

## CHAPTER 60

## (SB 46)

AN ACT relating to crime victim testimony.

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

➔Section 1. KRS 421.500 is amended to read as follows:

- (1) As used in KRS 421.500 to 421.575, "victim" means an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime classified as stalking, unlawful imprisonment, use of a minor in a sexual performance, unlawful transaction with a minor in the first degree, terroristic threatening, menacing, harassing communications, intimidating a witness, criminal homicide, robbery, rape, assault, sodomy, kidnapping, burglary in the first or second degree, sexual abuse, wanton endangerment, criminal abuse, or incest. If the victim is a minor or legally incapacitated, "victim" means a parent, guardian, custodian or court-appointed special advocate.
  - (a) If the victim is deceased and the relation is not the defendant, the following relations shall be designated as "victim" for the purpose of exercising those rights contained in KRS 421.500 to 421.575:
    1. ~~[(a)]~~ The spouse;
    2. ~~[(b)]~~ An adult child if *subparagraph 1. of this paragraph* ~~[(a) of this subsection]~~ does not apply;
    3. ~~[(c)]~~ A parent if *subparagraphs 1. and 2. of this paragraph* ~~[paragraphs (a) and (b) of this subsection]~~ do not apply;
    4. ~~[(d)]~~ A sibling if *subparagraphs 1. to 3. of this paragraph* ~~[paragraphs (a) through (c) of this subsection]~~ do not apply; and
    5. ~~[(e)]~~ A grandparent if *subparagraphs 1. to 4. of this paragraph* ~~[paragraphs (a) through (d) of this subsection]~~ do not apply.
  - (b) *If the victim is deceased and the relation is not the defendant, the following relations shall be designated as "victims" for the purpose of presenting victim impact testimony under subsection (2)(a)7. of Section 2 of this Act:*
    1. *A spouse;*
    2. *An adult child;*
    3. *A parent;*
    4. *A sibling; and*
    5. *A grandparent.*
- (2) If any court believes that the health, safety, or welfare of a victim who is a minor or is legally incapacitated would not otherwise adequately be protected, the court may appoint a special advocate to represent the interest of the victim and to exercise those rights provided for by KRS 421.500 to 421.575. Communication between the victim and the special advocate shall be privileged.
- (3) Law enforcement personnel shall ensure that victims receive information on available protective, emergency, social, and medical services upon initial contact with the victim and are given information on the following as soon as possible:
  - (a) Availability of crime victim compensation where applicable;
  - (b) Community based treatment programs;
  - (c) The criminal justice process as it involves the participation of the victim or witness;
  - (d) The arrest of the accused; and
  - (e) How to register to be notified when a person has been released from prison, jail, a juvenile detention facility, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as

defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A.

- (4) Law enforcement officers and attorneys for the Commonwealth shall provide information to victims and witnesses on how they may be protected from intimidation, harassment, and retaliation as defined in KRS 524.040, 524.045, or 524.055.
- (5) Attorneys for the Commonwealth shall make a reasonable effort to insure that:
  - (a) All victims and witnesses who are required to attend criminal justice proceedings are notified promptly of any scheduling changes that affect their appearances;
  - (b) If victims so desire and if they provide the attorney for the Commonwealth with a current address and telephone number, they shall receive prompt notification, if possible, of judicial proceedings relating to their case, including, but not limited to, the defendant's release on bond and any special conditions of release; of the charges against the defendant, the defendant's pleading to the charges, and the date set for the trial; of notification of changes in the custody of the defendant and changes in trial dates; of the verdict, the victim's right to make an impact statement for consideration by the court at the time of sentencing of the defendant, the date of sentencing, the victim's right to receive notice of any parole board hearing held for the defendant, and that the office of Attorney General will notify the victim if an appeal of the conviction is pursued by the defendant; and of a scheduled hearing for shock probation or for bail pending appeal and any orders resulting from that hearing; and
  - (c) The victim knows how to register to be notified when a person has been released from a prison, jail, a juvenile detention facility, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A;
  - (d) The victim receives information on available:
    1. Protective, emergency, social, and medical services;
    2. Crime victim compensation, where applicable;
    3. Restitution, where applicable;
    4. Assistance from a victim advocate; and
    5. Community-based treatment programs; and
  - (e) The victim of crime may, pursuant to KRS 15.247, receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts.
- (6) The victim shall be consulted by the attorney for the Commonwealth on the disposition of the case including dismissal, release of the defendant pending judicial proceedings, any conditions of release, a negotiated plea, and entry into a pretrial diversion program.
- (7) In prosecution for offenses listed in this section for the purpose of defining "victim," law enforcement agencies and attorneys for the Commonwealth shall promptly return a victim's property held for evidentiary purposes unless there is a compelling reason for retaining it. Photographs of such property shall be received by the court as competent evidence in accordance with the provisions of KRS 422.350.
- (8) A victim or witness who so requests shall be assisted by law enforcement agencies and attorneys for the Commonwealth in informing employers that the need for victim or witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work.
- (9) The Attorney General, where possible, shall provide technical assistance to law enforcement agencies and attorneys for the Commonwealth if such assistance is requested for establishing a victim assistance program.
- (10) If a defendant seeks appellate review of a conviction and the Commonwealth is represented by the Attorney General, the Attorney General shall make a reasonable effort to notify victims promptly of the appeal, the status of the case, and the decision of the appellate court.

➔Section 2. KRS 532.055 is amended to read as follows:

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

**Signed by Governor April 10, 2008.**