

CHAPTER 25

(HB 3)

AN ACT relating to human trafficking and making an appropriation therefor.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 620 IS CREATED TO READ AS FOLLOWS:

- (1) *In order to provide the most effective treatment for children who are victims of human trafficking, as defined in Section 7 of this Act, the cabinet shall:*
 - (a) *Investigate a report alleging a child is a victim of human trafficking pursuant to subsection (3) of Section 2 of this Act;*
 - (b) *Provide or ensure the provision of appropriate treatment, housing, and services consistent with the status of the child as a victim of human trafficking; and*
 - (c) *Proceed in the case in accordance with applicable statutes governing cases involving dependency, neglect, or abuse regardless of whether the person believed to have caused the human trafficking of the child is a parent, guardian, or person exercising custodial control or supervision.*
- (2) *In order to effectuate the requirements of this section, the cabinet shall:*
 - (a) *Consult with agencies serving victims of human trafficking to promulgate administrative regulations for the treatment of children who are reported to be victims of human trafficking as dependent, neglected, or abused children, including providing for appropriate screening, assessment, treatment, services, temporary and long-term placement of these children, training of staff, the designation of specific staff, and collaboration with service providers and law enforcement; and*
 - (b) *By November 1 of each year, beginning in 2013, submit to the Legislative Research Commission a comprehensive report detailing the number of reports the cabinet has received regarding child victims of human trafficking, the number of reports in which the cabinet has investigated and determined that a child is the victim of human trafficking, and the number of cases in which services were provided.*

➔Section 2. KRS 620.030 is amended to read as follows:

- (1) Any person who knows or has reasonable cause to believe that a child is dependent, neglected, or abused shall immediately cause an oral or written report to be made to a local law enforcement agency or the Department of Kentucky State Police; the cabinet or its designated representative; the Commonwealth's attorney or the county attorney; by telephone or otherwise. Any supervisor who receives from an employee a report of suspected dependency, neglect, or abuse shall promptly make a report to the proper authorities for investigation. If the cabinet receives a report of abuse or neglect allegedly committed by a person other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall refer the matter to the Commonwealth's attorney or the county attorney and the local law enforcement agency or the Department of Kentucky State Police. Nothing in this section shall relieve individuals of their obligations to report.
- (2) Any person, including but not limited to a physician, osteopathic physician, nurse, teacher, school personnel, social worker, coroner, medical examiner, child-caring personnel, resident, intern, chiropractor, dentist, optometrist, emergency medical technician, paramedic, health professional, mental health professional, peace officer, or any organization or agency for any of the above, who knows or has reasonable cause to believe that a child is dependent, neglected, or abused, regardless of whether the person believed to have caused the dependency, neglect, or abuse is a parent, guardian, person exercising custodial control or supervision, or another person, or who has attended such child as a part of his or her professional duties shall, if requested, in addition to the report required in subsection (1) *or* (3) of this section, file with the local law enforcement agency or the Department of Kentucky State Police or the Commonwealth's or county attorney, the cabinet or its designated representative within forty-eight (48) hours of the original report a written report containing:
 - (a) The names and addresses of the child and his or her parents or other persons exercising custodial control or supervision;
 - (b) The child's age;

- (c) The nature and extent of the child's alleged dependency, neglect, or abuse, including any previous charges of dependency, neglect, or abuse, to this child or his or her siblings;
 - (d) The name and address of the person allegedly responsible for the abuse or neglect; and
 - (e) Any other information that the person making the report believes may be helpful in the furtherance of the purpose of this section.
- (3) ***Any person who knows or has reasonable cause to believe that a child is a victim of human trafficking as defined in Section 7 of this Act shall immediately cause an oral or written report to be made to a local law enforcement agency or the Department of Kentucky State Police; or the cabinet or its designated representative; or the Commonwealth's attorney or the county attorney; by telephone or otherwise. This subsection shall apply regardless of whether the person believed to have caused the human trafficking of the child is a parent, guardian, or person exercising custodial control or supervision.***
- (4) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.
- ~~(5)(4)~~ The cabinet upon request shall receive from any agency of the state or any other agency, institution, or facility providing services to the child or his or her family, such cooperation, assistance, and information as will enable the cabinet to fulfill its responsibilities under KRS 620.030, 620.040, and 620.050.
- ~~(6)(5)~~ Any person who intentionally violates the provisions of this section shall be guilty of a:
- (a) Class B misdemeanor for the first offense;
 - (b) Class A misdemeanor for the second offense; and
 - (c) Class D felony for each subsequent offense.
- ➔Section 3. KRS 620.040 is amended to read as follows:
- (1) (a) Upon receipt of a report alleging abuse or neglect by a parent, guardian, or person exercising custodial control or supervision, pursuant to KRS 620.030(1) or (2), ***or a report alleging a child is a victim of human trafficking pursuant to subsection (3) of Section 2 of this Act***, the recipient of the report shall immediately notify the cabinet or its designated representative, the local law enforcement agency or the Department of Kentucky State Police, and the Commonwealth's or county attorney of the receipt of the report unless they are the reporting source.
- (b) Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk determined, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse ***or human trafficking of a child*** shall be considered high risk and shall not be referred to any other community agency.
- (c) The cabinet shall, within seventy-two (72) hours, exclusive of weekends and holidays, make a written report to the Commonwealth's or county attorney and the local enforcement agency or the Department of Kentucky State Police concerning the action that has been taken on the investigation.
- (d) If the report alleges abuse or neglect by someone other than a parent, guardian, or person exercising custodial control or supervision, ***or the human trafficking of a child***, the cabinet shall immediately notify the Commonwealth's or county attorney and the local law enforcement agency or the Department of Kentucky State Police.
- (2) (a) Upon receipt of a report alleging dependency pursuant to KRS 620.030(1) and (2), the recipient shall immediately notify the cabinet or its designated representative.
- (b) Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse ***or human trafficking of a child*** shall be considered high risk and shall not be referred to any other community agency.

- (c) The cabinet need not notify the local law enforcement agency or the Department of Kentucky State Police or county attorney or Commonwealth's attorney of reports made under this subsection ***unless the report involves the human trafficking of a child, in which case the notification shall be required.***
- (3) If the cabinet or its designated representative receives a report of abuse by a person other than a parent, guardian, or other person exercising custodial control or supervision of a child, it shall immediately notify the local law enforcement agency or the Department of Kentucky State Police and the Commonwealth's or county attorney of the receipt of the report and its contents, and they shall investigate the matter. The cabinet or its designated representative shall participate in an investigation of noncustodial physical abuse or neglect at the request of the local law enforcement agency or the Department of Kentucky State Police. The cabinet shall participate in all investigations of reported or suspected sexual abuse ***or human trafficking*** of a child.
- (4) School personnel or other persons listed in KRS 620.030(2) do not have the authority to conduct internal investigations in lieu of the official investigations outlined in this section.
- (5) (a) If, after receiving the report, the law enforcement officer, the cabinet, or its designated representative cannot gain admission to the location of the child, a search warrant shall be requested from, and may be issued by, the judge to the appropriate law enforcement official upon probable cause that the child is dependent, neglected, or abused. If, pursuant to a search under a warrant, a child is discovered and appears to be in imminent danger, the child may be removed by the law enforcement officer.
- (b) If a child who is in a hospital or under the immediate care of a physician appears to be in imminent danger if he or she is returned to the persons having custody of him or her, the physician or hospital administrator may hold the child without court order, provided that a request is made to the court for an emergency custody order at the earliest practicable time, not to exceed seventy-two (72) hours.
- (c) Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person exercising custodial control or supervision if there exist reasonable grounds for the officer to believe that the child is in danger of imminent death or serious physical injury, ~~or~~ is being sexually abused, ***or is a victim of human trafficking*** and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child. The officer or the person to whom the officer entrusts the child shall, within twelve (12) hours of taking the child into protective custody, request the court to issue an emergency custody order.
- (d) When a law enforcement officer, hospital administrator, or physician takes a child into custody without the consent of the parent or other person exercising custodial control or supervision, he or she shall provide written notice to the parent or other person stating the reasons for removal of the child. Failure of the parent or other person to receive notice shall not, by itself, be cause for civil or criminal liability.
- (6) To the extent practicable and when in the best interest of a child alleged to have been abused, interviews with the child shall be conducted at a children's advocacy center.
- (7) (a) One (1) or more multidisciplinary teams may be established in every county or group of contiguous counties.
- (b) Membership of the multidisciplinary team shall include but shall not be limited to social service workers employed by the Cabinet for Health and Family Services and law enforcement officers. Additional team members may include Commonwealth's and county attorneys, children's advocacy center staff, mental health professionals, medical professionals, victim advocates ***including advocates for victims of human trafficking***, educators, and other related professionals, as deemed appropriate.
- (c) The multidisciplinary team ~~shall~~ ~~may~~ review child sexual abuse cases ***and child human trafficking cases involving commercial sexual activity*** referred by participating professionals, including those in which the alleged perpetrator does not have custodial control or supervision of the child or is not responsible for the child's welfare. The purpose of the multidisciplinary team shall be to review investigations, assess service delivery, and to facilitate efficient and appropriate disposition of cases through the criminal justice system.
- (d) The team shall hold regularly scheduled meetings if new reports of sexual abuse ***or child human trafficking cases involving commercial sexual activity*** are received or if active cases exist. At each meeting, each active case shall be presented and the agencies' responses assessed.

- (e) The multidisciplinary team shall provide an annual report to the public of nonidentifying case information to allow assessment of the processing and disposition of child sexual abuse cases ***and child human trafficking cases involving commercial sexual activity.***
- (f) Multidisciplinary team members and anyone invited by the multidisciplinary team to participate in a meeting shall not divulge case information, including information regarding the identity of the victim or source of the report. Team members and others attending meetings shall sign a confidentiality statement that is consistent with statutory prohibitions on disclosure of this information.
- (g) The multidisciplinary team shall, pursuant to KRS 431.600 and 431.660, develop a local protocol consistent with the model protocol issued by the Kentucky Multidisciplinary Commission on Child Sexual Abuse. The local team shall submit the protocol to the commission for review and approval.
- (h) The multidisciplinary team review of a case may include information from reports generated by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case, KRS 610.320 to KRS 610.340 notwithstanding.
- (i) To the extent practicable, multidisciplinary teams shall be staffed by the local children's advocacy center.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

- (1) ***If, during the course of screening, assessing, or providing services to a child committed to or in the custody of the department, there is reasonable cause to believe that the child is a victim of human trafficking as defined in Section 7 of this Act, the department shall:***
 - (a) ***File a report with the Cabinet for Health and Family Services pursuant to Section 2 of this Act;***
 - (b) ***Notify the child's attorney that the child may be a victim of human trafficking; and***
 - (c) ***If the child does not pose a threat to public safety, petition the court to transfer custody from the department to the Cabinet for Health and Family Services.***
- (2) ***After consultation with agencies serving victims of human trafficking, the department shall promulgate administrative regulations for the treatment of child victims of human trafficking who are committed to or in the custody of the department and pose a threat to public safety but do not qualify to be in the custody of the Cabinet for Health and Family Services under paragraph (c) of subsection (1) of this section. The administrative regulations shall include provisions for appropriate screening, assessment, placement, treatment, and services for these children, the training of staff, and collaboration with service providers.***

➔Section 5. KRS 605.030 is amended to read as follows:

- (1) A court-designated worker may:
 - (a) Receive complaints;
 - (b) Review complaints taken by peace officers;
 - (c) Investigate complaints except neglect, abuse, and dependency;
 - (d) ***Perform an initial screening for human trafficking as defined in Section 7 of this Act for referral to the cabinet for investigation as a case of dependency, neglect, or abuse;***
 - (e) Dispose of complaints limited to a total of three (3) status or nonfelony complaints per child;
 - ~~(f)(e)~~ Administer oaths;
 - ~~(g)(f)~~ Issue summonses;
 - ~~(h)(g)~~ Issue subpoenas;
 - ~~(i)(h)~~ Make advisory dispositional recommendations and provide, within forty-eight (48) hours, exclusive of weekends and holidays, information concerning a child who has chosen to waive the investigation pursuant to KRS 610.100 for the use of the cabinet in placing the child;
 - ~~(j)(i)~~ Perform such duties as required by KRS Chapter 645; and
 - ~~(k)(j)~~ Perform such other functions related to activities of children as may be authorized or directed by the court.

- (2) Upon the filing of a petition which initiates a formal court action in the interest of the child, the court-designated worker's involvement, with the exception of the activities defined in subsection (1)(i)~~(h)~~ of this section, shall cease.
- (3) When a child is to be tried as an adult, the court-designated worker need not make dispositional recommendations.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 630 IS CREATED TO READ AS FOLLOWS:

If reasonable cause exists to believe the child is a victim of human trafficking, as defined in Section 7 of this Act, the child shall not be charged with or adjudicated guilty of a status offense related to conduct arising from the human trafficking of the child unless it is determined at a later time that the child was not a victim of human trafficking at the time of the offense.

➔Section 7. KRS 529.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "Advancing prostitution" -- A person "advances prostitution" when acting other than as a prostitute or as a patron thereof, he ***or she*** knowingly causes or aids a person to engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any conduct designed to institute, aid or facilitate an act or enterprise of prostitution;
- (2) "Commercial sexual activity" means prostitution, ***regardless of whether the trafficked person can be charged with prostitution***, participation in the production of obscene material as set out in KRS Chapter 531, or engaging in a sexually explicit performance;
- (3) "Forced labor or services" means labor or services that are performed or provided by another person and that are obtained through force, fraud, or coercion;
- (4) "Force, fraud, or coercion" may only be accomplished by the same means and methods as a person may be restrained under KRS 509.010;
- (5) "Human trafficking" refers to criminal activity whereby one (1) or more persons are subjected to engaging in:
 - (a) Forced labor or services; or
 - (b) Commercial sexual activity through the use of force, fraud, or coercion, except that if the trafficked person is under the age of eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion;
- (6) ***"Human trafficking victims fund" is the fund created in Section 9 of this Act;***
- (7) "Labor" means work of economic or financial value;
- (8) ***"Minor" means a person under the age of eighteen (18) years;***
- (9) ~~(7)~~ "Profiting from prostitution" -- A person "profits from prostitution" when acting other than as a prostitute receiving compensation for personally rendered prostitution services, he ***or she*** knowingly accepts or receives or agrees to accept or receive money or other property pursuant to an agreement or understanding with any person whereby he ***or she*** participates or is to participate in proceeds of prostitution activity;
- ~~(10)~~~~(8)~~ "Services" means an ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor;
- ~~(11)~~~~(9)~~ "Sexual conduct" means sexual intercourse or any act of sexual gratification involving the sex organs;~~and~~
- ~~(12)~~~~(10)~~ "Sexually explicit performance" means a performance of sexual conduct involving:
 - (a) Acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse, actual or simulated;
 - (b) Physical contact with, or willful or intentional exhibition of, the genitals;
 - (c) Flagellation or excretion for the purpose of sexual stimulation or gratification; or
 - (d) The exposure, in an obscene manner, of the unclothed or apparently unclothed human male or female genitals, pubic area, or buttocks, or the female breast, whether or not subsequently obscured by a mark

placed thereon, or otherwise altered, in any resulting motion picture, photograph, or other visual representation, exclusive of exposure portrayed in matter of a private, family nature not intended for distribution outside the family; *and*

- (13) *"Victim of human trafficking" is a person who has been subjected to human trafficking.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 529 IS CREATED TO READ AS FOLLOWS:

Any person convicted of an offense in KRS 529.100 or 529.110 shall be ordered to pay, in addition to any other fines, penalties, or applicable forfeitures, a human trafficking victims service fee of ten thousand dollars (\$10,000) to be remitted to the fund created in Section 9 of this Act.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 529 IS CREATED TO READ AS FOLLOWS:

- (1) *The "human trafficking victims fund," referred to in this section as the "fund," is created as a separate revolving fund within the Justice and Public Safety Cabinet.*
- (2) *The fund shall consist of proceeds from assets seized and forfeited pursuant to Section 10 of this Act, proceeds from the fee in Section 8 of this Act, grants, contributions, appropriations, and any other moneys that may be made available for purposes of the fund.*
- (3) *Moneys in the fund shall be distributed to agencies serving victims of human trafficking, including but not limited to law enforcement agencies, prosecutorial agencies, and victim service agencies in accordance with procedures developed by the Justice and Public Safety Cabinet pursuant to administrative regulation. The administrative regulation shall require that the Cabinet for Health and Family Services receive adequate funding allocation under this subsection to meet the responsibilities imposed upon it to serve minor victims of human trafficking under Section 1 of this Act.*
- (4) *Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this section.*
- (5) *Any interest earnings on moneys in the fund shall become a part of the fund and shall not lapse to the general fund.*
- (6) *Moneys in the fund are hereby appropriated for the purposes set forth in this section.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 529 IS CREATED TO READ AS FOLLOWS:

- (1) *All property used in connection with or acquired as a result of a violation of KRS 529.100 or 529.110 shall be subject to forfeiture under the same terms, conditions, and defenses and using the same process as set out in KRS 218A.405 to 218A.460, with the exception of the distribution of proceeds, which shall be distributed as required in this section.*
- (2) *Proceeds from the assets seized and forfeited shall be distributed as follows:*
 - (a) *Fifty percent (50%) shall be paid to the human trafficking victims fund;*
 - (b) *Forty-two and one-half percent (42.5%) shall be paid to the law enforcement agency or agencies that seized the property, to be used for direct law enforcement purposes; and*
 - (c) *Seven and one-half percent (7.5%) shall be paid to the Office of the Attorney General or, in the alternative, to the Prosecutors Advisory Council for deposit on behalf of the Commonwealth's attorney or county attorney who has participated in the forfeiture proceeding, as determined by the court pursuant to subsection (9) of KRS 218A.420. Notwithstanding KRS Chapter 48, these funds shall be exempt from any state budget reduction acts.*

The moneys identified in this subsection are intended to supplement any funds otherwise appropriated to the recipient and shall not supplant other funding of any recipient.

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 529 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding Section 12 or 13 of this Act, if it is determined after a reasonable period of custody for investigative purposes, that the person suspected of prostitution or loitering for prostitution is under the age of eighteen (18), then the minor shall not be prosecuted for an offense under Section 12 or 13 of this Act.*
- (2) *A law enforcement officer who takes a minor into custody under subsection (1) of this section shall immediately make a report to the Cabinet for Health and Family Services pursuant to Section 2 of this Act. Pursuant to Section 3 of this Act, the officer may take the minor into protective custody.*

- (3) ***The Cabinet for Health and Family Services shall commence an investigation into child dependency, neglect, or abuse pursuant to Section 1 of this Act.***

➔Section 12. KRS 529.020 is amended to read as follows:

- (1) ***Except as provided in Section 11 of this Act***, a person is guilty of prostitution when he engages or agrees or offers to engage in sexual conduct with another person in return for a fee.
- (2) Prostitution is a Class B misdemeanor.

➔Section 13. KRS 529.080 is amended to read as follows:

- (1) ***Except as provided in Section 11 of this Act***, a person is guilty of loitering for prostitution purposes when he loiters or remains in a public place for the purpose of engaging or agreeing or offering to engage in prostitution.
- (2) Loitering for prostitution purposes is a:
- (a) Violation for the first offense;
- (b) Class B misdemeanor for the second offense and for each subsequent offense.

➔Section 14. KRS 15.334 is amended to read as follows:

- (1) The Kentucky Law Enforcement Council shall approve mandatory training subjects to be taught to all students attending a law enforcement basic training course that include but are not limited to:
- (a) Abuse, neglect, and exploitation of the elderly and other crimes against the elderly, including the use of multidisciplinary teams in the investigation and prosecution of crimes against the elderly;
- (b) The dynamics of domestic violence, pediatric abusive head trauma, as defined in KRS 620.020, child physical and sexual abuse, and rape; child development; the effects of abuse and crime on adult and child victims, including the impact of abuse and violence on child development; legal remedies for protection; lethality and risk issues; profiles of offenders and offender treatment; model protocols for addressing domestic violence, rape, pediatric abusive head trauma, as defined in KRS 620.020, and child abuse; available community resources and victim services; and reporting requirements. This training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with expertise in domestic violence, child abuse, and rape. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services;
- (c) Human immunodeficiency virus infection and acquired immunodeficiency virus syndrome; ~~and~~
- (d) Identification and investigation of, responding to, and reporting bias-related crime, victimization, or intimidation that is a result of or reasonably related to race, color, religion, sex, or national origin; ***and***
- (e) ***The characteristics and dynamics of human trafficking, state and federal laws relating to human trafficking, the investigation of cases involving human trafficking, including but not limited to screening for human trafficking, and resources for assistance to the victims of human trafficking.***
- (2) (a) The council shall develop and approve mandatory professional development training courses to be presented to all certified peace officers. A mandatory professional development training course shall be first taken by a certified peace officer in the training year following its approval by the council and biennially thereafter. A certified peace officer shall be required to take these courses no more than two (2) times in eight (8) years.
- (b) Beginning January 1, 2011, the council shall require that one and one-half (1.5) hours of professional development covering the recognition and prevention of pediatric abusive head trauma be included in the curriculum of all mandatory professional development training courses such that all officers shall receive this training at least once by December 31, 2013. The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours.
- (3) The Justice and Public Safety Cabinet shall provide training on the subjects of domestic violence and abuse and may do so utilizing currently available technology. All certified peace officers shall be required to complete this training at least once every two (2) years.

- (4) The council shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish mandatory basic training and professional development training courses.
- (5) The council shall make an annual report by December 31 each year to the Legislative Research Commission that details the subjects and content of mandatory professional development training courses established during the past year and the subjects under consideration for future mandatory training.

➔Section 15. KRS 15.706 is amended to read as follows:

- (1) The Prosecutors Advisory Council shall collect statistical data regarding the investigation, prosecution, dismissal, conviction, or acquittal of any person charged with committing, attempting to commit, or complicity to a sexual offense defined by KRS Chapter 510 involving a minor, ***human trafficking offenses involving a minor engaged in commercial sexual activity***, incest involving a minor, use of a minor in a sexual performance, or unlawful transaction with a minor.
- (2) Each Commonwealth's attorney, each county attorney, the secretary of the Cabinet for Health and Family Services, the commissioner of the Department of Kentucky State Police, each Circuit Court clerk, and the Administrative Office of the Courts shall provide any data requested by the council for this purpose, on a form prescribed by the council, at intervals as the council may direct.
- (3) The council may contract with any other public agency to collect the data in lieu of collecting the data itself.
- (4) The Prosecutors Advisory Council may promulgate administrative regulations to specify information to be reported.
- (5) The information required to be reported by this section shall be provided by each Commonwealth's attorney and county attorney at the end of each quarter of the calendar year or as otherwise directed by the Prosecutors Advisory Council.
- (6) The Prosecutors Advisory Council and the Office of the Attorney General shall compile the information by county and issue a public report at least annually.
- (7) The public report shall not contain the name or identifying information of a victim or person not formally charged with the commission of child sexual abuse ***or human trafficking of a child***. Information collected by the Commonwealth's attorney or county attorney or by the Prosecutors Advisory Council containing data which cannot be published shall be excluded from inspection, unless by court order, from the Open Records Law.
- (8) Any Commonwealth's attorney or any county attorney who fails to report information as defined by this section or administrative regulation shall be subject to salary reduction as authorized by KRS 61.120.

➔Section 16. KRS 15.718 is amended to read as follows:

- (1) The Attorney General shall provide initial training courses and, at least once every two (2) years, continuing education courses for Commonwealth's attorneys and county attorneys and their staffs concerning:
 - (a) The dynamics of domestic violence, child physical and sexual abuse, rape, effects of crime on adult and child victims, legal remedies for protection, lethality and risk issues, profiles of offenders, model protocols for addressing domestic violence, child abuse, rape, available community resources and victims services, and reporting requirements; ***and***
 - (b) ***The appropriate response to victims of human trafficking, including but not limited to screening for victims of human trafficking, federal and state legislation on human trafficking, appropriate services and referrals for victims of human trafficking, working with interpreters, and agency protocol for handling child trafficking cases.***
- (2) The training shall be developed in consultation with prosecutors, victims services, victim advocacy, and mental health professionals with an expertise in domestic violence, child abuse, ***human trafficking***, and rape.
- ~~(3)~~~~(2)~~ Each Commonwealth's Attorney, assistant Commonwealth's Attorney, county attorney, and assistant county attorney shall successfully complete the training.

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 16 IS CREATED TO READ AS FOLLOWS:

The Department of Kentucky State Police shall designate a unit within the department to receive and investigate complaints of human trafficking. The unit shall cooperate with and assist prosecutorial agencies and local and federal law enforcement, as well as law enforcement from other states, in the receipt and investigation of complaints of human trafficking.

➔Section 18. 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, *human trafficking*, 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. The spouse;
 2. An adult child if subparagraph 1. of this paragraph does not apply;
 3. A parent if subparagraphs 1. and 2. of this paragraph do not apply;
 4. A sibling if subparagraphs 1. to 3. of this paragraph do not apply; and
 5. A grandparent if subparagraphs 1. to 4. of this paragraph 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 KRS 532.055(2)(a)7.:
 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 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 19. KRS 421.570 is amended to read as follows:

- (1) For the purposes of this section and KRS 421.575, "victim advocate" means an individual at least eighteen (18) years of age and of good moral character, who is employed by, or serves as a volunteer for, a public or private agency, organization, or official to counsel and assist crime victims as defined in KRS 421.500, and includes a victim advocate employed by a Commonwealth's attorney pursuant to KRS 15.760 and a victim advocate employed by a county attorney pursuant to KRS 69.350.
- (2) Each victim advocate shall complete training which shall include information concerning the difference between advocacy and the practice of law, and the appropriate intervention with crime victims, including victims of domestic violence, child physical and sexual abuse, *human trafficking*, and rape.
- (3) A victim advocate shall not engage in the practice of law as defined in KRS 524.130.

➔Section 20. KRS 413.249 is amended to read as follows:

- (1) As used in this section:
 - (a) "Childhood sexual assault" means an act or series of acts against a person less than eighteen (18) years old and which meets the criteria defining a felony in KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 529.100 where the offense involves commercial sexual activity, **529.110 where the offense involves commercial sexual activity**, 530.020, 530.064, 531.310, or 531.320. No

prior criminal prosecution or conviction of the civil defendant for the act or series of acts shall be required to bring a civil action for redress of childhood sexual assault;

- (b) "Childhood sexual abuse" means an act or series of acts against a person less than eighteen (18) years old and which meets the criteria defining a misdemeanor in KRS 510.120, KRS 510.130, KRS 510.140, or KRS 510.150. No prior criminal prosecution or conviction of the civil defendant for the act or series of acts shall be required to bring a civil action for redress of childhood sexual abuse;
 - (c) "Child" means a person less than eighteen (18) years old; and
 - (d) "Injury or illness" means either a physical or psychological injury or illness.
- (2) A civil action for recovery of damages for injury or illness suffered as a result of childhood sexual abuse or childhood sexual assault shall be brought before whichever of the following periods last expires:
- (a) Within five (5) years of the commission of the act or the last of a series of acts by the same perpetrator;
 - (b) Within five (5) years of the date the victim knew, or should have known, of the act; or
 - (c) Within five (5) years after the victim attains the age of eighteen (18) years.
- (3) If a complaint is filed alleging that an act of childhood sexual assault or childhood sexual abuse occurred more than five (5) years prior to the date that the action is commenced, the complaint shall be accompanied by a motion to seal the record and the complaint shall immediately be sealed by the clerk of the court. The complaint shall remain sealed until:
- (a) The court rules upon the motion to seal;
 - (b) Any motion to dismiss under CR 12.02 is ruled upon, and if the complaint is dismissed, the complaint and any related papers or pleadings shall remain sealed unless opened by a higher court; or
 - (c) The defendant files an answer and a motion to seal the record upon grounds that a valid factual defense exists, to be raised in a motion for summary judgment pursuant to CR 56. The record shall remain sealed by the clerk until the court rules upon the defendant's motion to close the record. If the court grants the motion to close, the record shall remain sealed until the defendant's motion for summary judgment is granted. The complaint, motions, and other related papers or pleadings shall remain sealed unless opened by a higher court.

➔Section 21. 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 510.155, 529.030 to 529.050, 529.070, **529.100, 529.110**, 530.020, 530.060, 530.064(1)(a), 531.310, 531.320, 531.370, or any specified in KRS 439.3401 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, but shall be subject to being recalled during the course of the trial to give additional testimony under the same circumstances as with any other recalled witness, provided that the additional testimony is given utilizing the provisions of subsection (2) or (3) of this section.
- (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 22. KRS 431.082 is amended to read as follows:

- (1) In the event of the conviction of a defendant for the violation of any offense proscribed by KRS Chapter 510 or 531 **or any human trafficking offense proscribed by KRS Chapter 529**, the person who was the victim of the offense may bring an action in damages against the defendant in the criminal case.
- (2) If the plaintiff prevails, he **or she** shall be entitled to attorney's fees and all other costs incurred in the bringing of the action, including but not limited to the services of expert witnesses, testing and counseling, medical and psychological treatment, and other expenses reasonably incurred as a result of the criminal act.
- (3) Any award of nominal damages shall support an award of attorneys fees and costs to the prevailing party.
- (4) Punitive damages as well as compensatory damages shall be awardable in cases brought under this section.
- (5) The provisions of this section shall not be construed as repealing any provision of KRS 431.080 or any other applicable statute or of any statutory or common law right of action but shall be construed as ancillary and supplemental thereto.

➔Section 23. KRS 431.600 is amended to read as follows:

- (1) Each investigation of reported or suspected sexual abuse of a child shall be conducted by a specialized multidisciplinary team composed, at a minimum, of law enforcement officers and social workers from the Cabinet for Health and Family Services. Cabinet for Health and Family Services social workers shall be available to assist in all investigations under this section but shall be lead investigators only in those cases of reported or suspected sexual abuse of a child in which a person exercising custodial control or supervision, as defined in KRS 600.020, is the alleged or suspected perpetrator of the abuse. Additional team members may include Commonwealth's and county attorneys, children's advocacy center staff, mental health professionals, medical professionals, victim advocates, **including those for victims of human trafficking**, educators, and other related professionals, as necessary, operating under protocols governing roles, responsibilities, and procedures developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse and promulgated by the Attorney General as administrative regulations pursuant to KRS Chapter 13A.
- (2) Local protocols shall be developed in each county or group of contiguous counties by the agencies and persons specified in subsection (1) of this section specifying how the state protocols shall be followed within the county or group of contiguous counties. These protocols shall be approved by the Kentucky Multidisciplinary Commission on Child Sexual Abuse.
- (3) If adequate personnel are available, each Commonwealth's attorney's office and each county attorney's office shall have a child sexual abuse specialist.
- (4) Commonwealth's attorneys and county attorneys, or their assistants, shall take an active part in interviewing and familiarizing the child alleged to have been abused, or who is testifying as a witness, with the proceedings throughout the case, beginning as early as practicable in the case.
- (5) If adequate personnel are available, Commonwealth's attorneys and county attorneys shall provide for an arrangement which allows one (1) lead prosecutor to handle the case from inception to completion to reduce the number of persons involved with the child victim.

- (6) Commonwealth's attorneys and county attorneys and the Cabinet for Health and Family Services and other team members shall minimize the involvement of the child in legal proceedings, avoiding appearances at preliminary hearings, grand jury hearings, and other proceedings when possible.
- (7) Commonwealth's attorneys and county attorneys shall make appropriate referrals for counseling, private legal services, and other appropriate services to ensure the future protection of the child when a decision is made not to prosecute the case. The Commonwealth's attorney or county attorney shall explain the decision not to prosecute to the family or guardian, as appropriate, and to the child victim.
- (8) To the extent practicable and when in the best interest of a child alleged to have been abused, interviews with a child shall be conducted at a children's advocacy center.

➔SECTION 24. A NEW SECTION OF KRS CHAPTER 336 IS CREATED TO READ AS FOLLOWS:

- (1) *The cabinet shall report all incidents of human trafficking as defined in Section 7 of this Act about which the cabinet knows or has reasonable cause to believe within twenty-four (24) hours to a local law enforcement agency or the Department of Kentucky State Police, and the appropriate Commonwealth's attorney or county attorney.*
- (2) *Anyone acting upon reasonable cause in the making of a report under subsection (1) of this section in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed.*

➔Section 25. KRS 337.385 is amended to read as follows:

- (1) *Except as provided in subsection (3) of this section, any employer who pays any employee less than wages and overtime compensation to which such employee is entitled under or by virtue of KRS 337.020 to 337.285 shall be liable to such employee affected for the full amount of such wages and overtime compensation, less any amount actually paid to such employee by the employer, for an additional equal amount as liquidated damages, and for costs and such reasonable attorney's fees as may be allowed by the court.*
- (2) ~~Provided, that~~ If, in any action commenced to recover such unpaid wages or liquidated damages, the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he or she had reasonable grounds for believing that his or her act or omission was not a violation of KRS 337.020 to 337.285, the court may, in its sound discretion, award no liquidated damages, or award any amount thereof not to exceed the amount specified in this section. Any agreement between such employee and the employer to work for less than the applicable wage rate shall be no defense to such action. Such action may be maintained in any court of competent jurisdiction by any one (1) or more employees for and in behalf of himself, herself, or themselves.
- (3) *If the court finds that the employer has subjected the employee to forced labor or services as defined in Section 7 of this Act, the court shall award the employee punitive damages not less than three (3) times the full amount of the wages and overtime compensation due, less any amount actually paid to such employee by the employer, and for costs and such reasonable attorney's fees as may be allowed by the court, including interest thereon.*

- (4)~~(2)~~ At the written request of any employee paid less than the amount to which he or she is entitled under the provisions of KRS 337.020 to 337.285, the commissioner may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. The commissioner in case of suit shall have power to join various claimants against the same employer in one (1) action.

➔Section 26. KRS 516.030 is amended to read as follows:

- (1) A person is guilty of forgery in the second degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument, *or in the commission of a human trafficking offense as described in KRS 529.100 or 529.110, coerces another person to falsely make, complete, or alter a written instrument*, which is or purports to be or which is calculated to become or to represent when completed:
 - (a) A deed, will, codicil, contract, assignment, commercial instrument, credit card or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status; or
 - (b) A public record or an instrument filed or required or authorized by law to be filed in or with a public office or public employee; or

- (c) A written instrument officially issued or created by a public office, public employee or governmental agency.
- (2) Forgery in the second degree is a Class D felony.

➔Section 27. By November 1, 2013, the Cabinet for Health and Family Services shall submit to the Legislative Research Commission a comprehensive report on its plan to implement treatment and services for children who are suspected to be victims of human trafficking as well as recommended statutory changes that will improve the cabinet's ability to investigate these cases and provide treatment and services specific to the needs of these children.

➔Section 28. Sections 1 to 28 of this Act may be cited as the "Human Trafficking Victims Rights Act."

Signed by Governor March 19, 2013.