 510;
 - (d) An offense under KRS 530.020;
 - (e) An offense under KRS 530.064(1)(a);
 - (f) An offense under KRS 531.310; or
 - (g) A misdemeanor offense under KRS Chapter 510.
- (3) A "juvenile sexual offender assessment" means an assessment of the child's adolescent social development, medical history, educational history, legal history, family history, substance abuse history, sexual history, treatment history, and recent behaviors, which shall be prepared in order to assist the courts in determining whether the child should be declared a juvenile sexual offender, and to provide information regarding the risk for reoffending and recommendations for treatment.

- (4) "Individual with an intellectual disability" as used in this section means a juvenile with a full scale intelligent quotient of seventy (70) or below.

KRS 635.510 Criteria for classification as juvenile sexual offender -- Juvenile sexual offender assessment.

- (1) A child, thirteen (13) years of age or older at the time of the commission of the offense, shall be declared a juvenile sexual offender if the child has been adjudicated guilty of an offense listed in KRS 635.505(2)(a), (b), (c), (d), (e), or (f).
- (2) (a) A child, less than thirteen (13) years of age, may be declared a juvenile sexual offender if the child has been adjudicated guilty of an offense listed in KRS 635.505(2).
(b) Any child, thirteen (13) years of age or older, may be declared a juvenile sexual offender if the child has been adjudicated guilty of an offense listed in KRS 635.505(2)(g).
- (3) Upon final adjudication by the juvenile court under subsection (2) of this section, the juvenile court judge shall order a juvenile sexual offender assessment to be conducted on the child by the Department of Juvenile Justice treatment program or by a qualified professional approved by the program which shall recommend whether the child be declared a sexual offender and receive sexual offender treatment. Upon receipt of the findings of the assessment, the juvenile court judge shall determine whether the child shall be declared a juvenile sexual offender, and, if so, shall initiate a referral to the Department of Juvenile Justice treatment program for treatment.

KRS 635.515 Treatment time -- Treatment agreement -- Reports -- Reviews.

- (1) A child declared a juvenile sexual offender shall be committed to the custody of the Department of Juvenile Justice and shall receive sexual offender treatment for not more than three (3) years, except that this period of sexual offender treatment may be extended for one (1) additional year by the sentencing court upon motion of the Department of Juvenile Justice, and the juvenile sexual offender shall not remain in the care of the Department of Juvenile Justice after the age of twenty-one (21) years.
- (2) Based on the assessment and evaluation of the juvenile sexual offender and his family, the Department of Juvenile Justice shall utilize the treatment setting which provides the least restrictive alternative as defined in KRS 600.020.
- (3) The program shall develop a written treatment agreement upon the child's placement in a community setting, detailing the responsibilities of the juvenile sexual offender, his family, and the program to include but not be limited to: attendance; participation in education; participation in planning and completion of treatment goals; curfew; visit of appropriate staff to the home; participation in parenting groups and family counseling; continued contact with the program, schools, and courts; insurance of legal rights; and discharge criteria.
- (4) The written treatment agreement shall be presented to the court, and the court shall include the agreement as part of the order except for good cause shown.
- (5) The program shall be responsible for sending written reports every sixty (60) days to the juvenile court judge concerning the participation of the juvenile sexual offender and family in the treatment program. The written report shall include information about the treatment received by the juvenile sexual offender and family, an assessment of the sexual offender's current condition, and recommendations by the program staff.
- (6) The case may be called for review upon the recommendation of the program staff or by the juvenile court judge at any time during the course of treatment. The review may be called to consider documentation of noncompliance, absenteeism, or unwillingness to acknowledge responsibility for sexually inappropriate behavior which may be remedied through the contempt powers of the court.

(7) A court review shall be requested by the program sixty (60) days prior to the recommended program release date. The juvenile court judge shall schedule a hearing to formally consider the recommendation of release from the program.

KRS 635.520 Responsibility for design of program -- Agreements with public and private agencies.

- (1) The Department of Juvenile Justice shall have the sole authority and responsibility for establishing the design of the juvenile sexual offender treatment program but shall consult with the Administrative Office of the Courts and the Cabinet for Health and Family Services.
- (2) The Department of Juvenile Justice may enter into agreements with public or private agencies in order to implement and operate the juvenile sexual offender treatment program

KRS 635.525 Maintenance of data -- Annual report.

The Department of Juvenile Justice shall maintain complete and comprehensive data on each juvenile sexual offender participating in the program and shall compile an annual statistical report on the program.

KRS 635.527 Disclosure of communications made in course of sexual offender's diagnosis and treatment.

Communications made in the application for or in the course of a child sexual offender's diagnosis and treatment in the program, between a sexual offender or member of the sexual offender's family and any employee of the department who is assigned to work in the program, or any approved provider as defined in KRS 17.500, shall be privileged from disclosure in any civil or criminal proceeding, other than proceedings to determine the sentence, unless the sexual offender consents in writing to the disclosure or the communication is related to an ongoing criminal investigation. The privilege created by this section shall not extend to disclosures made for the purpose of determining whether the sexual offender should continue to participate in the program. The provisions of KRS 620.030 shall not apply to a communication made, received, or overheard if the communication is made pursuant to this section. The child sexual offender shall be informed in writing of the limits of the privilege created by this section.

KRS 635.545 File of participants to be maintained -- Biennial report on whether participants later committed sex-related or other criminal offenses.

- (1) The Department of Juvenile Justice shall maintain on file the names and identities of program participants for a period of fifteen (15) years following their participation in the program. The names and identities shall not be disclosed except for the purposes allowed in this section.
- (2) On a biennial basis, the Department of Juvenile Justice shall request from the Administrative Office of the Courts and the Department of Kentucky State Police information concerning whether any of the individuals who participated in the program have been arrested, tried, convicted, or incarcerated for any offense under KRS Chapter 510, KRS 530.020, 530.064(1)(a), or 531.310, or any other criminal offense.
- (3) Each two (2) years, the Department of Juvenile Justice shall compile the information obtained and present it to the Governor, the Legislative Research Commission, and the Supreme Court. The report shall not contain the names of any of the individual participants but shall contain identifying information which may assist in the evaluation of the program and in determination of whether participants have engaged in further criminal behavior as juveniles or adults.

**KRS 630.080 Detention in secure juvenile detention facility or juvenile holding facility -
Limitation on detention of child.**

- (1) In order for the court to detain a child after the detention hearing, the Commonwealth shall establish probable cause at the detention hearing that the child is a status offender and that further detention of the child is necessary for the protection of the child or the community. If the Commonwealth fails to establish probable cause that the child is a status offender, the complaint shall be dismissed and the child shall be released. If the Commonwealth establishes probable cause that the child is a status offender, but that further detention of the child is not necessary for the protection of the child or the community, the child shall be released to the parent or person exercising custodial control or supervision of the child. If grounds are established that the child is a status offender, and that further detention is necessary, the child may be placed in a nonsecure setting approved by the Department of Juvenile Justice;
- (2) A status offender may be securely detained if the cabinet has initiated or intends to initiate transfer of the youth by competent document under the provisions of the interstate compact pursuant to KRS Chapter 615;
- (3) The appropriate public agency shall:
 - (a) Within twenty-four (24) hours, exclusive of weekends and holidays, of receiving notification, as provided in subsection (3) of KRS 17.510, that a status offender or alleged status offender has been detained on the allegation that the child has violated a valid court order, meet with and interview the child; and
 - (b) Within forty-eight (48) hours, exclusive of weekend and holidays, of the detention hearing required under KRS 64.005, prepare and deliver to the court the completed written report required by subsection (4) of this section and KRS 64.005 if the child remains in detention after the detention hearing, and prior to the disposition hearing if the child has not been detained; and
- (4) A status offender or alleged status offender who is subject to a valid court order may be securely detained upon a finding that the child violated the valid court order if the court does the following prior to ordering that detention:
 - (a) Affirms that the requirements for a valid court order were met at the time the original order was issued;
 - (b) Makes a determination during the adjudicatory hearing that the child violated the valid court order; and
 - (c) Within forty-eight (48) hours after the adjudicatory hearing on the violation of a valid court order by the child, exclusive of weekends and holidays, the court receives and reviews a written report prepared by an appropriate public agency that reviews the behavior of the child and the circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate. If a prior written report is included in the child's file, that report shall not be used to satisfy this requirement. The child may be securely detained for a period not to exceed forty-eight (48) hours, exclusive of weekends and holidays, pending receipt and review of the report by the court. The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure or nonsecure detention of a status offender.

3. ***HIV Testing***

KRS 510.320 Human immunodeficiency virus testing for defendants accused of certain sexual offenses -- Results -- Counseling when test positive -- Cost -- Effect of appeal.

- (1) For purposes of this section, "human immunodeficiency virus test" means a test of an individual for presence of human immunodeficiency virus, or for antibodies or antigens that result from human immunodeficiency virus infection, or for any other substance specifically indicating human immunodeficiency virus infection.
- (2) A defendant charged with an offense pursuant to this chapter which has sexual intercourse or deviate sexual intercourse as an element, or has sexual contact as an element when the circumstances of the case demonstrate a possibility of transmission of human immunodeficiency virus, shall upon initial court appearance on the charge, be informed by the judge of the availability of human immunodeficiency virus testing. The judge shall also notify the victim of the offense, or parent or guardian of the victim, that the defendant has been so notified.
- (3) When a defendant has been convicted of any offense in subsection (2) of this section, other provisions of law to the contrary notwithstanding, the sentencing court, regardless of any prior human immunodeficiency virus test, shall order the defendant to undergo a human immunodeficiency virus test, under the direction of the Cabinet for Health and Family Services.
- (4)
 - (a) The result of any human immunodeficiency virus test conducted pursuant to this section shall not be a public record for purposes of KRS Chapter 61.
 - (b) The result of any human immunodeficiency virus test conducted pursuant to this section shall only be made available by the Cabinet for Health and Family Services to the victim, or the parent or guardian of a victim who is a minor, an individual with an intellectual disability, or mentally incapacitated, the defendant, the court issuing the order for testing, and to any other agency as directed pursuant to KRS Chapter 214.
 - (c) The Cabinet for Health and Family Services shall immediately provide to the victim the results of any human immunodeficiency virus test conducted under this section.
 - (d) In addition, the Cabinet for Health and Family Services shall provide to the Department of Corrections the result of any human immunodeficiency virus test conducted pursuant to this section which indicates that the defendant is infected with the human immunodeficiency virus. The Department of Corrections shall use this information solely for the purpose of providing medical treatment to the defendant while incarcerated in a state penitentiary or correctional institution or county jail.
- (5) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Cabinet for Health and Family Services shall provide counseling to the victim and the defendant regarding human immunodeficiency virus disease, and referral for appropriate health-care and support services.
- (6) The cost of testing under this section shall be paid by the defendant tested, unless the court has determined the defendant to be indigent.
- (7) Filing of a notice of appeal shall not automatically stay an order that the defendant submit to a human immunodeficiency virus test.

KRS 438.250 Mandatory testing for HIV, hepatitis B & C, tuberculosis, and other diseases for criminal defendants, inmates, and state patients under specified conditions -- Effect of refusal to be tested - Costs.

- (1) When a public servant, as defined in KRS 521.010, a health care professional who is licensed or certified under the laws of the Commonwealth, an employee of the health care professional, an employee of a health care facility that is licensed under the laws of the Commonwealth, or victim of a crime is bitten by, suffers a puncture wound caused by, or is exposed to the blood or body fluids of a criminal defendant, inmate, parolee, probationer, or patient or

resident of any health facility owned or operated by the Commonwealth, or the blood or body fluids of a criminal defendant, inmate, parolee, or probationer have come into contact with the skin or unprotected clothing of a public servant during any incident in which the public servant and the criminal defendant, inmate, parolee, or probationer are involved, the criminal defendant, inmate, parolee, or probationer shall be ordered to submit to testing for human immunodeficiency virus (HIV), hepatitis B and C viruses, and any other disease, if testing for that disease is recommended by the most current guidelines of the Centers for Disease Control and Prevention, and if testing for any of these conditions is recommended, then testing will be conducted as recommended by the Centers for Disease Control and Prevention.

- (2) The written results of the testing shall be made available to each public servant, victim of the crime, criminal defendant, inmate, parolee, or probationer coming within the purview of subsection (1). However, the results shall not be public records and shall be disclosed to others only on a need-to-know basis. The victim of the crime shall receive written results as provided in KRS 510.320.
- (3) If a criminal defendant, inmate, parolee, or probationer fails or refuses to be tested as ordered, he may be held in criminal contempt. A Circuit or District Judge shall compel the criminal defendant, inmate, parolee, or probationer to undergo the testing required herein if he fails or refuses to do so. Undergoing compulsory testing after a failure or refusal to be tested shall not relieve the criminal defendant, inmate, parolee, or probationer of the liability imposed by this subsection.
- (4) The costs of the testing shall be borne by the criminal defendant, inmate, parolee, or probationer unless he is determined unable to pay for the test by a court of competent jurisdiction for criminal defendants and probationers and by the Department of Corrections pursuant to their indigency standards for inmates and parolees, in which case the Commonwealth shall pay for the testing.
- (5) The provisions of subsections (1) to (4) of this section shall apply to juveniles falling within any category specified in subsections (1) to (4) of this section as well as to adults.

G. SEX OFFENDER REGISTRATION

1. Sex Offender Registration & Residency Restrictions

KRS 17.500 Definitions for KRS 17.500 to 17.580.

As used in KRS 17.500 to 17.580:

- (1) "Approved provider" means a mental health professional licensed or certified in Kentucky whose scope of practice includes providing mental health treatment services and who is approved by the Sex Offender Risk Assessment Advisory Board, under administrative regulations promulgated by the board, to provide comprehensive sex offender presentence evaluations or treatment to adults and youthful offenders, as defined in KRS 600.020;
- (2) "Cabinet" means the Justice and Public Safety Cabinet;
- (3) (a) Except as provided in paragraph (b) of this subsection, "criminal offense against a victim who is a minor" means any of the following offenses if the victim is under the age of eighteen (18) at the time of the commission of the offense:
 1. Kidnapping, as set forth in KRS 509.040, except by a parent;
 2. Unlawful imprisonment, as set forth in KRS 509.020, except by a parent;
 3. Sex crime;
 4. Promoting a sexual performance of a minor, as set forth in KRS 531.320;
 5. Human trafficking involving commercial sexual activity, as set forth in KRS 529.100;
 6. Promoting human trafficking involving commercial sexual activity, as set forth in KRS 529.110;

7. Promoting prostitution, as set forth in KRS 529.040, when the defendant advances or profits from the prostitution of a person under the age of eighteen (18);
 8. Use of a minor in a sexual performance, as set forth in KRS 531.310;
 9. Sexual abuse, as set forth in KRS 510.120 and 510.130;
 10. Unlawful transaction with a minor in the first degree, as set forth in KRS 530.064(1)(a);
 11. Any offense involving a minor or depictions of a minor, as set forth in KRS Chapter 531;
 12. Any attempt to commit any of the offenses described in subparagraphs 1. to 11. of this paragraph;
 13. Solicitation to commit any of the offenses described in subparagraphs 1. to 11. of this paragraph; or
 14. Any offense from another state or territory, any federal offense, or any offense subject to a court martial of the United States Armed Forces, which is similar to any of the offenses described in subparagraphs 1. to 13. of this paragraph.
- (b) Conduct which is criminal only because of the age of the victim shall not be considered a criminal offense against a victim who is a minor if the perpetrator was under the age of eighteen (18) at the time of the commission of the offense;
- (4) "Law enforcement agency" means any lawfully organized investigative agency, sheriff's office, police unit, or police force of federal, state, county, urban-county government, charter county, city, consolidated local government, or a combination of these, responsible for the detection of crime and the enforcement of the general criminal federal or state laws;
- (5) "Registrant" means:
- (a) Any person eighteen (18) years of age or older at the time of the offense or any youthful offender, as defined in KRS 600.020, who has committed:
 1. A sex crime; or
 2. A criminal offense against a victim who is a minor; or
 - (b) Any person required to register under KRS 17.510; or
 - (c) Any sexually violent predator; or
 - (d) Any person whose sexual offense has been diverted pursuant to KRS 533.250, until the diversionary period is successfully completed;
- (6) "Registrant information" means the name, including any lawful name change together with the previous name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, fingerprints, palm prints, DNA sample, a photograph, aliases used, residence, motor vehicle operator's license number as well as any other government-issued identification card numbers, if any, a brief description of the crime or crimes committed, and other information the cabinet determines, by administrative regulation, may be useful in the identification of registrants;
- (7) "Residence" means any place where a person sleeps. For the purposes of this statute, a registrant may have more than one (1) residence. A registrant is required to register each residence address;
- (8) "Sex crime" means:
- (a) A felony offense defined in KRS Chapter 510, or KRS 530.020, 530.064(1)(a), 531.310, 531.320, or 531.335;
 - (b) A felony attempt to commit a felony offense specified in paragraph (a) of this subsection; or
 - (c) A federal felony offense, a felony offense subject to a court-martial of the United States Armed Forces, or a felony offense from another state or a territory where the felony offense is similar to a felony offense specified in paragraph (a) of this subsection;
- (9) "Sexual offender" means any person convicted of, pleading guilty to, or entering an Alford plea to a sex crime as defined in this section, as of the date the verdict is entered by the court;
- (10) "Sexually violent predator" means any person who has been subjected to involuntary civil commitment as a sexually violent predator, or a similar designation, under a state, territory, or federal statutory scheme;

- (11) "The board" means the Sex Offender Risk Assessment Advisory Board created under KRS 17.554;
- (12) "Victim" has the same meaning as in KRS 421.500;
- (13) "DNA sample" or "deoxyribonucleic acid sample" means a blood or swab specimen from a person, as prescribed by administrative regulation, that is required to provide a DNA sample pursuant to KRS 17.170 or 17.510, that shall be submitted to the Department of Kentucky State Police forensic laboratory for law enforcement identification purposes and inclusion in law enforcement identification databases; and
- (14) "Authorized personnel" means an agent of state government who is properly trained in DNA sample collection pursuant to administrative regulation.

KRS 17.510 Registration system for adults who have committed sex crimes or crimes against minors -- Persons required to register -- Exemption for registration for juveniles to be retroactive -- Manner of registration -- Penalties -- Notifications of violations required.

- (1) The cabinet shall develop and implement a registration system for registrants which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.
- (2) A registrant shall, on or before the date of his or her release by the court, the parole board, the cabinet, or any detention facility, register with the appropriate local probation and parole office in the county in which he or she intends to reside. The person in charge of the release shall facilitate the registration process.
- (3) Any person required to register pursuant to subsection (2) of this section shall be informed of the duty to register by the court at the time of sentencing if the court grants probation or conditional discharge or does not impose a penalty of incarceration, or if incarcerated, by the official in charge of the place of confinement upon release. The court and the official shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register has been explained to the person. The court and the official in charge of the place of confinement shall require the release to complete the acknowledgment form and the court or the official shall retain the original completed form. The official shall then send the form to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.
- (4) The court or the official shall order the person to register with the appropriate local probation and parole office which shall obtain the person's fingerprints, palm prints, DNA sample, photograph, and a copy of his or her motor vehicle operator's license as well as any other government-issued identification cards, if any. Thereafter, the registrant shall return to the appropriate local probation and parole office not less than one (1) time every two (2) years in order for a new photograph to be obtained, and the registrant shall pay the cost of updating the photo for registration purposes. Any registrant who has not provided palm prints, a copy of his or her motor vehicle operator's license, or a copy of any other government-issued identification cards, if any, as of July 14, 2018, shall provide the information to the appropriate local probation and parole office when the registrant appears for a new photograph to be obtained. Any change to a registrant's motor vehicle operator's license number or any other government-issued identification card after the registrant appears for a new photograph shall be registered in accordance with subsection (10) of this section. Failure to comply with this requirement shall be punished as set forth in subsection (11) of this section.
- (5) (a) The appropriate probation and parole office shall send the registration form containing the registrant information, fingerprints, palm prints, photograph, and a copy of his or her motor vehicle operator's license as well as any other government-issued identification cards, if any, and any special conditions imposed by the court or the Parole Board, to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601. The appropriate probation and parole office shall send the DNA sample to the Department

of Kentucky State Police forensic laboratory in accordance with administrative regulations promulgated by the cabinet.

- (b) The Information Services Center, upon request by a state or local law enforcement agency, shall make available to that agency registrant information, including a person's fingerprints and photograph, where available, as well as any special conditions imposed by the court or the Parole Board.
 - (c) Any employee of the Justice and Public Safety Cabinet who disseminates, or does not disseminate, registrant information in good-faith compliance with the requirements of this subsection shall be immune from criminal and civil liability for the dissemination or lack thereof.
- (6) (a) Except as provided in paragraph (b) of this subsection, any person who has been convicted in a court of any state or territory, a court of the United States, or a similar conviction from a court of competent jurisdiction in any other country, or a court martial of the United States Armed Forces of a sex crime or criminal offense against a victim who is a minor and who has been notified of the duty to register by that state, territory, or court, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws, or has a similar conviction from a court of competent jurisdiction in any other country, shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register with the appropriate local probation and parole office in the county of residence within five (5) working days of relocation. No additional notice of the duty to register shall be required of any official charged with a duty of enforcing the laws of this Commonwealth.
- (b) No person shall be required to register under this subsection for a juvenile adjudication if such an adjudication in this Commonwealth would not create a duty to register. This paragraph shall be retroactive.
- (7) (a) Except as provided in paragraph (b) of this subsection, if a person is required to register under federal law or the laws of another state or territory, or if the person has been convicted of an offense in a court of the United States, in a court martial of the United States Armed Forces, or under the laws of another state or territory that would require registration if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register within five (5) working days with the appropriate local probation and parole office in the county of residence, employment, vocation, or schooling. A person required to register under federal law or the laws of another state or territory shall be presumed to know of the duty to register in the Commonwealth. As used in this subsection, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.
- (b) No person shall be required to register under this subsection for a juvenile adjudication if such an adjudication in this Commonwealth would not create a duty to register. This paragraph shall be retroactive.
- (8) The registration form shall be a written statement signed by the person which shall include registrant information, including an up-to-date photograph of the registrant for public dissemination.

- (9) For purposes of KRS 17.500 to 17.580 and 17.991, a post office box number shall not be considered an address.
- (10) (a) If the residence address of any registrant changes, but the registrant remains in the same county, the person shall register, on or before the date of the change of address, with the appropriate local probation and parole office in the county in which he or she resides.
- (b) 1. If the registrant changes his or her residence to a new county, the person shall notify his or her current local probation and parole office of the new residence address on or before the date of the change of address.
2. The registrant shall also register with the appropriate local probation and parole office in the county of his or her new residence no later than five (5) working days after the date of the change of address.
- (c) If the:
1. Motor vehicle operator's license number or any other government-issued identification card number of any registrant changes; or
2. Registrant obtains for the first time a motor vehicle operator's license number or any other government-issued identification card number; then, the registrant shall register the change or addition no later than five (5) working days after the date of the change or the date of the addition, with the appropriate local probation and parole office in the county in which he or she resides.
- (d) 1. As soon as a probation and parole office learns of the person's new address under paragraph (b)1. of this subsection, that probation and parole office shall notify the appropriate local probation and parole office in the county of the new address of the effective date of the new address.
2. As soon as a probation and parole office learns of the person's new address under paragraph (b)2. of this subsection, that office shall forward this information as set forth under subsection (5) of this section.
- (e) 1. A registrant shall register the following information with the appropriate local probation and parole office no less than twenty-one (21) days before traveling outside of the United States:
- a. His or her passport number and country of issue;
- b. The dates of departure, travel, and return; and
- c. The foreign countries, colonies, territories, or possessions that the registrant will visit.
2. The appropriate local probation and parole office no later than five (5) working days after the date of his or her return from traveling outside of the United States:
- a. The date he or she departed, traveled, and returned; and
- b. The foreign countries, colonies, territories, or possessions that the registrant visited.
- (11) Any person required to register under this section who knowingly violates any of the provisions of this section or prior law is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (12) Any person required to register under this section or prior law who knowingly provides false, misleading, or incomplete information is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (13) (a) The cabinet shall verify the addresses, names, motor vehicle operator's license numbers, and government-issued identification card numbers of individuals required to register under this section. Verification shall occur at least once every ninety (90) days for a person required to register under KRS 17.520(2) and at least once every calendar year for a person required to register under KRS 17.520(3).
- (b) If the cabinet determines that a person has:
1. Moved without providing his or her new address; or
2. A new name, motor vehicle operator's license number, or government- issued

identification card number that he or she has not provided; to the appropriate local probation and parole office or offices as required under subsection (10) (a), (b), and (c) of this section, the cabinet shall notify the appropriate local probation and parole office of the new address, name, motor vehicle operator's license number, or government-issued identification card number used by the person. The office shall then forward this information as set forth under subsection (5) of this section. The cabinet shall also notify the appropriate court, Parole Board, and appropriate Commonwealth's attorney, sheriff's office, probation and parole office, corrections agency, and law enforcement agency responsible for the investigation of the report of noncompliance.

- (c) An agency that receives notice of the noncompliance from the cabinet under paragraph (a) of this subsection:
1. Shall consider revocation of the parole, probation, post-incarceration, supervision, or conditional discharge of any person released under its authority; and
 2. Shall notify the appropriate county or Commonwealth's Attorney for prosecution.

KRS 17.520 Period of registration.

- (1) A registrant, upon his or her release by the court, the Parole Board, the cabinet, or any detention facility, shall be required to register for a period of time required under this section.
- (2) (a) Lifetime registration is required for:
1. Any person who has been convicted of kidnapping, as set forth in KRS 509.040, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;
 2. Any person who has been convicted of unlawful imprisonment, as set forth in KRS 509.020, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;
 3. Any person convicted of a sex crime:
 - a. Who has one (1) or more prior convictions of a felony criminal offense against a victim who is a minor; or
 - b. Who has one (1) or more prior sex crime convictions;
 4. Any person who has been convicted of two (2) or more felony criminal offenses against a victim who is a minor;
 5. Any person who has been convicted of:
 - a. Rape in the first degree under KRS 510.040; or
 - b. Sodomy in the first degree under KRS 510.070; and
 6. Any sexually violent predator.
- (3) All other registrants are required to register for twenty (20) years following discharge from confinement or twenty (20) years following the maximum discharge date on probation, shock probation, conditional discharge, parole, or other form of early release, whichever period is greater.
- (4) If a person required to register under this section is reincarcerated for another offense or as the result of having violated the terms of probation, parole, post-incarceration supervision, or conditional discharge, the registration requirements and the remaining period of time for which the registrant shall register are tolled during the reincarceration.
- (5) A person who has pled guilty, entered an Alford plea, or been convicted in a court of another state or territory, in a court of the United States, or in a court-martial of the United States Armed Forces who is required to register in Kentucky shall be subject to registration in Kentucky based on the conviction in the foreign jurisdiction. The Justice and Public Safety Cabinet shall promulgate administrative regulations to carry out the provisions of this subsection.

- (6) The court shall designate the registration period as mandated by this section in its judgment and shall cause a copy of its judgment to be mailed to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.

KRS 17.530 Authority to share information from registrations.

The cabinet may share information gathered pursuant to KRS 17.510 with law enforcement agencies of this state, other states, and the federal government in the course of their official duties.

KRS 17.540. Short title for KRS 17.500 to 17.540.

KRS 17.500 to 17.540 may be cited as the "Sex Offender Registration Act"

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

- (1) No registrant, as defined in KRS 17.500, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility. The measurement shall be taken in a straight line from the nearest property line of the school to the nearest property line of the registrant's place of residence.
- (2) No registrant, as defined in KRS 17.500, nor any person residing outside of Kentucky who would be required to register under KRS 17.510 if the person resided in Kentucky, shall be on the clearly defined grounds of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility, except with the advance written permission of the school principal, the school board, the local legislative body with jurisdiction over the publicly owned playground, or the day care director that has been given after full disclosure of the person's status as a registrant or sex offender from another state and all registrant information as required in KRS 17.500. As used in this subsection, "local legislative body" means the chief governing body of a city, county, urban-county government, consolidated local government, charter county government, or unified local government that has legislative powers.
- (3) For purposes of this section:
- (a) The registrant shall have the duty to ascertain whether any property listed in subsection (1) of this section is within one thousand (1,000) feet of the registrant's residence; and
- (b) If a new facility opens, the registrant shall be presumed to know and, within ninety (90) days, shall comply with this section.
- (4)
- (a) Except as provided in paragraph (b) of this subsection, no registrant who is eighteen (18) years of age or older and has committed a criminal offense against a victim who is a minor shall have the same residence as a minor.
- (b) A registrant who is eighteen (18) years of age or older and has committed a criminal offense against a victim who is a minor may have the same residence as a minor if the registrant is the spouse, parent, grandparent, stepparent, sibling, stepsibling, or court-appointed guardian of the minor, unless the spouse, child, grandchild, stepchild, sibling, stepsibling, or ward was a victim of the registrant.
- (c) This subsection shall not operate retroactively and shall apply only to a registrant that committed a criminal offense against a victim who is a minor after July 14, 2018.
- (5) Any person who violates subsection (1) or (4) of this section shall be guilty of:
- (a) A Class A misdemeanor for a first offense; and
- (b) A Class D felony for the second and each subsequent offense.
- (6) Any registrant residing within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility on July 12, 2006, shall move and comply with this section within ninety (90) days of July 12, 2006, and thereafter, shall be subject to the penalties set forth under subsection (5) of this section.

(7) This section shall not apply to a youthful offender probated or paroled during his or her minority or while enrolled in an elementary or secondary education program.

KRS 17.546 Registrant prohibited from using social networking Web site or instant messaging or chat room program accessible by minors, exception for parents -- Registrant prohibited from photographing, filming, or making a video of a minor without consent of minor's parent or guardian.

- (1)
- (a) As used in this subsection, "electronic communications" means any transfer of information, including signs, signals, data, writings, images, sounds, text, voice, and video, transmitted primarily through the use of electrons or electromagnetic waves or particles.
 - (b) Except as provided in paragraph (c) of this subsection, a registrant who has committed a criminal offense against a victim who is a minor after July 14, 2018, shall not knowingly or intentionally use electronic communications for communicating with or gathering information about a person who is less than eighteen (18) years of age.
 - (c) It is not a violation of paragraph (b) of this subsection for a registrant to use electronic communications to communicate with or gather information about a person under the age of eighteen (18) years of age if:
 - 1. The registrant is the parent of the person; and
 - 2. The registrant is not prohibited by court order, or the terms of probation, shock probation, conditional discharge, parole, or any other form of early release, from communicating with or gathering information about a person.
- (2) No registrant shall intentionally photograph, film, or video a minor through traditional or electronic means without the written consent of the minor's parent, legal custodian, or guardian unless the registrant is the minor's parent, legal custodian, or guardian. The written consent required under this subsection shall state that the person seeking the consent is required to register as a sex offender under Kentucky law.
- (3) Any person who violates subsection (1) or (2) of this section shall be guilty of a Class A misdemeanor.

KRS 17.547 Persons immune from suit for good faith conduct under KRS 17.500 to 17.580 and 17.991.

The following shall be immune from suit for good faith conduct under KRS 17.500 to 17.580 and 17.991:

- (1) Law enforcement agencies including the cabinet;
- (2) Independent contractors acting under the direction of law enforcement agencies;
- (3) State and county officials;
- (4) Approved providers, as defined in KRS 17.500; and
- (5) Employees of any of the agencies, entities, and persons identified in subsections (1), (2), (3), and (4) of this section.

KRS 17.549 False statements to law enforcement officials regarding noncompliant registrant -- Harboring - Violation.

- (1) A person shall be guilty of making a false statement to a law enforcement official when he or she intentionally misleads any law enforcement official regarding a noncompliant registrant.
- (2) A person shall be guilty of harboring when he or she intentionally allows a registrant to reside at his or her residence to avoid registration if the address is not the address the registrant listed as his or her residence address.

- (3) For the purposes of this section, law enforcement officials include the Attorney General, elected sheriffs, deputy sheriffs, city police officers, county police officers, state police officers, probation and parole officers, state and federal prosecutors, and investigators employed by any of these officers.
- (4) A person who violates this section shall be guilty of a Class A misdemeanor for a first offense and a Class D felony for each subsequent offense.

KRS 17.578 Termination of duty to register.

A person required to register under the provisions of KRS 17.510 and 17.520 shall be relieved of any further duty to register only upon reversal of the underlying conviction or upon a pardon.

KRS 17.580 Duty of Department of Kentucky State Police to maintain and update Web site containing information about adults who have committed sex crimes or crimes against minors -- Immunity from liability for good-faith dissemination of information -- Justice and Public Safety Cabinet to establish toll-free telephone number -- Permission for local law enforcement agency to notify of registrants in jurisdiction.

- (1) The Department of Kentucky State Police shall establish a Web site available to the public. The Web site shall display:
 - (a) The registrant information, except for information that identifies a victim, DNA samples, fingerprints, palm prints, Social Security numbers, motor vehicle operator's license numbers, and government-issued identification card numbers obtained by the Information Services Center, Department of Kentucky State Police, under KRS 17.510;
 - (b) The sex offender information, except for information that identifies a victim, DNA samples, Social Security numbers, and vehicle registration data, obtained by the Information Services Center, Department of Kentucky State Police, under KRS 17.510 prior to April 11, 2000; and
 - (c) The registrant's conviction, the elements of the offense for which the registrant was convicted, whether the registrant is currently on probation or parole, and whether the registrant is compliant or noncompliant.The Web site shall be updated every day except for Saturdays, Sundays, and state holidays.
- (2) The information pertaining to an individual shall be maintained on the Web site so long as that individual is registered in accordance with KRS 17.500 to 17.580.
- (3) The following language shall be prominently displayed on the Web site: "UNDER KRS 525.070 AND 525.080, USE OF INFORMATION OBTAINED FROM THIS WEB SITE TO HARASS A PERSON IDENTIFIED ON THIS WEB SITE IS A CRIMINAL OFFENSE PUNISHABLE BY UP TO NINETY (90) DAYS IN THE COUNTY JAIL. MORE SEVERE CRIMINAL PENALTIES APPLY FOR MORE SEVERE CRIMES COMMITTED AGAINST A PERSON IDENTIFIED ON THIS WEB SITE."
- (4)
 - (a) Any Department of Kentucky State Police employee who disseminates, or does not disseminate, registrant information or sex offender information in good-faith compliance with the requirements of this section shall be immune from criminal and civil liability for the dissemination or lack thereof.
 - (b) Any person, including an employee of a sheriff's office, acting in good faith in disseminating, or not disseminating, information previously disseminated by the Department of Kentucky State Police shall be immune from criminal and civil liability for the dissemination or lack thereof.
- (5) The cabinet shall establish a toll-free telephone number for a person to call to learn the identity of the Web site created in this section and the location of public access to the Web site in the county where the person resides.
- (6) In addition to the Web site, a local law enforcement agency may provide personal notification regarding the registrants located in its jurisdiction. Any notification shall contain the warning specified in subsection (3) of this section.

2. Employment & Volunteer Background Checks

KRS 15.382 Minimum qualifications for certification (for a Law Enforcement Officer).

NOTE: Statute effective January 1, 2019, subsequent to the publishing of this manual.

A person certified after December 1, 1998, under KRS 15.380 to 15.404 shall, at the time of becoming certified, meet the following minimum qualifications:

- (1) Be a citizen of the United States;
- (2) Be at least twenty-one (21) years of age;
- (3) (a) Be a high school graduate, regardless of whether the school is accredited or certified by a governing body, provided that the education received met the attendance and curriculum standards of Kentucky law at the time of graduation, as determined by the Kentucky Department of Education; or
(b) Possess a High School Equivalency Diploma;
- (4) Possess a valid license to operate a motor vehicle;
- (5) Be fingerprinted for a criminal background check;
- (6) Not have been convicted of any felony;
- (7) Not be prohibited by federal or state law from possessing a firearm;
- (8) Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;
- (9) Have not received a dishonorable discharge, bad conduct discharge, or general discharge under other than honorable conditions, if having served in any branch of the Armed Forces of the United States;
- (10) Have passed a medical examination as defined by the council by administrative regulation and provided by a licensed physician, physician assistant, or advanced practice registered nurse to determine if he can perform peace officer duties as determined by a validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall pass the medical examination, appropriate to the agency's job task analysis, of the employing agency. All agencies shall certify passing medical examination results to the council, which shall accept them as complying with KRS 15.310 to 15.510;
- (11) Have passed a drug screening test administered or approved by the council by administrative regulation. A person shall be deemed to have passed a drug screening test if the results of the test are negative for the use of an illegal controlled substance or prescription drug abuse. Any agency that administers its own test that meets or exceeds this standard shall certify passing test results to the council, which shall accept them as complying with KRS 15.310 to 15.510;
- (12) Have undergone a background investigation established or approved by the council by administrative regulation to determine suitability for the position of a peace officer. If the employing agency has established its own background investigation that meets or exceeds the standards of the council, as set forth by administrative regulation, the agency shall conduct the background investigation and shall certify background investigation results to the council, which shall accept them as complying with KRS 15.310 to 15.510;
- (13) Have been interviewed by the employing agency;
- (14) Not have had certification as a peace officer permanently revoked in another state;
- (15) Have taken a psychological suitability screening administered or approved by the council by administrative regulation to determine the person's suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take that agency's psychological examination, appropriate to the agency's job task analysis. All agencies shall certify psychological examination results to the council, which shall accept them as complying with KRS 15.310 to 15.510;
- (16) Have passed a physical agility test administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties as determined by a

council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take the physical agility examination of the employing agency. All agencies shall certify physical agility examination results to the council, which shall accept them as demonstrating compliance with KRS 15.310 to 15.510; and

- (17) Have taken a polygraph examination administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties. Any agency that administers its own polygraph examination as approved by the council shall certify the results that indicate whether a person is suitable for employment as a peace officer to the council, which shall accept them as complying with KRS 15.310 to 15.510.

KRS 15.3971 Court security officers -- Minimum qualifications - Exceptions.

- (1) A person certified as a court security officer after June 26, 2007, under KRS 15.380 to 15.404 shall, at the time of becoming certified, meet the following minimum qualifications:
- (a) Be a citizen of the United States;
 - (b) Be at least twenty-one (21) years of age;
 - (c) 1. Be a high school graduate, regardless of whether the school is accredited or certified by a governing body, provided that the education received met the attendance and curriculum standards of Kentucky law at the time of graduation, as determined by the Kentucky Department of Education; or
2. Possess a high school diploma or a High School Equivalency Diploma;
 - (d) Possess a valid license to operate a motor vehicle;
 - (e) Be fingerprinted for a criminal background check;
 - (f) Not have been convicted of any felony;
 - (g) Not be prohibited by federal or state law from possessing a firearm;
 - (h) Have received and read the Kentucky Law Enforcement Officers Code of Ethics, as established by the council;
 - (i) Have not received a dishonorable discharge, a bad conduct discharge, or general discharge under other than honorable conditions if he or she served in any branch of the Armed Forces of the United States;
 - (j) Have passed a drug screening test administered or approved by the council by administrative regulation. A person shall be deemed to have passed a drug screening test if the results of the test are negative for the use of an illegal controlled substance or prescription drug abuse. Any agency that administers its own test that meets or exceeds this standard shall certify passing test results to the council, which shall accept them as complying with KRS 15.380 to 15.404;
 - (k) Have undergone a background investigation established or approved by the council by administrative regulation to determine suitability for the position of a court security officer. If the employing agency has established its own background investigation that meets or exceeds the standards of the council, as set forth by administrative regulation, the agency shall conduct the background investigation and shall certify background investigation results to the council, which shall accept them as complying with KRS 15.380 to 15.404;
 - (l) Have been interviewed by the employing agency;
 - (m) Have taken a psychological suitability screening administered or approved by the council by administrative regulation to determine the person's suitability to perform court security officer duties; and
 - (n) Have taken a polygraph examination administered or approved by the council by administrative regulation to determine his or her suitability to perform court security officer duties. Any agency that administers its own polygraph examination as approved by the council shall certify the results that indicate whether a person is suitable for employment as a court security officer to the council, which shall accept them as complying with KRS 15.380 to 15.404.

- (2) A court security officer employed on or before June 26, 2007, shall comply with the requirements of subsection (1) of this section within six (6) months of June 26, 2007.
- (3) A peace officer who has previously attended law enforcement basic training and met the certification requirements of KRS 15.380 and 15.382 shall not be required to meet the requirements of this section to be appointed a court security officer, but shall meet the requirements of KRS 15.386(3).

KRS 160.151 Criminal background check on certified employees and student teachers in private, parochial, and church schools - Fingerprinting - Disclosure - Contractors, volunteers, and visitors subject to check - Employment of offenders by nonpublic schools.- *Text included in Chapter 4, Section E, 1, B.*

KRS 160.380 (4-14) School employees - Restrictions on appointment of violent offenders, and persons convicted of sex crimes - National and state criminal history background checks on applicants and new hires - Application and renewal forms - Employees charged with felony offenses.- *Text included in Chapter 4, Section E, 1, B.*

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

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

KRS 164.281 Public institution of postsecondary education criminal history background checks - Initial hires, contractors, employees, volunteers, visitors - Disclosures - Termination. *Text included in Chapter 4, E, 2, B.*

KRS 199.462 Criminal background investigation of applicant to provide foster care, relative caregiver services, fictive kin placement, or adoptive home, and of applicant's adult household members -- Request for conviction information -- Form and fee for request -- Background investigation at annual reevaluation authorized -- Administrative regulation -- Rap back system. (in re: Foster Care Provider)

- (1) Before an applicant is approved to provide foster care or relative caregiver services to a child, considered a fictive kin placement for a child, or approved to receive a child for adoption, the Cabinet for Health and Family Services shall:
 - (a) Require a criminal background investigation of the applicant and any of the applicant's adult household members by means of a fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation; or
 - (b) Request from the Justice and Public Safety Cabinet records of all conviction information for the applicant and any of the applicant's adult household members. The Justice and Public Safety Cabinet shall furnish the information to the Cabinet for Health and Family Services and shall also send a copy of the information to the applicant.
- (2) The request for records shall be in a manner approved by the Justice and Public Safety Cabinet, and the Justice and Public Safety Cabinet may charge a fee to be paid by the applicant for the actual cost of processing the request.
- (3) During a certified adoptive or foster home's annual reevaluation, the Cabinet for Health and Family Services may:
 - (a) Require a background investigation for each adult household member of the certified adoptive or foster home under subsections (1) and (2) of this section; or
 - (b) Register each adult household member of a certified adoptive or foster home under subsections (1) and (2) of this section in the rap back system.
- (4) If a child is placed and resides in a fictive kin home for more than seventy-two (72) hours, the Cabinet for Health and Family Services shall take action, including but not limited to the following:
 - (a) Provide information on how to recognize and report child abuse or neglect; and
 - (b) Ensure that, within the first five (5) days of a child under the age of five (5) years old being placed in a fictive kin home, the fictive kin has completed a one (1) time training course of one and one-half (1.5) hours of training covering the prevention and recognition of pediatric abusive head trauma, as defined in KRS 620.020.
- (5) The Cabinet for Health and Family Services shall promulgate an administrative regulation to implement this section.

KRS 199.640(6) Licensing of child-caring and child-placing agencies or facilities - Prohibition against hiring convicted sex offender.

- (6) Any administrative regulations promulgated pursuant to KRS Chapter 13A to govern services provided by church-related privately operated child-caring agencies or facilities shall not prohibit the use of reasonable corporal physical discipline which complies with the provisions of KRS 503.110(1), including the use of spanking or paddling, as a means of punishment, discipline, or behavior modification and shall prohibit the employment of persons convicted of any sexual offense with any child-caring facility or child-placing agency.

216.533 Department for Behavioral Health, Developmental and Intellectual Disabilities long-term care facilities -- Criminal background checks for applicants for employment -- Persons who may not be employed -- Effect of pardon or expunged record -- Exemption from KRS 216.789(1).

- (1) A long-term care facility owned, managed, or operated by the Department for Behavioral Health, Developmental and Intellectual Disabilities shall request an in-state criminal background information check from the Justice and Public Safety Cabinet or Administrative Office of the Courts for each applicant recommended for employment. Out-of-state criminal background information checks shall be obtained for any applicant recommended for employment who has resided or been employed outside of the Commonwealth.
- (2) No facility specified in subsection (1) of this section shall knowingly employ any person who has been convicted of a felony offense under:
 - (a) KRS Chapter 209;
 - (b) KRS Chapter 218A;
 - (c) KRS 507.020, 507.030, and 507.040;
 - (d) KRS Chapter 509;
 - (e) KRS Chapter 510;
 - (f) KRS Chapter 511;
 - (g) KRS Chapter 513;
 - (h) KRS 514.030;
 - (i) KRS Chapter 530;
 - (j) KRS Chapter 531;
 - (k) KRS 508.010, 508.020, 508.030, and 508.032;
 - (l) A criminal statute of the United States or another state similar to paragraphs (a) to (k) of this subsection; or
 - (m) A violation of the uniform code of military justice or military regulation similar to paragraphs (a) to (k) of this subsection which has caused the person to be discharged from the Armed Forces of the United States.
- (3) A person who has received a pardon for an offense specified in subsection (2) or has had the record of such an offense expunged may be employed.
- (4) Department for Behavioral Health, Developmental and Intellectual Disabilities facilities specified in subsection (1) of this section shall be exempt from the provisions of KRS 216.789(1).

KRS 216.789 Prohibition against employing certain felons at long-term care facilities, in nursing pools providing staff to nursing facilities, or in assisted-living communities - Preemployment check with Justice and Public Safety Cabinet - Temporary employment.

- (1) No long-term care facility as defined by KRS 216.535(1), nursing pool providing staff to a nursing facility, or assisted-living community shall knowingly employ a person in a position which involves providing direct services to a resident or client if that person has been convicted of a felony offense related to theft; abuse or sale of illegal drugs; abuse, neglect, or exploitation of an adult; or a sexual crime.
- (2) A nursing facility, nursing pool providing staff to a nursing facility, or assisted-living community may employ persons convicted of or pleading guilty to an offense classified as a misdemeanor if the crime is not related to abuse, neglect, or exploitation of an adult.
- (3) Each long-term care facility as defined by KRS 216.535(1), nursing pool providing staff to a nursing facility, or assisted-living community shall request all conviction information from the Justice and Public Safety Cabinet for any applicant for employment pursuant to KRS 216.793.
- (4) The long-term care facility, nursing pool providing staff to a nursing facility, or assisted-living community may temporarily employ an applicant pending the receipt of the conviction information.

KRS 329A.035 (3) Applications for licenses (as Private Investigators) -- Requirements.

- (3) Each applicant for an individual license or owner, partner, or qualifying agent for a company license shall:
- (a) Be at least twenty-one (21) years of age;
 - (b) Be a citizen of the United States or a resident alien;
 - (c) Have a high school education or its equivalent;
 - (d) Not receive a license until the earlier of:
 - 1. The expiration of ten (10) years from the applicant's release from a sentence imposed by any state or territory of the United States or the federal government for the commission of a felony, including a sentence of confinement or time served on probation, parole, or other form of conditional release or discharge; or
 - 2. The date the applicant received a restoration of the applicant's civil rights;
 - (e) Not have been convicted of a misdemeanor involving moral turpitude or for which dishonesty is a necessary element within the previous five (5) years;
 - (f) Not have been dishonorably discharged from any branch of the Armed Forces of the United States;
 - (g) Not have had his or her certification as a peace officer revoked in this or another state;
 - (h) Not have been declared by any court of competent jurisdiction to be incompetent by reason of mental defect or disease unless a court of competent jurisdiction has since declared the applicant to be competent;
 - (i) Not have been voluntarily or involuntarily committed to a facility or outpatient program for the abuse of a controlled substance or been convicted of a misdemeanor violation of KRS Chapter 218A or similar laws of any other state relating to controlled substances within the three (3) year period immediately preceding the date on which the application is submitted;
 - (j) Not chronically and habitually use alcoholic beverages as evidenced by:
 - 1. The applicant having two (2) or more convictions for violating KRS 189A.010 within the three (3) year period immediately preceding the date on which the application is submitted; or
 - 2. The applicant having been committed as an alcoholic pursuant to KRS Chapter 222, or similar laws of any other state, within the three (3) year period immediately preceding the date on which the application is submitted;
 - (k) Not chronically and habitually use alcoholic beverages or drugs to the extent that his or her normal faculties are impaired;
 - (l) Be of good moral character;
 - (m) Pass an examination administered by the board in accordance with KRS 329A.025(2)(c); and
 - (n) Submit proof of coverage which meets the following requirements:
 - 1. Is written by an insurance company which is lawfully engaged to provide insurance coverage in Kentucky;
 - 2. Provides for a combined single-limit policy in the amount of at least two hundred fifty thousand dollars (\$250,000); and
 - 3. Insures for liability all of the applicant's employees while acting in the course of their employment.Private investigators who limit their practice exclusively to working under the supervision and as employees of an attorney who is licensed to practice law in this state are exempted from the requirement of this paragraph.

922 KAR 1:490. Background checks for foster and adoptive parents, caretaker relatives, kinship caregivers, fictive kin, and reporting requirements.

Section 1. Definitions.

- (1) "Address check" means a search of the Sex Offender Registry to determine if an address is a known address of a registered sex offender.
- (2) "Administrative review" means that the status of the individual subject to the child abuse and neglect check is pending the outcome of an:
 - (a) Investigation or assessment in accordance with 922 KAR 1:330; or
 - (b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.
- (3) "Adolescent member of the household" means a youth who:
 - (a) Resides in the home of:
 1. An individual who applies for approval or has been approved to provide foster or adoptive services; or
 2. A caretaker relative, fictive kin, or kinship caregiver;
 - (b) Is age twelve (12) through age seventeen (17); and
 - (c) Is not placed in the home by a state agency.
- (4) "Adult member of the household" means an adult who:
 - (a) Resides in the home of:
 1. An individual who applies for approval or has been approved to provide foster or adoptive services; or
 2. A caretaker relative, fictive kin, or kinship caregiver; and
 - (b) Is eighteen (18) years of age or older.
- (5) "Applicant" means an individual who applies for approval as a foster or adoptive parent of a child in the custody of the state under:
 - (a) 922 KAR 1:350, Family Preparation; or
 - (b) 922 KAR 1:310, Standards for Child-Placing Agencies.
- (6) "Caretaker relative" means a relative with whom the child is, or shall be, placed by the cabinet.
- (7) "Child fatality" is defined by KRS 211.684.
- (8) "Child-placing agency" is defined by KRS 199.011(6).
- (9) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).
- (10) "Kinship caregiver" means the qualified caretaker relative of a child with whom the child is placed by the cabinet as an alternative to foster care in accordance with 922 KAR 1:130.
- (11) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).
- (12) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.
- (13) "Sexual abuse" is defined by KRS 600.020(60).
- (14) "Sexual exploitation" is defined by KRS 600.020(61).

Section 2. Background Checks Required for Foster or Adoptive Parent Applicants.

- (1) An applicant, and each adult member of the household, shall complete a DPP-157, Background Checks for Applicants or Foster/Adoptive Parents, and submit to:
 - (a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:
 1. Kentucky Justice and Public Safety Cabinet; or
 2. Administrative Office of the Courts;
 - (b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years;
 - (c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and
 - (d) An address check of the Sex Offender Registry.
- (2) Prior to approval of an applicant, each adolescent member of the household shall complete a DPP-157 and submit to a child abuse or neglect check conducted by the cabinet.

- (3) A Kentucky child abuse or neglect check conducted by the cabinet shall identify the name of each applicant, adolescent member of the household, or adult member of the household who has:
- (a) Been found by the cabinet to have:
 1. Committed sexual abuse or sexual exploitation of a child;
 2. Been responsible for a child fatality or near fatality related to abuse or neglect;
 3. Abused or neglected a child within the seven (7) year period immediately prior to the application; or
 4. Had parental rights terminated; or
 - (b) A matter pending administrative review.
- (4) An applicant shall not be approved if:
- (a) A criminal records check reveals that the applicant, or adult member of the household, has a:
 1. Felony conviction involving:
 - a. A spouse, a child, sexual violence, or death as described by 42 U.S.C. 671(a)(20); or
 - b. Physical abuse, battery, a drug, or alcohol within the five (5) year period prior to application;
 2. Criminal conviction relating to child abuse or neglect; or
 3. Civil judicial determination related to child abuse or neglect;
 - (b) A child abuse or neglect check reveals that the applicant, adolescent member of the household, or adult member of the household, has been found to have:
 1. Committed sexual abuse or sexual exploitation of a child;
 2. Been responsible for a child fatality or near fatality related to abuse or neglect; or
 3. Had parental rights terminated involuntarily in accordance with KRS 625.050 through 625.120 or another state's laws; or
 - (c) An address check of the Sex Offender Registry and supporting documentation confirm that a sex offender resides at the applicant's home address.
- (5) An individual identified in accordance with subsection (3) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 3. Procedure for Requesting a Cabinet Child Abuse or Neglect Check, a Criminal Record Check, and an Address Check of the Sex Offender Registry.

Prior to approval of an applicant, a child-placing agency shall request a child abuse or neglect check, a criminal records check, and an address check of the Sex Offender Registry by submitting to the cabinet:

- (1) A completed form, DPP-157, including the fee for a criminal background check; and
- (2) Documentation required to request a child abuse or neglect check from the child welfare agency in each previous state of residence, if the applicant or adult household member has resided outside of the state of Kentucky in the previous five (5) years.
- (3) To the extent resources are available, the department shall post information about other states' child abuse and neglect checks on the department's Web site.

Section 4. Request for a Child Abuse or Neglect Check from Another State.

- (1) The cabinet shall conduct a child abuse or neglect check as required by 42 U.S.C. 671(a)(20) if a:
 - (a) Completed DPP-157 or DPP-159, Background Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers, is submitted to the cabinet; or
 - (b) Request is received on agency letterhead and includes two (2) numeric identifiers.
- (2) The cabinet shall:
 - (a) Protect the confidentiality of the information transmitted by the cabinet to a child welfare agency; and
 - (b) Waive the fee specified in 922 KAR 1:470.

Section 5. Background Checks Required for a Caretaker Relative and Fictive Kin.

- (1) A caretaker relative, fictive kin, and each adult member of the household, shall complete a DPP-159 and submit to:
 - (a) An in-state criminal records check, conducted pursuant to KRS 199.462(1) by the:
 1. Kentucky Justice and Public Safety Cabinet; or
 2. Administrative Office of the Courts;
 - (b) A child abuse or neglect check conducted by the cabinet;
 - (c) An address check of the Sex Offender Registry; and
 - (d) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation if the caretaker relative, fictive kin, or adult household member has lived outside the state of Kentucky during the past five (5) years.
- (2) An adolescent member of a caretaker relative's or fictive kin's household shall complete a DPP-159 and submit to a child abuse or neglect check conducted by the cabinet.
- (3) A child abuse and neglect check conducted by the cabinet in accordance with subsection (1)(b) or (2) of this section shall include any finding consistent with Section 2(3) of this administrative regulation.
- (4) A caretaker relative or fictive kin shall not be approved if a criminal records check, a child abuse and neglect check, or an address check of the Sex Offender Registry reveals a finding consistent with Section 2(4) of this administrative regulation.

Section 6. Approval.

- (1) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, approval of an applicant, fictive kin, or caretaker relative who has been convicted of a nonviolent felony or misdemeanor, has been found by the cabinet or another child welfare agency to have abused or neglected a child, or whose parental rights have been terminated voluntarily, shall be handled on a case-by-case basis with consideration given to the:
 - (a) Nature of the offense;
 - (b) Length of time that has elapsed since the event; and
 - (c) Applicant's life experiences during the ensuing period of time.
- (2) Except for the provisions of Section 2(4) or 5(4) of this administrative regulation, an applicant, fictive kin, or caretaker relative may be approved on a case-by-case basis in accordance with the criteria described by subsection (1)(a) through (c) of this section if:
 - (a) An adolescent member of the household has:
 1. Been found by the cabinet to have abused or neglected a child; or
 2. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws; or
 - (b) An adult member of the household has:
 1. Been convicted of a nonviolent felony or misdemeanor;
 2. Been found to have abused or neglected a child; or
 3. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws.

Section 7. Reevaluation.

- (1) An approved foster or adoptive parent and each adult member of the household shall submit annually, prior to or during the anniversary month of initial approval, to:
 - (a) A criminal records check as described in Section 2(1)(a) of this administrative regulation;
 - (b) A child abuse or neglect check conducted by the cabinet; and
 - (c) An address check of the Sex Offender Registry.
- (2)
 - (a) If an adult becomes a new member of an approved foster or adoptive parent's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 2(1)(a)

through (d) of this administrative regulation.

- (b) If an adult becomes a new member of a kinship caregiver's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 5(1) of this administrative regulation.
- (3) If an adolescent becomes a new member of an approved foster or adoptive parent or a kinship caregiver's household, the new adolescent member of the household shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 2(2) or 5(2) of this administrative regulation.
- (4) If the cabinet has custody of a child placed with a caretaker relative or fictive kin:
 - (a) A new adult household member of a caretaker relative or fictive kin shall submit to background checks within thirty (30) calendar days of residence in the household in accordance with Section 5(1) of this administrative regulation; and
 - (b) A new adolescent household member of a caretaker relative or fictive kin shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 5(2) of this administrative regulation.
- (5) An annual address check of the Sex Offender Registry shall be completed for a kinship caregiver's eligibility redetermination in accordance with 922 KAR 1:130, Section 13(2).
- (6) If an annual address check indicates a match with the Sex Offender Registry, a report of abuse, neglect, or dependency shall be made in accordance with 922 KAR 1:330.

Section 8. Maintenance of Records.

- (1) A completed copy of each criminal records check conducted pursuant to Section 2 or 7 of this administrative regulation and the DPP-157 shall be maintained on behalf of each:
 - (a) Applicant;
 - (b) Foster or adoptive parent; and
 - (c) Adult member of an applicant or foster or adoptive parent's household.
- (2) A completed copy of each DPP-157 submitted pursuant to Section 2(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent member of:
 - (a) An applicant's household; or
 - (b) A foster or adoptive parent's household.
- (3) A completed copy of the DPP-159 and criminal records check conducted pursuant to Section 5 or 7 of this administrative regulation shall be maintained for each:
 - (a) Caretaker relative;
 - (b) Kinship caregiver;
 - (c) Fictive kin; and
 - (d) Adult member of a caretaker relative, fictive kin, or kinship caregiver's household.
- (4) A completed copy of the DPP-159 submitted pursuant to Section 5(2) or 7(3) of this administrative regulation shall be maintained on behalf of each adolescent household member of a:
 - (a) Caretaker relative;
 - (b) Kinship caregiver; or
 - (c) Fictive kin.

Section 9. Communications.

This administrative regulation shall not limit the cabinet's ability to discuss the qualifications or fitness of an applicant or an existing foster or adoptive parent with a child-placing agency in accordance with:

- (1) KRS 620.050(5); or
- (2) The terms and conditions of:
 - (a) A release of information signed by the applicant or foster or adoptive parent; or
 - (b) The agreement between the cabinet and the child-placing agency.

Section 10. Incorporation by Reference.

- (1) The following material is incorporated by reference:
- (a) "DPP-157, Background Checks for Applicants or Foster/Adoptive Parents", 1/18; and
 - (b) "DPP-159, Background Checks for Caretaker Relatives, Fictive Kin, or Kinship Caregivers", 1/18.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 am to 4:30 pm.

922 KAR 2:090, Section 16 ,Child-care center licensure -- Basis for Denial, Suspension or Revocation.

Section 16. Basis for Denial, Suspension or Revocation.

- (1) (a) The cabinet shall deny, suspend, or revoke a preliminary or regular license in accordance with KRS 199.896 if the applicant for licensure, director, employee, or a person who has supervisory authority over, or unsupervised contact with, a child fails to meet the requirements of this administrative regulation, 922 KAR 2:120, 922 KAR 2:280, or 922 KAR 2:190.
- (b) A licensee whose regular license is suspended or revoked shall:
- 1. Receive a new license certificate indicating that the license is under adverse action; and
 - 2. Post the new license certificate in accordance with Section 8(6) of this administrative regulation.
- (2) Emergency Action.
- (a) The cabinet shall take emergency action in accordance with KRS 199.896(4) by issuing an emergency order that suspends a child-care center's license.
- (b) An emergency order shall:
- 1. Be served to a licensed child-care center in accordance with KRS 13B.050(2); and
 - 2. Specify the regulatory violation that caused the emergency condition to exist.
- (c) Upon receipt of an emergency order, a child-care center shall surrender its license to the cabinet.
- (d) The cabinet or its designee and the child-care center shall make reasonable efforts to:
- 1. Notify a parent of each child in care of the center's suspension; and
 - 2. Refer a parent for assistance in locating alternate child care arrangements.
- (e) A child-care center required to comply with an emergency order issued in accordance with this subsection may submit a written request for an emergency hearing within twenty (20) calendar days of receipt of the order to determine the propriety of the licensure's suspension in accordance with KRS 199.896(7).
- (f) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing in accordance with KRS 13B.125(3).
- (g) 1. Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency order to suspend licensure.
2. The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.
- (h) A provider's license shall be revoked if the:
- 1. Provider does not request a hearing within the timeframes established in paragraph (e) of this subsection; or
 - 2. Condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.
- (3) Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).
- (4) Unless an applicant for a license meets requirements of Section 6(5) of this administrative

- regulation, the cabinet shall deny an applicant for a preliminary or regular license if:
- (a) The applicant has had previous ownership interest in a child-care provider that had its certification, license, or registration denied or revoked;
 - (b) Denial, investigation, or revocation proceedings were initiated, and the licensee voluntarily relinquished the license;
 - (c) An appeal of a denial or revocation is pending;
 - (d) The applicant previously failed to comply with the requirements of KRS 199.896, 922 KAR 2:120, 922 KAR 2:280, 922 KAR 2:190, this administrative regulation, or another administrative regulation effective at the time;
 - (e) An individual with ownership interest in the child-care center has been discontinued or disqualified from participation in:
 - 1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or
 - 2. Another governmental assistance program due to fraud, abuse, or criminal conviction related to that program;
 - (f) The applicant is the parent, spouse, sibling, or child of a previous licensee whose license was denied, revoked, or voluntarily relinquished as described in paragraphs (a) through (d) of this subsection, and the previous licensee will be involved in the child-care center in any capacity;
 - (g) The applicant listed as an officer, director, incorporator, or organizer of a corporation or limited liability company whose child-care center license was denied, revoked, or voluntarily relinquished as described in paragraph (a) through (d) of this subsection within the past seven (7) years;
 - (h) The applicant knowingly misrepresents or submits false information on a form required by the cabinet;
 - (i) The applicant interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(8)(f) or 6(9) of this administrative regulation;
 - (j) The applicant's background check reveals that the applicant is disqualified in accordance with 922 KAR 2:280;
 - (k) The applicant has been the subject of more than two (2) directed plans of correction during a three (3) year period; or
 - (l) The applicant has failed to comply with payment provisions in accordance with 922 KAR 2:190.
- (5) A child-care center's license shall be revoked if:
- (a) A representative of the center interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(8)(f) or 6(9) of this administrative regulation;
 - (b) A cabinet representative, a representative from another agency with regulatory authority, or parent is denied access during operating hours to:
 - 1. A child;
 - 2. The child-care center; or
 - 3. Child-care center staff;
 - (c) The licensee is discontinued or disqualified from participation in:
 - 1. The Child Care Assistance Program as a result of an intentional program violation in accordance with 922 KAR 2:020; or
 - 2. A governmental assistance program as a result of fraud, abuse, or criminal conviction related to that program;
 - (d) The licensee fails to meet a condition of, or violates a requirement of a directed plan of correction pursuant to Section 15 of this administrative regulation;
 - (e) The applicant or licensee knowingly misrepresents or submits false information on a form required by the cabinet;

- (f) The licensee is the subject of more than two (2) directed plans of correction during a three (3) year period; or
 - (g) The licensee has failed to comply with payment provisions in accordance with 922 KAR 2:190.
- (6) The cabinet or its designee shall suspend the license if:
- (a) A regulatory violation is found to pose an immediate threat to the health, safety, and welfare of the children in care as described in KRS 199.896(4); or
 - (b) The child care-center fails to comply with the approved plan of correction.

H. VICTIM & COMMUNITY NOTIFICATION

KRS 17.580 Duty of Department of Kentucky State Police to maintain and update Web site containing information about adults who have committed sex crimes or crimes against minors -- Immunity from liability for good-faith dissemination of information -- Justice and Public Safety Cabinet to establish toll-free telephone number -- Permission for local law enforcement agency to notify of registrants in jurisdiction. – *Text included in Chapter 5, Section G.*

KRS 196.280 Notification of release of person from penitentiary, facility for youthful offenders, regional jail, or county jail - Escape. (VINE System Requirements)

- (1) (a) The Department of Corrections shall provide or contract with a private entity to provide to members of the public who have made a notification request, notification of the release of an incarcerated person from a penitentiary, as defined in KRS 197.010, facility for youthful offenders, regional jail, or county jail. The warden, jailer, or chief administrator, or a person designated by the warden, jailer, or chief administrator, of a penitentiary, facility for youthful offenders, regional jail, or county jail, shall make available to the Department of Corrections, or any private entity under contract with the Department of Corrections, the information necessary to implement this section in a timely manner and before the release of any incarcerated person from the penitentiary, facility for youthful offenders, regional jail, or county jail. The Department of Corrections or the private entity under contract with the Department of Corrections shall be responsible for retrieving the information and notifying the requester in accordance with administrative regulations promulgated by the Department of Corrections.
- (b) If an incarcerated person escapes from any penitentiary, facility for youthful offenders, regional jail, or county jail, the warden, jailer, or chief administrator, or a person designated by the warden, jailer, or chief administrator, shall immediately provide the information necessary to implement this section.
- (c) If, upon a hearing, a court releases an incarcerated person and the incarcerated person does not return to the penitentiary, facility for youthful offenders, regional jail, or county jail, the warden, jailer, or chief administrator, or a person designated by the warden, jailer, or chief administrator, shall provide the information necessary to implement this section as soon as practicable.
- (2) The Department of Corrections shall promulgate administrative regulations for the implementation of this section.

501 KAR 14:010 Psychiatric or Forensic Psychiatric Facility Victim Notification System. Section 1. Definitions.

- (1) "Notification" means the telephonic communication to the individual regarding the release or escape of an involuntarily committed person.
- (2) "Register" means the electronic communication by the individual recording a telephone number to be contacted when the involuntarily committed person is released or escapes.

Section 2.

- (1) The chief administrator of a psychiatric or forensic psychiatric facility shall make available the name, date of birth, date of commitment, the charge, date of release or escape of the involuntarily committed individual to the Department of Corrections.
- (2) The Department of Corrections shall provide:
 - (a) The ability to register for notification purposes; and
 - (b) The notification for which the individual has registered.

Section 3.

- (1) A victim may register for notification by calling Victim Information and Notification Every Day (VINE) at (800) 511-1670 and providing his name, address, and telephone number.
- (2) The victim may provide the notification information by:
 - (a) Speaking to a VINE operator; or
 - (b) Accessing the VINE system through the keypad on his telephone.

Section 4.

If the Department of Corrections provides the administrator with any instrument or equipment to provide victim notification, the instrument or equipment shall be secured. The instrument or equipment shall be used only for the purposes set out in this administrative regulation, unless express written permission is obtained from the Department of Corrections.

908 KAR 3:025 Notification of discharge, transfer or escape of violent offenders.

Section 1. Definitions.

- (1) "Facility administrator" means the director of the facility or designee.
- (2) "State psychiatric facility" or "facility" means a hospital operated or contracted by the Department for Behavioral Health, Developmental and Intellectual Disabilities Services.
- (3) "Violent offender" is defined in KRS 439.3401.

Section 2. Identification of Violent Offenders.

- (1) If a person is committed to a state psychiatric facility pursuant to a court order issued in accordance with KRS 202A.101 and the order indicates that the person has been charged with or convicted of a violent crime as defined in KRS 439.3401, the facility staff person who authorized admission to the facility shall determine if the requirements of KRS 202A.101(5) have been met.
- (2) Upon admission of a violent offender who has been involuntarily committed to a state psychiatric facility, the facility staff person who authorized the admission shall notify the facility administrator that the violent offender has been admitted. The notification shall specify:
 - (a) The offender's name;
 - (b) The offender's date of birth;
 - (c) The criminal charge pending against the offender, if applicable;
 - (d) The criminal charge for which the offender has been convicted, if applicable;
 - (e) The county in which the offense occurred; and
 - (f) The location where the offender is housed within the facility.

Section 3. Required Procedures for Notification of Transfer or Discharge.

- (1) Prior to the discharge or transfer of a violent offender who has been involuntarily committed, the facility administrator shall notify officials specified in KRS 202A.410 in the following manner:
 - (a) The Department of Corrections in accordance with the provisions of 501 KAR 14:010;
 - (b) The prosecutor in the county where the violent crime was committed by sending a certified or registered letter; and
 - (c) The law enforcement agency with jurisdiction in the area to which the violent offender is discharged or transferred by sending a certified or registered letter.
- (2) Notification of prosecutors and law enforcement agencies shall:
 - (a) Include the date of discharge or transfer;
 - (b) The name and address of the facility to which a violent offender is transferred if applicable;

and

- (c) The information specified in Section 2(2)(a) through (e) of this administrative regulation.
- (3) If a violent offender is ordered to be transferred to a psychiatric facility in accordance with KRS 202A.201, the psychiatric facility shall not transfer or discharge the offender except in accordance with KRS 202A.201(3).

Section 4. Required Procedures for Notification of Escape.

- (1) If a violent offender who has been involuntarily committed escapes from a psychiatric facility, the facility administrator shall notify the officials specified in KRS 210.410 no later than one (1) hour after an escape is discovered. The notification process shall be to the following entities as follows:
- (a) The Department of Corrections in accordance with the provisions of 501 KAR 14:010;
 - (b) The prosecutor in the county where the violent crime was committed, by telephone, facsimile transmission, or other electronic device; and
 - (c) A local law enforcement agency that has jurisdiction in the area in which the facility is located, by telephone, facsimile transmission, or other electronic device.
- (2) Notification of prosecutors and law enforcement agencies shall include:
- (a) The date and time the escape was discovered; and
 - (b) The information specified in Section 2(2)(a) through (e) of this administrative regulation.

Section 5. Internal Procedures for Implementation. The facility administrator shall establish internal procedures to assure the proper and effective implementation of this administrative regulation. The internal procedures shall specify:

- (1) Staff designated to make the notifications required by Sections 3 and 4 of this administrative regulation;
- (2) Requirements for documentation of a discharge, transfer, or escape of a violent offender;
- (3) Requirements for notifying the facility administrator if a violent offender is transferred, is discharged or escapes;
- (4) Methods of monitoring the movement of violent offenders within the facility; and
- (5) Methods for discovering, reporting, and documenting the escape of a violent offender. (25 Ky.R. 2082; Am. 2399; eff. 4-21-1999; TAm eff. 4-27-2016.).

I. CRIMINAL CASE DATA COLLECTION

KRS 16.132 Collection of statistical data concerning sexual offenses and sexual assault evidence kits.

- (1) The Administrative Office of the Courts shall collect statistical data regarding the prosecution, dismissal, conviction, or acquittal of any person charged with committing, attempting to commit, or complicity to a sexual offense as defined by KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, 510.130, 510.140, 530.020, 530.064(1)(a), and 531.310.
- (2) The information collected pursuant to this section for the previous calendar year shall be provided by May 1 of 2018 and by each May 1 thereafter to the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707

KRS 27A.305 Collection of statistical data concerning sexual offenses.

- (1) The Administrative Office of the Courts shall collect statistical data regarding the prosecution, dismissal, conviction, or acquittal of any person charged with committing, attempting to commit, or complicity to a sexual offense as defined by KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, 510.130, 510.140, 530.020, 530.064(1)(a), and 531.310.
- (2) The information collected pursuant to this section for the previous calendar year shall be provided by May 1 of 2018 and by each May 1 thereafter to the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.