

## CHAPTER 89

( HB 472 )

AN ACT relating to child abuse and declaring an emergency.

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

➔Section 1. KRS 500.050 is amended to read as follows:

- (1) Except as otherwise expressly provided, the prosecution of a felony is not subject to a period of limitation and may be commenced at any time.
- (2) Except as otherwise expressly provided, the prosecution of an offense other than a felony must be commenced within one (1) year after it is committed.
- (3) (a) For a misdemeanor *sex* offense~~[ under KRS Chapter 510]~~ when the victim is *a minor*~~[under the age of eighteen (18)]~~ at the time of the offense, the prosecution of the offense shall be commenced within *ten (10)*~~[five (5)]~~ years after the victim attains the age of eighteen (18) years.
- (b) *As used in paragraph (a) of this subsection, "misdemeanor sex offense" means a misdemeanor offense in:*
  1. *KRS Chapter 510;*
  2. *KRS Chapter 531 involving a minor or depiction of a minor; or*
  3. *KRS 506.010 or 506.030 for attempt to commit or solicitation to commit:*
    - a. *Any of the offenses described in subparagraphs 1. and 2. of this paragraph;*
    - b. *Promoting prostitution under KRS 529.040 when the defendant advances or profits from the prostitution of a minor;*
    - c. *Human trafficking involving commercial sexual activity under KRS 529.100;*
    - d. *Promoting human trafficking involving commercial sexual activity under KRS 529.110; or*
    - e. *Unlawful transaction with a minor in the first degree under KRS 530.064(1)(a).*
- (4) For purposes of this section, an offense is committed either when every element occurs, or if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated.

➔Section 2. KRS 413.249 is amended to read as follows:

- (1) As used in this section:
  - (a) "Childhood sexual assault *or 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 or felony in:*
    1. *KRS Chapter 510;*
    2. *KRS 529.040 when the defendant advances or profits from the prostitution of a minor; ~~in KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110,~~*
    3. *KRS 529.100 when~~[where]~~ the offense involves commercial sexual activity;~~[,]~~*
    4. *KRS 529.110 when~~[where]~~ the offense involves commercial sexual activity;~~[,]~~*
    5. *KRS 530.020 ~~or~~ ~~[,]~~ 530.064(1)(a); ~~[, 531.310, or 531.320]~~*
    6. *KRS Chapter 531 involving a minor or depiction of a minor; or*
    7. *KRS 506.010 or 506.030 for attempt to commit or solicitation to commit any of the offenses described in subparagraphs 1. to 6. of this paragraph.*

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 *or abuse*;

- (b) ***"Entity" means a firm, partnership, company, corporation, trustee, association, or any private or public entity, including the Commonwealth, a city, county, urban-county, consolidated local government, unified local government, or charter county government, or any of their agencies, departments, or any KRS 58.180 nonprofit nonstock corporation; and*** ~~["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 ***assault or abuse*** ~~or childhood sexual assault~~ shall be brought before whichever of the following periods last expires:
- Within ten (10) years of the commission of the act or the last of a series of acts by the same perpetrator;
  - Within ten (10) years of the date the victim knew, or should have known, of the act;
  - Within ten (10) years after the victim attains the age of eighteen (18) years; or
  - Within ten (10) years of the conviction of a civil defendant for an offense included in the definition of childhood sexual ***assault or abuse*** ~~or childhood sexual assault~~.
- (3) ***The time periods set forth in subsection (2) of this section shall apply to a civil action for recovery of damages for injury or illness against;***
- A person alleged to have committed the act of childhood sexual assault or abuse; or***
  - An entity that owed a duty of care to the plaintiff, where a wrongful or negligent act by an employee, officer, director, official, volunteer, representative, or agent of the entity was a legal cause of the childhood sexual assault or abuse that resulted in the injury to the plaintiff.***
- (4) If a complaint is filed alleging that an act of childhood sexual assault or ~~childhood sexual~~ abuse occurred more than ten (10) 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:
- The court rules upon the motion to seal;
  - 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
  - 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.
- (5) ***A victim of childhood sexual assault or abuse shall not have a cause of action against a third party, unless the third party failed to act as a reasonable person or entity in complying with their duties to the victim. If a victim of childhood sexual assault or abuse has a cause of action under this section, the cause of action shall be commenced within the time period set forth in subsection (2) of this section.***
- (6)
  - Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for excluding evidence regarding childhood sexual assault or abuse or the cause thereof when an exception to the Kentucky Rules of Evidence is met, in any judicial proceeding. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding childhood sexual assault or abuse.***
  - As used in paragraph (a) of this subsection, the clergy-penitent privilege is limited to information received solely through confidential communications with a clergy member, privately or in a confessional setting, when in the course of the discipline or practice of the clergy member's church, denomination, or organization, he or she is authorized or accustomed to hearing those***

*communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.*

- (7) (a) *As was its intention with the passage of 2017 Ky. Acts ch. 114, sec. 2, the General Assembly hereby states that the amendments enacted in 2017 Ky. Acts ch. 114, sec. 2 shall be applied retroactively to actions accruing before its effective date of June 29, 2017. This section is a remedial statute which is to be given the most liberal interpretation to provide remedies for victims of childhood sexual assault or abuse.*
- (b) *Notwithstanding any provision of law to the contrary, any claim for childhood sexual assault or abuse that was barred as of the effective date of this Act because the applicable statute of limitations had expired is hereby revived, and the action may be brought if commenced within five (5) years of the date on which the applicable statute of limitations expired.*

➔Section 3. This Act shall apply to causes of action accruing on or after the effective date of this Act, and to causes of action accruing before the effective date of this Act, if the applicable statute of limitations, as it existed prior to this Act, has not yet run before the effective date of this Act.

➔Section 4. The restrictions of KRS 6.945(1) shall not apply to Sections 1 and 2 of this Act.

➔Section 5. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

➔Section 6. Whereas Kentucky has the highest rate of child abuse in the country, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by Governor March 23, 2021.**