

CHAPTER 19

(SB 30)

AN ACT relating to crime victims' rights.

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

➔Section 1. KRS 421.576 is repealed and reenacted to read as follows:

- (1) In order to establish the minimum conduct of criminal justice professionals with respect to crime victims and to communicate the intent of the General Assembly that victims of crime play an integral role in the criminal justice process, KRS 421.500 to 421.575 is hereby named the Kentucky Crime Victim Bill of Rights.
- (2) The rights established by KRS 421.500 to 421.575 shall apply in all felony and misdemeanor proceedings in a District or Circuit Court of the Commonwealth.
- (3) Nothing in KRS 421.500 to 421.575 shall provide grounds for the victim to challenge a charging decision or a conviction, to obtain a stay of trial, or to compel a new trial. Law enforcement agencies, county attorneys, and Commonwealth's attorneys and courts shall make every reasonable effort to ensure that victims of crime receive the benefits of the rights set out in KRS 421.500 to 421.575.

➔Section 2. KRS 421.500 is repealed, reenacted, and amended to read as follows:

- (1) (a) As used in KRS 421.500 to 421.575, "victim" means *an individual directly and proximately harmed as a result of:*

1. *The commission of a crime classified as a felony; a misdemeanor involving threatened or actual physical injury, harassment, or restraint; a misdemeanor involving a child or incompetent person; or a misdemeanor involving a sexual offense or a trespass; or*
2. *Conduct which, if committed by an adult, would be classified as a felony or a misdemeanor described in subparagraph 1. of this paragraph.*

If the victim is a minor, incapacitated, or deceased, "victim" also means one (1) or more of the victim's spouse, parents, siblings, children, or other lawful representatives which shall be designated by the court unless the person is the defendant or a person the court finds would not act in the best interests of the victim.

- (b) *In a case in which the number of victims makes it impracticable to accord all victims those rights provided by KRS 421.500 to 421.575, the court may fashion a reasonable procedure that does not unduly complicate or prolong the proceeding, to give effect to this section.*

- (c) ~~{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.
- (11) ***Full restitution to a named victim, if there is a named victim, shall be ordered by the court to be paid by the convicted or adjudicated party in a manner consistent, insofar as possible, with this section and KRS 439.563, 532.032, 532.033, 533.020, and 533.030 in addition to any other penalty.***
- (12) ***Nothing in KRS 421.500 to 421.575 shall be construed as altering the presumption of innocence in the criminal justice system, or to be a waiver of sovereign immunity or any other immunity or privilege maintained by the Commonwealth; its cabinets, departments, bureaus, political subdivisions, and agencies; and its officers, agents, and employees.***

➔Section 3. KRS 421.510 is repealed and reenacted 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 4. KRS 421.520 is repealed and reenacted to read as follows:

- (1) The attorney for the Commonwealth shall notify the victim that, upon conviction of the defendant, the victim has the right to submit a written victim impact statement to the probation officer responsible for preparing the presentence investigation report for inclusion in the report or to the court should such a report be waived by the defendant.
- (2) The impact statement may contain, but need not be limited to, a description of the nature and extent of any physical, psychological or financial harm suffered by the victim, the victim's need for restitution and whether the victim has applied for or received compensation for financial loss, and the victim's recommendation for an appropriate sentence.
- (3) The victim impact statement shall be considered by the court prior to any decision on the sentencing or release, including shock probation, of the defendant.

➔Section 5. KRS 421.530 is repealed and reenacted to read as follows:

- (1) If a defendant is sentenced to a period of incarceration and his release is subject to the authority of the parole board, the victim may submit a written impact statement to the parole board that it shall consider when making a decision on the release of the defendant.

- (2) The impact statement may contain, but need not be limited to, a description of the long-term consequences of the crime, including but not necessarily limited to, the physical, psychological and financial harm suffered by the victim, and whether the victim has applied for or received compensation for financial loss.

➔Section 6. KRS 421.550 is amended to read as follows:

- (1) Nothing in KRS ~~421.500 to 421.575~~~~[421.510 to 421.540], [or KRS] 15.245, or 196.280~~~~[, or 421.500]~~ creates a cause of action for money damages against the state, a county, a municipality, or any of their agencies, public officials, or employees.
- (2) The jailer or chief administrator of a juvenile detention facility, regional jail, or county jail, or any of their respective designees who acts in good faith in making available the release information required by KRS 196.280, or in good faith fails or is unable to provide the release information required by KRS 196.280, shall be immune from any criminal liability.
- (3) The jailer or chief administrator of a juvenile detention facility, regional jail, or county jail, or any of their respective designees, who acts in good faith in making available the release information required by KRS 196.280, or in good faith fails or is unable to provide the release information required by KRS 196.280, and who is sued for any act or omission in relation to KRS 196.280, and who has a judgment rendered against him and who personally suffers actual financial loss, unreimbursed from any source, by the enforcement and satisfaction of the judgment, including any costs or attorney's fees awarded pursuant thereto, shall be indemnified by the Commonwealth from funds appropriated to the Finance and Administration Cabinet for the payment of judgments, to the extent of his actual financial loss. The indemnification shall not be construed to abrogate or limit any privilege, immunity, or matter of defense otherwise available to the person claiming indemnification and shall not constitute a waiver of any privilege, immunity, or matter of defense, including the sovereign immunity of the Commonwealth.
- (4) The Attorney General shall defend the jailer, chief administrator, or designee upon request, in any suit related to the provision of information under KRS 196.280.
- (5) ***An attorney for the Commonwealth who acts in good faith in his or her ministerial duties under KRS 421.500 to 421.575 shall be immune from criminal or civil liability. The immunity shall not be construed to abrogate or limit any privilege, immunity, or matter of defense otherwise available and shall not constitute a waiver of any privilege, immunity, or matter of defense, including the sovereign immunity of the Commonwealth.***

➔Section 7. The following KRS section is repealed:

421.540 Effect of failure to provide required notification.

➔Section 8. This Act shall take effect only upon the ratification, in the general election of November 6, 2018, of a Constitutional amendment providing for the protection of crime victims' rights. If such an amendment is not ratified, this Act shall be void.

Signed by Governor March 23, 2018.