

**CHAPTER 139****( SB 97 )**

AN ACT relating to child fatalities and near fatalities.

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

➔Section 1. KRS 620.040 is amended to read as follows:

- (1) (a) Upon receipt of a report alleging abuse or neglect by a parent, guardian, fictive kin, person in a position of authority, person in a position of special trust, 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 KRS 620.030(3), 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, fictive kin, person in a position of authority, person in a position of special trust, 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, fictive kin, person in a position of authority, person in a position of special trust, 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, 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.
- (e)
  1. *If a report includes a child fatality or near fatality, and the law enforcement officer has reasonable grounds to believe any parent or person exercising custodial control or supervision of the child was under the influence of alcohol or drugs at the time the fatality or near fatality occurred, the law enforcement officer shall request a test of blood, breath, or urine from that person.*
  2. *If, after making the request, consent is not given for the test of blood, breath, or urine, a search warrant shall be requested from and may be issued by the judge to the appropriate law enforcement official upon probable cause that a child fatality or near fatality has occurred and that the person exercising custodial control or supervision of the child at the time of the fatality or near fatality was under the influence.*
  3. *Any test requested under this section shall be conducted pursuant to the testing procedures and requirements in KRS 189A.103.*
- (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 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.
- (8) Nothing in this section shall limit the cabinet's investigatory authority under KRS 620.050 or any other obligation imposed by law.

➔Section 2. KRS 620.055 is amended to read as follows:

- (1) An external child fatality and near fatality review panel is hereby created and established for the purpose of conducting comprehensive reviews of child fatalities and near fatalities, reported to the Cabinet for Health and Family Services, suspected to be a result of abuse or neglect. The panel shall be attached to the Justice and Public Safety Cabinet for staff and administrative purposes.
- (2) The external child fatality and near fatality review panel shall be composed of the following five (5) ex officio nonvoting members and *seventeen (17)*~~fifteen (15)~~ voting members:
  - (a) *Two (2) members*~~{The chairperson of the House Health and Welfare Committee}~~ of the Kentucky General Assembly, *one (1) appointed by the President of the Senate and one (1) appointed by the Speaker of the House of Representatives*, who shall be ~~{an}~~ ex officio nonvoting ~~members~~~~{member}~~;
  - (b) ~~{The chairperson of the Senate Health and Welfare Committee of the Kentucky General Assembly, who shall be an ex officio nonvoting member.}~~
  - ~~{(c) —}~~ The commissioner of the Department for Community Based Services, who shall be an ex officio nonvoting member;
  - ~~(c)~~~~{(d)}~~ The commissioner of the Department for Public Health, who shall be an ex officio nonvoting member;
  - ~~(d)~~~~{(e)}~~ A family court judge selected by the Chief Justice of the Kentucky Supreme Court, who shall be an ex officio nonvoting member;
  - ~~(e)~~~~{(f)}~~ A pediatrician from the University of Kentucky's Department of Pediatrics who is licensed and experienced in forensic medicine relating to child abuse and neglect to be selected by the Attorney General from a list of three (3) names provided by the dean of the University of Kentucky School of Medicine;
  - ~~(f)~~~~{(g)}~~ A pediatrician from the University of Louisville's Department of Pediatrics who is licensed and experienced in forensic medicine relating to child abuse and neglect to be selected by the Attorney General from a list of three (3) names provided by the dean of the University of Louisville School of Medicine;
  - ~~(g)~~~~{(h)}~~ The state medical examiner or designee;
  - ~~(h)~~~~{(i)}~~ A court-appointed special advocate (CASA) program director to be selected by the Attorney General from a list of three (3) names provided by the Kentucky CASA Association;
  - ~~(i)~~~~{(j)}~~ A peace officer with experience investigating child abuse and neglect fatalities and near fatalities to be selected by the Attorney General from a list of three (3) names provided by the commissioner of the Kentucky State Police;
  - ~~(j)~~~~{(k)}~~ A representative from Prevent Child Abuse Kentucky, Inc. to be selected by the Attorney General from a list of three (3) names provided by the president of the Prevent Child Abuse Kentucky, Inc. board of directors;

- ~~(k)~~~~(1)~~ A practicing local prosecutor to be selected by the Attorney General;
  - ~~(l)~~~~(m)~~ The executive director of the Kentucky Domestic Violence Association or the executive director's designee;
  - ~~(m)~~~~(n)~~ The chairperson of the State Child Fatality Review Team established in accordance with KRS 211.684 or the chairperson's designee;
  - ~~(n)~~~~(o)~~ A practicing social work clinician to be selected by the Attorney General from a list of three (3) names provided by the Board of Social Work;
  - ~~(o)~~~~(p)~~ A practicing addiction counselor to be selected by the Attorney General from a list of three (3) names provided by the Kentucky Association of Addiction Professionals;
  - ~~(p)~~~~(q)~~ A representative from the family resource and youth service centers to be selected by the Attorney General from a list of three (3) names submitted by the Cabinet for Health and Family Services;
  - ~~(q)~~~~(r)~~ A representative of a community mental health center to be selected by the Attorney General from a list of three (3) names provided by the Kentucky Association of Regional Mental Health and Mental Retardation Programs, Inc.;
  - ~~(r)~~~~(s)~~ A member of a citizen foster care review board selected by the Chief Justice of the Kentucky Supreme Court;~~and~~
  - ~~(s)~~~~(t)~~ An at-large representative who shall serve as chairperson to be selected by the Secretary of State;
  - (t) *The president of the Kentucky Coroners Association; and***
  - (u) *A practicing medication-assisted treatment provider to be selected by the Attorney General from a list of three (3) names provided by the Kentucky Board of Medical Licensure.***
- (3) (a) By August 1, 2013, the appointing authority or the appointing authorities, as the case may be, shall have appointed panel members. Initial terms of members, other than those serving ex officio, shall be staggered to provide continuity. Initial appointments shall be: five (5) members for terms of one (1) year, five (5) members for terms of two (2) years, and five (5) members for terms of three (3) years, these terms to expire, in each instance, on June 30 and thereafter until a successor is appointed and accepts appointment.
- (b) Upon the expiration of these initial staggered terms, successors shall be appointed by the respective appointing authorities, for terms of two (2) years, and until successors are appointed and accept their appointments. Members shall be eligible for reappointment. Vacancies in the membership of the panel shall be filled in the same manner as the original appointments.
- (c) At any time, a panel member shall recuse himself or herself from the review of a case if the panel member believes he or she has a personal or private conflict of interest.
- (d) If a voting panel member is absent from two (2) or more consecutive, regularly scheduled meetings, the member shall be considered to have resigned and shall be replaced with a new member in the same manner as the original appointment.
- (e) If a voting panel member is proven to have violated subsection (13) of this section, the member shall be removed from the panel, and the member shall be replaced with a new member in the same manner as the original appointment.
- (4) The panel shall meet at least quarterly and may meet upon the call of the chairperson of the panel.
- (5) Members of the panel shall receive no compensation for their duties related to the panel, but may be reimbursed for expenses incurred in accordance with state guidelines and administrative regulations.
- (6) Each panel member shall be provided copies of all information set out in this subsection, including but not limited to records and information, upon request, to be gathered, unredacted, and submitted to the panel within thirty (30) days by the Cabinet for Health and Family Services from the Department for Community Based Services or any agency, organization, or entity involved with a child subject to a fatality or near fatality:
- (a) Cabinet for Health and Family Services records and documentation regarding the deceased or injured child and his or her caregivers, residents of the home, and persons supervising the child at the time of the incident that include all records and documentation set out in this paragraph:

1. All prior and ongoing investigations, services, or contacts;
  2. Any and all records of services to the family provided by agencies or individuals contracted by the Cabinet for Health and Family Services; and
  3. All documentation of actions taken as a result of child fatality internal reviews conducted pursuant to KRS 620.050(12)(b);
- (b) Licensing reports from the Cabinet for Health and Family Services, Office of Inspector General, if an incident occurred in a licensed facility;
- (c) All available records regarding protective services provided out of state;
- (d) All records of services provided by the Department for Juvenile Justice regarding the deceased or injured child and his or her caregivers, residents of the home, and persons involved with the child at the time of the incident;
- (e) Autopsy reports;
- (f) Emergency medical service, fire department, law enforcement, coroner, and other first responder reports, including but not limited to photos and interviews with family members and witnesses;
- (g) Medical records regarding the deceased or injured child, including but not limited to all records and documentation set out in this paragraph:
1. Primary care records, including progress notes; developmental milestones; growth charts that include head circumference; all laboratory and X-ray requests and results; and birth record that includes record of delivery type, complications, and initial physical exam of baby;
  2. In-home provider care notes about observations of the family, bonding, others in home, and concerns;
  3. Hospitalization and emergency department records;
  4. Dental records;
  5. Specialist records; and
  6. All photographs of injuries of the child that are available;
- (h) Educational records of the deceased or injured child, or other children residing in the home where the incident occurred, including but not limited to the records and documents set out in this paragraph:
1. Attendance records;
  2. Special education services;
  3. School-based health records; and
  4. Documentation of any interaction and services provided to the children and family.
- The release of educational records shall be in compliance with the Family Educational Rights and Privacy Act, 20 U.S.C. sec. 1232g and its implementing regulations;
- (i) Head Start records or records from any other child care or early child care provider;
- (j) Records of any Family, Circuit, or District Court involvement with the deceased or injured child and his or her caregivers, residents of the home and persons involved with the child at the time of the incident that include but are not limited to the juvenile and family court records and orders set out in this paragraph, pursuant to KRS Chapters 199, 403, 405, 406, and 600 to 645:
1. Petitions;
  2. Court reports by the Department for Community Based Services, guardian ad litem, court-appointed special advocate, and the Citizen Foster Care Review Board;
  3. All orders of the court, including temporary, dispositional, or adjudicatory; and
  4. Documentation of annual or any other review by the court;
- (k) Home visit records from the Department for Public Health or other services;

- (l) All information on prior allegations of abuse or neglect and deaths of children of adults residing in the household;
  - (m) All law enforcement records and documentation regarding the deceased or injured child and his or her caregivers, residents of the home, and persons involved with the child at the time of the incident; and
  - (n) Mental health records regarding the deceased or injured child and his or her caregivers, residents of the home, and persons involved with the child at the time of the incident.
- (7) The panel may seek the advice of experts, such as persons specializing in the fields of psychiatric and forensic medicine, nursing, psychology, social work, education, law enforcement, family law, or other related fields, if the facts of a case warrant additional expertise.
- (8) The panel shall post updates after each meeting to the Web site of the Justice and Public Safety Cabinet regarding case reviews, findings, and recommendations.
- (9) The panel chairperson, or other requested persons, shall report a summary of the panel's discussions and proposed or actual recommendations to the Interim Joint Committee on Health and Welfare of the Kentucky General Assembly monthly or at the request of a committee co-chair. The goal of the committee shall be to ensure impartiality regarding the operations of the panel during its review process.
- (10) (a) The panel shall publish an annual report by ~~February~~~~December~~ 1 of each year consisting of case reviews, findings, and recommendations for system and process improvements to help prevent child fatalities and near fatalities that are due to abuse and neglect. The report shall be submitted to the Governor, the secretary of the Cabinet for Health and Family Services, the Chief Justice of the Supreme Court, the Attorney General, and the director of the Legislative Research Commission for distribution to the Child Welfare Oversight and Advisory Committee established in KRS 6.943 and the Judiciary Committee.
- (b) *The panel shall determine which agency is responsible for implementing each recommendation, and shall forward each recommendation in writing to the appropriate agency.*
- (c) *Any agency that receives a recommendation from the panel shall, within ninety (90) days of receipt:*
- 1. *Respond to the panel with a written notice of intent to implement the recommendation, an explanation of how the recommendation will be implemented, and an approximate time frame of implementation; or*
  - 2. *Respond to the panel with a written notice that the agency does not intend to implement the recommendation, and a detailed explanation of why the recommendation cannot be implemented.*
- (11) Information and record copies that are confidential under state or federal law and are provided to the external child fatality and near fatality review panel by the Cabinet for Health and Family Services, the Department for Community Based Services, or any agency, organization, or entity for review shall not become the information and records of the panel and shall not lose their confidentiality by virtue of the panel's access to the information and records. The original information and records used to generate information and record copies provided to the panel in accordance with subsection (6) of this section shall be maintained by the appropriate agency in accordance with state and federal law and shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. All open records requests shall be made to the appropriate agency, not to the external child fatality and near fatality review panel or any of the panel members. Information and record copies provided to the panel for review shall be exempt from the Kentucky Open Records Act, KRS 61.870 to 61.884. At the conclusion of the panel's examination, all copies of information and records provided to the panel involving an individual case shall be destroyed by the Justice and Public Safety Cabinet.
- (12) Notwithstanding any provision of law to the contrary, the portions of the external child fatality and near fatality review panel meetings during which an individual child fatality or near fatality case is reviewed or discussed by panel members may be a closed session and subject to the provisions of KRS 61.815(1) and shall only occur following the conclusion of an open session. At the conclusion of the closed session, the panel shall immediately convene an open session and give a summary of what occurred during the closed session.
- (13) Each member of the external child fatality and near fatality review panel, any person attending a closed panel session, and any person presenting information or records on an individual child fatality or near fatality shall not release information or records not available under the Kentucky Open Records Act, KRS 61.870 to 61.884 to the public.

- (14) A member of the external child fatality and near fatality review panel shall not be prohibited from making a good faith report to any state or federal agency of any information or issue that the panel member believes should be reported or disclosed in an effort to facilitate effectiveness and transparency in Kentucky's child protective services.
- (15) A member of the external child fatality and near fatality review panel shall not be held liable for any civil damages or criminal penalties pursuant to KRS 620.990 as a result of any action taken or omitted in the performance of the member's duties pursuant to this section and KRS 620.050, except for violations of subsection (11), (12), or (13) of this section.
- (16) *The proceedings, records, opinions, and deliberations of the external child fatality and near fatality review panel shall be privileged and shall not be subject to discovery, subpoena, or introduction into evidence in any civil or criminal actions in any manner that would directly or indirectly identify specific persons or cases reviewed by the panel. Nothing in this subsection shall be construed to restrict or limit the right to discover or use in any civil action any evidence that is discoverable independent of the proceedings of the panel.*
- (17)~~(16)~~ ~~[Beginning in 2014]~~ The Legislative Oversight and Investigations Committee of the Kentucky General Assembly shall conduct an annual evaluation of the external child fatality and near fatality review panel established pursuant to this section to monitor the operations, procedures, and recommendations of the panel and shall report its findings to the General Assembly.

➔Section 3. KRS 72.410 is amended to read as follows:

- (1) The coroner of each county shall investigate the cause and manner of all deaths that are defined by KRS 72.405 as a coroner's case.
- (2) The coroner may, in his sound discretion, when investigating a coroner's case, request the assistance of the district medical examiner and the Office of the Kentucky State Medical Examiner, order an autopsy, and hold an inquest.
- (3) (a) Upon notification of the death of a child under the age of eighteen (18) years which meets the criteria for a coroner's case as defined in KRS 72.405 and 72.025, the coroner shall **immediately**~~as soon as practicable~~ contact the local office of the Department for Community Based Services, law enforcement agencies with local jurisdiction, and the local health department to determine the existence of relevant information concerning the case.
- (b) Any agency of the state or any other agency, institution, or facility providing services to the child or the child's family, shall provide to the coroner upon his or her request the cooperation, assistance, and information to enable the coroner to comply with the provisions of this chapter. This section shall not be deemed to abrogate the attorney-client nor the clergy-penitent privilege or the confidentiality of records provided by KRS 311.377(2). If other privileged or confidential records are disclosed to the coroner pursuant to this section, the records shall remain confidential or privileged and shall not be disclosed except as authorized by this section, to the state or local child fatality response team, or as otherwise required by law.

**Signed by Governor April 8, 2022.**