

CHAPTER 400

(SB 116)

AN ACT relating to victims of crime.

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

Section 1. KRS 196.280 is amended to read as follows:

- (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***, juvenile detention facility, 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, juvenile detention facility, 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, juvenile detention facility, 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, juvenile detention facility, 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, juvenile detention facility, 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.
- (3) Notwithstanding KRS 610.320 or 610.340, this section shall require the release of information relating to juveniles who have been charged with a felony offense pursuant to KRS Chapters 507, 508, 509, 510, or 515, or KRS 530.020, 530.064, or 531.310. The release of information shall be limited to the extent necessary to comply with the provisions of this section.

SECTION 2. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

A civil action may be maintained under this section against any person who commits the conduct prohibited under 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 KRS 508.140 or 508.150 has been charged or convicted of the alleged crime. 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. An action under this section shall be brought within two (2) years of the last act of conduct in violation of this section.

Section 3. KRS 431.064 is amended to read as follows:

LEGISLATIVE RESEARCH COMMISSION PDF VERSION

- (1) In making a decision concerning pretrial release of a person who is arrested for a violation of KRS Chapters 508 or 510, or charged with a crime involving a violation of a protective order issued pursuant to KRS 403.740 or 403.750, 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), 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).
- (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 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 pre-trial 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.

Section 4. KRS 438.250 is amended to read as follows:

- (1) When a public servant, as defined in KRS 521.010, 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, or probationer 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 of the blood for human immunodeficiency virus (HIV), hepatitis A, B, and C, and tuberculosis.
- (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.

Section 5. KRS 510.320 is amended to read as follows:

- (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 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 Services to the victim, or the parent or guardian of a victim who is a minor or is mentally retarded 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 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 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 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.

Approved April 11, 2000