

CHAPTER 401

(SB 263)

AN ACT relating to public safety.

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

Section 1. KRS 218A.050 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for Health Services, the controlled substances listed in this section are included in Schedule I:

- (1) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, ~~or~~~~and~~ salts is possible within the specific chemical designation: Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrophan; Diampromide; Diethylthiambutene; Dimenoxadol; Dimepheptanol; Dimethylthiambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxadine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacylmorphan; Morpheridine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properidine; Propiram; Racemoramide; Trimeperidine.
- (2) Any material, compound, mixture, or preparation which contains any quantity of the following opium derivatives, *including* their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, ~~or~~~~and~~ salts of isomers is possible within the specific chemical designation: Acetorphine; Acetyldihydrocodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin; Hydromorphanol; Methyldesorphine; Methyldihydromorphine; Morphine methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine; Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.
- (3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, ~~or~~~~and~~ salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3,4, 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; Marijuana; Mescaline; Peyote; N-ethyl-3-piperidyl benzilate; Nmethyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2 Methylamino-1-phenylpropan-1-one (including, but not limited to, Methcathinone, Cat, and Ephedrone).
- (4) *Any material, compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation: gamma hydroxybutyric acid.*

Section 2. KRS 439.265 is amended to read as follows:

- (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 Section 3 of this Act, the sentence shall not be probated under this section.***
- (5) If the defendant has been convicted of an offense under KRS ~~510.040,~~ 510.050, ~~510.070,~~ 510.080, 530.020, 530.064, 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)~~~~(5)~~ If the defendant has been convicted of an offense under KRS 510.060, 510.090, or 510.110, prior to considering the motion to suspend a sentence, the court shall 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 Mental Health and Mental Retardation Services. 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.
- ~~(7)~~~~(6)~~ 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)~~~~(7)~~ The provisions of this section shall not apply where a sentence of death has been imposed.

Section 3. KRS 439.3401 is amended to read as follows:

- (1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim or serious physical injury to a victim, or rape in the first degree or sodomy in the first degree of the victim. 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 sentence is commuted to a life sentence shall not be released on **probation or** parole until he 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 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 who is a violent offender shall not be released on **probation or** parole until he has served at least eighty-five percent (85%) of the sentence imposed.
- (4) A violent offender may not be awarded any credit on his sentence authorized by KRS 197.045(1), except the educational credit. A violent offender may, at the discretion of the commissioner, receive credit on his sentence authorized by KRS 197.045(3). In no event shall a violent offender be given credit on his 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.

Section 4. KRS 510.010 is amended to read as follows:

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 a foreign object manipulated by another person. "Deviate sexual intercourse" does not include penetration of the anus by 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) "Mentally retarded person" means a person with significantly subaverage 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 a controlled or 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;
- (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~~[- or anus]~~ of one person by 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~~[- or anus]~~ by 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.

Section 5. KRS 500.050 is amended to read as follows:

- (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 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.

~~[(4) No offense in KRS Chapter 510 involving deviate sexual intercourse or sexual intercourse by the other spouse shall be prosecuted unless formally reported to the police within one (1) year after the commission of the offense. The report shall be signed by the victim of the offense.]~~

SECTION 6. A NEW SECTION OF KRS CHAPTER 510 IS CREATED TO READ AS FOLLOWS:

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.

Section 7. KRS 532.040 is amended to read as follows:

When a person is convicted of an offense, other than a capital offense ***or having been designated a violent offender as defined in Section 3 of this Act***, 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.

SECTION 8. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

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 Section 3 of this Act, unless such probation is granted in accordance with Section 3 of this Act.

Section 9. KRS 532.045 is amended to read as follows:

(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, a holding facility as defined in KRS 600.020, 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 KRS~~[-510.040,]~~ 510.050,~~[-510.070,]~~ 510.080, 529.030 to 529.050, 529.070, 530.020, 531.310, 531.320, 531.370, 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 three (3) years conditional discharge 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 an evaluation of the offender performed by the sex offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services. The court shall use the 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 communitybased sexual offender treatment program operated or approved by the Department of Corrections or the Department for Mental Health and Mental Retardation Services.
- (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 evaluation or treatment.
- (6) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.

- (7) All communications relative to the evaluation and treatment of a sexual 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.
- (8) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any 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 a copy of the 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.

Section 10. KRS 439.510 is amended to read as follows:

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 Mental Health and Mental Retardation Services who request the information in the course of conducting an evaluation or treatment pursuant to KRS ~~439.265(6)~~~~[439.265(5)]~~, 532.045(3), or 532.050(4).

SECTION 11. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon receiving notice that a person barred from purchasing a firearm under 18 U.S.C. sec. 922(g)(8) has purchased or attempted to purchase a firearm, any agency with the responsibility of entering domestic violence records into the Law Information Network of Kentucky shall notify:*
 - (a) *The court in the jurisdiction where the domestic violence order was issued under KRS 403.750; and*
 - (b) *The law enforcement agencies, as designated by the Kentucky State Police, that have jurisdiction in the county where the domestic violence order was issued and in the county of the victim's residence if different from the county where the domestic violence order was issued.*
- (2) *The Kentucky State Police shall develop a protocol for providing notice to the required court and law enforcement agencies under subsection (1) of this section. Within the protocol, the Kentucky State Police shall designate which local law enforcement agencies are to receive notice in each county. A minimum of one (1) law enforcement agency shall be designated in each county.*
- (3) *When a designated law enforcement agency for the county where the domestic violence order was issued or where the victim resides receives notice under subsection (1)(b) of this section, that agency shall make reasonable efforts to ensure that the petitioner who obtained the domestic violence order is notified that the respondent has purchased or attempted to purchase a firearm.*
- (4) *Any person carrying out responsibilities under this section shall be immune from civil liability for good faith conduct in carrying out those responsibilities.*

- (5) *This section shall apply only to domestic violence orders issued, or reissued, on or after the effective date of this Act.*

Section 12. KRS 421.500 is amended to read as follows:

- (1) As used in KRS 421.500 to 421.575, "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime classified as stalking, unlawful imprisonment, use of a minor in a sexual performance, unlawful transaction with a minor in the first degree, terroristic threatening, menacing, harassing communications, intimidating a witness, criminal homicide, robbery, rape, assault, sodomy, kidnapping, burglary in the first or second degree, sexual abuse, wanton endangerment, criminal abuse, or incest. If the victim is a minor or legally incapacitated, "victim" means a parent, guardian, custodian or court-appointed special advocate. If the victim is deceased and the relation is not the defendant, the following relations shall be designated as "victim" for the purpose of exercising those rights contained in KRS 421.500 to 421.575:
 - (a) The spouse;
 - (b) An adult child if paragraph (a) of this subsection does not apply;
 - (c) A parent if paragraphs (a) and (b) of this subsection do not apply; (d) A sibling if paragraphs (a) through (c) of this subsection do not apply; and
 - (e) A grandparent if paragraphs (a) through (d) of this subsection do not apply.
- (2) If any court believes that the health, safety, or welfare of a victim who is a minor or is legally incapacitated would not otherwise adequately be protected, the court may appoint a special advocate to represent the interest of the victim and to exercise those rights provided for by KRS 421.500 to 421.575. Communication between the victim and the special advocate shall be privileged.
- (3) Law enforcement personnel shall ensure that victims receive information on available protective, emergency, social, and medical services upon initial contact with the victim and are given information on the following as soon as possible:
 - (a) Availability of crime victim compensation where applicable;
 - (b) Community based treatment programs;
 - (c) The criminal justice process as it involves the participation of the victim or witness;
 - (d) The arrest of the accused; and
 - (e) How to register to be notified when a person has been released from prison, jail, a juvenile detention facility, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A.
- (4) Law enforcement officers and attorneys for the Commonwealth shall provide information to victims and witnesses on how they may be protected from intimidation, harassment, and retaliation as defined in KRS 524.040, 524.045 or 524.055.
- (5) Attorneys for the Commonwealth shall make a reasonable effort to insure that:

- (a) All victims and witnesses who are required to attend criminal justice proceedings are notified promptly of any scheduling changes that affect their appearances;
- (b) If victims so desire and if they provide the attorney for the Commonwealth with a current address and telephone number, they shall receive prompt notification, if possible, of judicial proceedings relating to their case, including, **but not limited to**, the defendant's release on bond and any special conditions of release; of the charges against the defendant, the defendant's pleading to the charges, and the date set for the trial; of notification of changes in the custody of the defendant and changes in trial dates; of the verdict, the victim's right to make an impact statement for consideration by the court at the time of sentencing of the defendant, the date of sentencing, the victim's right to receive notice of any parole board hearing held for the defendant, and that the office of Attorney General will notify the victim if an appeal of the conviction is pursued by the defendant; **and of a scheduled hearing for shock probation or for bail pending appeal and any orders resulting from that hearing**; and
- (c) The victim knows how to register to be notified when a person has been released from a prison, jail, a juvenile detention facility, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A;
- (d) The victim receives information on available:
 - 1. Protective, emergency, social, and medical services;
 - 2. Crime victim compensation, where applicable;
 - 3. Restitution, where applicable;
 - 4. Assistance from a victim advocate; and
 - 5. Community-based treatment programs; and
- (e) The victim of crime may, pursuant to KRS 15.247, receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts.
- (6) The victim shall be consulted by the attorney for the Commonwealth on the disposition of the case including dismissal, release of the defendant pending judicial proceedings, any conditions of release, a negotiated plea, and entry into a pretrial diversion program.
- (7) In prosecution for offenses listed in this section for the purpose of defining "victim," law enforcement agencies and attorneys for the Commonwealth shall promptly return a victim's property held for evidentiary purposes unless there is a compelling reason for retaining it. Photographs of such property shall be received by the court as competent evidence in accordance with the provisions of KRS 422.350.
- (8) A victim or witness who so requests shall be assisted by law enforcement agencies and attorneys for the Commonwealth in informing employers that the need for victim or witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work.

- (9) The Attorney General, where possible, shall provide technical assistance to law enforcement agencies and attorneys for the Commonwealth if such assistance is requested for establishing a victim assistance program.
- (10) If a defendant seeks appellate review of a conviction and the Commonwealth is represented by the Attorney General, the Attorney General shall make a reasonable effort to notify victims promptly of the appeal, the status of the case, and the decision of the appellate court.

Section 13. KRS 508.130 is amended to read as follows:

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. 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 403.7521(1);***
 - (c) ***An order issued under KRS 431.064; and***
 - (d) ***Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender.***

Section 14. KRS 508.140 is amended to read as follows:

- (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 ~~or other judicial order as provided for in KRS Chapter 403~~ 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~~[, other than a violation of KRS 508.150,]~~ 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.

Section 15. KRS 17.500 is amended to read as follows:

As used in KRS 17.500 to 17.540:

- (1) "Cabinet" means the Justice Cabinet.
- (2) *(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 confinement, 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. *Promoting prostitution, as set forth in KRS 529.030, 529.040, and 529.050, when the defendant advances or profits from the prostitution of a person under the age of eighteen (18);*
 6. *Use of a minor in a sexual performance, as set forth in KRS 531.310;*
 7. *Sexual abuse, as set forth in KRS 510.120 and 510.130;*
 8. *Any attempt to commit any of the offenses described in subparagraphs 1. to 7. of this paragraph; and*
 9. *Solicitation to commit any of the offenses described in subparagraphs 1. to 7. 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.*
- (3) "Law enforcement agency" means any lawfully-organized investigative agency, police unit, or police force of federal, state, county, city, metropolitan government, or a combination of these, responsible for the detection of crime and the enforcement of the general criminal federal or state laws.
- (4) **"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*
- (c) *Any person required to register under subsection (6) or (7) of Section 16 of this Act; or*
- (d) *Any sexually violent predator.*
- (5)~~(3)~~ **"Registrant~~[Sex offender]~~ information"** means the name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, ***fingerprints, a photograph***, aliases used, residence,~~[vehicle registration data,]~~ 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***~~[sex offenders]~~.
- (6)~~(4)~~—"Sex crime" means:
- (a) A felony offense defined in KRS Chapter 510, KRS 530.020, 530.064,~~[or]~~ 531.310, ***or 531.320***;
 - (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***~~[sex crime, or similar offenses in another jurisdiction]~~.
- (7) ***"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.***

Section 16. KRS 17.510 is amended to read as follows:

- (1) The cabinet shall develop and implement a~~[sex offender]~~ 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***~~[Any person eighteen (18) years of age or older at the time of the offense or any youthful offender who has committed or attempted to commit a sex crime shall, within ten (10) days after]~~ his ***or her*** release by the court, the parole board,~~[or]~~ 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***~~[resides]~~. ***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~~[under this section]~~ by the court at the time of sentencing and 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~~[under this section]~~ has been explained to the person. The court and the official in charge of the place of confinement shall require the releasee 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, Kentucky State Police, Frankfort, Kentucky **40601**.

- (4) The court or the official shall order the person to:
- (a) Register with the appropriate local probation and parole office; *and*
 - (b) ***Report to a local detention facility within forty-eight (48) hours. The facility shall obtain the person's fingerprints under KRS 441.046 and the person's photograph. The local detention facility shall send the fingerprints and the photograph to the Information Services Center, Kentucky State Police, Frankfort, Kentucky 40601.***
- (5) (a) The appropriate probation and parole office shall send the ***registration form containing the registrant information as well as any special conditions imposed by the court or the Parole Board,*** ~~form~~ to the Information Services Center, Kentucky State Police, Frankfort, Kentucky **40601**.
- (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 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) Any person who has ~~pled guilty or~~ been convicted in a court of another state *or territory*, ~~of~~ a court of the United States, or a court martial of the United States Armed Forces of ~~the commission or attempt to commit~~ a sex crime ***or criminal offense against a victim who is a minor, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws,*** shall be informed at the time of his *or her* relocation to Kentucky of the duty to register under this section, ***and to comply with the requirements of subsection (4)(b) of this section,*** by the interstate compact officer of the Department of Corrections or the Department of Juvenile Justice. The officer 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 under this section has been explained. The officer shall order the person to complete the registration form, ***and the officer shall facilitate the registration process.*** The officer shall then send the form, ***including any special conditions imposed by the court or the Parole Board in the state of conviction*** to the Information Services Center, Kentucky State Police, Frankfort, Kentucky **40601**, ***and to the appropriate local probation and parole office in the county of the registrant's residence.***
- (7) If a person is required to register ~~as a sex offender~~ under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration ~~under this section~~ 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 ***and the requirements of subsection (4)(b) of this section and shall register with the appropriate local probation and parole office in the county of employment, vocation, or***

schooling. 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.

- (8) The registration form shall be a written statement signed by the person which shall include **registrant**~~[sex-offender]~~ information.
- (9) For purposes of this section and KRS 17.550 to 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**~~[within ten (10) days]~~ of the change of address, with the appropriate local probation and parole office in the county **in which he or she resides**~~[of his new residence]~~.
- (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) days after the date of the change of address.**
- (c) 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**~~[The appropriate local probation and parole office shall send this information to the Information Services Center, Kentucky State Police, Frankfort, Kentucky].~~
- (11) Any person required to register under this section who violates any of the provisions of this section is guilty of a Class **D felony**~~[A misdemeanor]~~.
- (12) Any person required to register under this section who knowingly provides false, misleading, or incomplete information is guilty of a Class **D felony**~~[A misdemeanor]~~.
- (13) (a) **The Justice Cabinet shall verify the addresses 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 subsection (2) of Section 17 of this Act and at least once every calendar year for a person required to register under subsection (3) of Section 17 of this Act. If the Justice Cabinet determines that a person has moved without providing his or her new address to the appropriate local probation and parole office or offices as required under paragraphs (a) and (b) of subsection (10) of this section, the Justice Cabinet shall notify the appropriate local probation and parole office of the new address. The office shall then forward this information as set forth under subsection (5) of this section. The Justice**

Cabinet shall also notify the appropriate court, Parole Board, and appropriate corrections agency.

(b) When the appropriate court, Parole Board, or appropriate corrections agency receives notice from the Justice Cabinet, or any other source, that a person has failed to comply with any of the registration requirements under this section, then the court, Parole Board, or corrections agency:

- 1. Shall consider revocation of the parole, probation, or conditional discharge of any person released under its authority; and*
- 2. Shall notify the appropriate county attorney for prosecution*~~*[appropriate court, parole authority, or corrections agency shall be immediately notified to consider revocation of the parole, probation, or conditional discharge of any person released under its authority who has failed to register within the prescribed time period as required by this section.*~~

- ~~(14) The statement required by subsection (6) of this section shall not be open to inspection by the public and may only be accessible to law enforcement agencies.~~
- ~~(15) Any person who disseminates, receives, or otherwise uses or attempts to use information in the registry database, knowing the dissemination, receipt, or use is for a purpose other than authorized by law, shall be guilty of a Class A misdemeanor.~~

Section 17. KRS 17.520 is amended to read as follows:

- (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 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 confinement, 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 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 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 ten (10) years following discharge from confinement or ten (10) 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, or conditional discharge, the registration requirements are tolled during the reincarceration.*
- (5) *An offender who has pled guilty 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 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, Kentucky State Police, Frankfort, Kentucky 40601* ~~Persons classified as high risk sex offenders as provided by subsection (3) of KRS 17.550 shall remain registered for the lifetime of the offender, unless redesignated pursuant to KRS 17.578.~~
- ~~(2) Persons classified as low or moderate risk sex offenders shall remain registered for a period of ten (10) years following their discharge from confinement or ten (10) years following their maximum discharge date on probation, shock probation, conditional discharge, parole, or other form of early release, whichever period is greater.~~
- ~~(3) If a sex offender is reincarcerated for another offense or as the result of having violated the terms of probation, parole, or conditional discharge, the registration requirements are tolled during the subsequent incarceration.~~

Section 18. KRS 17.550 is amended to read as follows:

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 ~~who suffers from a mental or behavioral abnormality or personality disorder characterized by a pattern or repetitive, compulsive behavior that makes the offender a threat to public safety~~;
- ~~(3) "High risk sex offender" means a sex offender who meets the criteria established by the Sex Offender Risk Assessment Advisory Board that have been demonstrated to correlate with a high risk of recommitting a sex crime. This term means the same as a sexually violent predator as defined by 42 U.S.C. sec. 14071. A person determined to be a sexually violent predator in a federal jurisdiction or in another state will be classified as a high risk sex offender for the purpose of this section;~~
- ~~(4) "Moderate risk sex offender" means a sex offender who meets the criteria established by the Sex Offender Risk Assessment Advisory Board that have been demonstrated to correlate with a moderate risk of recommitting a sex crime;~~
- ~~(5) "Low risk sex offender" means a sex offender who meets the criteria established by the Sex Offender Risk Assessment Advisory Board that have been demonstrated to correlate with a low risk of recommitting a sex crime;~~

- (6) ~~"Mental or behavioral abnormality" means a congenital or acquired condition that affects the emotional or volitional capacity of a person in a manner that predisposes that individual to the commission of a sex crime;~~
- (7) ~~"Personality disorder" means a condition where a person exhibits personality traits which are inflexible and maladaptive and cause either significant functional impairment or subjective distress;~~
- (8) ~~"Approved~~~~[Certified]~~ 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*~~[conduct sexual offender risk assessments pursuant to KRS 17.550 to 17.991, or presentence assessment pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, and 532.045]; and~~
- (4)~~[(9)]~~—"Victim" means victim as defined by KRS 421.500.

SECTION 19. A NEW SECTION OF KRS 17.550 TO 17.991 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky State Police shall establish a website available to the public. The website shall display:*
- (a) *The registrant information, except for information that identifies a victim, fingerprints, and Social Security numbers, obtained by the Information Services Center, Kentucky State Police, under Section 16 of this Act; and*
- (b) *The sex offender information, except for information that identifies a victim, Social Security numbers, and vehicle registration data, obtained by the Information Services Center, Kentucky State Police, under KRS 17.510 prior to the effective date of this Act.*

The website shall be updated every day except for Saturdays, Sundays, and state holidays.

- (2) *The information pertaining to an individual shall be maintained on the website so long as that individual is registered in accordance with KRS 17.500 to 17.540.*
- (3) *The following language shall be prominently displayed on the website: "UNDER KRS 525.070 AND 525.080, USE OF INFORMATION OBTAINED FROM THIS WEBSITE TO HARASS A PERSON IDENTIFIED ON THIS WEBSITE 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 WEBSITE."*
- (4) (a) *Any 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*

Kentucky State Police shall be immune from criminal and civil liability for the dissemination or lack thereof.

- (5) *The Justice Cabinet shall establish a toll-free telephone number for a person to call to learn the identity of the website created in this section and the location of public access to the website in the county where the person resides.*

Section 20. KRS 17.552 is amended to read as follows:

No person shall conduct ***comprehensive sex offender presentence evaluations or treatment***~~[sexual offender risk assessments pursuant to KRS 17.550 to 17.991, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, and 532.045,]~~ without first obtaining ***approval***~~[a certification]~~ from the Sex Offender Risk Assessment Advisory Board.

Section 21. KRS 17.554 is amended to read as follows:

- (1) A Sex Offender Risk Assessment Advisory Board is hereby created. The board shall ***approve***~~[certify]~~ providers who shall conduct ***comprehensive sex***~~[sexual]~~ offender ***presentence evaluations and treatment***~~[risk assessments pursuant to KRS 17.550 to 17.991, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, and 532.045].~~
- (2) The board shall develop a ***comprehensive sex offender presentence evaluation***~~[risk assessment procedure]~~ that shall be used by ***approved***~~[certified]~~ providers in assessing the risk of recommitting a sex crime by a sex offender,~~[and]~~ the threat posed to public safety, ***amenability to sex offender treatment, and the nature of the required sex offender treatment***. The ***evaluation***~~[procedure]~~ 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.

Section 22. KRS 17.558 is amended to read as follows:

- (1) The board may issue, refuse to issue, reissue, or renew a provider ***approval***~~[certificate]~~, or may probate, suspend, or revoke the ***approval***~~[certificate]~~ of a provider~~[who conducts sexual offender assessments]~~.
- (2) The board shall revoke the ***approval***~~[certificate]~~ of a provider~~[who conducts sexual offender assessments]~~ while his ***or her approval***~~[certification]~~ is suspended.

Section 23. KRS 17.560 is amended to read as follows:

- (1) Prior to the refusal to issue, renew, probate, suspend, or revoke the **approval**~~[certificate]~~ of a provider, the board shall conduct a hearing in accordance with the provisions of this chapter and KRS Chapter 13B.
 - (a) The hearing may be conducted by a hearing officer;
 - (b) The hearing officer may only issue a recommended order, and the recommended order shall be subject to review by a majority of the full board, which shall issue a final order.
- (2) The board may proceed against **an approved**~~[a certified]~~ provider on its own initiative, on the basis of either information contained in its own records, or information obtained through its informal investigation.
- (3) If a formal complaint verified by affidavit is filed with the board by a responsible citizen or organization containing allegations that if true would warrant action, the board may proceed against the **approved**~~[certified]~~ provider.
- (4) Any final order of the board may be appealed to the Franklin Circuit Court in accordance with KRS Chapter 13B.

Section 24. KRS 17.564 is amended to read as follows:

- (1) The board may promulgate all reasonable administrative regulations not inconsistent with this chapter that are necessary to carry into effect the purposes of KRS 17.550 to 17.991.
- (2) The board may promulgate administrative regulations requiring mandatory continuing education for **approved**~~[certified]~~ providers~~[to continue conducting sexual offender risk assessments pursuant to KRS 17.550 to 17.991, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, and 532.045,]~~ as a condition for obtaining their renewal **approvals**~~[certificates]~~.

Section 25. KRS 17.566 is amended to read as follows:

Only persons **approved**~~[certified]~~ under KRS 17.550 to 17.991 may be known as **approved**~~[certified]~~ 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**~~[certified]~~ providers~~[who conduct sexual offender risk assessments pursuant to KRS 17.550 to 17.991, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, and 532.045].~~

Section 26. KRS 17.574 is amended to read as follows:

- (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 sex offender to be discharged, paroled, or released to the **approved**~~[certified]~~ 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.

Section 27. KRS 17.576 is amended to read as follows:

Communications made in the course of *comprehensive sex offender presentence evaluations or treatment* ~~{sexual offender risk assessments pursuant to KRS 17.550 to 17.991, or presentence assessments pursuant to KRS 532.050, or assessments related to probation or conditional discharge pursuant to KRS 439.265, 439.267, or 532.045}~~ to the *approved* ~~{certified}~~ provider and any employee of the *approved* ~~{certified}~~ 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.

Section 28. KRS 17.578 is amended to read as follows:

~~{(1) —}~~ A person *required to register under the provisions of Sections 16 and 17 of this Act shall be relieved of any further duty to register only upon reversal of the underlying conviction or upon a pardon* ~~{designated a "high risk sex offender" and who is required to register for his lifetime pursuant to the provisions of this chapter may be relieved of any further duty to register upon the grant of a petition for relief by the sentencing court entered no earlier than ten (10) years after the date of discharge from probation, parole, or release from incarceration, whichever is most recent. If the petition is denied, the person may petition for relief from the high risk designation every five (5) years thereafter.}~~

~~(2) —~~ Upon receipt of the petition for relief, the sentencing court shall request an updated assessment to a certified provider.

~~(3) —~~ The sentencing court shall conduct a second hearing as provided in KRS 17.570}.

SECTION 29. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

No registrant, as defined in Section 15 of this Act, who is placed on probation, parole, or any form of supervised release, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, or licensed day care facility. The measurement shall be taken in a straight line from the nearest wall of the school to the nearest wall of the registrant's place of residence.

SECTION 30. A NEW SECTION OF KRS CHAPTER 17 IS CREATED TO READ AS FOLLOWS:

The following shall be immune from suit for good faith conduct under KRS 17.500 to 17.540 and KRS 17.550 to 17.991:

- (1) *Law enforcement agencies including the Justice Cabinet;*
- (2) *Independent contractors acting under the direction of law enforcement agencies;*
- (3) *State and county officials;*
- (4) *Approved providers, as defined under Section 18 of this Act; and*
- (5) *Employees of any of the agencies, entities, and persons identified in subsections (1), (2), (3), and (4) of this section.*

Section 31. KRS 197.410 is amended to read as follows:

- (1) A person is considered to be a "sexual offender" as used in this chapter when he *or she has been adjudicated guilty of a sex crime, as defined in Section 15 of this Act, or any similar offense in another jurisdiction*~~]:~~
 - ~~(a) Has been adjudicated guilty of any felony described in KRS Chapter 510; or~~
 - ~~(b) Has been adjudicated guilty of any other felony committed in conjunction with a misdemeanor described in KRS Chapter 510; or~~
 - ~~(c) Has been adjudicated guilty of any felony under KRS 506.010 when the crime attempted is a felony or misdemeanor described in KRS Chapter 510; or~~
 - ~~(d) Has been adjudicated guilty of a felony offense under KRS 530.020; or~~
 - ~~(e) Has been adjudicated guilty of a felony offense relating to sexual activity under KRS 530.064; or~~
 - ~~(f) Has been adjudicated guilty of a felony offense under KRS 531.310].~~
- (2) A sexual offender becomes an "eligible sexual offender" when the sentencing court or department officials, or both, determine that the offender:
 - (a) Has demonstrated evidence of a mental, emotional, or behavioral disorder, but not active psychosis or mental retardation; and (b) Is likely to benefit from the program.
- (3) "Department" is the Department of Corrections.

Section 32. KRS 197.440 is amended to read as follows:

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 Section 18 of this Act*, 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 offender shall be informed in writing of the limits of the privilege created in this section.

Section 33. KRS 439.265 is amended to read as follows:

- (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 has been convicted of an offense under KRS 510.040, 510.050, 510.070, 510.080, 530.020, 530.064, 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.

- (5) *When a defendant has been convicted of a sex crime, as defined in Section 15 of this Act, 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*~~[If the defendant has been convicted of an offense under KRS 510.060, 510.090, or 510.110, prior to considering the motion to suspend a sentence, the court shall 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 *Sex Offender Risk Assessment Advisory Board*~~[Department for Mental Health and Mental Retardation Services]~~. 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.

- (6) 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.

(7) The provisions of this section shall not apply where a sentence of death has been imposed.

Section 34. KRS 532.045 is amended to read as follows:

- (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, a holding facility as defined

in KRS 600.020, 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 KRS 510.040, 510.050, 510.070, 510.080, 529.030 to 529.050, 529.070, 530.020, 531.310, 531.320, 531.370, 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 three (3) years conditional discharge 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* ~~an~~ evaluation of the offender performed by *an approved provider, as defined in Section 18 of this Act or the* ~~sex offender treatment program operated or approved by the~~ Department of Corrections ~~or the Department for Mental Health and Mental Retardation Services~~. 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 communitybased sexual offender treatment program operated or approved by the Department of Corrections or the *Sex Offender Risk Assessment Advisory Board* ~~Department for Mental Health and Mental Retardation Services~~.
- (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.

Section 35. KRS 532.050 is amended to read as follows:

- (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 and is ineligible for probation or conditional discharge.
- (2) The report shall be prepared and presented by a probation officer and shall include an analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, personal habits, and 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 Section 15 of this Act*~~any felony offense under KRS Chapter 510, 530.020, 530.064, 531.310, any sexual offense under KRS 506.010 or 506.030, or any other felony offense committed in conjunction with a misdemeanor under KRS Chapter 510, the court shall~~, prior to determining the sentence, *the court shall* order *a comprehensive sex offender presentence*~~an~~ evaluation of the defendant to be conducted by *an approved provider, as defined in Section 18 of this Act or the*~~sexual offender treatment program operated or approved by the~~ Department of Corrections~~or the Department for Mental Health and Mental Retardation Services~~. 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,*~~Commonwealth~~ 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 correctionalinstitutional-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 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.

Section 36. KRS 532.100 is amended to read as follows:

- (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) 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 subsection (11) or (12) of Section 16 of this Act*, the sentence shall be served in a state institution. Counties choosing not to comply with the provisions of this subsection shall be granted a waiver by the commissioner of the Department of Corrections.

- (5) The jailer of a county in which a Class D 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 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 qualifying to serve time in county jails, shall be transferred to the state institution within forty-five (45) days of final sentencing.

Section 37. The provisions of Sections 15 to 30 of this Act shall apply to all persons who, after the effective date of this Act, are required under Section 16 of this Act to become registrants, as defined in Section 15 of this Act.

Section 38. The following KRS sections are repealed:

- 17.570 Order for sex offender risk assessment -- Cost -- Hearing -- Appeal -- Notice to sheriff upon release of sex offender.
- 17.572 Notification for high, moderate, and low risk sex offenders.
- 510.310 Evidence of violation inadmissible in child custody or visitation suit -- Exception.

Section 39. KRS 508.032 is amended to read as follows:

- (1) If *a person commits* ~~[an individual is found guilty or pleads guilty to]~~ a third or subsequent offense of assault in the fourth degree *under* ~~[pursuant to]~~ 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 penalty shall be enhanced by one (1) degree above the penalty otherwise provided for the offense]~~. 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.

Section 40. Whereas the federal government has mandated that the Commonwealth immediately enact public safety legislation contained in Sections 15 to 38 of this Act or lose federal funding, an emergency is declared to exist, and Sections 15 to 38 of this Act take effect upon this Act's passage and approval by the Governor or upon this Act otherwise becoming law.

Approved April 11, 2000