

CHAPTER 182**(HB 3)**

AN ACT relating to sex offenses and the punishment thereof.

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

Section 1. KRS 17.165 is amended to read as follows:

- (1) As used in this section, "sex crime" means a conviction or a plea of guilty ***to a sex crime specified in Section 5 of this Act***~~for a violation or attempted violation of KRS 510.040 to 510.140, 529.020 to 529.050, 530.020, 530.065, 531.310, 531.320, and 531.340 to 531.370. Conviction for a violation or attempted violation of an offense committed outside the Commonwealth of Kentucky is a sex crime if such offense would have been a crime in Kentucky under one (1) of the above sections if committed in Kentucky].~~
- (2) 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 rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.
- (3) As used in this section, "violent crime" shall mean a conviction of or a plea of guilty to the commission of a capital offense, Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.
- (4) No child-care center as defined in KRS 199.894 shall employ, in a position which involves supervisory or disciplinary power over a minor, or direct contact with a minor, any person who is a violent offender or has been convicted of a sex crime. Each child-care center shall request all conviction information for any applicant for employment from the Justice Cabinet or the Administrative Office of the Courts prior to employing the applicant.
- (5) No child-care provider that is required to be certified under KRS 199.8982 or that receives a public child-care subsidy administered by the cabinet or an adult who resides on the premises of the child-care provider and has direct contact with a minor shall have been convicted of a violent crime, or a sex crime, or have been found by the Cabinet for Health and Family Services or a court to have abused or neglected a child.
- (6) Each application form, provided by the employer to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."
- (7) Any request for records under subsection (4) of this section shall be on a form approved by the Justice Cabinet or the Administrative Office of the Courts, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.
- (8) The provisions of this section shall apply to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor after July 15, 1988.

Section 2. KRS 17.170 is amended to read as follows:

- (1) Any person, ***including a youthful offender as defined in KRS 600.020, detained in the custody of the Department of Juvenile Justice who is*** convicted ~~on or after July 14, 1992,~~ of a felony offense under KRS Chapter 510 or KRS 530.020, shall, or who is in the custody of the Department of Corrections on July 14, 1992, under KRS Chapter 510 or KRS 530.020 may, have a sample of blood, an oral swab, or sample obtained through a noninvasive procedure taken by the Department of Corrections ***or the Department of Juvenile Justice, when appropriate,*** for DNA (deoxyribonucleic acid) law enforcement identification purposes and inclusion in law enforcement identification databases.
- (2) The samples shall be obtained in a medically approved manner by a physician, registered nurse, phlebotomist, medical technician, or medical technologist, and packaged and submitted in containers provided by the Department of State Police forensic laboratory in accordance with administrative regulations promulgated by the Department of State Police forensic laboratory. No civil liability shall attach to any person authorized to obtain the DNA sample as provided by this section as a result of the act of obtaining the DNA sample from any person, provided the procedure was done according to generally accepted medical procedures.
- (3) The cost of testing shall be paid by the agency or individual making the request for testing.

- (4) Any person who tampers or attempts to tamper with any DNA sample collected under this section or its container without lawful authority shall be guilty of a Class D felony.

Section 3. KRS 17.495 is repealed, reenacted as a new section of KRS 17.500 to 17.580, and amended to read as follows:

- (1) No registrant, as defined in KRS 17.500, ~~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, **publicly owned playground**, or licensed day care facility. The measurement shall be taken in a straight line from the nearest **property line** ~~to the nearest property line~~ of the school to the nearest **property line** ~~to the nearest property line~~ of the registrant's place of residence.
- (2) **For purposes of this section:**
- (a) **The registrant shall have the duty to ascertain whether any property listed in subsection (1) of this section is within one thousand (1,000) feet of the registrant's residence; and**
- (b) **If a new facility opens, the registrant shall be presumed to know and, within ninety (90) days, shall comply with this section.**
- (3) **Any person who violates subsection (1) of this section shall be guilty of:**
- (a) **A Class A misdemeanor for a first offense; and**
- (b) **A Class D felony for the second and each subsequent offense.**
- (4) **Any registrant residing within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility on the effective date of this Act shall move and comply with this section within ninety (90) days of the effective date of this Act, and thereafter, shall be subject to the penalties set forth under subsection (3) of this section.**
- (5) This section shall not apply to a youthful offender probated or paroled during his or her minority or while enrolled in **an elementary or** ~~a~~ secondary education program.

Section 4. KRS 17.497 is repealed, reenacted as a new section of KRS 17.500 to 17.580, and amended to read as follows:

The following shall be immune from suit for good faith conduct under KRS 17.500 to **17.580 and** ~~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 **in Section 5 of this Act** ~~under KRS 17.550~~; and
- (5) Employees of any of the agencies, entities, and persons identified in subsections (1), (2), (3), and (4) of this section.

Section 5. KRS 17.500 is amended to read as follows:

As used in KRS 17.500 to **17.580** ~~17.540~~:

- (1) **"Approved provider" means a mental health professional licensed or certified in Kentucky whose scope of practice includes providing mental health treatment services and who is approved by the Sex Offender Risk Assessment Advisory Board, under administrative regulations promulgated by the board, to provide comprehensive sex offender presentence evaluations or treatment to adults and youthful offenders, as defined in KRS 600.020;**
- (2) "Cabinet" means the Justice Cabinet; ~~and~~
- (3) ~~(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 **imprisonment**~~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. **Unlawful transaction with a minor in the first degree as set forth in subsection (1)(a) of Section 38 of this Act;**
 9. **Any offense involving a minor or depictions of a minor as set forth in KRS Chapter 531;**
 10. Any attempt to commit any of the offenses described in subparagraphs 1. to ~~9.~~ of this paragraph; and
 - 11.~~9.~~Solicitation to commit any of the offenses described in subparagraphs 1. to ~~9.~~ of this paragraph.
- (b) Conduct which is criminal only because of the age of the victim shall not be considered a criminal offense against a victim who is a minor if the perpetrator was under the age of eighteen (18) at the time of the commission of the offense;~~;~~
- ~~(4)(3)~~ "Law enforcement agency" means any lawfully organized investigative agency, **sheriff's office**, police unit, or police force of federal, state, county, **urban county government, charter county**, city, **consolidated local**~~metropolitan~~ government, or a combination of these, responsible for the detection of crime and the enforcement of the general criminal federal or state laws;~~;~~
- ~~(5)(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
 - (b) Any person required to register under KRS 17.510~~((6) or (7))~~; or
 - (c) Any sexually violent predator; **or**
 - (d) **Any person whose sexual offense has been diverted pursuant to KRS 533.250, until the diversionary period is successfully completed.**
- ~~(6)(5)~~ "Registrant information" means the name, **including any lawful name change together with the previous name**, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, fingerprints, a photograph, aliases used, residence, a brief description of the crime or crimes committed, and other information the cabinet determines, by administrative regulation, may be useful in the identification of registrants;~~;~~
- (7) **"Residence" means any place where a person sleeps. For the purposes of this statute, a registrant may have more than one (1) residence. A registrant is required to register each residence address;**
- ~~(8)(6)~~ "Sex crime" means:
- (a) A felony offense defined in KRS Chapter 510, **or** KRS 530.020, 530.064**(1)(a)**, 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;

- (9) *"Sexual offender" means any person convicted of, pleading guilty to, or entering an Alford plea to a sex crime as defined in this section, as of the date the verdict is entered by the court;*~~;~~
- (10)~~(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;*
- (11) *"The board" means the Sex Offender Risk Assessment Advisory Board created under KRS 17.554; and*
- (12) *"Victim" has the same meaning as in KRS 421.500.*

Section 6. KRS 17.510 is amended to read as follows:

- (1) The cabinet shall develop and implement a registration system for registrants which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.
- (2) A registrant shall, on or before the date of his or her release by the court, the parole board, the cabinet, or any detention facility, register with the appropriate local probation and parole office in the county in which he or she intends to reside. The person in charge of the release shall facilitate the registration process.
- (3) Any person required to register pursuant to subsection (2) of this section shall be informed of the duty to register by the court at the time of sentencing ***if the court grants probation or conditional discharge or does not impose a penalty of incarceration, or if incarcerated,***~~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 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 register***~~to:~~
- (a) ~~Register~~ with the appropriate local probation and parole ***office which***~~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. ***Thereafter, the registrant shall return to the appropriate local probation and parole office not less than one (1) time every two (2) years in order for a new photograph to be obtained, and the registrant shall pay the cost of updating the photo for registration purposes. Failure to comply with this requirement shall be punished as set forth in subsection (11) of this section.***~~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, ***fingerprint card, and photograph, and*** ~~as well as~~ any special conditions imposed by the court or the Parole Board, 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 been convicted in a court of ~~any~~~~another~~ state or territory, a court of the United States, ***or a similar conviction from a court of competent jurisdiction in any other country***, or a court martial of the United States Armed Forces of a sex crime or criminal offense against a victim who is a minor ***and who has been notified of the duty to register by that state, territory, or court***, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws, ***or has a similar conviction from a court of competent jurisdiction in any other country***, shall ***comply with the registration requirement of this section, including***~~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, ***and shall register with the appropriate local probation and parole office in the county of residence within five (5) working days of relocation. No additional notice of the duty to register shall be required of any official charged with a duty of enforcing the laws of this Commonwealth.***~~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 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 if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section, *including* ~~and~~ the requirements of subsection (4)~~(b)~~ of this section, and shall register *within five (5) working days* with the appropriate local probation and parole office in the county of *residence*, employment, vocation, or schooling. *A person required to register under federal law or the laws of another state or territory shall be presumed to know of the duty to register in the Commonwealth.* As used in this subsection, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.
- (8) The registration form shall be a written statement signed by the person which shall include registrant information, *including an up-to-date photograph of the registrant for public dissemination.*
- (9) For purposes of ~~this section and~~ KRS 17.500 to 17.580 ~~and~~ ~~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 of the change of address, with the appropriate local probation and parole office in the county in which he or she resides.
- (b) 1. If the registrant changes his or her residence to a new county, the person shall notify his or her current local probation and parole office of the new residence address on or before the date of the change of address.
2. The registrant shall also register with the appropriate local probation and parole office in the county of his or her new residence no later than five (5) *working* days after the date of the change of address.
- (c) 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.
- (11) Any person required to register under this section who *knowingly* violates any of the provisions of this section *or prior law* is guilty of a Class D felony *for the first offense and a Class C felony for each subsequent offense.*
- (12) Any person required to register under this section *or prior law* who knowingly provides false, misleading, or incomplete information is guilty of a Class D felony *for the first offense and a Class C felony for each subsequent offense.*
- (13) (a) The 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 KRS 17.520(2) and at least once every calendar year for a person required to register under KRS 17.520(3).

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 subsection (10)(a) and (b) 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 ***Commonwealth's attorney, sheriff's office, probation and parole office***, corrections agency, ***and law enforcement agency responsible for the investigation of the report of noncompliance***.

- (b) ***An agency that receives notice of the noncompliance from the cabinet under paragraph (a) of this subsection***~~[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 ***or Commonwealth's Attorney*** for prosecution.

Section 7. 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 ***required*** under this section.
- (2) (a) Lifetime registration is required for:
 1. Any person who has been convicted of kidnapping, as set forth in KRS 509.040, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;
 2. Any person who has been convicted of unlawful 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 ***felony*** criminal offense against a victim who is a minor; or
 - b. Who has one (1) or more prior sex crime convictions;
 4. Any person who has been convicted of two (2) or more ***felony*** criminal offenses against a victim who is a minor;
 5. Any person who has been convicted of:
 - a. Rape in the first degree under KRS 510.040; or
 - b. Sodomy in the first degree under KRS 510.070; and
 6. Any sexually violent predator.
- (3) All other registrants are required to register for ***twenty (20)***~~[ten (10)]~~ years following discharge from confinement or ***twenty (20)***~~[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 ***and the remaining period of time for which the registrant shall register*** are tolled during the reincarceration.
- (5) ***A person***~~[An offender]~~ who has pled guilty, ***entered an Alford plea***, or been convicted in a court of another state or territory, in a court of the United States, or in a court-martial of the United States Armed Forces who is required to register in Kentucky shall be subject to registration in Kentucky based on the conviction in the foreign jurisdiction. The Justice 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.

Section 8. KRS 17.530 is amended to read as follows:

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

Section 9. 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 ~~17.500~~~~17.550~~ to **17.580 and** 17.991.
- (2) The board may promulgate administrative regulations requiring mandatory continuing education for approved providers as a condition for obtaining their renewal approvals.

Section 10. KRS 17.566 is amended to read as follows:

Only persons approved under KRS ~~17.500~~~~17.550~~ to **17.580 and** 17.991 may be known as approved providers in the Commonwealth of Kentucky, or use any words or letters or assume any titles or description tending to convey the impression that they are approved providers.

Section 11. KRS 17.568 is amended to read as follows:

Whenever in the judgment of the board any person has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of KRS ~~17.500~~~~17.550~~ to **17.580 and** 17.991, the board may apply to the Franklin Circuit Court for an order enjoining these acts or practices.

- (1) Upon a showing by the board that a person has engaged or is about to engage in any of these acts or practices, an injunction, restraining order, or other order as may be appropriate shall be granted by the court.
- (2) Any order of the Franklin Circuit Court shall be enforceable and shall be valid anywhere in this state, and the order of the court shall be reviewable as provided in the Rules of Civil Procedure in the case of other injunctions and restraining orders.

Section 12. 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 ~~sexual~~~~sex~~ offender to be discharged, paroled, or released to the approved provider for review prior to the release or discharge for consideration in making recommendations to the sentencing court. The relevant information shall include but is not limited to:
 - (a) The institutional record;
 - (b) The medical record including all psychological records; and
 - (c) The treatment record.
- (2) All confidential records provided pursuant to this section shall remain confidential, unless otherwise ordered by a court or by another person duly authorized to release the information.

Section 13. KRS 17.580 is amended to read as follows:

- (1) The Kentucky State Police shall establish a web site available to the public. The web site shall display:
 - (a) The registrant information, except for information that identifies a victim, fingerprints, and Social Security numbers, obtained by the Information Services Center, Kentucky State Police, under KRS 17.510;~~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 April 11, 2000; **and**
 - (c) ***The registrant's conviction, the elements of the offense for which the registrant was convicted, whether the registrant is currently on probation or parole, and whether the registrant is compliant or noncompliant.***

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

- (2) The information pertaining to an individual shall be maintained on the web site so long as that individual is registered in accordance with KRS 17.500 to ~~17.540~~**17.580**.
- (3) The following language shall be prominently displayed on the web site: "UNDER KRS 525.070 AND 525.080, USE OF INFORMATION OBTAINED FROM THIS WEB SITE TO HARASS A PERSON IDENTIFIED ON THIS WEB SITE IS A CRIMINAL OFFENSE PUNISHABLE BY UP TO NINETY (90) DAYS IN THE COUNTY JAIL. MORE SEVERE CRIMINAL PENALTIES APPLY FOR MORE SEVERE CRIMES COMMITTED AGAINST A PERSON IDENTIFIED ON THIS WEB SITE."
- (4)
 - (a) Any 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 web site created in this section and the location of public access to the web site in the county where the person resides.
- (6) *In addition to the Web site, a local law enforcement agency may provide personal notification regarding the registrants located in its jurisdiction. Any notification shall contain the warning specified in subsection (3) of this section.*

SECTION 14. A NEW SECTION OF KRS 17.500 TO 17.580 IS CREATED TO READ AS FOLLOWS:

- (1) *A person shall be guilty of making a false statement to a law enforcement official when he or she intentionally misleads any law enforcement official regarding a noncompliant registrant.*
- (2) *A person shall be guilty of harboring when he or she intentionally allows a registrant to reside at his or her residence to avoid registration if the address is not the address the registrant listed as his or her residence address.*
- (3) *For the purposes of this section, law enforcement officials include the Attorney General, elected sheriffs, deputy sheriffs, city police officers, county police officers, state police officers, probation and parole officers, state and federal prosecutors, and investigators employed by any of these officers.*
- (4) *A person who violates this section shall be guilty of a Class A misdemeanor for a first offense and a Class D felony for each subsequent offense.*

SECTION 15. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *Each local law enforcement agency and the Department of State Police shall each have the responsibility for enforcing the provisions of sex offender registration laws.*
- (2) *Law enforcement agencies may enter into written agreements for joint investigation and enforcement of violations of sex offender registration laws. These agreements may include other local law enforcement agencies and may include the Department of State Police.*

SECTION 16. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *It is the intent of the General Assembly to occupy the entire field of legislation relating to:*
 - (a) *Any person who has committed or is charged with the commission of a violent offense as specified in KRS 439.3401; and*
 - (b) *Any person who has committed or is charged with commission of a sex crime as specified in Section 5 of this Act.*
- (2) *No city, county, urban-county, charter county, consolidated local government, or other unit or instrumentality of local government shall enact an ordinance or other rule or regulation relating to the control, management, registration, monitoring, or housing of, or other matter relating to, a person specified in subsection (1) of this section.*

- (3) *The fact that the General Assembly has not regulated a particular subject relating to a person specified in subsection (1) of this section does not grant a city, county, urban-county, charter county, consolidated local government, or other unit or instrumentality of local government the authority to enact an ordinance, rule, or regulation relating to that subject.*
- (4) *Cities, counties, urban-counties, charter counties, consolidated local governments, and units and instrumentalities of local government shall enforce the provisions of state law with regard to persons specified in subsection (1) of this section.*
- (5) *On the effective date of this Act, any local ordinance, resolution, or rule relating to any topic specified in this section shall be null, void, and unenforceable.*

Section 17. KRS 160.151 is amended to read as follows:

- (1) (a) Beginning with the 2002-2003 school year, a private, parochial, or church school that has voluntarily been certified by the Kentucky Board of Education in accordance with the provisions of KRS 156.160(3) may require a national and state criminal background check on all new certified hires in the school and student teachers assigned to the school. Certified individuals who were employed in another certified position in a Kentucky school within six (6) months of the date of the hire and who had previously submitted to a national and state criminal background check for previous employment may be excluded from further national or state criminal background checks.
- (b) The national criminal history background check shall be conducted by the Federal Bureau of Investigation. The state criminal history background check shall be conducted by the Kentucky State Police or the Administrative Office of the Courts.
- (c) All fingerprints requested under this section shall be on an applicant fingerprint card provided by the Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation by the Kentucky State Police after a state criminal background check has been conducted. Any fee charged by the Kentucky State Police, the Administrative Office of the Courts, or the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (2) If a school requires a criminal background check for a new hire, the school shall conspicuously include the following disclosure statement on each application or renewal form provided by the employer to an applicant for a certified position: "STATE LAW AUTHORIZES THIS SCHOOL TO REQUIRE A CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT FOR THIS TYPE OF POSITION."
 - (a) *For purposes of this subsection, "contractor" means an adult who is permitted access to school grounds pursuant to a current or prospective contractual agreement with the school, school board, school district, or school-affiliated entity, at times when students are present. The term "contractor" includes an employee of a contractor.*
 - (b) *The school or school board may require a contractor, volunteer, or visitor to submit to a national criminal history check by the Federal Bureau of Investigation and state criminal history background check by the Kentucky State Police or Administrative Office of the Courts. Any request for records under this section shall be on an applicant fingerprint card provided by Kentucky State Police. The results of the state criminal background check and the results of the national criminal history background check, if requested, shall be sent to the hiring superintendent. Any fee charged by the Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.*
- (3) (a) A nonpublic school voluntarily implementing the provisions of this chapter may choose not to employ any person who is a violent offender as defined by KRS 17.165(2), has been convicted of a sex crime which is classified as a felony as defined by KRS 17.165(1), or has committed a violent crime as defined in KRS 17.165(3). A nonpublic school may employ, at its discretion, persons convicted of sex crimes classified as a misdemeanor.
- (b) If a school term has begun and a certified position remains unfilled or if a vacancy occurs during a school term, a nonpublic school implementing the provisions of this chapter may employ an individual

who will have supervisory or disciplinary authority over minors on probationary status pending receipt of a criminal history background check.

- (c) Employment at a nonpublic school implementing the provisions of this chapter may be contingent on the receipt of a criminal history background check documenting a record as a violent offender, of a sex crime, or of a violent crime as defined in KRS 17.165.
- (d) Nonpublic schools implementing the provisions of this chapter may terminate probationary employment under this section upon receipt of a criminal history background check documenting a record as a violent offender, of a sex crime, or of a violent crime as defined in KRS 17.165.

Section 18. KRS 160.380 is amended to read as follows:

(1) As used in this section:

(a) ***"Contractor" means an adult who is permitted access to school grounds pursuant to a current or prospective contractual agreement with the school, school board, school district, or school-affiliated entity, at times when students are present. The term "contractor" includes an employee of a contractor.***

(b) "Relative" ~~means~~~~shall mean~~ father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law.

(c) ~~(b)~~ "Vacancy" ~~means~~~~shall mean~~ any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.

- (2) (a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the Kentucky Board of Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any time after February 1 preceding the beginning of the school year. No superintendent of schools shall appoint or transfer himself to another position within the school district.
- (b) When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer thirty (30) days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.
- (c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days.
- (d) When a vacancy occurs in a local district, the superintendent shall conduct a search to locate minority teachers to be considered for the position. The superintendent shall, pursuant to administrative regulations of the Kentucky Board of Education, report annually the district's recruitment process and the activities used to increase the percentage of minority teachers in the district.
- (e) No relative of a superintendent of schools shall be an employee of the school district. However, this shall not apply to a relative who is a classified or certified employee of the school district for at least thirty-six (36) months prior to the superintendent assuming office, or prior to marrying a relative of the superintendent, and who is qualified for the position the employee holds. A superintendent's spouse who has at least twenty (20) years of service in school systems may be an employee of the school district. A superintendent's spouse who is employed under this provision shall not hold a position in which the spouse supervises certified or classified employees. A superintendent's spouse may supervise

teacher aides and student teachers. However, the superintendent shall not promote a relative who continues employment under an exception of this subsection.

- (f) No superintendent shall employ a relative of a school board member of the district, unless on July 13, 1990, the board member's relative is an employee of the district, the board member is holding office, and the relative was not initially hired by the district during the tenure of the board member. A relative employed in 1989-90 and initially hired during the tenure of a board member serving on July 13, 1990, may continue to be employed during the remainder of the board member's term. However, the superintendent shall not promote any relative of a school board member who continues employment under the exception of this subsection.
- (g)
 - 1. No principal's relative shall be employed in the principal's school, except a relative who is not the principal's spouse and who was employed in the principal's school during the 1989-90 school year.
 - 2. No spouse of a principal shall be employed in the principal's school, except:
 - a. A principal's spouse who was employed in the principal's school during the 1989-90 school year for whom there is no position for which the spouse is certified to fill in another school operated in the district; or
 - b. A principal's spouse who was employed in the 1989-90 school year and is in a school district containing no more than one (1) elementary school, one (1) middle school, and one (1) high school.
 - 3. A principal's spouse who is employed in the principal's school shall be evaluated by a school administrator other than the principal.
 - 4. The provisions of KRS 161.760 shall not apply to any transfer made in order to comply with the provisions of this paragraph.
- (3) No superintendent shall employ in any position in the district any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony. The superintendent may employ, at his discretion, persons convicted of sex crimes classified as a misdemeanor.
- (4)
 - (a) A superintendent shall require a national and state criminal background check on all new certified hires in the school district and student teachers assigned within the district. Excluded are certified individuals who were employed in another certified position in a Kentucky school district within six (6) months of the date of hire and who had previously submitted to a national and state criminal background check for the previous employment.
 - (b) The superintendent shall require that each new certified hire and student teacher, as set forth in paragraph (a) of this subsection, submit to a national and state criminal history background check by the Kentucky State Police and the Federal Bureau of Investigation.
 - (c) All fingerprints requested under this section shall be on an applicant fingerprint card provided by Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation from the Kentucky State Police after a state criminal background check is conducted. The results of the state and federal criminal background check shall be sent to the hiring superintendent. Any fee charged by the Kentucky State Police and the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the search.
 - (d) The Education Professional Standards Board may promulgate administrative regulations to impose additional qualifications to meet the requirements of Public Law 92-544.
- (5) A superintendent shall require a state criminal background check on all classified initial hires.
 - (a) The superintendent shall require that each classified initial hire submit to a state criminal history background check by the Kentucky State Police. If an applicant has been a resident of Kentucky twelve (12) months or less, the superintendent may require a national criminal history background check as a condition of employment.
 - (b) Any request for records under this section shall be on an applicant fingerprint card provided by Kentucky State Police. The results of the state criminal background check and the results of the

national criminal history background check, if requested under the provisions of paragraph (a) of this subsection, shall be sent to the hiring superintendent. Any fee charged by the Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.

- (6) ***The superintendent may require a contractor, volunteer, or visitor to submit to a national and state criminal history background check by the Kentucky State Police and the Federal Bureau of Investigation. Any request for records under this section shall be on an applicant fingerprint card provided by the Kentucky State Police. The results of the state criminal background check and the results of the national criminal history background check, if requested, shall be sent to the hiring superintendent. Any fee charged by the Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.***
- (7) (a) If a school term has begun and a certified or classified position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the criminal history background check. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.
- (b) Employment shall be contingent on the receipt of the criminal history background check documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165.
- (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the school district of a criminal history background check documenting a record of a sex crime or as a violent offender as defined in KRS 17.165 and no further procedures shall be required.
- (d) The provisions of KRS 161.790 shall apply to terminate employment of a certified employee on the basis of a criminal record other than a record of a sex crime or as a violent offender as defined in KRS 17.165.
- ~~(8)(7)~~ (a) Each application or renewal form, provided by the employer to an applicant for a classified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT. UNDER CERTAIN CIRCUMSTANCES, A NATIONAL CRIMINAL HISTORY BACKGROUND CHECK MAY BE REQUIRED AS A CONDITION OF EMPLOYMENT."
- (b) Each application or renewal form, provided by the employer to an applicant for a certified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND STATE CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT."
- (c) Each application form for a district position shall require the applicant to:
1. Identify the states in which he or she has maintained residency, including the dates of residency; and
 2. Provide picture identification.
- ~~(9)(8)~~ The provisions of subsections (4), (5), (6), ~~and~~ (7), **and** (8) of this section shall apply to a nonfaculty coach or nonfaculty assistant as defined under KRS 161.185.

SECTION 19. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

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

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

Section 20. 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 *for youthful offenders*, regional jail, or county jail. The warden, jailer, or chief administrator, or a person designated by the warden, jailer, or chief administrator, of a penitentiary, ~~juvenile detention~~ facility *for youthful offenders*, regional jail, or county jail, shall make available to the Department of Corrections, or any private entity under contract with the Department of Corrections, the information necessary to implement this section in a timely manner and before the release of any incarcerated person from the penitentiary, ~~juvenile detention~~ facility *for youthful offenders*, regional jail, or county jail. The Department of Corrections or the private entity under contract with the Department of Corrections shall be responsible for retrieving the information and notifying the requester in accordance with administrative regulations promulgated by the Department of Corrections.
- (b) If an incarcerated person escapes from any penitentiary, ~~juvenile detention~~ facility *for youthful offenders*, regional jail, or county jail, the warden, jailer, or chief administrator, or a person designated by the warden, jailer, or chief administrator, shall immediately provide the information necessary to implement this section.
- (c) If, upon a hearing, a court releases an incarcerated person and the incarcerated person does not return to the penitentiary, ~~juvenile detention~~ facility *for youthful offenders*, regional jail, or county jail, the warden, jailer, or chief administrator, or a person designated by the warden, jailer, or chief administrator, shall provide the information necessary to implement this section as soon as practicable.

(2) The Department of Corrections shall promulgate administrative regulations for the implementation of this section.

~~{(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 Chapter 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 21. KRS 197.010 is amended to read as follows:

Definitions as used in this chapter, unless the context otherwise requires:

- (1) **"Cabinet" means the Justice Cabinet**~~["State agency" means any department, board, commission, or agency of the state government];~~
- (2) **"Classification" means the systematic assignment of a prisoner to a custody level, program, and penitentiary**~~["Cabinet" means the Justice Cabinet];~~
- (3) "Department" means Department of Corrections;
- (4) **"Eligible sexual offender" means a sexual offender for whom the sentencing court, department officials, or both have determined that he or she:**
 - (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;**
- (5) "Penitentiaries" includes the state penal institutions for males at Eddyville, LaGrange, the Green River Correctional Complex, the Luther Luckett Correctional Complex, the Kentucky Correctional Institute for Women, the Northpoint Training Center, the Roederer Correctional Complex, the Eastern Kentucky Correctional Complex, the Western Kentucky Correctional Complex, Frankfort Career Development Center, Blackburn Correctional Complex, and Bell County Forestry Camp, together with the branches thereof, any private prison as provided by KRS 197.500, and any other similar institutions hereafter established;~~{}~~
- ~~{(5)}~~ **"Sexual offender" means any person convicted of, pleading guilty to, or entering an Alford plea to a sex crime as defined in Section 5 of this Act; and**
- (7) **"State agency" means any department, board, commission, or agency of the state government**~~["Classification" means the systematic assignment of a prisoner to a custody level, program, and penitentiary].~~

Section 22. KRS 197.045 is amended to read as follows:

- (1) Any person convicted and sentenced to a state penal institution may receive a credit on his sentence of not exceeding ten (10) days for each month served, except as otherwise provided in this section, to be determined by the department from the conduct of the prisoner. In addition, the department shall provide an educational good time credit of sixty (60) days to any prisoner who successfully receives a graduate equivalency diploma or a high school diploma, a two (2) or four (4) year college degree, or a two (2) year or four (4) year certification in applied sciences, or who receives a technical education diploma as provided and defined by the department; prisoners may earn additional credit for each program completed. The department may forfeit any good time previously earned by the prisoner or deny the prisoner the right to earn good time in any amount if during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.
- (2) When two (2) or more consecutive sentences are to be served, the several sentences shall be merged and served in the aggregate for the purposes of the good time credit computation or in computing dates of expiration of sentence.
- (3) An inmate may, at the discretion of the commissioner, be allowed a deduction from a sentence not to exceed five (5) days per month for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs. The allowance shall be an addition to commutation of time for good conduct and under the same terms and conditions and without regard to length of sentence.

- (4) Until successful completion of the sex offender treatment program, *an eligible sexual*~~[a-sex]~~ offender may earn good time. However, the good time shall not be credited to the *an eligible sexual*~~[sex]~~ offender's sentence. Upon the successful completion of the sex offender treatment program, as determined by the program director, the offender shall be eligible for all good time earned but not otherwise forfeited under administrative regulations promulgated by the Department of Corrections. After successful completion of the sex offender treatment program, *an eligible sexual*~~[a-sex]~~ offender may continue to earn good time in the manner provided by administrative regulations promulgated by the Department of Corrections. Any *eligible sexual*~~[sex]~~ offender, as defined in KRS 197.410, who has not successfully completed the sex offender treatment program as determined by the program director shall not be entitled to the benefit of any credit on his sentence. A *sexual*~~[sex]~~ offender who does not complete the sex offender treatment program for any reason shall serve his entire sentence without benefit of good time, parole, or other form of early release. The provisions of this section shall not apply to any *sexual*~~[sex]~~ offender convicted before July 15, 1998, or to any mentally retarded *sexual*~~[sex]~~ offender.
- (5) (a) The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of good time and the ability to earn good time in the future for those inmates who have civil actions dismissed because the court found the action to be malicious, harassing, or factually frivolous.
- (b) Penalties set by administrative regulation pursuant to this subsection shall be as uniform as practicable throughout all institutions operated by, under contract to, or under the control of the department and shall specify a specific number of days or months of good time forfeited as well as any prohibition imposed on the future earning of good time.

Section 23. 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 5 of this Act*~~[KRS 17.550]~~, shall be privileged from disclosure in any civil or criminal proceeding, other than proceedings to determine the sentence, unless the offender consents in writing to the disclosure or the communication is related to an ongoing criminal investigation. The privilege created by this section shall not extend to disclosures made for the purpose of determining whether the offender should continue to participate in the program. ***The provisions of KRS 620.030 shall not apply to a communication made, received, or overheard if the communication is made pursuant to this section.*** The offender shall be informed in writing of the limits of the privilege created in this section.

Section 24. KRS 431.005 is amended to read as follows:

- (1) A peace officer may make an arrest:
- (a) In obedience to a warrant; or
- (b) Without a warrant when a felony is committed in his presence; or
- (c) Without a warrant when he has probable cause to believe that the person being arrested has committed a felony; or
- (d) Without a warrant when a misdemeanor, as defined in KRS 431.060, has been committed in his presence; or
- (e) Without a warrant when a violation of KRS 189.290, 189.393, 189.520, 189.580, 511.080, or 525.070 has been committed in his presence, except that a violation of KRS 189A.010 or KRS 281A.210 need not be committed in his presence in order to make an arrest without a warrant if the officer has probable cause to believe that the person has violated KRS 189A.010 or KRS 281A.210.
- (2) (a) Any peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member or member of an unmarried couple.
- (b) For the purposes of this subsection, the term "family member" means a spouse, including a former spouse, a parent, a grandparent, a child, a stepchild, or any other person related by consanguinity or affinity within the second degree.

- (c) For the purpose of this subsection, the term "member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together.
- (3) *A peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person is a sexual offender who has failed to comply with the Kentucky Sex Offender Registry requirements based upon information received from the Law Information Network of Kentucky.*
- (4) For purposes of ~~subsections~~~~subsection~~ (2) and (3) of this section, a "peace officer" is *an officer certified pursuant to KRS 15.380*:
- ~~(a) A full time sworn officer of the Kentucky State Police, a full time sworn officer of the Kentucky Horse Park, a commissioned full time state park ranger, a full time officer of the Division of Law Enforcement within the Department of Fish and Wildlife Resources who is exercising authority under KRS Chapter 235, a full time city policeman, a full time county policeman, a full time university safety and security officer appointed pursuant to KRS 164.950 to 164.970, a full time city county policeman, a duly elected sheriff, or a full time paid deputy sheriff; or~~
- ~~(b) A part time paid law enforcement officer, or a special paid deputy, who has completed a Kentucky law enforcement council approved education and training program referred to in KRS 15.334.~~
- ~~(c) The provisions of this section relating to training shall not apply to a deputy sheriff who is subject to the training requirements specified in KRS 70.263(3).~~
- ~~(5)~~~~(4)~~ If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.
- ~~(6)~~~~(5)~~ A private person may make an arrest when a felony has been committed in fact and he has probable cause to believe that the person being arrested has committed it.
- ~~(7)~~~~(6)~~ If a law enforcement officer has probable cause to believe that a person has violated a restraining order issued under KRS 508.155, then the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

Section 25. KRS 431.520 is amended to read as follows:

Any person charged with an offense shall be ordered released by a court of competent jurisdiction pending trial on his personal recognizance or upon the execution of an unsecured bail bond in an amount set by the court or as fixed by the Supreme Court as provided by KRS 431.540, unless the court determines in the exercise of its discretion that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the court shall, either in lieu of or in addition to the above methods of release, impose any of the following conditions of release:

- (1) Place the person in the custody of a designated person or organization agreeing to supervise him;
- (2) Place restrictions on the travel, association, or place of abode of the person during the period of release;
- (3) Require the execution of a bail bond:
 - (a) With sufficient personal surety or sureties acceptable to the court; in determining the sufficiency of such surety, or sureties, the court shall consider his character, his place of residence, his relationship with the defendant, and his financial and employment circumstances; or
 - (b) With the 10% deposit as provided in KRS 431.530; or
 - (c) With the deposit of cash equal to the amount of the bond or in lieu thereof acceptable security as provided in KRS 431.535;
- (4) If the person's record indicates a history of controlled substance or alcohol abuse, order the person to submit to periodic testing for use of controlled substances or alcohol and pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court with the fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection.

If the person is declared indigent, the testing fee may be waived by the court. The Administrative Office of the Courts shall establish pilot projects to implement the provisions of this subsection;

- (5) ***If the person is charged with a sex crime as defined in Section 5 of this Act, consider requiring that he or she be monitored electronically, and shall consider requiring the person be subject to home incarceration;***
- (6) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours;
- ~~(7)~~~~(6)~~ A court authorizing the release of a person pursuant to this section shall cause the issuance of an appropriate order containing a statement of the conditions imposed, if any, shall cause such person to be informed of the penalties applicable to violations of the conditions of his release, and shall cause him to be informed that a warrant for his arrest will be issued immediately upon any such violation;
- ~~(8)~~~~(7)~~ A person for whom conditions of release are imposed and who after twenty-four (24) hours from the time of the imposition of said conditions continues to be detained as a result of his inability to meet the conditions of release shall, upon written application or upon the court's own motion, be entitled to have the conditions reviewed by the court which imposed them. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon written application or upon the court's own motion, be entitled to a review by the court which imposed the condition;
- ~~(9)~~~~(8)~~ If at any time following release of a defendant and before he is required to appear for trial, the court is advised of a material change in the defendant's circumstances or that he has not complied with all conditions imposed upon his release, the court having jurisdiction may: (a) order the arrest of the defendant; (b) enter an order requiring the defendant, his surety or sureties to appear and show cause why the bail bond should not be forfeited or the conditions of his release be changed; or (c) both. A copy of said order shall be served upon the defendant, his surety or sureties. If the defendant fails to appear before the court as ordered or if, after hearing, the court finds the conditions of release have not been complied with, the court may change the conditions imposed or forfeit the bail bond or any portion thereof and enter a judgment for the Commonwealth against the defendant and his surety or sureties for the amount of the bail bond or any portion thereof and cost of the proceedings.

SECTION 26. A NEW SECTION OF KRS CHAPTER 439 IS CREATED TO READ AS FOLLOWS:

- (1) ***Each probation and parole officer shall be trained in the requirements of the sexual offender registration laws and shall be able to:***
 - (a) ***Register or reregister a sexual offender; and***
 - (b) ***Answer questions about the sexual offender registration law and its requirements.***
- (2) ***The Justice Cabinet shall provide each probation and parole office with sufficient copies of the following documents to handle the expected numbers of registrants:***
 - (a) ***The sexual offender registration statutes and any administrative regulations, which are promulgated relating to sexual offender registration;***
 - (b) ***A brochure explaining in lay person's terms the requirements of the sex offender registration laws and administrative regulations;***
 - (c) ***Registration forms;***
 - (d) ***Fingerprint cards; and***
 - (e) ***Other documents and supplies necessary to register a sexual offender.***

Section 27. 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) A capital offense;
 - (b) A Class A felony;
 - (c) A Class B felony involving the death of the victim or serious physical injury to a victim;

- (d) *The commission or attempted commission of a felony sexual offense in KRS Chapter 510;*
- (e) *Use of a minor in a sexual performance as described in KRS 531.310;*
- (f) *Promoting a sexual performance by a minor as described in KRS 531.320;*
- (g) *Unlawful transaction with a minor in the first degree as described in subsection (1)(a) of Section 38 of this Act;*
- (h) *Promoting prostitution in the first degree as described in KRS 529.030(1)(b);*
- (i) *Criminal abuse in the first degree as described in KRS 508.100;*
- (j) *Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;*
- (k) *Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or*
- (l) *Robbery in the first degree*~~[, 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, burglary in the first degree accompanied by the commission or attempted commission of a felony sexual offense in KRS Chapter 510, burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060, burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040, or robbery in the first degree].~~ The court shall designate in its judgment if the victim suffered death or serious physical injury.

- (2) A violent offender who has been convicted of a capital offense and who has received a life sentence (and has not been sentenced to twenty-five (25) years without parole or imprisonment for life without benefit of probation or parole), or a Class A felony and receives a life sentence, or to death and his 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.
- (8) The provisions of subsection (1) of this section extending the definition of "violent offender" to persons convicted of or pleading guilty to robbery in the first degree shall apply only to persons whose crime was committed after July 15, 2002.

Section 28. 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 KRS 439.3401, the sentence shall not be probated under this section.
- (5) If the defendant has been convicted of an offense under KRS 510.050, 510.080, 530.020, 530.064(1)(a), or 531.310, or criminal attempt to commit any of these offenses under KRS 506.010, the sentence shall not be suspended, in accordance with KRS 532.045.
- (6) When a defendant has been convicted of a sex crime, as defined in KRS 17.500, the court shall order a comprehensive sex offender presentence evaluation, unless one has been provided within the past six (6) months, in which case the court may order an update of the comprehensive sex offender presentence evaluation of the defendant conducted by the sex offender treatment program operated or approved by the Department of Corrections or the Sex Offender Risk Assessment Advisory Board. The comprehensive sex offender presentence evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining whether to suspend the sentence. If the court suspends the sentence and places the defendant on probation, the provisions of KRS 532.045(3) to (7) shall apply.
- (7) The authority granted in this section shall be exercised by the judge who imposed sentence on the defendant, unless he is unable to act and it appears that his inability to act should continue beyond the expiration of the term of the court. In such case, the judge who imposed sentence shall assign a judge to dispose of a motion filed under this section, or as prescribed by the rules and practices concerning the responsibility for disposition of criminal matters.
- (8) The provisions of this section shall not apply where a sentence of death has been imposed.

Section 29. KRS 441.046 is amended to read as follows:

- (1) All persons arrested or detained in any adult or juvenile detention facility shall be fingerprinted ***prior to the person's release from custody. A copy of these fingerprints shall be transmitted to the Kentucky State Police for review.***
- (2) The jailer ~~shall~~~~may~~ fingerprint persons for other law enforcement agencies.
- (3) The jailer shall submit the fingerprints to the Kentucky State Police in the manner and at the time required by the Kentucky State Police through administrative regulation.
- (4) ***The Kentucky State Police shall notify the Department of Corrections and the jailer, in writing, of the intentional failure of a jailer to comply with subsection (1), (2), or (3) of this section. Upon the first receipt of the notification of an intentional failure to comply with subsection (1), (2), or (3) of this section, the Department of Corrections shall issue a formal written warning to the jailer setting forth the consequences of continued intentional failure to comply with subsection (1), (2), or (3) of this section.***

- (5) *If the jailer intentionally failed to comply with any fingerprinting requirements of subsection (1), (2), or (3) of this section, after being warned of such intentional failure, the Department of Corrections shall have authority to withhold the state contribution under KRS 441.206 and may require the jailer to return the state contribution funds received under KRS 441.206 for any period in which he or she intentionally failed to comply after being warned.*

Section 30. KRS 510.020 is amended to read as follows:

- (1) Whether or not specifically stated, it is an element of every offense defined in this chapter that the sexual act was committed without consent of the victim.
- (2) Lack of consent results from:
- (a) Forcible compulsion;
 - (b) Incapacity to consent; or
 - (c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.
- (3) A person is deemed incapable of consent when he *or she* is:
- (a) Less than sixteen (16) years old;
 - (b) Mentally retarded or suffers from a mental illness;
 - (c) Mentally incapacitated;~~[-or]~~
 - (d) Physically helpless; *or*
 - (e) *Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.*
- (4) *The provisions of paragraph (e) of subsection (3) of this section shall not apply to persons who are lawfully married to each other and no court order is in effect prohibiting contact between the parties.*

Section 31. KRS 510.060 is amended to read as follows:

- (1) A person is guilty of rape in the third degree when:
- (a) He engages in sexual intercourse with another person who is incapable of consent because he *or she* is mentally retarded;
 - (b) Being twenty-one (21) years old or more, he *or she* engages in sexual intercourse with another person less than sixteen (16) years old; or
 - (c) Being twenty-one (21) years old or more, he *or she* engages in sexual intercourse with another person less than eighteen (18) years old and for whom he *or she* provides a foster family home as defined in KRS 600.020; *or*
 - (d) *Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in sexual intercourse with a minor under sixteen (16) years old with whom he or she comes into contact as a result of that position.*
- (2) Rape in the third degree is a Class D felony.

Section 32. KRS 510.090 is amended to read as follows:

- (1) A person is guilty of sodomy in the third degree when:
- (a) He engages in deviate sexual intercourse with another person who is incapable of consent because he *or she* is mentally retarded;
 - (b) Being twenty-one (21) years old or more, he *or she* engages in deviate sexual intercourse with another person less than sixteen (16) years old; or

- (c) Being twenty-one (21) years old or more, he *or she* engages in deviate sexual intercourse with another person less than eighteen (18) years old and for whom he *or she* provides a foster family home as defined in KRS 600.020; *or*
- (d) *Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in deviate sexual intercourse with a minor less than sixteen (16) years old with whom he or she comes into contact as a result of that position.*

(2) Sodomy in the third degree is a Class D felony.

Section 33. KRS 510.110 is amended to read as follows:

- (1) A person is guilty of sexual abuse in the first degree when:
 - (a) He *or she* subjects another person to sexual contact by forcible compulsion; or
 - (b) He *or she* subjects another person to sexual contact who is incapable of consent because he *or she*:
 - 1. Is physically helpless;
 - 2. Is less than twelve (12) years old; or
 - 3. Is mentally incapacitated.
- (2) Sexual abuse in the first degree is a Class D felony, *unless the victim is less than twelve (12) years old, in which case the offense shall be a Class C felony.*

Section 34. KRS 510.120 is amended to read as follows:

- (1) A person is guilty of sexual abuse in the second degree when:
 - (a) He *or she* subjects another person to sexual contact who is incapable of consent because he *or she* is mentally retarded;
 - (b) He *or she* subjects another person who is less than fourteen (14) years old to sexual contact;
 - (c) Being an employee, contractor, vendor, or volunteer of the Department of Corrections, or a detention facility as defined in KRS 520.010, or of an entity under contract with either the department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he *or she* subjects an offender who is incarcerated, supervised, evaluated, or treated by the Department of Corrections, the detention facility, or the contracting entity, to sexual contact. In any prosecution under this paragraph, the defendant may prove in exculpation that, at the time he *or she* engaged in the conduct constituting the offense, he *or she* and the offender were married to each other; or
 - (d) Being twenty-one (21) years old or more, he *or she* subjects another person to sexual contact who is less than eighteen (18) years old and for whom he *or she* provides a foster family home as defined in KRS 600.020; *or*
 - (e) *Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he subjects a minor who is under sixteen (16) years old, with whom he or she comes into contact as a result of that position, to sexual contact.*
- (2) Sexual abuse in the second degree is a Class A misdemeanor.

Section 35. KRS 510.155 is amended to read as follows:

- (1) It shall be unlawful for any person to knowingly use a communications system, including computers, computer networks, computer bulletin boards, *cellular telephones*, or any other electronic means, for the purpose of procuring or promoting the use of a minor, or a peace officer posing as a minor if the person believes that the peace officer is a minor or is wanton or reckless in that belief, for any activity in violation of KRS 510.040, 510.050, **510.060**, 510.070, 510.080, **510.090**, **529.030**, ~~530.064(1)(a)~~, *or Chapter 531.*
- (2) No person shall be convicted of this offense and an offense specified in KRS 506.010, 506.030, 506.040, or 506.080 for a single course of conduct intended to consummate in the commission of the same offense with the same minor or peace officer.
- (3) A violation of this section is punishable as a Class D felony.

SECTION 36. A NEW SECTION OF KRS CHAPTER 519 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of tampering with a prisoner monitoring device when he or she intentionally alters, disables, deactivates, tampers with, removes, damages, or destroys any device used to facilitate electronic monitoring or supervision of a person who is on probation or parole, or has been ordered to wear a device as a condition of pretrial release.*
- (2) *Tampering with a prisoner monitoring device is a Class D felony.*

Section 37. KRS 530.020 is amended to read as follows:

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

Section 38. KRS 530.064 is amended to read as follows:

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

Except those offenses involving minors in KRS Chapter 531 and KRS 529.030.

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

Section 39. KRS 531.335 is amended to read as follows:

- (1) A person is guilty of possession of matter portraying a sexual performance by a minor when, having knowledge of its content, character, and that the sexual performance is by a minor, he *or she* knowingly has in his *or her* possession or control any matter which visually depicts an actual sexual performance by a minor person.
- (2) Possession of matter portraying a sexual performance by a minor is a ~~Class A misdemeanor for the first offense and a~~ Class D ~~felony for the second and subsequent offenses~~.

Section 40. KRS 531.340 is amended to read as follows:

- (1) A person is guilty of distribution of matter portraying a sexual performance by a minor when, having knowledge of its content and character, he *or she*:
 - (a) Sends or causes to be sent into this state for sale or distribution; or

- (b) Brings or causes to be brought into this state for sale or distribution; or
- (c) In this state, he *or she*:
 - 1. Exhibits for profit or gain; or
 - 2. Distributes; or
 - 3. Offers to distribute; or
 - 4. Has in his *or her* possession with intent to distribute, exhibit for profit or gain or offer to distribute, any matter portraying a sexual performance by a minor.

- (2) Any person who has in his *or her* possession more than one (1) unit of material coming within the provision of KRS 531.300(2) shall be rebuttably presumed to have such material in his *or her* possession with the intent to distribute it.
- (3) Distribution of matter portraying a sexual performance by a minor is a Class D felony *for the first offense and a Class C felony for each subsequent offense*.

Section 41. KRS 531.360 is amended to read as follows:

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

Section 42. KRS 532.043 is amended to read as follows:

- (1) In addition to the penalties authorized by law, any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510, KRS 529.030, 530.020, 530.064(1)(a), 531.310, or 531.320 shall be subject to a period of conditional discharge following release from:
 - (a) Incarceration upon expiration of sentence; or
 - (b) Completion of parole.
- (2) The period of conditional discharge shall be *five (5)* ~~[three (3)]~~ years.
- (3) During the period of conditional discharge, the defendant shall:
 - (a) Be subject to all orders specified by the Department of Corrections; and
 - (b) Comply with all education, treatment, testing, or combination thereof required by the Department of Corrections.
- (4) Persons under conditional discharge pursuant to this section shall be subject to the supervision of the Division of Probation and Parole.
- (5) If a person violates a provision specified in subsection (3) of this section, the violation shall be reported in writing to the Commonwealth's attorney in the county of conviction. The Commonwealth's attorney may petition the court to revoke the defendant's conditional discharge and reincarcerate the defendant as set forth in KRS 532.060.
- (6) The provisions of this section shall apply only to persons convicted, pleading guilty, or entering an Alford plea after July 15, 1998.

Section 43. 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 510.050, 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 *five (5)*~~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 evaluation of the offender performed by an approved provider, as defined in *Section 5 of this Act*~~KRS 47.550~~ or the Department of Corrections. The court shall use the comprehensive sex offender presentence evaluation in determining the appropriateness of probation or conditional discharge.
- (4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community-based sexual offender treatment program operated or approved by the Department of Corrections or the Sex Offender Risk Assessment Advisory Board.
- (5) The offender shall pay for any evaluation or treatment required pursuant to this section up to the offender's ability to pay but not more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.

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

Section 44. 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 KRS 17.500, prior to determining the sentence or prior to final sentencing for youthful offenders, the court shall order a comprehensive sex offender presentence evaluation of the defendant to be conducted by an approved provider, as defined in **Section 5 of this Act** ~~(KRS 17.550)~~, the Department of Corrections, or the Department of Juvenile Justice if the defendant is a youthful offender. The comprehensive sex offender presentence evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment and shall be considered by the court in determining the appropriate sentence. A copy of the comprehensive sex offender presentence evaluation shall be furnished to the court, the Commonwealth's attorney, and to counsel for the defendant. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the comprehensive sex offender presentence evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any comprehensive sex offender presentence evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.
- (5) The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based and correctional-institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.
- (6) Before imposing sentence, the court shall advise the defendant or his 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 45. KRS 532.080 is amended to read as follows:

- (1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the sentence of imprisonment assessed under KRS 532.060 for the crime of which such person presently stands convicted, shall fix a sentence of imprisonment as authorized by subsection (5) or (6) of this section. When a defendant is charged with being a persistent felony offender, the determination of whether or not he is such an offender and the punishment to be imposed pursuant to subsection (5) or (6) of this section shall be determined in a separate proceeding from that proceeding which resulted in his last conviction. Such proceeding shall be conducted before the court sitting with the jury that found the defendant guilty of his most recent offense unless the court for good cause discharges that jury and impanels a new jury for that purpose.
- (2) A persistent felony offender in the second degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of one (1) previous felony. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:
 - (a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and
 - (b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and
 - (c) That the offender:
 1. Completed service of the sentence imposed on the previous felony conviction within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
 2. Was on probation, parole, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
 3. Was discharged from probation, parole, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
 4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or
 5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.
- (3) A persistent felony offender in the first degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of two (2) or more felonies, ***or one (1) or more felony sex crimes against a minor as defined in Section 5 of this Act, and now stands convicted of any one (1) or more felonies.*** As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:
 - (a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and
 - (b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and
 - (c) That the offender:
 1. Completed service of the sentence imposed on any of the previous felony convictions within five (5) years prior to the date of the commission of the felony for which he now stands convicted; or
 2. Was on probation, parole, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
 3. Was discharged from probation, parole, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
 4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or

5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.
- (4) For the purpose of determining whether a person has two (2) or more previous felony convictions, two (2) or more convictions of crime for which that person served concurrent or uninterrupted consecutive terms of imprisonment shall be deemed to be only one (1) conviction, unless one (1) of the convictions was for an offense committed while that person was imprisoned.
- (5) A person who is found to be a persistent felony offender in the second degree shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing provisions of KRS 532.060(2) for the next highest degree than the offense for which convicted. A person who is found to be a persistent felony offender in the second degree shall not be eligible for probation, shock probation, or conditional discharge, unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person, in which case probation, shock probation, or conditional discharge may be granted. A violent offender who is found to be a persistent felony offender in the second degree shall not be eligible for parole except as provided in KRS 439.3401.
- (6) A person who is found to be a persistent felony offender in the first degree shall be sentenced to imprisonment as follows:
- (a) If the offense for which he presently stands convicted is a Class A or Class B felony, *or if the person was previously convicted of one (1) or more sex crimes committed against a minor as defined in Section 5 of this Act and presently stands convicted of a subsequent sex crime*, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than twenty (20) years nor more than fifty (50) years, or life imprisonment, *or life imprisonment without parole for twenty-five (25) years for a sex crime committed against a minor*; ~~or~~
- (b) If the offense for which he presently stands convicted is a Class C or Class D felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten (10) years nor more than twenty (20) years.
- (7) A person who is found to be a persistent felony offender in the first degree shall not be eligible for probation, shock probation, or conditional discharge, unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person *or a sex crime as that term is defined in Section 5 of this Act*, in which case probation, shock probation, or conditional discharge may be granted. If the offense the person presently stands convicted of is a Class A, B, or C felony, the person shall not be eligible for parole until the person has served a minimum term of incarceration of not less than ten (10) years, *unless another sentencing scheme applies*. A violent offender who is found to be a persistent felony offender in the first degree shall not be eligible for parole except as provided in KRS 439.3401.
- (8) No conviction, plea of guilty, or Alford plea to a violation of KRS 218A.500 shall bring a defendant within the purview of or be used as a conviction eligible for making a person a persistent felony offender under this section.
- (9) The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be retroactive.
- Section 46. 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) (a) The provisions of KRS 500.080(5) notwithstanding, if a Class D felon is sentenced to an indeterminate term of imprisonment of five (5) years or less, he shall serve that term in a county jail in a county in which the fiscal court has agreed to house state prisoners; except that, when an indeterminate sentence of two (2) years or more is imposed on a Class D felon convicted of a sexual offense enumerated in

KRS 197.410(1), or a crime under KRS 17.510(11) or (12), the sentence shall be served in a state institution. Counties choosing not to comply with the provisions of this paragraph shall be granted a waiver by the commissioner of the Department of Corrections.

- (b) 1. The provisions of KRS 500.080(5) notwithstanding, and except as provided in subparagraph 2. of this paragraph, a Class C or D felon with a sentence of more than five (5) years who is classified by the Department of Corrections as community custody shall serve that term in a county jail in a county in which the fiscal court has agreed to house state prisoners if:
 - a. Beds are available in the county jail;
 - b. State facilities are at capacity; and
 - c. Halfway house beds are being utilized at the contract level as of July 15, 2000.
- 2. When an indeterminate sentence of two (2) years or more is imposed on a felon convicted of a *sex crime, as defined in Section 5 of this Act or any similar offense in another jurisdiction*~~[sexual offense enumerated in KRS 197.410(1)]~~, the sentence shall be served in a state institution.
- 3. Counties choosing not to comply with the provisions of this paragraph shall be granted a waiver by the commissioner of the Department of Corrections.
- (c) Any jail that houses state inmates under paragraph (a) or (b) of this subsection shall offer programs as recommended by the Jail Standards Commission. The Department of Corrections shall adopt the recommendations of the Jail Standards Commission and promulgate administrative regulations establishing required programs for a jail that houses state inmates under paragraph (a) or (b) of this subsection.
- (5) The jailer of a county in which a Class D felon or a Class C felon is incarcerated may request the commissioner of the Department of Corrections to incarcerate the felon in a state corrections institution if the jailer has reasons to believe that the felon is an escape risk, a danger to himself or other inmates, an extreme security risk, or needs protective custody beyond that which can be provided in a county jail. The commissioner of the Department of Corrections shall evaluate the request and transfer the inmate if he deems it necessary. If the commissioner refuses to accept the felon inmate, and the Circuit Judge of the county that has jurisdiction of the offense charged is of the opinion that the felon cannot be safely kept in a county jail, the Circuit Judge, with the consent of the Governor, may order the felon transferred to the custody of the Department of Corrections.
- (6) Class D felons and Class C felons serving their time in a local jail shall be considered state prisoners, and the Department of Corrections shall pay the jail in which the prisoner is incarcerated a per diem amount determined according to KRS 431.215(2). For other state prisoners and parole violator prisoners, the per diem payments shall also begin on the date prescribed in KRS 431.215(2).
- (7) State prisoners, excluding the Class D felons and Class C felons qualifying to serve time in county jails, shall be transferred to the state institution within forty-five (45) days of final sentencing.

Section 47. KRS 532.110 is amended to read as follows:

- (1) When multiple sentences of imprisonment are imposed on a defendant for more than one (1) crime, including a crime for which a previous sentence of probation or conditional discharge has been revoked, the multiple sentences shall run concurrently or consecutively as the court shall determine at the time of sentence, except that:
 - (a) A definite and an indeterminate term shall run concurrently and both sentences shall be satisfied by service of the indeterminate term;
 - (b) The aggregate of consecutive definite terms shall not exceed one (1) year;~~[and]~~
 - (c) The aggregate of consecutive indeterminate terms shall not exceed in maximum length the longest extended term which would be authorized by KRS 532.080 for the highest class of crime for which any of the sentences is imposed. In no event shall the aggregate of consecutive indeterminate terms exceed seventy (70) years; **and**

(d) *The sentences of a defendant convicted of two (2) or more felony crimes, as defined in Section 5 of this Act, involving two (2) or more victims shall run consecutively.*

- (2) If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run concurrently with any other sentence which the defendant must serve unless the sentence is required by subsection (3) of this section or KRS 533.060 to run consecutively.
- (3) Notwithstanding any provision in this section to the contrary, if a person is convicted of an offense that is committed while he is imprisoned in a penal or reformatory institution, during an escape from imprisonment, or while he awaits imprisonment, the sentence imposed for that offense may be added to the portion of the term which remained unserved at the time of the commission of the offense. The sentence imposed upon any person convicted of an escape or attempted escape offense shall run consecutively with any other sentence which the defendant must serve.
- (4) Notwithstanding any provision in this chapter to the contrary, if a person is convicted of an offense that is committed while he is imprisoned in a penal or reformatory institution, the sentence imposed for that offense may, upon order of the trial court, be served in that institution. The person may be transferred to another institution pursuant to administrative regulations of the Department of Corrections.

Section 48. KRS 533.030 is amended to read as follows:

- (1) The conditions of probation and conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation or conditional discharge that the defendant not commit another offense during the period for which the sentence remains subject to revocation.
- (2) When imposing a sentence of probation or conditional discharge, the court may, in addition to any other reasonable condition, require that the defendant:
 - (a) Avoid injurious or vicious habits;
 - (b) Avoid persons or places of disreputable or harmful character;
 - (c) Work faithfully at suitable employment as far as possible;
 - (d) Undergo available medical or psychiatric treatment and remain in a specific institution as required for that purpose;
 - (e) Post a bond, without surety, conditioned on performance of any of the prescribed conditions;
 - (f) Support his dependents and meet other family responsibilities;
 - (g) Pay the cost of the proceeding as set by the court;
 - (h) Remain within a specified area;
 - (i) Report to the probation officer as directed;
 - (j) Permit the probation officer to visit him at his home or elsewhere;
 - (k) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment; and
 - (l) Submit to periodic testing for the use of controlled substances or alcohol, if the defendant's record indicates a controlled substance or alcohol problem, and to pay a reasonable fee, as determined by the court, which fee shall not exceed the actual cost of the test and analysis and shall be paid directly to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis, as specified by written order of the court, performed under this subsection. For good cause shown, the testing fee may be waived by the court.
- (3) When imposing a sentence of probation or conditional discharge in a case where a victim of a crime has suffered monetary damage as a result of the crime due to his property having been converted, stolen, or unlawfully obtained, or its value substantially decreased as a result of the crime, or where the victim suffered actual medical expenses, direct out-of-pocket losses, or loss of earning as a direct result of the crime, ***or where the victim incurred expenses in relocating for the purpose of the victim's safety or the safety of a member of the victim's household,*** or if as a direct result of the crime the victim incurred medical expenses that were paid

by the Cabinet for Health and Family Services, the Crime Victims Compensation Board, or any other governmental entity, the court shall order the defendant to make restitution in addition to any other penalty provided for the commission of the offense. Payment of restitution to the victim shall have priority over payment of restitution to any government agency. Restitution shall be ordered in the full amount of the damages, unless the damages exceed one hundred thousand dollars (\$100,000) or twice the amount of the gain from the commission of the offense, whichever is greater, in which case the higher of these two (2) amounts shall be awarded. The court may, in lieu of ordering monetary restitution, order the defendant to make restitution by working for or on behalf of the victim. The court shall determine the number of hours of work necessary by applying the then-prevailing federal minimum wage to the total amount of monetary damage caused by or incidental to the commission of the crime. The court may, with the consent of the agency, order the defendant to work as specified in KRS 533.070. Any work ordered pursuant to this section shall not be deemed employment for any purpose, nor shall the person performing the work be deemed an employee for any purpose. Where there is more than one (1) defendant or more than one (1) victim, restitution may be apportioned. Restitution shall be subject to the following additional terms and conditions:

- (a) Where property which is unlawfully in the possession of the defendant is in substantially undamaged condition from its condition at the time of the taking, return of the property shall be ordered in lieu of monetary restitution;
 - (b) The circuit clerk shall assess an additional fee of five percent (5%) to defray the administrative costs of collection of payments or property. This fee shall be paid by the defendant and shall inure to a trust and agency account which shall not lapse and which shall be used to hire additional deputy clerks and office personnel or increase deputy clerk or office personnel salaries, or combination thereof;
 - (c) When a defendant fails to make restitution ordered to be paid through the circuit clerk or a court-authorized program run by the county attorney or the Commonwealth's attorney, the circuit clerk or court-authorized program shall notify the court; and
 - (d) An order of restitution shall not preclude the owner of property or the victim who suffered personal physical or mental injury or out-of-pocket loss of earnings or support or other damages from proceeding in a civil action to recover damages from the defendant. A civil verdict shall be reduced by the amount paid under the criminal restitution order.
- (4) When requiring fees for controlled substances or alcohol tests, or other fees and payments authorized by this section or other statute, except restitution, to be paid by the defendant, the court shall not order the payments to be paid through the circuit clerk.
 - (5) When a defendant is sentenced to probation or conditional discharge, he shall be given a written statement explicitly setting forth the conditions under which he is being released.
 - (6) When imposing a sentence of probation or conditional discharge, the court, in addition to conditions imposed under this section, may require as a condition of the sentence that the defendant submit to a period of imprisonment in the county jail or to a period of home incarceration at whatever time or intervals, consecutive or nonconsecutive, the court shall determine. The time actually spent in confinement or home incarceration pursuant to this provision shall not exceed twelve (12) months or the maximum term of imprisonment assessed pursuant to KRS Chapter 532, whichever is the shorter. Time spent in confinement or home incarceration under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to KRS Chapter 532, if probation or conditional discharge is revoked and the defendant is sentenced to imprisonment. Any prohibitions against probation, shock probation, or conditional discharge under KRS 533.060(2) or 532.045 shall not apply to persons convicted of a misdemeanor or Class D felony and sentenced to a period of confinement or home incarceration under this section.

Section 49. KRS 533.250 is amended to read as follows:

- (1) A pretrial diversion program shall be operated in each judicial circuit. The chief judge of each judicial circuit, in cooperation with the Commonwealth's Attorney, shall submit a plan for the pretrial diversion program to the Supreme Court for approval on or before December 1, 1999. The pretrial diversion program shall contain the following elements:
 - (a) The program may be utilized for a person charged with a Class D felony offense who has not, within ten (10) years immediately preceding the commission of this offense, been convicted of a felony under the laws of this state, another state, or of the United States, or has not been on probation or parole or

who has not been released from the service of any felony sentence within ten (10) years immediately preceding the commission of the offense.

- (b) The program shall not be utilized for persons charged with offenses for which probation, parole, or conditional discharge is prohibited under KRS 532.045.
- (c) No person shall be eligible for pretrial diversion more than once in a five (5) year period.
- (d) ***No person shall be eligible for pretrial diversion who has committed a sex crime as defined in Section 5 of this Act. A person who is on pretrial diversion on the effective date of this Act may remain on pretrial diversion if the person continues to meet the requirements of the pretrial diversion and the registration requirements of Section 6 of this Act.***
- (e) Any person charged with an offense not specified as precluding a person from pretrial diversion under paragraph (b) of this subsection may apply in writing to the trial court and the Commonwealth's attorney for entry into a pretrial diversion program.

~~(f)(e)~~ Any person shall be required to enter an Alford plea or a plea of guilty as a condition of pretrial diversion.

- (2) The Commonwealth's attorney shall make a recommendation upon each application for pretrial diversion to the Circuit Judge in the court in which the case would be tried. The court may approve or disapprove the diversion.
- (3) The court shall assess a diversion supervision fee of a sufficient amount to defray all or part of the cost of participating in the diversion program. Unless the fee is waived by the court in the case of indigency, the fee shall be assessed against each person placed in the diversion program. The fee may be based upon ability to pay.

Section 50. KRS 605.090 is amended to read as follows:

- (1) Unless precluded by law, any child committed to the Department of Juvenile Justice or the cabinet may by the decision of the Department of Juvenile Justice or the cabinet or its designee, at any time during the period of his commitment, be:
 - (a) Upon fourteen (14) days' prior written notice to the court, discharged from commitment. Written notice of discharge shall be given to the committing court and to any other parties as may be required by law;
 - (b) Placed in the home of the child's parents, in the home of a relative, a suitable foster home, or boarding home, upon such conditions as the Department of Juvenile Justice or the cabinet may prescribe and subject to visitation and supervision by a social service worker or juvenile probation and parole officer.
 - 1. At the time a committed child is placed in the home of his parents by the Department of Juvenile Justice or the cabinet, the parents shall be informed in writing of the conditions of the placement and the criteria that will be used to determine whether removal is necessary.
 - 2. At the time a committed child is placed anywhere other than the home of the child's parents, the cabinet or the Department of Juvenile Justice shall inform the foster home, the relative, or the governing authority of any private facility or agency in which the child has been placed whether the minor placed is a juvenile sexual offender as defined in KRS 635.505(2) or of any inappropriate sexual acts or sexual behavior by the child specifically known to the cabinet or Department of Juvenile Justice, and any behaviors of the child specifically known to the cabinet or Department of Juvenile Justice that indicate a safety risk for the placement. Information received by any private facility or agency under this paragraph shall be disclosed immediately and directly to the individual or individuals who have physical custody of the child.
 - 3. If, after a placement is made, additional information is obtained by the cabinet or the Department of Juvenile Justice about inappropriate sexual behavior or other behavior of the committed child that may indicate a safety risk for the placement, the cabinet or the Department of Juvenile Justice shall as soon as practicable, but no later than seventy-two (72) hours after the additional information is received, inform the foster parent, relative, or private facility or agency. Additional information received by any private facility or agency shall be disclosed immediately and directly to the individual or individuals who have physical custody of the child.

4. Information disclosed under this paragraph shall be limited to the acts or behaviors of the committed child and shall not constitute a violation of confidentiality under KRS Chapter 610 or 620. No foster parent, relative, or other person caring for a committed child shall divulge the information received under this paragraph to persons who do not have a legitimate interest or responsibility relating to the case. ***Nothing in this subparagraph shall prohibit the disclosure or sharing of information between a foster parent, custodial, private facility, or governmental entity for the protection of any child.*** A violation of this subparagraph is a Class B misdemeanor;
- (c) Placed in one (1) of the facilities or programs operated by the Department of Juvenile Justice or the cabinet, except that no child committed under the provisions of KRS 610.010(1)(b), (c), or (d) shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as a public offender unless the cabinet and the department agree, and the court consents, that the placement is in the best interest of the child and that the placement does not exceed a group home level;
 - (d) Placed in a child-caring facility operated by a local governmental unit or by a private organization willing to receive the child, upon such conditions as the cabinet may prescribe;
 - (e) ***However, under no circumstances shall a child committed under KRS Chapter 620 be placed in a home, facility, or other shelter with a child who has been committed to the Department of Juvenile Justice for commission of a sex crime, as that term is defined in Section 5 of this Act, unless the child committed for the commission of a sex crime is kept segregated from other children in the home, facility, or other shelter that have not been committed for the commission of a sex crime;***
 - (f) Treated as provided in KRS Chapter 645;
- (g)~~(f)~~ Following the transfer or placement of a child pursuant to paragraphs (b), (c), (d),~~(e)~~ or (f) of this subsection, the Department of Juvenile Justice or the cabinet shall, within fourteen (14) days, excluding weekends and holidays, give written notice to the court of the transfer, the placement, and the reasons therefor.
- (2) No child ten (10) years of age or under shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as public offenders, except that a child charged with the commission of a capital offense or with an offense designated as a Class A or Class B felony may be detained in a state-operated detention facility when there is no available less restrictive alternative.
 - (3) If a child committed to the cabinet as dependent, neglected, or abused is placed in the home of the child's parents, the child shall not be removed except in accordance with the following standards and procedures:
 - (a) If the social service worker believes that the committed child continues to be dependent, neglected, or abused, but immediate removal is unnecessary to protect the child from imminent death or serious physical injury, the casework situation and evidence shall be reviewed with his supervisor to determine whether to continue work with the family intact or to remove the child. There shall be documentation that the social service worker, prior to the court hearing, made an effort to contact the parents to inform them of the specific problems that could lead to removal so they have an opportunity to take corrective action. If the parents are unavailable or do not respond to attempts to communicate, the specific circumstances shall be documented;
 - (b) If it appears that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm and there is not reasonably available an alternative less drastic than removal of the child from the home, the cabinet shall petition the District Court to review the commitment pursuant to KRS 610.120 in relation to the cabinet's intention to remove the child from the parent's home. The petition shall set forth the facts which constitute the need for removal of the child. The court shall serve notice of the petition and the time and place of the hearing on the parents; however, the social service worker shall also contact the parents to ensure that they received the notice and are aware of the right to be represented by counsel. If the parents' whereabouts are unknown, notice may be mailed to the last known address of an adult who is a near relative. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall not be removed from the parents' home;

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

Section 51. KRS 620.090 is amended to read as follows:

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

child may also be placed in a facility or program operated or approved by the cabinet, including a foster home, or any other appropriate available placement. ***However, under no circumstance shall the child be placed in a home, facility, or other shelter with a child who has been committed to the Department of Juvenile Justice for commission of a sex crime as that term is defined in Section 5 of this Act, unless the child committed for the commission of a sex crime is kept segregated from other children in the home, facility, or other shelter that have not been committed for the commission of a sex crime.***

- (3) If the court finds there are not reasonable grounds to believe the child is dependent, neglected or abused, or if no action is taken within seventy-two (72) hours, the emergency custody order shall be dissolved automatically and the cabinet or its designee shall return the child to the parent or other person exercising custodial control or supervision. A request for a continuance of the hearing by the parent or other person exercising custodial control or supervision shall constitute action precluding automatic dissolution of the emergency custody order.
- (4) When the court issues a temporary order for the custody of a child, the court may order that, within two (2) weeks, arrangements be made for the child to receive a thorough medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. The costs of the examination shall be paid by the cabinet.
- (5) The child shall remain in temporary custody with the cabinet for a period of time not to exceed forty-five (45) days from the date of the removal from his home. The court shall conduct the adjudicatory hearing and shall make a final disposition within forty-five (45) days of the removal of the child. The court may extend such time after making written findings establishing the need for the extension and after finding that the extension is in the child's best interest.

Section 52. KRS 620.230 is amended to read as follows:

- (1) For each child placed in the custody of the cabinet by an order of commitment, the cabinet shall file a case permanency plan for the child with the court and send a copy to the Administrative Office of the Courts Citizen Foster Care Review Board Program as soon as the plan is prepared but no later than thirty (30) days after the effective date of the order. Notwithstanding the provisions of KRS 620.090(5), if a child remains in the temporary custody of the cabinet for longer than forty-five (45) days and if a request is submitted by the Administrative Office of the Courts Citizen Foster Care Review Board Program, the cabinet shall provide a copy of the case permanency plan for the child.
- (2) The case permanency plan shall include, but need not be limited to:
 - (a) A concise statement of the reasons why the child is in the custody of the cabinet;
 - (b) A statement of the actions which have been taken with regard to the child to the date of the plan;
 - (c) A statement of the proposed actions which may be taken or are contemplated with regard to the child during the next six (6) months and during the entire duration of the time the child is in the custody of the cabinet;
 - (d) Contemplated placements for the child;
 - (e) If the child is placed outside the home, reasons why the child cannot be protected adequately in the home, the harms the child may suffer if left in the home, factors which may indicate when the child can be returned to the home, and efforts the cabinet or others are making to return the child to the home;
 - (f) If the child is placed outside the home, the steps that the cabinet will take to minimize the harm to the child as a result of the action, both at the time of removal and on a long-term basis;
 - (g) A description of the type of home, child-caring facility, child-placing agency or facility in which the child is to be placed or has been placed, and a statement why the placement is appropriate for the child, including but not limited to:
 1. Age;
 2. Educational needs;
 3. Medical needs;
 4. Emotional needs;

5. Relationship with parents; and
 6. Number of children the home is authorized to care for and the number of children currently residing in the home;
- (h) If the placement is outside the child's original county of residence, documentation that no closer placement is appropriate or available, and the reasons why the placement made was chosen;
 - (i) A description of the services for the child and his family to be provided or arranged by the cabinet to facilitate the return of the child to his own home or to another permanent placement;
 - (j) A list of objectives and specific tasks, together with specific time frames for each task, for which the parents have agreed to assume responsibility, including a schedule of regular visits with the child;
 - (k) A projected schedule of time intervals by which each of the services, objectives, and tasks outlined in the case permanency plan should be accomplished and a schedule of time intervals which have already been accomplished or are in the process of accomplishment;
 - (l) If the child is to remain at home, a description of the potential harm which could befall the child and measures that are being taken to prevent or minimize such harm; and
 - (m) If the child is to remain at home, reasons why he cannot be placed in foster care or why such care is not needed.
- (3) ***Under no circumstance shall a child be placed in a home, facility, or other shelter with a child who has been committed to the Department of Juvenile Justice for commission of a sex crime as defined in Section 5 of this Act, unless the child committed for the commission of a sex crime is kept segregated from other children in the home, facility, or other shelter that have not been committed for the commission of a sex crime.***

Section 53. KRS 635.527 is amended to read as follows:

~~[Any other statute to the contrary notwithstanding,]~~ Communications made in the application for or in the course of a **child** sexual offender's diagnosis and treatment in the program, between a sexual offender or member of the sexual offender's family and any employee of the department who is assigned to work in the program, or any approved provider **as defined in Section 5 of this Act**, shall be privileged from disclosure **in any civil or criminal proceeding, other than proceedings to determine the sentence**, unless the sexual offender consents in writing to the disclosure or the communication is related to an ongoing criminal investigation. The privilege created by this section shall not extend to disclosures made for the purpose of determining whether the sexual offender should continue to participate in the program. **The provisions of KRS 620.030 shall not apply to a communication made, received, or overheard if the communication is made pursuant to this section**, ~~to any communication regarding conduct in which the sexual offender was not a participant, or to any disclosure involving a homicide~~. The **child** sexual offender shall be informed in writing of the limits of the privilege created by this section.

Section 54. KRS 635.510 is amended to read as follows:

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

Section 55. KRS 635.515 is amended to read as follows:

- (1) A child declared a juvenile sexual offender shall be committed to the custody of the Department of Juvenile Justice and shall receive sexual offender treatment for not more than three (3) years, except that *this period of sexual offender treatment may be extended for one (1) additional year by the sentencing court upon motion of the Department of Juvenile Justice*, and the juvenile sexual offender shall not remain in the care of the Department of Juvenile Justice after the age of twenty-one (21) years. ~~If an individual in the care of the department as a juvenile sexual offender reaches the age of nineteen (19) years prior to the completion of the sexual offender treatment program or the expiration of three (3) years of treatment, that individual shall be returned to the sentencing court. At that time, the sentencing court may order the individual to complete the prescribed treatment subject to the contempt powers of the court.~~
- (2) Based on the assessment and evaluation of the juvenile sexual offender and his family, the Department of Juvenile Justice shall utilize the treatment setting which provides the least restrictive alternative as defined in KRS 600.020.
- (3) The program shall develop a written treatment agreement upon the child's placement in a community setting, detailing the responsibilities of the juvenile sexual offender, his family, and the program to include but not be limited to: attendance; participation in education; participation in planning and completion of treatment goals; curfew; visit of appropriate staff to the home; participation in parenting groups and family counseling; continued contact with the program, schools, and courts; insurance of legal rights; and discharge criteria.
- (4) The written treatment agreement shall be presented to the court, and the court shall include the agreement as part of the order except for good cause shown.
- (5) The program shall be responsible for sending written reports every sixty (60) days to the juvenile court judge concerning the participation of the juvenile sexual offender and family in the treatment program. The written report shall include information about the treatment received by the juvenile sexual offender and family, an assessment of the sexual offender's current condition, and recommendations by the program staff.
- (6) The case may be called for review upon the recommendation of the program staff or by the juvenile court judge at any time during the course of treatment. The review may be called to consider documentation of noncompliance, absenteeism, or unwillingness to acknowledge responsibility for sexually-inappropriate behavior which may be remedied through the contempt powers of the court.
- (7) A court review shall be requested by the program sixty (60) days prior to the recommended program release date. The juvenile court judge shall schedule a hearing to formally consider the recommendation of release from the program.

Section 56. KRS 640.030 is amended to read as follows:

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

- (1) The presentence investigation required by KRS 532.050 shall be prepared by the Department of Juvenile Justice or by its designated representative;
- (2) Except as provided in KRS 640.070, any sentence imposed upon the youthful offender shall be served in a facility or program operated or contracted by the Department of Juvenile Justice until the expiration of the sentence, the youthful offender is paroled, the youthful offender is probated, or the youthful offender reaches the age of eighteen (18), whichever first occurs. The Department of Juvenile Justice shall take custody of a youthful offender, remanded into its custody, within sixty (60) days following sentencing. If an individual sentenced as a youthful offender attains the age of eighteen (18) prior to the expiration of his sentence, and has not been probated or released on parole, that individual shall be returned to the sentencing court. At that time, the sentencing court shall make one (1) of the following determinations:
 - (a) Whether the youthful offender shall be placed on probation or conditional discharge;
 - (b) Whether the youthful offender shall be returned to the Department of Juvenile Justice to complete a treatment program, which treatment program shall not exceed the youthful offender's attainment of the age of eighteen (18) years and five (5) months. At the conclusion of the treatment program, the individual shall be returned to the sentencing court for a determination under paragraph (a) or (c) of this subsection; or

- (c) Whether the youthful offender shall be incarcerated in an institution operated by the Department of Corrections;
- (3) If a youthful offender has attained the age of eighteen (18) years but less than eighteen (18) years and five (5) months prior to sentencing, that individual shall be returned to the sentencing court upon attaining the age of eighteen (18) years and five (5) months if that individual has been sentenced to a period of placement or treatment with the Department of Juvenile Justice. The court shall have the same dispositional options as currently provided in subsection (2)(a) and (c) of this section;
- (4) The Department of Juvenile Justice shall inform the sentencing court of any youthful offender in their custody pursuant to this section who has attained the age of eighteen (18) years and five (5) months, and the court shall enter a court order directing the sheriff or jailer to transport the youthful offender to the county jail to await sentencing pursuant to subsection (2)(a) or (c) of this section; and
- (5) KRS 197.420 to the contrary notwithstanding, a youthful offender who ***has committed a sex crime, as defined in KRS 17.500, or any similar offense in another jurisdiction***~~is a sexual offender as defined by KRS 197.410(1)}~~ shall be provided a sexual offender treatment program by the Department of Juvenile Justice pursuant to KRS 635.500 and as mandated by KRS 439.340(11) unless the youthful offender has been transferred to the Department of Corrections.

Section 57. KRS 216B.400 is amended to read as follows:

- (1) Where a person has been determined to be in need of emergency care by any person with admitting authority, no such person shall be denied admission by reason only of his inability to pay for services to be rendered by the hospital.
- (2) Every hospital of this state which offers emergency services shall provide that a physician or a sexual assault nurse examiner, who shall be a registered nurse licensed in the Commonwealth and credentialed by the Kentucky Board of Nursing as provided under KRS 314.142, is available on call twenty-four (24) hours each day for the examinations of persons reported to any law enforcement agency to be victims of sexual offenses as defined by KRS 510.010 to 510.140, 530.020, 530.064(I)(a), and 531.310.
- (3) An examination provided in accordance with this section of a victim of a sexual offense may be performed in a sexual assault examination facility as defined in KRS 216B.015. An examination under this section shall apply only to an examination of a victim.
- (4) The physician or sexual assault nurse examiner, acting under a statewide medical protocol which shall be developed by the chief medical examiner, and promulgated by the secretary of justice pursuant to KRS Chapter 13A shall, upon the request of any peace officer or prosecuting attorney, and with the consent of the reported victim, or upon the request of the reported victim, examine such person for the purpose of gathering physical evidence. This examination shall include but not be limited to:
- (a) Basic treatment and evidence gathering services; and
- (b) Laboratory tests, as appropriate.
- (5) Each reported victim shall be informed of available services for treatment of venereal disease, pregnancy, and other medical and psychiatric problems. Pregnancy counseling shall not include abortion counseling or referral information.
- (6) Each reported victim shall be informed of available crisis intervention or other mental health services provided by regional rape crisis centers providing services to victims of sexual assault.
- (7) Notwithstanding any other provision of law, a minor may consent to examination under this section. This consent is not subject to disaffirmance because of minority, and consent of the parents or guardians of the minor is not required for the examination.
- (8) (a) The examinations provided in accordance with this section shall be paid for by the Crime Victims' Compensation Board at a rate to be determined by the administrative regulation promulgated by the board after consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.
- (b) Upon receipt of a completed original claim form supplied by the board and itemized billing for a forensic sexual assault examination, the board shall reimburse the hospital or sexual assault

examination facility, and the physician or sexual assault nurse examiner as provided in administrative regulations promulgated by the board pursuant to KRS Chapter 13A. Reimbursement shall be made to an out-of-state nurse who is credentialed in the other state to provide sexual assault examinations, an out-of-state hospital, or an out-of-state physician if the sexual assault occurred in Kentucky.

- (c) Independent investigation by the Crime Victims' Compensation Board shall not be required for payment of claims under this section; however, the board may require additional documentation or proof that the forensic medical examination was performed.
- (9) No charge shall be made to the victim for sexual assault examinations by the hospital, the sexual assault examination facility, the physician, the sexual assault nurse examiner, the victim's insurance carrier, or the Commonwealth.

Section 58. KRS 311.595 is amended to read as follows:

If the power has not been transferred by statute to some other board, commission, or agency of this state, the board may deny an application or reregistration for a license; place a licensee on probation for a period not to exceed five (5) years; suspend a license for a period not to exceed five (5) years; limit or restrict a license for an indefinite period; or revoke any license heretofore or hereafter issued by the board, upon proof that the licensee has:

- (1) Knowingly made or presented, or caused to be made or presented, any false, fraudulent, or forged statement, writing, certificate, diploma, or other thing, in connection with an application for a license or permit;
- (2) Practiced, or aided or abetted in the practice of fraud, forgery, deception, collusion, or conspiracy in connection with an examination for a license;
- (3) Committed, procured, or aided in the procurement of an unlawful abortion, including a partial-birth abortion;
- (4) Entered a guilty or nolo contendere plea, or been convicted, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be a felony under the laws of the Commonwealth of Kentucky, or of the United States, or of any crime involving moral turpitude which is a misdemeanor under the laws;
- (5) Been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, 530.064(I)(a), or 531.310, or been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the physician;
- (6) Become addicted to a controlled substance;
- (7) Become a chronic or persistent alcoholic;
- (8) Been unable or is unable to practice medicine according to acceptable and prevailing standards of care by reason of mental or physical illness or other condition including but not limited to physical deterioration that adversely affects cognitive, motor, or perceptive skills, or by reason of an extended absence from the active practice of medicine;
- (9) Engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof;
- (10) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his profession;
- (11) Employed, as a practitioner of medicine or osteopathy in the practice of his profession in this state, any person not duly licensed or otherwise aided, assisted, or abetted the unlawful practice of medicine or osteopathy or any other healing art;
- (12) Violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate any provision or term of any medical practice act, including but not limited to the code of conduct promulgated by the board under KRS 311.601 or any other valid regulation of the board;
- (13) Violated any agreed order, letter of agreement, final order, or emergency order issued by the board;
- (14) Engaged in or attempted to engage in the practice of medicine or osteopathy under a false or assumed name, or impersonated another practitioner of a like, similar, or different name;

- (15) Obtained a fee or other thing of value on the fraudulent representation that a manifestly incurable condition could be cured;
- (16) Willfully violated a confidential communication;
- (17) Had his license to practice medicine or osteopathy in any other state, territory, or foreign nation revoked, suspended, restricted, or limited or has been subjected to other disciplinary action by the licensing authority thereof. This subsection shall not require relitigation of the disciplinary action;
- (18) Failed or refused, without legal justification, to practice medicine in a rural area of this state in violation of a valid medical scholarship loan contract with the trustees of the rural Kentucky medical scholarship fund;
- (19) Given or received, directly or indirectly, from any person, firm, or corporation, any fee, commission, rebate, or other form of compensation for sending, referring, or otherwise inducing a person to communicate with a person licensed under KRS 311.530 to 311.620 in his professional capacity or for any professional services not actually and personally rendered; provided, however, that nothing contained in this subsection shall prohibit persons holding valid and current licenses under KRS 311.530 to 311.620 from practicing medicine in partnership or association or in a professional service corporation authorized by KRS Chapter 274, as now or hereinafter amended, or from pooling, sharing, dividing, or apportioning the fees and moneys received by them or by the partnership, corporation, or association in accordance with the partnership agreement or the policies of the board of directors of the corporation or association. Nothing contained in this subsection shall abrogate the right of two (2) or more persons holding valid and current licenses under KRS 311.530 to 311.620 to receive adequate compensation for concurrently rendering professional care to a single patient and divide a fee, if the patient has full knowledge of this division and if the division is made in proportion to the services performed and responsibility assumed by each;
- (20) Been removed, suspended, expelled, or disciplined by any professional medical association or society when the action was based upon what the association or society found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provision of KRS Chapter 311. This subsection shall not require relitigation of the disciplinary action; or
- (21) Been disciplined by a licensed hospital or medical staff of the hospital, including removal, suspension, limitation of hospital privileges, failing to renew privileges for cause, resignation of privileges under pressure or investigation, or other disciplinary action if the action was based upon what the hospital or medical staff found to be unprofessional conduct, professional incompetence, malpractice, or a violation of any provisions of KRS Chapter 311. This subsection shall not require relitigation of the disciplinary action.

Section 59. KRS 312.150 is amended to read as follows:

- (1) Charges may be preferred by the board against the holder of a license to practice chiropractic in this state on any of the following grounds:
 - (a) That fraud, misrepresentation, concealment of material facts, or deceit was used in obtaining or retaining the license;
 - (b) That the licensee no longer possesses a good moral character;
 - (c) That the licensee has been convicted of a felony or violation of any law involving moral turpitude;
 - (d) That the licensee solicits or advises patients utilizing false, deceptive, or misleading statements or information;
 - (e) That the licensee is impaired by drugs or alcohol to the extent that it may affect the health, welfare, or safety of patients;
 - (f) That the licensee is in any way guilty of any deception, misrepresentation, fraud, or unethical conduct in the practice of chiropractic;
 - (g) That the licensee has violated any of the provisions of this chapter, or any of the administrative regulations of the board;
 - (h) That the licensee failed to attend and complete annual continuing chiropractic education courses as provided in KRS 312.175;

- (i) That the licensee failed to provide a complete copy of the patient's medical records or an itemized statement to the patient upon request, pursuant to KRS 422.317, within ten (10) business days; or
 - (j) That the chiropractor failed to provide notice of a change in address or change in the name and address of the facility where the chiropractor practices as required by KRS 312.145(4).
- (2) Unprofessional conduct shall include any departure or the failure to conform to the minimal standards of acceptable chiropractic practice or the willful or careless disregard for the health, welfare, or safety of patients, in any of which cases proof of actual injury need not be established. Unprofessional conduct shall include, but not be limited to, the following acts of a chiropractor:
- (a) Gross ignorance of, or incompetence in, the practice of chiropractic;
 - (b) Performing unnecessary services;
 - (c) Charging a patient an unconscionable fee or charging for services not rendered;
 - (d) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques, including having patients enter into a contract for a course of treatment;
 - (e) Perpetrating fraud upon patients, third-party payors, or others, relating to the practice of chiropractic, including violations of the federal Medicaid and Medicare laws;
 - (f) Advertising that the licensee shall accept for services rendered assigned payments from any third-party payor as payment in full, if the effect is to give the impression of eliminating the need for payment by the patient of any required deductible or copayment applicable in the patient's health benefit plan; or advertising a fee or charge for a service or treatment different from the fee or charge the licensee submits to a third-party payor for that service of treatment. The licensee shall attach to any claim form submitted to any third-party payor a copy of any coupon or a summary of the terms of any discount given;
 - (g) Accepting for services rendered assigned payments from any third-party payor as payment in full, if the effect is to eliminate the need for payment by the patient of any required deductible or copayment applicable in the patient's health benefit plan, or collecting a fee or charge the licensee submits to a third-party payor for that service or treatment. However, in instances where the intent is not to collect excessive remuneration from a third-party payor but rather to provide services at a reduced rate to a patient unable to afford the deductible or copayment, the services may be performed for a lesser charge or fee. The third-party payor shall be informed by the licensee of the reduced charge; or
 - (h) Conviction of a misdemeanor offense under KRS Chapter 510 involving a patient while the patient was under the care of the chiropractor, or a felony offense under KRS Chapter 510, 530.064(1)(a), or 531.310, or the chiropractor having been found by the board to have had sexual contact as defined in KRS 510.010 with a patient while the patient was under the care of the chiropractor.
- (3) Upon receipt and due consideration of any charges, the board upon an affirmative vote shall determine whether the nature and quality of the charges are such that further investigation or initiation of disciplinary proceedings against the charged licensee is indicated. If disciplinary proceedings are not warranted, the charges shall be dismissed with or without prejudice. If the board determines that disciplinary proceedings are appropriate, the case may be resolved informally by agreed order or set for hearing to be conducted in accordance with KRS Chapter 13B.
- (4) Except for revocation for nonrenewal, no license shall be revoked or suspended without an opportunity for a hearing. The board may at any time proceed against a licensee on its own initiative either on the basis of information contained in its own records or on the basis of information obtained through its informal investigation.
- (5) If the board substantiates that sexual contact occurred between the chiropractor and a patient while the patient was under the care of or in a professional relationship with the chiropractor, the chiropractor's license may be revoked or suspended with mandatory treatment of the chiropractor as prescribed by the board. The board may require the chiropractor to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.

Section 60. KRS 314.091 is amended to read as follows:

- (1) The board shall have power to reprimand, deny, limit, revoke, probate, or suspend any license or credential to practice nursing issued by the board or applied for in accordance with this chapter, or to otherwise discipline a licensee, credential holder, or applicant, or to deny admission to the licensure examination, or to require evidence of evaluation and therapy upon proof that the person:
 - (a) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;
 - (b) Has been convicted of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty, under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence. For the purposes of this section, "conviction" means but is not limited to pleading no contest, entering an Alford plea, or entry of a court order suspending the imposition of a criminal penalty to a crime;
 - (c) Has been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, 530.064(1)(a), or 531.310, or has been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the nurse;
 - (d) Has negligently or willfully acted in a manner inconsistent with the practice of nursing;
 - (e) Is unfit or incompetent to practice nursing by reason of negligence or other causes, including but not limited to, being unable to practice nursing with reasonable skill or safety;
 - (f) Abuses use of controlled substances, prescription medications, or alcohol;
 - (g) Has misused or misappropriated any drugs placed in the custody of the nurse for administration, or for use of others;
 - (h) Has falsified or in a negligent manner made incorrect entries or failed to make essential entries on essential records;
 - (i) Has a license or credential to practice as a nurse denied, limited, suspended, probated, revoked, or otherwise disciplined in another jurisdiction on grounds sufficient to cause a license to be denied, limited, suspended, probated, revoked, or otherwise disciplined in this Commonwealth, including action by another jurisdiction for failure to repay a student loan;
 - (j) Has violated any of the provisions of this chapter;
 - (k) Has violated any lawful order or directive previously entered by the board;
 - (l) Has violated any administrative regulation promulgated by the board; or
 - (m) Has been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property.
- (2) All hearings shall be conducted in accordance with KRS Chapter 13B. A suspended or revoked license or credential may be reinstated at the discretion of the board, and in accordance with regulations promulgated by the board.
- (3) The executive director may issue subpoenas to compel the attendance of witnesses and the production of documents in the conduct of an investigation. The subpoenas may be enforced by the Circuit Court as for contempt. Any order or subpoena of the court requiring the attendance and testimony of witnesses and the production of documentary evidence may be enforced and shall be valid anywhere in this state.
- (4) At all hearings on request of the board the Attorney General of this state or one (1) of the assistant attorneys general designated by the Attorney General shall appear and represent the board.
- (5) A final order of the board shall be by majority vote thereof.
- (6) Any person adversely affected by any final order of the board may obtain a review thereof by filing a written petition for review with the Circuit Court of the county in which the board's offices are located in accordance with KRS Chapter 13B.
- (7) If the board substantiates that sexual contact occurred between a nurse and a patient while the patient was under the care of or in a professional relationship with the nurse, the nurse's license or credential may be

revoked or suspended with mandatory treatment of the nurse as prescribed by the board. The board may require the nurse to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.

Section 61. KRS 319.082 is amended to read as follows:

- (1) The board may suspend, revoke, or refuse to issue or renew a license; may accept an assurance of voluntary compliance; restrict, or place a credential holder on probation; or issue an administrative reprimand or private admonishment upon proof that the credential holder has:
- (a) Committed any act involving moral turpitude, dishonesty, or corruption, relating to the practice of psychology, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon conviction of such a crime, the judgment and sentence is presumptive evidence at the ensuing disciplinary hearing of the guilt of the licensee or applicant of the crime described in the indictment or information and of the person's violation of the statute on which it is based. For the purpose of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended;
 - (b) Misrepresented or concealed a material fact in obtaining a license, or in reinstatement thereof;
 - (c) Committed any unfair, false, misleading, or deceptive act or practice;
 - (d) Been incompetent or negligent in the practice of psychology;
 - (e) Practiced psychology while under the suspension, revocation, or restriction of the individual's license to practice by competent authority in any state, federal, or foreign jurisdiction;
 - (f) Violated any state statute or administrative regulation governing the practice of psychology;
 - (g) Unlawfully failed to cooperate with the board by:
 - 1. Not furnishing any papers or documents requested by the board;
 - 2. Not furnishing in writing a complete explanation covering the matter contained in the complaint filed with the board;
 - 3. Not appearing before the board at the time and place designated; or
 - 4. Not properly responding to subpoenas issued by the board;
 - (h) Failed to comply with an order issued by the board or an assurance of voluntary compliance;
 - (i) Aided or abetted an unlicensed person to practice when a license or certificate is required;
 - (j) Grossly overcharged for professional services;
 - (k) Practiced beyond the scope demonstrated by an appropriate combination of knowledge, skill, experience, training, and education;
 - (l) Failed to provide adequate supervision for certified psychologists, licensed psychological associates, applicants for licensure, or other staff;
 - (m) Been convicted of any misdemeanor or felony relating to the practice of psychology. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended;
 - (n) Physically abused or had sexual contact with a patient, client, student, or supervisee;
 - (o) Been convicted of a misdemeanor offense under KRS Chapter 510 involving a client, patient, or student, or a felony offense under KRS Chapter 510, 530.064(1)(a), or 531.310, or been found by the board to have had sexual contact as defined in KRS 510.010 with a client, patient, student, or supervisee;
 - (p) Improperly divulged confidential information;
 - (q) Exercised undue influence in such a manner as to exploit the client, patient, student, or supervisee for financial or other personal advantage to the practitioner or a third party;

- (r) Showed an inability to practice psychology with reasonable skill and safety to patients or clients by reason of illness, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition; or
 - (s) Failed to comply with the requirements of the board for continuing education.
- (2) Private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)(l) and shall not constitute disciplinary action, but may be used by the board for statistical purposes or in subsequent disciplinary action against the credential holder or applicant.
 - (3) No unlawful act or violation of any provision of this chapter by any credential holder employed or supervised by a licensed psychologist shall be cause for the revocation of the supervisor's license, unless the board finds that the licensed psychologist had knowledge of it.
 - (4) Three (3) years from the date of a revocation, any person whose license has been revoked may petition the board for reinstatement. The board shall investigate his or her petition and may reinstate his or her license upon finding that the former licensee has complied with the provisions of this chapter and administrative regulations promulgated by the board and is again able to engage in the practice of psychology with reasonable skill, competency, and safety to the public.
 - (5) The board may, at its own discretion, reconsider, modify, or reverse its probations, suspensions, revocations, restrictions, or refusals to issue or renew licenses at any time.

Section 62. KRS 335.150 is amended to read as follows:

- (1) The board may revoke, suspend, or refuse to issue or renew; impose probationary or supervisory conditions upon; impose an administrative fine; issue a written reprimand or admonishment; or any combination of actions regarding any applicant, license, or licensee upon proof that the applicant or licensee has:
 - (a) Committed any act of dishonesty or corruption. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon conviction of the crime, the judgment and sentence creates a rebuttable presumption at the ensuing disciplinary hearing of the guilt of the applicant or licensee. Conviction includes all instances in which a plea of no contest is the basis of the conviction;
 - (b) Misrepresented or concealed a material fact in obtaining a license, or in reinstatement thereof;
 - (c) Committed any unfair, false, misleading, or deceptive act or practice;
 - (d) Been incompetent or negligent in the practice of social work;
 - (e) Violated any state statute or administrative regulation governing the practice of social work or any activities undertaken by a social worker;
 - (f) Failed to comply with an order issued by the board or an assurance of voluntary compliance;
 - (g) Violated the code of ethical conduct as set forth by the board by promulgation of an administrative regulation;
 - (h) Been legally declared mentally incompetent;
 - (i) Aided or abetted another person in falsely procuring or attempting to procure a license;
 - (j) Aided or abetted an unlicensed person in the practice of social work; or
 - (k) Failed to comply with the requirements of KRS 214.615(1).
- (2) Five (5) years from the date of a revocation, any person whose license has been revoked may petition the board for reinstatement. The board shall investigate the petition and may reinstate the license upon a finding that the individual has complied with any terms prescribed by the board and is again able to engage competently in the practice of social work.
- (3) If an alleged violation is not of a serious nature and the evidence presented to the board, after the investigation and appropriate opportunity for the licensee to respond, provides a clear indication that the alleged violation did in fact occur, the board may issue a written admonishment to the licensee. A copy of the admonishment shall be placed in the permanent file of the licensee. The licensee shall have the right to file a response within thirty (30) days of its receipt and to have the response placed in the licensee's permanent file. Alternatively,

the licensee may file a request for a hearing, within thirty (30) days of the receipt of the written admonishment. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing.

- (4) At any time during the investigative or hearing processes, the board may enter into an agreed order with, or accept an assurance of voluntary compliance from, the licensee that effectively satisfies the complaint.
- (5) The board may reconsider, modify, or reverse its decision regarding probation, suspension, or any other disciplinary action.
- (6) Upon proof substantiating that sexual contact occurred between a social worker licensed by the board and a client while the client was under the care of or in a professional relationship with the social worker, the social worker's license may be revoked or suspended with mandatory treatment of the social worker as prescribed by the board. The board may require the social worker to pay a specified amount for mental health services for the client which are needed as a result of the sexual contact.
- (7) The board may revoke the license of a social worker if the social worker has been convicted of a misdemeanor offense under KRS Chapter 510 involving a client or a felony offense under KRS Chapter 510, 530.064(I)(a), or 531.310, or has been found to have had sexual contact as defined in KRS 510.010(7) with a client while the client was under the care of the social worker.

Section 63. KRS 421.350 is amended to read as follows:

- (1) This section applies only to a proceeding in the prosecution of an offense, including but not limited to an offense under KRS 510.040 to 510.150, 529.030 to 529.050, 529.070, 530.020, 530.060, 530.064(I)(a), 531.310, 531.320, 531.370, and all dependency proceedings pursuant to KRS Chapter 620, when the act is alleged to have been committed against a child twelve (12) years of age or younger, and applies to the statements or testimony of that child or another child who is twelve (12) years of age or younger who witnesses one of the offenses included in this subsection.
- (2) The court may, on the motion of the attorney for any party and upon a finding of compelling need, order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding. Only the attorneys for the defendant and for the state, persons necessary to operate the equipment, and any person whose presence the court finds would contribute to the welfare and well-being of the child may be present in the room with the child during his testimony. Only the attorneys may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during his testimony, but does not permit the child to see or hear them. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant.
- (3) The court may, on the motion of the attorney for any party and upon a finding of compelling need, order that the testimony of the child be taken outside the courtroom and be recorded for showing in the courtroom before the court and the finder of fact in the proceeding. Only those persons permitted to be present at the taking of testimony under subsection (3) of this section may be present during the taking of the child's testimony, and the persons operating the equipment shall be confined from the child's sight and hearing as provided by subsection (3) of this section. The court shall permit the defendant to observe and hear the testimony of the child in person, but shall ensure that the child cannot hear or see the defendant. The court shall also ensure that:
 - (a) The recording is both visual and oral and is recorded on film or videotape or by other electronic means;
 - (b) The recording equipment was capable of making an accurate recording, the operator was competent, and the recording is accurate and is not altered;
 - (c) Each voice on the recording is identified; and
 - (d) Each party is afforded an opportunity to view the recording before it is shown in the courtroom.
- (4) If the court orders the testimony of a child to be taken under subsection (2) or (3) of this section, the child may not be required to testify in court at the proceeding for which the testimony was taken.

- (5) For the purpose of subsections (2) and (3) of this section, "compelling need" is defined as the substantial probability that the child would be unable to reasonably communicate because of serious emotional distress produced by the defendant's presence.

Section 64. KRS 421.510 is amended to read as follows:

- (1) Where the victim is less than sixteen (16) years old and the crime is a sexual offense including violations of KRS 510.040 to 510.150, 530.020, 530.064(1)(a), 530.070, 531.310, 531.320, and 531.370, a speedy trial may be scheduled as provided in subsection (2) of this section.
- (2) The court, upon motion by the attorney for the Commonwealth for a speedy trial, shall set a hearing date on the motion within ten (10) days of the date of the motion. If the motion is granted, the trial shall be scheduled within ninety (90) days from the hearing date.
- (3) In ruling on any motion or other request for a delay or continuance of the proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

Section 65. KRS 532.060 is amended to read as follows:

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

Section 66. KRS 635.505 is amended to read as follows:

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

- (1) The "treatment program" means a continuum of services provided in community and institutional settings designed to provide early intervention and treatment services for juvenile sexual offenders.
- (2) A "juvenile sexual offender" as used in this chapter means an individual who was at the time of the commission of the offense under the age of eighteen (18) years who is not actively psychotic or mentally retarded and who has been adjudicated guilty of or has been convicted of or pled guilty to:
 - (a) A felony under KRS Chapter 510;
 - (b) Any other felony committed in conjunction with a misdemeanor described in KRS Chapter 510;
 - (c) Any felony under KRS 506.010 when the crime attempted is a felony or misdemeanor described in KRS Chapter 510;
 - (d) An offense under KRS 530.020;
 - (e) An offense under **KRS 530.064(1)(a)**;

- (f) An offense under KRS 531.310; or
 - (g) A misdemeanor offense under KRS Chapter 510.
- (3) A "juvenile sexual offender assessment" means an assessment of the child's adolescent social development, medical history, educational history, legal history, family history, substance abuse history, sexual history, treatment history, and recent behaviors, which shall be prepared in order to assist the courts in determining whether the child should be declared a juvenile sexual offender, and to provide information regarding the risk for reoffending and recommendations for treatment.
 - (4) "Mentally retarded" as used in this section means a juvenile with a full scale intelligent quotient of seventy (70) or below.

Section 67. KRS 635.545 is amended to read as follows:

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

Section 68. KRS 610.320 is amended to read as follows:

- (1) A special record book shall be kept by the court for all cases, to be known as the "juvenile record," and the docket or calendar of such cases shall be called the "juvenile docket."
- (2) No probation officer, nor employee of a probation officer, shall, without the consent of the District Judge sitting in juvenile session, divulge or communicate to any persons other than the court, law enforcement, the Department of Juvenile Justice, an officer of the court interested in the case, a member of the advisory board of the court, or a representative of the cabinet, any information obtained pursuant to the discharge of his duties, nor shall any record of the action of the probation officer be made public except by leave of the District Judge; provided, that nothing in this subsection shall prohibit the probation officer from divulging or communicating such information to the court, to his colleagues or superiors in his own department, or to another probation officer having a direct interest in the record or social history of the child.
- (3) All law enforcement and court records regarding children who have not reached their eighteenth birthday shall not be opened to scrutiny by the public, except ***that a separate public record shall be kept by the clerk of the court which shall be accessible to the public for*** court records, limited to the petition, order of the adjudication, and disposition in juvenile delinquency proceedings concerning a child ***who is fourteen (14) years of age or older at the time of the commission of the offense, and*** who is adjudicated a juvenile delinquent for the commission of an offense that would constitute a capital offense or a Class A, B, or C felony if the juvenile were an adult, or any offense involving a deadly weapon, or an offense wherein a deadly weapon is used or displayed.
- (4) Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act is also prohibited. Otherwise, the law enforcement records shall be made available to the child, family, guardian, or legal representative of the child involved. The records shall also be made available to the court, probation officers, prosecutors, the Department of Juvenile Justice, and law enforcement agencies or representatives of the cabinet. Records, limited to the child's adjudication of delinquency, and disposition of a criminal activity covered by KRS 610.345, shall also be made available to public or private elementary and secondary school administrative, transportation, and counseling personnel, and to any teacher to whose class the student has been assigned for instruction, subject to the provisions of KRS 610.340 and 610.345.

- (5)~~(4)~~ Subject to the Kentucky Rules of Evidence, juvenile court records of adjudications of guilt of a child for an offense which would be a felony if committed by an adult shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial, and may be used during the sentencing phase of a criminal trial. However, the fact that a juvenile has been adjudicated delinquent of an offense which would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication.
- (6)~~(5)~~ This section shall not relieve the probation officer or peace officer from divulging such facts as a witness in a trial or hearing involving any cases falling under KRS Chapters 600 to 645 or the production of juvenile records for use in the trial or proceedings.
- (7)~~(6)~~ This section shall not prohibit release of information regarding juvenile proceedings in the District Court which do not reveal the identity of the child or its parents or guardians, or which relate to the child's eligibility for services under Title IV-E or IV-B of the Federal Social Security Act. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court.

Section 69. KRS 610.340 is amended to read as follows:

- (1) (a) Unless a specific provision of KRS Chapters 600 to 645 specifies otherwise, all juvenile court records of any nature generated pursuant to KRS Chapters 600 to 645 by any agency or instrumentality, public or private, shall be deemed to be confidential and shall not be disclosed except to the child, parent, victims, or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070 unless ordered by the court for good cause.
- (b) Juvenile court records which contain information pertaining to arrests, petitions, adjudications, and dispositions of a child may be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.
- (c) Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act shall not be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.
- (d) Victim access under this subsection to juvenile court records shall include access to records of adjudications that occurred prior to July 15, 1998.
- (2) The provisions of this section shall not apply to public officers or employees engaged in the investigation of and in the prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes. ***Any record obtained pursuant to this subsection shall be used for official use only, shall not be disclosed publicly, and shall be exempt from disclosure under the Open Records Act, KRS 61.870 to 61.884.***
- (3) ***The provisions of this section shall not apply to any peace officer, as defined in KRS 446.010(24), who is engaged in the investigation or prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes. Any record obtained pursuant to this subsection shall be used for official use only, shall not be disclosed publicly, and shall be exempt from disclosure under the Open Records Act, KRS 61.870 to 61.884.***
- (4) The provisions of this section shall not apply to employees of the Department of Juvenile Justice or cabinet or its designees responsible for any services under KRS Chapters 600 to 645 or to attorneys for parties involved in actions relating to KRS Chapters 600 to 645 or other prosecutions authorized by the Kentucky Revised Statutes.
- (5)~~(4)~~ The provisions of this section shall not apply to records disclosed pursuant to KRS 610.320 or to public or private elementary and secondary school administrative, transportation, and counseling personnel, to any teacher or school employee with whom the student may come in contact, or to persons entitled to have juvenile records under KRS 610.345, if the possession and use of the records is in compliance with the provisions of KRS 610.345 and this section.

- (6)~~(5)~~ No person, including school personnel, shall disclose any *confidential* record or any information contained therein except as permitted by this section or other specific section of KRS Chapters 600 to 645, or except as permitted by specific order of the court.
- (7)~~(6)~~ No person, including school personnel, authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain *confidential* records to which he is not entitled or for purposes for which he is not permitted to obtain them pursuant to KRS Chapters 600 to 645.
- (8)~~(7)~~ No person, including school personnel, not authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records which are made confidential pursuant to KRS Chapters 600 to 645 except upon proper motion to a court of competent jurisdiction.
- (9)~~(8)~~ No person shall destroy or attempt to destroy any record required to be kept pursuant to KRS Chapters 600 to 645 unless the destruction is permitted pursuant to KRS Chapters 600 to 645 and is authorized by the court upon proper motion and good cause for the destruction being shown.
- (10)~~(9)~~ As used in this section the term "KRS Chapters 600 to 645" includes any administrative regulations which are lawfully promulgated pursuant to KRS Chapters 600 to 645.

Section 70. KRS 610.345 is amended to read as follows:

- (1) When a child is adjudicated guilty of an offense which classifies him or her as a youthful offender, the judge in the court in which the matter was tried shall direct the clerk to notify the superintendent of the public school district in which the child is enrolled or the principal of any private elementary or secondary school which the child attends of the adjudication and the petition and disposition of the case. The name of the complainant shall be deleted.~~[Upon written request of the authorized representative of the school district or the school,]~~ The court **shall direct the appropriate prosecuting entity**~~[, if it deems it appropriate, may authorize the county attorney]~~ to give the school district or the school a statement of facts in the case. The superintendent shall notify the principal of the school in which the child is enrolled.
- (2) When a child is adjudicated guilty of an offense which would classify him or her as a violent offender under KRS 439.3401, or be a felony under KRS Chapter 218A, 508, 510, or 527 if committed by an adult, but which would not classify him or her as a youthful offender, the judge in the court in which the matter was tried shall direct the clerk to notify within five (5) days of the order the superintendent of the public school district in which the child is enrolled or the principal of any private elementary or secondary school which the child attends of the charge, the adjudication, and the disposition of the case. The name of the complainant shall be deleted.~~[Upon written request of the authorized representative of the school district or the school,]~~ The court **shall**~~[, if it deems it appropriate, may]~~ authorize the county attorney to give the school district or the school a statement of facts in the case. The superintendent shall notify the principal of the school in which the child is enrolled.
- (3) When a petition is filed against a child, or a child is adjudicated guilty of an offense that would be a felony or misdemeanor if committed by an adult, and the misdemeanor involves a controlled substance or the possession, carrying, or use of a deadly weapon, or physical injury to another person, the judge in the court in which the matter is considered shall direct the clerk to notify the superintendent of the public school district in which the child is enrolled or the principal of any private elementary or secondary school that the child attends of the charge, the adjudication, and the disposition of the case. The notification shall be made within twenty-four (24) hours of the time when the petition is filed. The name of the complainant shall be deleted.~~[Upon written request of the authorized representative of the school district or the school,]~~ The court **shall**~~[, if it deems it appropriate, may]~~ authorize the county attorney to give the school district or the school a statement of the facts in the case, not to include the complainant's name. If the petition is dismissed, all records of the incident or notification created in the school district or the school under this subsection shall be destroyed, and shall not be included in the child's school records.
- (4) Notice of adjudication to a district superintendent referenced in subsections~~[(1),]~~ (2)~~[(1),]~~ and (3) of this section shall be released by the superintendent to the principal. A principal of a public or private school receiving notice of adjudication shall release the information to employees of the school having responsibility for classroom instruction or counseling of the child and may release it to other school personnel as described in subsection (5) of this section, but the information shall otherwise be confidential and shall not be shared by school personnel with any other person or agency except as may otherwise be required by law. The

notification in writing of the nature of the offense committed by the child and any probation requirements shall not become a part of the child's student record.

- (5) Records or information disclosed pursuant to this section shall be limited to records of that student's criminal petition and the disposition thereof covered by this section, shall be subject to the provisions of KRS 610.320 and 610.340, and shall not be disclosed to any other person, including school personnel, except to a district superintendent, public or private elementary and secondary school administrative, transportation, and counseling personnel, and to any teacher or school employee with whom the student may come in contact. This section shall not authorize the disclosure of any other juvenile record or information relating to the child.
- (6) The Department of Juvenile Justice shall provide a child's offense history information pursuant to this section to the superintendent of the local school district in which the child, who is committed to the department, is placed.
- (7) Records or information received by the school pursuant to this section shall be kept in a locked file, when not in use, to be opened only on permission of the administrator.

Approved April 18, 2006