

CHAPTER 75**(HB 2)**

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. KRS 17.500 is amended to read as follows:

As used in KRS 17.500 to 17.580:

- (1) "Approved provider" means a mental health professional licensed or certified in Kentucky whose scope of practice includes providing mental health treatment services and who is approved by the Sex Offender Risk Assessment Advisory Board, under administrative regulations promulgated by the board, to provide comprehensive sex offender presentence evaluations or treatment to adults and youthful offenders, as defined in KRS 600.020;
- (2) "Cabinet" means the Justice and Public Safety Cabinet;
- (3) (a) Except as provided in paragraph (b) of this subsection, "criminal offense against a victim who is a minor" means any of the following offenses if the victim is under the age of eighteen (18) at the time of the commission of the offense:
 1. Kidnapping, as set forth in KRS 509.040, except by a parent;
 2. Unlawful imprisonment, as set forth in KRS 509.020, except by a parent;
 3. Sex crime;
 4. Promoting a sexual performance of a minor, as set forth in KRS 531.320;
 5. Human trafficking involving commercial sexual activity, as set forth in KRS 529.100;
 6. Promoting human trafficking involving commercial sexual activity, as set forth in KRS 529.110;
 7. Promoting prostitution, as set forth in KRS 529.040, when the defendant advances or profits from the prostitution of a person under the age of eighteen (18);
 8. Use of a minor in a sexual performance, as set forth in KRS 531.310;
 9. Sexual abuse, as set forth in KRS 510.120 and 510.130;
 10. Unlawful transaction with a minor in the first degree, as set forth in KRS 530.064(1)(a);
 11. Any offense involving a minor or depictions of a minor, as set forth in KRS Chapter 531;
 12. Any attempt to commit any of the offenses described in subparagraphs 1. to 11. of this paragraph;
 13. Solicitation to commit any of the offenses described in subparagraphs 1. to 11. of this paragraph;
or
 14. Any offense from another state or territory, any federal offense, or any offense subject to a court martial of the United States Armed Forces, which is similar to any of the offenses described in subparagraphs 1. to 13. of this paragraph.
- (b) Conduct which is criminal only because of the age of the victim shall not be considered a criminal offense against a victim who is a minor if the perpetrator was under the age of eighteen (18) at the time of the commission of the offense;
- (4) "Law enforcement agency" means any lawfully organized investigative agency, sheriff's office, police unit, or police force of federal, state, county, urban-county government, charter county, city, consolidated local government, or a combination of these, responsible for the detection of crime and the enforcement of the general criminal federal or state laws;
- (5) "Registrant" means:

- (a) Any person eighteen (18) years of age or older at the time of the offense or any youthful offender, as defined in KRS 600.020, who has committed:
 - 1. A sex crime; or
 - 2. A criminal offense against a victim who is a minor; or
 - (b) Any person required to register under KRS 17.510; or
 - (c) Any sexually violent predator; or
 - (d) Any person whose sexual offense has been diverted pursuant to KRS 533.250, until the diversionary period is successfully completed;
- (6) "Registrant information" means the name, including any lawful name change together with the previous name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, fingerprints, palm prints, DNA sample, a photograph, aliases used, residence, motor vehicle operator's license number as well as any other government-issued identification card numbers, if any, a brief description of the crime or crimes committed, and other information the cabinet determines, by administrative regulation, may be useful in the identification of registrants;
- (7) "Residence" means any place where a person sleeps. For the purposes of this statute, a registrant may have more than one (1) residence. A registrant is required to register each residence address;
- (8) "Sex crime" means:
- (a) A felony offense defined in KRS Chapter 510, ~~or~~ KRS **529.100 or 529.110 involving commercial sexual activity**, 530.020, 530.064(1)(a), 531.310, 531.320, or 531.335;
 - (b) A felony attempt to commit a felony offense specified in paragraph (a) of this subsection; or
 - (c) A federal felony offense, a felony offense subject to a court-martial of the United States Armed Forces, or a felony offense from another state or a territory where the felony offense is similar to a felony offense specified in paragraph (a) of this subsection;
- (9) "Sexual offender" means any person convicted of, pleading guilty to, or entering an Alford plea to a sex crime as defined in this section, as of the date the verdict is entered by the court;
- (10) "Sexually violent predator" means any person who has been subjected to involuntary civil commitment as a sexually violent predator, or a similar designation, under a state, territory, or federal statutory scheme;
- (11) "The board" means the Sex Offender Risk Assessment Advisory Board created under KRS 17.554;
- (12) "Victim" has the same meaning as in KRS 421.500;
- (13) "DNA sample" or "deoxyribonucleic acid sample" means a blood or swab specimen from a person, as prescribed by administrative regulation, that is required to provide a DNA sample pursuant to KRS 17.170 or 17.510, that shall be submitted to the Department of Kentucky State Police forensic laboratory for law enforcement identification purposes and inclusion in law enforcement identification databases; and
- (14) "Authorized personnel" means an agent of state government who is properly trained in DNA sample collection pursuant to administrative regulation.

➔Section 2. KRS 49.370 is amended to read as follows:

- (1) No award shall be made unless the commission or commission member, as the case may be, finds that:
 - (a) Criminally injurious conduct occurred;
 - (b) Such criminally injurious conduct resulted in personal physical or psychological injury to, or death of, the victim; and
 - (c) Police or court records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police or court records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless the commission, for good cause shown, finds the delay to have been justified.
- (2) Except for claims related to sexual assault, **human trafficking**, and domestic violence, the commission upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies shall deny, reconsider, or reduce an award.

- (3) Any award made pursuant to KRS 49.270 to 49.490 shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services, including mental health counseling, necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from such injury. Mental health counseling shall be paid for a maximum of two (2) years, but only after proper documentation is submitted to the commission stating what treatment is planned and for what period of time. The commission shall have the power to discontinue payment of mental health counseling at any time within the two (2) year period. Replacement of eyeglasses and other corrective lenses shall be included in an award, provided they were stolen, destroyed, or damaged during the crime.
- (4) Any award made for loss of earnings or financial support may be considered for a claimant who has loss of support or wages due to the crime for which the claim is filed. Unless reduced pursuant to other provisions of KRS 49.270 to 49.490, the award shall be equal to net earnings at the time of the criminally injurious conduct; however, no such award shall exceed one hundred fifty dollars (\$150) for each week of lost earnings or financial support. The wage earner or source of support must have been employed or paying support at the time the crime occurred. Said employment or support shall be verified by the staff of the commission after information is provided by the claimant or victim. Should the claimant or victim fail to supply the commission with the information requested, the portion of the claim for lost wages or support shall be denied. If there are two (2) or more persons entitled to an award as a result of the injury or death of a person which is the direct result of criminally injurious conduct, the award shall be apportioned by the commission among the claimants.
- (5) The commission is authorized to set a reasonable limit for the payment of funeral and burial expenses which shall include funeral costs, a monument, and grave plot. In no event shall an award for funeral expenses exceed five thousand dollars (\$5,000).
- (6) Any award made under KRS 49.270 to 49.490 shall not exceed twenty-five thousand dollars (\$25,000) in total compensation to be received by or paid on behalf of a claimant from the fund.
- (7) No award shall be made for any type of property loss or damage, except as otherwise permitted in KRS 49.270 to 49.490.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 183 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "airport" has the same meaning as in KRS 183.011.*
- (2) *An airport shall post in all of its publicly accessible restrooms a printed sign in English and Spanish at least eleven (11) inches by fourteen (14) inches in size, with letters at least one (1) inch high, displaying the current telephone hotline number of the National Human Trafficking Resource Center or any federally funded successor entity. The sign shall be:*
 - (a) *Created using gender-neutral language supplied by the Office of the Attorney General; and*
 - (b) *Posted in a prominent place easily seen by patrons.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 277 IS CREATED TO READ AS FOLLOWS:

Every passenger train station shall post in all of its restrooms a printed sign in English and Spanish at least eleven (11) inches by fourteen (14) inches in size, with letters at least one (1) inch high, displaying the current telephone hotline number of the National Human Trafficking Resource Center or any federally funded successor entity. The sign shall be:

- (1) *Created using gender-neutral language supplied by the Office of the Attorney General; and*
- (2) *Posted in a prominent place easily seen by patrons.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
 - (a) *"Truck stop" means a privately owned and operated facility that provides services, including but not limited to:*
 1. *Food;*
 2. *Fuel;*
 3. *Showers or other sanitary facilities; and*
 4. *Lawful overnight parking for motor carriers; and*

- (b) *"Bus station" means a fixed structure where a bus delivers and receives passengers that has a restroom.*
- (2) *Every truck stop and bus station shall post in all of its restrooms a printed sign in English and Spanish at least eleven (11) inches by fourteen (14) inches in size, with letters at least one (1) inch high, displaying the current telephone hotline number of the National Human Trafficking Resource Center or any federally funded successor entity. The sign shall be:*
- (a) *Created using gender-neutral language supplied by the Office of the Attorney General; and*
- (b) *Posted in a prominent place easily seen by patrons.*

➔Section 6. KRS 529.010 is amended to read as follows:

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

- (1) *"Abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action;*
- (2) *"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;*
- (3)~~(2)~~ *"Commercial sexual activity" means:*
- (a) *Any sex act, for which anything of value is given to, promised to, or received by any person;*~~prostitution, regardless of whether the trafficked person can be charged with prostitution;~~
- (b) *Participation in the production of obscene material as set out in KRS Chapter 531;*~~;~~ or
- (c) *Engaging in a sexually explicit performance;*
- (4) *"Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for the debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined;*
- (5)~~(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;*
- (6)~~(4)~~ *"Force, fraud, or coercion" includes but is not limited to:*
- (a) *The use or threat of force against, abduction of, restraint, or serious harm of an individual;*
- (b) *The abuse or threatened abuse of law or legal process;*
- (c) *Facilitating, controlling, or threatening to control an individual's access to a controlled substance;*
- (d) *Knowingly destroying, concealing, removing, confiscating, or possessing, or attempting to destroy, conceal, remove, confiscate, or possess any actual or purported passport or other immigration documents or any other actual or purported governmental identification documents of the person or family member;*
- (e) *Use of debt bondage; or*
- (f) *The use of an individual's physical or mental impairment when the impairment has a substantial adverse effect on the individual's cognitive or volitional function*~~may only be accomplished by the same means and methods as a person may be restrained under KRS 509.010;~~
- (7)~~(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;
- ~~(8)(6)~~ "Human trafficking victims fund" is the fund created in KRS 529.140;
- ~~(9)(7)~~ "Labor" means work of economic or financial value;
- ~~(10)(8)~~ "Minor" means a person under the age of eighteen (18) years;
- ~~(11)(9)~~ "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;
- (12) "Serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious to compel a reasonable person to perform or to continue performing commercial sexual activity in order to avoid incurring that harm;**
- ~~(13)(10)~~ "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;
- ~~(14)(11)~~ "Sexual conduct" means sexual intercourse or any act of sexual gratification involving the sex organs;
- ~~(15)(12)~~ "Sexually explicit performance" means a performance of sexual conduct involving:
- Acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse, actual or simulated;
 - Physical contact with, or willful or intentional exhibition of, the genitals;
 - Flagellation or excretion for the purpose of sexual stimulation or gratification; or
 - 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
- ~~(16)(13)~~ "Victim of human trafficking" is a person who has been subjected to human trafficking.

➔Section 7. KRS 529.100 is amended to read as follows:

- A person is guilty of human trafficking when the person intentionally subjects one (1) or more persons to **engage in:**
 - Forced labor or services; or**
 - Commercial sexual activity through the use of force, fraud, or coercion, except that if the person is under the age of eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion**~~human trafficking~~.
- Human trafficking is a Class C felony unless it involves serious physical injury to a trafficked person, in which case it is a Class B felony.
 - If the victim of human trafficking is under eighteen (18) years of age, the penalty for the offense shall be one (1) level higher than the level otherwise specified in this section.

➔Section 8. KRS 529.130 is amended 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 **not less than** ten thousand dollars (\$10,000) to be remitted to the fund created in KRS 529.140.

➔Section 9. KRS 529.140 is amended to read as follows:

- The "human trafficking victims fund," referred to in this section as the "fund," is created as a separate revolving fund within the **Office of the Attorney General**~~Justice and Public Safety Cabinet~~.

- (2) The fund shall consist of proceeds from assets seized and forfeited pursuant to KRS 529.150, proceeds from the fee in KRS 529.130, 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. ***The Office of the Attorney General shall promulgate administrative regulations to develop procedures for distributing funds pursuant to this section***~~[in accordance with procedures developed by the Justice and Public Safety Cabinet pursuant to administrative regulation]~~. The administrative ***regulations***~~[regulation]~~ shall require that:
- (a) ***The Office of the Attorney General use funds received to maintain programs for the prevention of human trafficking, provide education, training, or public outreach programs about human trafficking, and conduct human trafficking investigations. The Office of the Attorney General may recoup costs for conducting any programs or trainings; and***
- (b) The Cabinet for Health and Family Services ***use funds received***~~[receive adequate funding allocation under this subsection to meet the responsibilities imposed upon it]~~ to serve minor victims of human trafficking under KRS 620.029.
- (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. KRS 529.180 is amended to read as follows:

In any prosecution under KRS 529.100 or 529.110 involving commercial sexual activity~~[with a minor]~~, it shall not be a defense that:

- (1) The defendant was unaware of the minor's actual age;
- (2) ***A minor consented to engage in commercial sexual activity;***
- (3) ***The intended victim of the offense is a law enforcement officer posing as a minor as part of a criminal investigation or operation;***
- (4) ***The solicitation was unsuccessful, the conduct was not engaged in, or the law enforcement officer could not engage in the solicited offense; or***
- (5) ***The victim is charged with an offense.***

➔Section 11. All files, funds, and functions of the human trafficking victims fund shall be transferred from the Justice and Public Safety Cabinet to the Office of the Attorney General.

Signed by Governor April 2, 2020.