

**CHAPTER 41**  
**( HB 39 )**

AN ACT relating to crimes and punishments.

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

➔Section 1. KRS 17.546 is amended to read as follows:

- (1) As used in this section:
  - (a) "Instant messaging or chat room program" means a software program that allows two (2) or more persons to communicate over the Internet in real time using typed text; and
  - (b) "Social networking Web site" means an Internet Web site that:
    1. Facilitates the social introduction between two (2) or more persons;
    2. Allows a person to create a Web page or a personal profile; and
    3. Provides a person who visits the Web site the opportunity to communicate with another person.
- (2) No registrant~~, as defined in KRS 17.500,~~ shall knowingly or intentionally use a social networking Web site or an instant messaging or chat room program if that Web site or program allows a person who is less than eighteen (18) years of age to access or use the Web site or program.
- (3) ***No registrant shall intentionally photograph, film, or video a minor through traditional or electronic means without the written consent of the minor's parent, legal custodian, or guardian unless the registrant is the minor's parent, legal custodian, or guardian. The written consent required under this subsection shall state that the person seeking the consent is required to register as a sex offender under Kentucky law.***
- (4) Any person who violates subsection (2) *or* (3) of this section shall be guilty of a Class A misdemeanor.

➔Section 2. KRS 500.092 is amended to read as follows:

- (1) (a) Notwithstanding KRS 500.090, all personal property which is not used as a permanent residence in this state which is used in connection with or acquired as a result of a violation or attempted violation of any of the statutes set out in subsection (3) of this section 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 for property subject to forfeiture under that chapter.
  - (b) ***Notwithstanding KRS 500.090, all real and personal property in this state which is used in connection with or acquired as a result of a violation or attempted violation of KRS 531.310 or 531.320 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 for property subject to forfeiture under that chapter.***
- (2) Administrative regulations promulgated under KRS 218A.420 shall govern expenditures derived from forfeitures under this section to the same extent that they govern expenditures from forfeitures under KRS 218A.405 to 218A.460.
- (3) The following offenses may trigger forfeiture of personal property under subsection (1)(a) of this section:
  - (a) KRS 17.546;
  - (b) KRS 508.140 and 508.150 involving the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device;
  - (c) KRS 510.155;
  - (d) KRS 530.064(1)(a);
  - (e) KRS 531.030;
  - (f) KRS 531.040
  - (g) KRS 531.310;

- (h) KRS 531.320;
- (i) KRS 531.335;
- (j) KRS 531.340;
- (k) KRS 531.350;
- (l) KRS 531.360; and
- (m) KRS 531.370.

➔Section 3. KRS 500.120 is amended to read as follows:

- (1) (a) In any investigation relating to an offense involving KRS 510.155, 530.064(1)(a), 531.030, 531.040, 531.310, 531.320, 531.335, 531.340, 531.350, 531.360, or 531.370, and upon reasonable cause to believe that an Internet service account has been used in the exploitation or attempted exploitation of children, or in any investigation of a violation of KRS 17.546, 508.140, 508.150, 525.070, or 525.080 where there is reasonable cause to believe that an Internet service account has been used in the commission of the offense, the Attorney General may issue in writing and cause to be served a subpoena requiring the production and testimony described in subsection (2) of this section.
- (b) *In any investigation relating to an offense involving KRS 510.155, 530.064(1)(a), 531.030, 531.040, 531.310, 531.320, 531.335, 531.340, 531.350, 531.360, or 531.370, and upon reasonable cause to believe that an Internet service account has been used in the exploitation or attempted exploitation of children, the commissioner of the Department of Kentucky State Police may issue in writing and cause to be served a subpoena requiring the production and testimony described in subsection (2) of this section.*
- (2) Except as provided in subsection (3) of this section, a subpoena issued under this section may require the production of any records or other documentation relevant to the investigation including:
  - (a) Electronic mail address;
  - (b) Internet username;
  - (c) Internet protocol address;
  - (d) Name of account holder;
  - (e) Billing and service address;
  - (f) Telephone number;
  - (g) Account status;
  - (h) Method of access to the Internet; and
  - (i) Automatic number identification records if access is by modem.
- (3) The provider of electronic communication service or remote computing service shall not disclose the following pursuant to a subpoena issued under this section but shall disclose the information in obedience to a warrant:
  - (a) In-transit electronic communications;
  - (b) Account memberships related to Internet groups, newsgroups, mailing lists or specific areas of interest;
  - (c) Account passwords; and
  - (d) Account content including:
    - 1. Electronic mail in any form;
    - 2. Address books, contacts, or buddy lists;
    - 3. Financial records;
    - 4. Internet proxy content or Web surfing history; and
    - 5. Files or other digital documents stored with the account or pursuant to use of the account.

- (4) At any time before the return date specified on the subpoena, the person summoned may, in the District Court in which the person resides or does business, petition for an order modifying or setting aside the subpoena, or a prohibition of disclosure by a court.
- (5) A subpoena under this section shall describe the objects required to be produced and shall prescribe a return date with a reasonable period of time within which the objects can be assembled and made available.
- (6) If no case or proceeding arises from the production of records or other documentation pursuant to this section within a reasonable time after those records or documentation is produced, the Attorney General shall either destroy the records and documentation or return them to the person who produced them.
- (7) A subpoena issued under this section may be served by any person who is at least eighteen (18) years of age and who is designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to him. Service may be made upon a corporation or partnership or other unincorporated association which is subject to suit under its common name, by delivering the subpoena to an officer, to a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena together with a true copy thereof shall be proof of service.
- (8) Except as provided in this section any information, records or data reported or obtained pursuant to subpoena under this section shall remain confidential and shall not be further disclosed unless in connection with a criminal case related to the subpoenaed materials.

➔Section 4. 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, 510.110, 529.100 where that offense involves commercial sexual activity, or 530.064(1)(a), or KRS 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) The solicitation of a minor through electronic communication under subsection (1) of this section shall be prima facie evidence of the person's intent to commit the offense ***and the offense is complete at that point without regard to whether the person met or attempted to meet the minor***~~[even if the meeting did not occur]~~.
- (4) This section shall apply to electronic communications originating within or received within the Commonwealth.
- (5) A violation of this section is punishable as a Class D felony.

➔Section 5. KRS 531.335 is amended to read as follows:

- (1) A person is guilty of possession ***or viewing*** 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:
  - (a) Knowingly has in his or her possession or control any matter which visually depicts an actual sexual performance by a minor person; ***or***
  - (b) ***Intentionally views any matter which visually depicts an actual sexual performance by a minor person.***
- (2) ***The provisions of subsection (1)(b) of this section:***
  - (a) ***Shall only apply to the deliberate, purposeful, and voluntary viewing of matter depicting sexual conduct by a minor person and not to the accidental or inadvertent viewing of such matter;***
  - (b) ***Shall not apply to persons viewing the matter in the course of a law enforcement investigation or criminal or civil litigation involving the matter; and***
  - (c) ***Shall not apply to viewing the matter by a minor, the minor's parents or guardians, and to school administrators investigating violations of subsection (1)(b) of this section.***
- (3) Possession ***or viewing*** of matter portraying a sexual performance by a minor is a Class D felony.

