

1 AN ACT relating to stalking.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➡ Section 1. KRS 508.130 is amended to read as follows:

4 As used in **this section**~~[KRS 508.130 to 508.150]~~, unless the context requires otherwise:

5 (1) (a) ~~{To "stalk" means to engage in an intentional course of conduct:~~

6 ~~1.—Directed at a specific person or persons;~~

7 ~~2.—Which seriously alarms, annoys, intimidates, or harasses the person or~~
8 ~~persons; and~~

9 ~~3.—Which serves no legitimate purpose.~~

10 ~~(b) The course of conduct shall be that which would cause a reasonable person to~~
11 ~~suffer substantial mental distress.~~

12 ~~(2)~~ 1. "Course of conduct" means a pattern of conduct composed of two (2) or
13 more acts, evidencing a continuity of purpose.

14 2. One (1) or more of these acts may include:

15 a. Those by which a person, directly or indirectly, by any means or
16 method:

17 i. Follows, monitors, observes, surveils, or threatens another
18 person; or

19 ii. Interferes with another person's property; or

20 b. The use of any equipment, instrument, machine, or other device by
21 which communication or information is transmitted, including **but**
22 **not limited to:**

23 i. Computers;~~{,}~~

24 ii. The internet, **internet applications, social media platforms,**
25 **email, text messages, instant messages,** or **any** other
26 electronic network;~~{,}~~

27 iii. Cameras or other recording devices;~~{,}~~

iv. Telephones or other personal communications devices;~~;~~

v. Scanners or other copying devices;~~;~~ and

vi. Any device that enables the use of a transmitting device.

3. Constitutionally protected activity is not included within the meaning of "course of conduct." If the defendant claims that he or she 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;~~;~~

~~(b)(3)~~ "Protective order" means:

1.(a) An emergency protective order or domestic violence order issued under KRS 403.715 to 403.785;

2.(b) A foreign protective order, as defined in KRS 403.720 and 456.010;

3.(c) An order issued under KRS 431.064;

4.(d) An interpersonal protective~~[A restraining]~~ order issued in accordance with KRS 508.155 or 510.037;

5.(e) An order of protection as defined in KRS 403.720 and 456.010;~~;~~
~~and~~

6. A civil restraining order issued by a court of this Commonwealth or any other state on the basis of domestic violence and abuse as defined in KRS 403.720 or dating violence and abuse as defined in KRS 456.010; or

7.(f) Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender;
and

(c) "Social media platform" means a website or application that is open to the public, allows a user to create an account, and enables users to do all of the

following:

1. Interact socially with other users within the confines of the website or application;
2. Construct a public or semipublic profile for the purpose of signing into and using the website or application;
3. Populate a list of other users with whom an individual shares or has the ability to share a social connection within the website or application; and
4. Create or post content viewable by others, including on message boards, chat rooms, video channels, direct or private messages, or chats, or on a landing page or main feed that presents the user with content generated by other users.

(2) A person is guilty of stalking when he or she:

(a) Intentionally engages in a course of conduct directed at another person or persons that:

1. Seriously alarms, annoys, intimidates, or harasses the other person or persons;
2. Serves no legitimate purpose; and
3. Causes the other person or persons to suffer substantial mental distress, including but not limited to interference with the person's sense of safety or well-being; and

(b) Consciously disregards a substantial and unjustifiable risk that the course of conduct would cause the other person or persons to suffer substantial mental distress.

(3) Stalking is a Class D felony unless:

(a) 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

- 1 has been given actual notice;
- 2 (b) A criminal complaint is currently pending with a court, law enforcement
- 3 agency, or prosecutor by the same victim or victims and the defendant has
- 4 been served with a summons or warrant or has been given actual notice;
- 5 (c) The defendant has been convicted of or pled guilty within the previous five
- 6 (5) years to a felony or to a Class A misdemeanor against the same victim or
- 7 victims;
- 8 (d) The act or acts were committed while the defendant had a deadly weapon on
- 9 or about his or her person; or
- 10 (e) The defendant's act or acts place the victim or victims in reasonable fear of:
- 11 1. Sexual contact as defined in KRS 510.010;
- 12 2. Physical injury; or
- 13 3. Death;
- 14 in which case it is a Class C felony.

15 ➔ Section 2. KRS 511.010 is amended to read as follows:

16 As used~~[The following definitions apply]~~ in this chapter, unless the context otherwise

17 requires:

18 (1) "Building," in addition to its ordinary meaning, means any structure, vehicle,

19 watercraft, or aircraft:

20 (a) Where any person lives; or

21 (b) Where people assemble for purposes of business, government, education,

22 religion, entertainment, or public transportation.

23 Each unit of a building consisting of two (2) or more units separately secured or

24 occupied is a separate building~~;~~~~[.]~~

25 (2) "Dwelling" means a building which is usually occupied by a person lodging

26 therein~~;~~~~[.]~~

27 (3) "Employee" has the same meaning as in KRS 338.015;

(4) "Employer" has the same meaning as in KRS 338.015;

(5)(3) "Premises" includes ~~a~~the term building as defined in this section, herein and any real property;

(6) "Threatening behavior" means behavior intentionally engaged in by a person that places another person in reasonable apprehension of imminent physical injury; and

(7) "Workplace" means any property that is owned, leased, or controlled by an employer where the employer's official business is conducted and where one (1) or more of the employer's employees perform employment duties.

➡ Section 3. KRS 511.070 is amended to read as follows:

(1) A person is guilty of criminal trespass in the second degree when he or she knowingly enters or remains:

(a) Unlawfully in a building or upon premises as to which notice against trespass is given by fencing or other enclosure; **or**

(b) In a workplace, while engaging in threatening behavior, as to which notice against trespass is given verbally or in writing by the applicable employer, an employee with the employer's authorization, or an authorized agent of the employer.

(2) For the purposes of this section, notice against trespass includes the placement of identifying purple paint marks on trees or posts on the property if the marks are:

(a) Vertical lines of not less than eight (8) inches in length and not less than one (1) inch in width;

(b) Placed so that the bottom of the mark is not less than three (3) feet from the ground nor more than five (5) feet from the ground; and

(c) Placed at locations that are readily visible to any person approaching the property and no more than:

1. One hundred (100) feet apart on forest land; or

1 2. One thousand (1,000) feet apart on land other than forest land.

2 (3) Criminal trespass in the second degree is a Class B misdemeanor, unless:

3 (a) The offense occurs during a declared emergency as defined by KRS 39A.020
4 arising from a natural or man-made disaster, within the area covered by the
5 emergency declaration, and within the area impacted by the disaster~~[-, in~~
6 ~~which case it is a Class A misdemeanor];~~ or

7 (b) A person commits a second or subsequent offense within three (3) years of
8 the prior offense;

9 in which case it is a Class A misdemeanor.

10 ➡ Section 4. KRS 511.080 is amended to read as follows:

11 (1) A person is guilty of criminal trespass in the third degree when he or she knowingly
12 enters or remains unlawfully in or upon premises.

13 (2) Criminal trespass in the third degree is a violation, unless:

14 (a) The offense occurs during a declared emergency as defined by KRS 39A.020
15 arising from a natural or man-made disaster, within the area covered by the
16 emergency declaration, and within the area impacted by the disaster~~[-, in~~
17 ~~which case it is a Class B misdemeanor];~~ or

18 (b) A person commits a second or subsequent offense within three (3) years of
19 the prior offense;

20 in which case it is a Class B misdemeanor.

21 ➡ Section 5. KRS 14.300 is amended to read as follows:

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

23 (1) "Address" means a residential street address, school address, or work address of an
24 individual, as specified on the application of an individual to be a program
25 participant under this section;

26 (2) "Applicant" means a person applying for certification in the Safe at Home Program
27 under KRS 14.300 to 14.318;

- 1 (3) "Application assistant" means a private individual, employee or volunteer of a
 2 government agency, or an employee or volunteer of a nonprofit program that
 3 provides counseling, referral, shelter, or other specialized service to victims of
 4 domestic violence, rape, sexual assault, human trafficking, stalking, or other crimes,
 5 who has been designated by the respective agency or program, and who has been
 6 trained and registered by the Secretary of State to assist individuals in establishing a
 7 safety program and in the completion of program applications;
- 8 (4) "Criminal offense against a victim who is a minor" has the same meaning as in
 9 KRS 17.500;
- 10 (5) "Domestic violence and abuse" has the same meaning as in KRS 403.720;
- 11 (6) "Human trafficking" means an offense or attempt to commit an offense as defined
 12 in:
- 13 (a) KRS 529.100;
- 14 (b) 18 U.S.C. sec. 1589;
- 15 (c) 18 U.S.C. sec. 1592;
- 16 (d) 22 U.S.C. sec. 7102(8);
- 17 (e) 22 U.S.C. sec. 7102(11); or
- 18 (f) 22 U.S.C. sec. 7102(12);
- 19 (7) "Program participant" means a person certified as a program participant under KRS
 20 14.300 to 14.318;
- 21 (8) "Sex crime" means an offense or an attempt to commit an offense defined in:
- 22 (a) KRS Chapter 510;
- 23 (b) KRS 530.020;
- 24 (c) KRS 530.064(1)(a);
- 25 (d) KRS 531.120;
- 26 (e) KRS 531.310;
- 27 (f) KRS 531.320; or

1 (g) Any criminal attempt to commit an offense specified in this subsection,
2 regardless of the penalty for the attempt;

3 (9) "Specified offense" means:

4 (a) Domestic violence and abuse;

5 (b) Stalking;

6 (c) A sex crime;

7 (d) Human trafficking;

8 (e) A criminal offense against a victim who is a minor;

9 (f) A similar federal offense; or

10 (g) A similar offense from another state or territory; and

11 (10) "Stalking" means conduct prohibited under Section 1 of this Act ~~[KRS 508.140 and~~
12 ~~508.150]~~.

13 ➡ Section 6. KRS 23A.208 is amended to read as follows:

14 (1) In addition to fees created by KRS 23A.205, 23A.206, and 23A.2065, an
15 administrative fee of thirty dollars (\$30) shall be added to the costs that the
16 defendant is required to pay for the following crimes:

17 (a) A sex crime, meaning an offense described in:

18 1. KRS Chapter 510;

19 2. KRS 530.020;

20 3. KRS 530.064(1)(a);

21 4. KRS 531.310; and

22 5. KRS 531.320;

23 (b) Stalking, meaning conduct prohibited under Section 1 of this Act ~~[KRS~~
24 ~~508.140 and 508.150]~~; and

25 (c) A criminal attempt, conspiracy, facilitation, or solicitation to commit the
26 crimes set forth in this subsection.

27 (2) The first one dollar and fifty cents (\$1.50) of each fee collected under this section

1 shall be placed into the general fund, and the remainder of the fee shall be allocated
 2 by the clerk of the court on a quarterly basis to the Safe at Home Program fund
 3 established in KRS 14.260 to be used solely to establish, operate, and maintain the
 4 Safe at Home Program established in KRS 14.302.

- 5 (3) The court may waive all or any portion of the fee required by this section if the
 6 court finds that a person subject to the surcharge is indigent or financially unable to
 7 pay all or any portion of the surcharge. The court may waive only the portion of the
 8 surcharge that the court finds the person is financially unable to pay.

9 ➡ Section 7. KRS 24A.178 is amended to read as follows:

- 10 (1) In addition to fees created by KRS 24A.175, 24A.176, and 24A.1765, an
 11 administrative fee of thirty dollars (\$30) shall be added to the costs that the
 12 defendant is required to pay for the following crimes:

13 (a) A sex crime, meaning an offense described in:

- 14 1. KRS Chapter 510;
- 15 2. KRS 530.020;
- 16 3. KRS 530.064(1)(a);
- 17 4. KRS 531.310; and
- 18 5. KRS 531.320;

19 (b) Stalking, meaning conduct prohibited under Section 1 of this Act KRS
 20 ~~508.140 and 508.150~~; and

21 (c) A criminal attempt, conspiracy, facilitation, or solicitation to commit the
 22 crimes set forth in this subsection.

- 23 (2) The first one dollar and fifty cents (\$1.50) of each fee collected under this section
 24 shall be placed into the general fund, and the remainder of the fee shall be allocated
 25 by the clerk of the court on a quarterly basis to the Safe at Home Program fund
 26 established in KRS 14.260 to be used solely to establish, operate, and maintain the
 27 Safe at Home Program established in KRS 14.302.

1 (3) The court may waive all or any portion of the fee required by this section if the
 2 court finds that a person subject to the surcharge is indigent or financially unable to
 3 pay all or any portion of the surcharge. The court may waive only the portion of the
 4 surcharge that the court finds the person is financially unable to pay.

5 ➡ Section 8. KRS 431.005 is amended to read as follows:

- 6 (1) A peace officer may make an arrest:
- 7 (a) In obedience to a warrant; or
 - 8 (b) Without a warrant when a felony is committed in his or her presence; or
 - 9 (c) Without a warrant when he or she has probable cause to believe that the
 10 person being arrested has committed a felony; or
 - 11 (d) Without a warrant when a misdemeanor, as defined in KRS 431.060, has been
 12 committed in his or her presence; or
 - 13 (e) Without a warrant when a violation of KRS 189.290, 189.393, 189.520,
 14 189.580, 511.080, or 525.070 has been committed in his or her presence,
 15 except that a violation of KRS 189A.010 or KRS 281A.210 need not be
 16 committed in his or her presence in order to make an arrest without a warrant
 17 if the officer has probable cause to believe that the person being arrested has
 18 violated KRS 189A.010 or KRS 281A.210;
 - 19 (f) Without a warrant when a violation of KRS 508.030 has occurred in a hospital
 20 without the officer's presence if the officer has probable cause to believe that
 21 the person being arrested has violated KRS 508.030. As used in this
 22 paragraph, "hospital" includes any property owned or used by a hospital as a
 23 parking lot or parking garage; or
 - 24 (g) Without a warrant when a violation of KRS 235.240(2) has occurred causing
 25 an accident, occurring outside of the peace officer's presence, involving a
 26 motorboat or vessel on the waters of the Commonwealth, and resulting in a
 27 physical injury or property damage, and a commissioned peace officer has

1 probable cause to determine who the operator of the motorboat or vessel was
 2 and that operator was intoxicated or under the influence of any substance that
 3 impairs one's ability to operate the motorboat or vessel at the time of the
 4 accident.

5 (2) (a) Any peace officer may arrest a person without warrant when the peace officer
 6 has probable cause to believe that the person has intentionally or wantonly
 7 caused physical injury to a family member, member of an unmarried couple,
 8 or another person with whom the person was or is in a dating relationship.

9 (b) As used in this subsection, "dating relationship," "family member," and
 10 "member of an unmarried couple" have the same meanings as ~~defined in~~
 11 KRS 403.720 and 456.010.†

12 ~~(c) For the purpose of this subsection, the term "member of an unmarried couple"~~
 13 ~~has the same meaning as set out in KRS 403.720.]~~

14 (3) A peace officer may arrest a person without a warrant when the peace officer has
 15 probable cause to believe that the person is a sexual offender who has failed to
 16 comply with the Kentucky Sex Offender Registry requirements based upon
 17 information received from the Law Information Network of Kentucky.

18 (4) For purposes of subsections (2) and (3) of this section, a "peace officer" is an
 19 officer certified pursuant to KRS 15.380 to 15.404.

20 (5) If a law enforcement officer has probable cause to believe that a person has violated
 21 a condition of release imposed in accordance with KRS 431.064 and verifies that
 22 the alleged violator has notice of the conditions, the officer shall, without a warrant,
 23 arrest the alleged violator whether the violation was committed in or outside the
 24 presence of the officer.

25 (6) A private person may make an arrest when a felony has been committed in fact and
 26 he or she has probable cause to believe that the person being arrested has committed
 27 it.

(7) If a law enforcement officer has probable cause to believe that a person has violated **an interpersonal protective**~~[a restraining]~~ order issued under KRS 508.155, then the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

→ Section 9. KRS 411.220 is amended to read as follows:

(1) A civil action may be maintained under this section against any person who commits the conduct prohibited under **Section 1 of this Act**~~[KRS 508.140 or 508.150. A civil action may be maintained under this section]~~ whether or not the individual who is alleged to have violated **Section 1 of this Act**~~[KRS 508.140 or 508.150]~~ has been charged or convicted of the alleged crime.

(2) The action may be:

(a) Brought by a victim or a victim's parent or legal guardian on behalf of a victim who is a minor; and

(b) Filed in a court of competent jurisdiction in the county where the alleged violation occurred or the county where the victim resides.

(3) Liability under this section shall include the actual damages caused by the violation and may include punitive damages, court costs, and reasonable attorney's fees.

(4) An action under this section shall be brought within two (2) years of the last act of conduct in violation of this section.

→ Section 10. KRS 456.010 is amended to read as follows:

As used in this chapter:

(1) "Dating relationship" means a relationship between individuals who have or have had a relationship of a romantic or intimate nature. It does not include a casual acquaintanceship or ordinary fraternization in a business or social context. The following factors may be considered in addition to any other relevant factors in determining whether the relationship is or was of a romantic or intimate nature:

(a) Declarations of romantic interest;

- 1 (b) The relationship was characterized by the expectation of affection;
- 2 (c) Attendance at social outings together as a couple;
- 3 (d) The frequency and type of interaction between the persons, including whether
- 4 the persons have been involved together over time and on a continuous basis
- 5 during the course of the relationship;
- 6 (e) The length and recency of the relationship; and
- 7 (f) Other indications of a substantial connection that would lead a reasonable
- 8 person to understand that a dating relationship existed;
- 9 (2) "Dating violence and abuse" means:
 - 10 (a) Physical injury, serious physical injury, stalking, sexual assault, strangulation,
 - 11 or the infliction of fear of imminent physical injury, serious physical injury,
 - 12 sexual assault~~[abuse]~~, strangulation, or assault occurring between persons
 - 13 who are or have been in a dating relationship; or
 - 14 (b) Any conduct prohibited by KRS 525.125, 525.130, 525.135, or 525.137, or
 - 15 the infliction of fear of such imminent conduct, taken against a domestic
 - 16 animal when used as a method of coercion, control, punishment, intimidation,
 - 17 or revenge directed against a person with whom the perpetrator is or has been
 - 18 in a dating relationship, when that person has a close bond of affection to the
 - 19 domestic animal;
- 20 (3) "Domestic animal" means a dog, cat, or other animal that is domesticated and kept
- 21 as a household pet, but does not include animals normally raised for agricultural or
- 22 commercial purposes;
- 23 (4) "Foreign protective order" means any judgment, decree, or order of protection
- 24 which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 which was
- 25 not issued on the basis of domestic violence and abuse;
- 26 (5) "Global positioning monitoring system" means a system that electronically
- 27 determines a person's location through a device worn by the person which does not

1 invade his or her bodily integrity and which transmits the person's latitude and
2 longitude data to a monitoring entity;

3 (6) "Order of protection" means any interpersonal protective order, including those
4 issued on a temporary basis, and includes a foreign protective order;

5 (7) "Sexual assault" refers to conduct prohibited as any degree of rape, sodomy, or
6 sexual abuse under KRS Chapter 510 or a criminal attempt, conspiracy, facilitation,
7 or solicitation to commit any degree of rape, sodomy, or sexual abuse, or incest
8 under KRS 530.020;

9 (8) "Stalking" refers to conduct prohibited as stalking under Section 1 of this Act ~~KRS~~
10 ~~508.140 or 508.150~~, or a criminal attempt, conspiracy, facilitation, or solicitation
11 to commit the crime of stalking;

12 (9) "Strangulation" refers to conduct prohibited by KRS 508.170 and 508.175, or a
13 criminal attempt, conspiracy, facilitation, or solicitation to commit the crime of
14 strangulation; and

15 (10) "Substantial violation" means criminal conduct which involves actual or threatened
16 harm to the person, family, or property, including a domestic animal, of an
17 individual protected by an order of protection.

18 ➡ Section 11. KRS 500.092 is amended to read as follows:

19 (1) (a) Notwithstanding KRS 500.090, all personal property which is not used as a
20 permanent residence in this state which is used in connection with or acquired
21 as a result of a violation or attempted violation of any of the statutes set out in
22 subsection (3) of this section shall be subject to forfeiture under the same
23 terms, conditions, and defenses and using the same process as set out in KRS
24 218A.405 to 218A.460 for property subject to forfeiture under that chapter.

25 (b) Notwithstanding KRS 500.090, all real and personal property in this state
26 which is used in connection with or acquired as a result of a violation or
27 attempted violation of KRS 531.310 or 531.320 shall be subject to forfeiture

1 under the same terms, conditions, and defenses and using the same process as
 2 set out in KRS 218A.405 to 218A.460 for property subject to forfeiture under
 3 that chapter.

4 (2) Administrative regulations promulgated under KRS 218A.420 shall govern
 5 expenditures derived from forfeitures under this section to the same extent that they
 6 govern expenditures from forfeitures under KRS 218A.405 to 218A.460.

7 (3) The following offenses may trigger forfeiture of personal property under subsection
 8 (1)(a) of this section:

9 (a) KRS 17.546;

10 (b) **Section 1 of this Act**~~[KRS 508.140 and 508.150]~~ involving the use of any
 11 equipment, instrument, machine, or other device by which communication or
 12 information is transmitted, including computers, the internet or other
 13 electronic network, cameras or other recording devices, telephones or other
 14 personal communications devices, scanners or other copying devices, and any
 15 device that enables the use of a transmitting device;

16 (c) KRS 510.155;

17 (d) KRS 530.064(1)(a);

18 (e) KRS 531.030;

19 (f) KRS 531.040

20 (g) KRS 531.310;

21 (h) KRS 531.320;

22 (i) KRS 531.335;

23 (j) KRS 531.340;

24 (k) KRS 531.350;

25 (l) KRS 531.360; and

26 (m) KRS 531.370.

27 ➡ Section 12. KRS 500.120 is amended to read as follows:

1 (1) (a) In any investigation relating to an offense involving KRS 510.155,
 2 530.064(1)(a), 531.030, 531.040, 531.310, 531.320, 531.335, 531.340,
 3 531.350, 531.360, or 531.370, and upon reasonable cause to believe that an
 4 internet service provider, social networking company, mobile payment
 5 service, or cloud storage service has been used in the exploitation or
 6 attempted exploitation of children, or in any investigation of a violation of
 7 KRS 17.546, **Section 1 of this Act**~~[508.140, 508.150]~~, 525.070, or 525.080
 8 where there is reasonable cause to believe that an internet service provider,
 9 social networking company, mobile payment service, or cloud storage service
 10 has been used in the commission of the offense, the Attorney General may
 11 issue in writing and cause to be served a subpoena requiring the production
 12 and testimony described in subsection (2) of this section.

13 (b) In any investigation relating to an offense involving KRS 510.155,
 14 530.064(1)(a), 531.030, 531.040, 531.310, 531.320, 531.335, 531.340,
 15 531.350, 531.360, or 531.370, and upon reasonable cause to believe that an
 16 internet service provider, social networking company, mobile payment
 17 service, or cloud storage service has been used in the exploitation or
 18 attempted exploitation of children, the commissioner of the Department of
 19 Kentucky State Police may issue in writing and cause to be served a subpoena
 20 requiring the production and testimony described in subsection (2) of this
 21 section.

22 (2) Except as provided in subsection (3) of this section, a subpoena issued under this
 23 section may require the production of any records or other documentation relevant
 24 to the investigation, including:

- 25 (a) Electronic mail address;
- 26 (b) Internet username;
- 27 (c) Internet protocol address;

- 1 (d) Name of account holder;
- 2 (e) Billing and service address;
- 3 (f) Telephone number;
- 4 (g) Account status;
- 5 (h) Method of access to the internet; and
- 6 (i) Automatic number identification records if access is by modem.
- 7 (3) The internet service provider, social networking company, mobile payment service,
- 8 cloud storage service, or provider of electronic communication service or remote
- 9 computing service shall not disclose the following pursuant to a subpoena issued
- 10 under this section but shall disclose the information in obedience to a warrant:
- 11 (a) In-transit electronic communications;
- 12 (b) Account memberships related to internet groups, newsgroups, mailing lists, or
- 13 specific areas of interest;
- 14 (c) Account passwords; and
- 15 (d) Account content including:
 - 16 1. Electronic mail in any form;
 - 17 2. Address books, contacts, or buddy lists;
 - 18 3. Financial records;
 - 19 4. Internet proxy content or web surfing history; and
 - 20 5. Files or other digital documents stored with the account or pursuant to
 - 21 use of the account.
- 22 (4) At any time before the return date specified on the subpoena, the person summoned
- 23 may, in the District Court in which the person resides or does business, petition for
- 24 an order modifying or setting aside the subpoena, or a prohibition of disclosure by a
- 25 court.
- 26 (5) A subpoena under this section shall describe the objects required to be produced
- 27 and shall prescribe a return date with a reasonable period of time within which the

1 objects can be assembled and made available.

2 (6) If no case or proceeding arises from the production of records or other
3 documentation pursuant to this section within a reasonable time after those records
4 or documentation are~~is~~ produced, the Attorney General shall either destroy the
5 records and documentation or return them to the person who produced them.

6 (7) A subpoena issued under this section may be served by any person who is at least
7 eighteen (18) years of age and who is designated in the subpoena to serve it. Service
8 upon a natural person may be made by personal delivery of the subpoena to him or
9 her. Service may be made upon a corporation or partnership or other unincorporated
10 association which is subject to suit under its common name, by delivering the
11 subpoena to an officer, to a managing or general agent, or to any other agent
12 authorized by appointment or by law to receive service of process. The affidavit of
13 the person serving the subpoena together with a true copy thereof shall be proof of
14 service.

15 (8) Except as provided in this section any information, records or data reported or
16 obtained pursuant to subpoena under this section shall remain confidential and shall
17 not be further disclosed unless in connection with a criminal case related to the
18 subpoenaed materials.

19 ➡ Section 13. KRS 506.160 is amended to read as follows:

20 (1) If a defendant is alleged by the prosecuting attorney to have been a member of a
21 criminal gang as defined in KRS 506.135, at the time of the commission of the
22 offense, upon conviction of the offense there shall be a separate proceeding from
23 that proceeding which resulted in the defendant's conviction if the defendant was
24 convicted of:

25 (a) Assault in the fourth degree under KRS 508.030;

26 (b) Menacing under KRS 508.050;

27 (c) Wanton endangerment in the second degree under KRS 508.070;

- 1 (d) Terroristic threatening in the third degree under KRS 508.080;
- 2 (e) ~~Stalking in the second degree under KRS 508.150;~~
- 3 ~~(f) Unlawful imprisonment in the second degree under KRS 509.030;~~
- 4 ~~(g)~~ Criminal coercion under KRS 509.080;
- 5 ~~(h)~~ Criminal mischief in the second degree under KRS 512.030;
- 6 ~~(i)~~ Obstructing governmental operations under KRS 519.020;
- 7 ~~(j)~~ Resisting arrest under KRS 520.090;
- 8 ~~(k)~~ Riot in the second degree under KRS 525.030;
- 9 ~~(l)~~ Inciting to riot under KRS 525.040;
- 10 ~~(m)~~ Harassment under KRS 525.070;
- 11 ~~(n)~~ Harassing communications under KRS 525.080;
- 12 ~~(o)~~ The misdemeanor offense of carrying a concealed deadly weapon in
- 13 violation of KRS 527.020; or
- 14 ~~(p)~~ Possession of a handgun by a minor as a first offense under KRS
- 15 527.100.
- 16 (2) The proceeding described in subsection (1) of this section shall be conducted before
- 17 the court sitting with the jury that found the defendant guilty of the offense unless
- 18 the court for good cause discharges that jury and impanels a new jury for that
- 19 purpose. If the jury determines beyond a reasonable doubt that the defendant is or
- 20 was a member of a criminal gang, acting for the purpose of benefitting, promoting,
- 21 or furthering the interest of a criminal gang at the time he or she committed the
- 22 offense, he or she shall not be released for a minimum of seventy-six (76) to ninety
- 23 (90) days of the sentence imposed if the offense he or she is convicted of is
- 24 classified as a Class B misdemeanor, or for a minimum of three hundred eleven
- 25 (311) to three hundred sixty-five (365) days if the offense he or she is convicted of
- 26 is classified as a Class A misdemeanor.
- 27 (3) This section shall not apply to a juvenile unless he or she has been transferred to

1 Circuit Court as a youthful offender pursuant to KRS 640.010 and has on at least
 2 one (1) prior separate occasion been adjudicated a public offender for a felony
 3 offense.

4 ➡ Section 14. KRS 508.155 is amended to read as follows:

5 ~~[(1) (a) Before January 1, 2016, a verdict of guilty or a plea of guilty to KRS 508.140~~
 6 ~~or 508.150 shall operate as an application for a restraining order utilizing the provisions~~
 7 ~~of this section and limiting the contact of the defendant and the victim who was stalked,~~
 8 ~~unless the victim requests otherwise.~~

9 ~~(b) Beginning January 1, 2016,]~~A verdict of guilty or a plea of guilty to **Section 1 of**
 10 **this Act**~~[KRS 508.140 or 508.150]~~ shall operate as an application for an interpersonal
 11 protective order issued under KRS Chapter 456, unless the victim requests otherwise.
 12 Notwithstanding the provisions of KRS Chapter 456:

13 **(1)**~~[1.]~~ An interpersonal protective order requested under this subsection may be
 14 issued by the court that entered the judgment of conviction;

15 **(2)**~~[2.]~~ The judgment of conviction shall constitute sufficient cause for the entry of
 16 the order without the necessity of further proof being taken; and

17 **(3)**~~[3.]~~ The order may be effective for up to ten (10) years, with further renewals in
 18 increments of up to ten (10) years~~[-~~.

19 ~~(2) The court shall give the defendant notice of his or her right to request a hearing on~~
 20 ~~the application for a restraining order. If the defendant waives his or her right to a~~
 21 ~~hearing on this matter, then the court may issue the restraining order without a~~
 22 ~~hearing.~~

23 ~~(3) If the defendant requests a hearing, it shall be held at the time of the verdict or plea~~
 24 ~~of guilty, unless the victim or defendant requests otherwise. The hearing shall be~~
 25 ~~held in the court where the verdict or plea of guilty was entered.~~

26 ~~(4) A restraining order may grant the following specific relief:~~

27 ~~(a) An order restraining the defendant from entering the residence, property, school, or~~

- 1 place of employment of the victim; or
- 2 ~~(b) An order restraining the defendant from making contact with the victim, including~~
 3 ~~an order forbidding the defendant from personally, or through an agent, initiating~~
 4 ~~any communication likely to cause serious alarm, annoyance, intimidation, or~~
 5 ~~harassment, including but not limited to personal, written, telephonic, or any other~~
 6 ~~form of written or electronic communication or contact with the victim. An order~~
 7 ~~issued pursuant to this subsection relating to a school, place of business, or similar~~
 8 ~~nonresidential location shall be sufficiently limited to protect the stalking victim but~~
 9 ~~shall also protect the defendant's right to employment, education, or the right to do~~
 10 ~~legitimate business with the employer of a stalking victim as long as the defendant~~
 11 ~~does not have contact with the stalking victim. The provisions of this subsection~~
 12 ~~shall not apply to a contact by an attorney regarding a legal matter.~~
- 13 ~~(5) A restraining order issued pursuant to this section shall be valid for a period of not~~
 14 ~~more than ten (10) years, the specific duration of which shall be determined by the~~
 15 ~~court. Any restraining order shall be based upon the seriousness of the facts before~~
 16 ~~the court, the probability of future violations, and the safety of the victim, his or her~~
 17 ~~immediate family, or both.~~
- 18 ~~(6) Unless the defendant has been convicted of a felony, or is otherwise ineligible to~~
 19 ~~purchase or possess a firearm under federal law, a restraining order issued pursuant~~
 20 ~~to this section shall not operate as a ban on the purchase or possession of firearms~~
 21 ~~or ammunition by the defendant.~~
- 22 ~~(7) The restraining order shall be issued on a form prescribed by the Administrative~~
 23 ~~Office of the Courts and may be lifted upon application of the stalking victim to the~~
 24 ~~court which granted the order.~~
- 25 ~~(8) Within twenty four (24) hours of entry of a restraining order or entry of an order~~
 26 ~~rescinding a restraining order, the circuit clerk shall forward a copy of the order to~~
 27 ~~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.~~

➡ Section 15. KRS 532.080 is amended to read as follows:

(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 the defendant ~~[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 or she 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 or her last conviction. The ~~[Such]~~ proceeding shall be conducted before the court sitting with the jury that found the defendant guilty of his or her 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

1 offense was committed; and

2 (c) That the offender:

3 1. Completed service of the sentence imposed on the previous felony
4 conviction within five (5) years prior to the date of commission of the
5 felony for which he or she now stands convicted;~~[-or]~~

6 2. Was on probation, parole, postincarceration supervision, conditional
7 discharge, conditional release, furlough, appeal bond, or any other form
8 of legal release from any of the previous felony convictions at the time
9 of commission of the felony for which he or she now stands convicted;
10 ~~or~~

11 3. Was discharged from probation, parole, postincarceration supervision,
12 conditional discharge, conditional release, or any other form of legal
13 release on any of the previous felony convictions within five (5) years
14 prior to the date of commission of the felony for which he or she now
15 stands convicted;~~[-or]~~

16 4. Was in custody from the previous felony conviction at the time of
17 commission of the felony for which he or she now stands convicted; or

18 5. Had escaped from custody while serving any of the previous felony
19 convictions at the time of commission of the felony for which he or she
20 now stands convicted.

21 (3) A persistent felony offender in the first degree is a person who is more than twenty-
22 one (21) years of age and who stands convicted of a felony after having been
23 convicted of two (2) or more felonies, or one (1) or more felony sex crimes against
24 a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more
25 felonies. As used in this provision, a previous felony conviction is a conviction of a
26 felony in this state or conviction of a crime in any other jurisdiction provided:

27 (a) That a sentence to a term of imprisonment of one (1) year or more or a

1 sentence to death was imposed therefor;~~and~~

2 (b) That the offender was over the age of eighteen (18) years at the time the
3 offense was committed; and

4 (c) That the offender:

5 1. Completed service of the sentence imposed on any of the previous
6 felony convictions within five (5) years prior to the date of the
7 commission of the felony for which he or she now stands convicted;~~or~~

8 2. Was on probation, parole, postincarceration supervision, conditional
9 discharge, conditional release, furlough, appeal bond, or any other form
10 of legal release from any of the previous felony convictions at the time
11 of commission of the felony for which he or she now stands convicted;~~or~~
12 ~~or~~

13 3. Was discharged from probation, parole, postincarceration supervision,
14 conditional discharge, conditional release, or any other form of legal
15 release on any of the previous felony convictions within five (5) years
16 prior to the date of commission of the felony for which he or she now
17 stands convicted;~~or~~

18 4. Was in custody from the previous felony conviction at the time of
19 commission of the felony for which he or she now stands convicted; or

20 5. Had escaped from custody while serving any of the previous felony
21 convictions at the time of commission of the felony for which he or she
22 now stands convicted.

23 (4) For the purpose of determining whether a person has two (2) or more previous
24 felony convictions, two (2) or more convictions of crime for which that person
25 served concurrent or uninterrupted consecutive terms of imprisonment shall be
26 deemed to be only one (1) conviction, unless one (1) of the convictions was for an
27 offense committed while that person was imprisoned.

- 1 (5) A person who is found to be a persistent felony offender in the second degree shall
2 be sentenced to an indeterminate term of imprisonment pursuant to the sentencing
3 provisions of KRS 532.060(2) for the next highest degree than the offense for
4 which convicted. A person who is found to be a persistent felony offender in the
5 second degree shall not be eligible for probation, shock probation, or conditional
6 discharge, unless all offenses for which the person stands convicted are Class D
7 felony offenses which do not involve a violent act against a person, in which case
8 probation, shock probation, or conditional discharge may be granted. A violent
9 offender who is found to be a persistent felony offender in the second degree shall
10 not be eligible for parole except as provided in KRS 439.3401.
- 11 (6) A person who is found to be a persistent felony offender in the first degree shall be
12 sentenced to imprisonment as follows:
- 13 (a) If the offense for which he or she presently stands convicted is a Class A or
14 Class B felony, or if the person was previously convicted of one (1) or more
15 sex crimes committed against a minor as defined in KRS 17.500 and presently
16 stands convicted of a subsequent sex crime, a persistent felony offender in the
17 first degree shall be sentenced to an indeterminate term of imprisonment, the
18 maximum of which shall not be less than twenty (20) years nor more than
19 fifty (50) years, or life imprisonment, or life imprisonment without parole for
20 twenty-five (25) years for a sex crime committed against a minor;
- 21 (b) If the offense for which he or she presently stands convicted is a Class C or
22 Class D felony, a persistent felony offender in the first degree shall be
23 sentenced to an indeterminate term of imprisonment, the maximum of which
24 shall not be less than ten (10) years nor more than twenty (20) years.
- 25 (7) A person who is found to be a persistent felony offender in the first degree shall not
26 be eligible for probation, shock probation, or conditional discharge, unless all
27 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) A conviction, plea of guilty, or Alford plea under KRS 218A.1415 shall not trigger the application of this section, regardless of the number or type of prior felony convictions that may have been entered against the defendant. A conviction, plea of guilty, or Alford plea under KRS 218A.1415 may be used as a prior felony offense allowing this section to be applied if he or she is subsequently convicted of a different felony offense.

(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, Section 1 of this Act [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

1 first-time violator of that offense.

2 ➔Section 16. The following KRS sections are repealed:

3 508.140 Stalking in the first degree.

4 508.150 Stalking in the second degree.

5 ➔Section 17. This Act shall not affect the validity of:

- 6 (1) A restraining order or interpersonal protective order issued under KRS 508.155
7 prior to the effective date of this Act. All such orders shall retain the full force of
8 law for the 10-year period following the date of issuance. Upon renewal of a
9 restraining order issued under Section 14 of this Act, it shall be converted to an
10 interpersonal protective order under KRS Chapter 456; or
- 11 (2) A domestic violence order issued under KRS Chapter 403 or an interpersonal
12 protective order issued under KRS Chapter 456 prior to the effective date of this
13 Act where the basis of the petition was stalking.