

AN ACT relating to dependency, abuse, and neglect investigations.

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

➔Section 1. KRS 620.050 is amended to read as follows:

- (1) Anyone acting upon reasonable cause in the making of a report or acting under KRS 620.030 to 620.050 in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action. However, any person who knowingly makes a false report and does so with malice shall be guilty of a Class A misdemeanor.
- (2) Any employee or designated agent of a children's advocacy center shall be immune from any civil liability arising from performance within the scope of the person's duties as provided in KRS 620.030 to 620.050. Any such person shall have the same immunity with respect to participation in any judicial proceeding. Nothing in this subsection shall limit liability for negligence. Upon the request of an employee or designated agent of a children's advocacy center, the Attorney General shall provide for the defense of any civil action brought against the employee or designated agent as provided under KRS 12.211 to 12.215.
- (3) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.
- (4) Upon receipt of a report of an abused, neglected, or dependent child pursuant to this chapter, the cabinet as the designated agency or its delegated representative shall initiate a prompt investigation or assessment of family needs, take necessary action, and shall offer protective services toward safeguarding the welfare of the child. The

cabinet shall work toward preventing further dependency, neglect, or abuse of the child or any other child under the same care, and preserve and strengthen family life, where possible, by enhancing parental capacity for adequate child care.

- (5) The report of suspected child abuse, neglect, or dependency and all information obtained by the cabinet or its delegated representative, as a result of an investigation or assessment made pursuant to this chapter, except for those records provided for in subsection (6) of this section, shall not be divulged to anyone except:
- (a) Persons suspected of causing dependency, neglect, or abuse;
 - (b) The custodial parent or legal guardian of the child alleged to be dependent, neglected, or abused;
 - (c) Persons within the cabinet with a legitimate interest or responsibility related to the case;
 - (d) Other medical, psychological, educational, or social service agencies, child care administrators, corrections personnel, or law enforcement agencies, including the county attorney's office, the coroner, and the local child fatality response team, that have a legitimate interest in the case;
 - (e) A noncustodial parent when the dependency, neglect, or abuse is substantiated;
 - (f) Members of multidisciplinary teams as defined by KRS 620.020 and which operate pursuant to KRS 431.600;
 - (g) Employees or designated agents of a children's advocacy center;
 - (h) Those persons so authorized by court order; or
 - (i) The external child fatality and near fatality review panel established by KRS 620.055.
- (6) (a) Files, reports, notes, photographs, records, electronic and other communications, and working papers used or developed by a children's advocacy center in providing services under this chapter are confidential and

shall not be disclosed except to the following persons:

1. Staff employed by the cabinet, law enforcement officers, and Commonwealth's and county attorneys who are directly involved in the investigation or prosecution of the case;
2. Medical and mental health professionals listed by name in a release of information signed by the guardian of the child, provided that the information shared is limited to that necessary to promote the physical or psychological health of the child or to treat the child for abuse-related symptoms;
3. The court and those persons so authorized by a court order; and
4. The external child fatality and near fatality review panel established by KRS 620.055.

(b) The provisions of this subsection shall not be construed as to contravene the Rules of Criminal Procedure relating to discovery.

- (7) Nothing in this section shall prohibit a parent or guardian from accessing records for his or her child providing that the parent or guardian is not currently under investigation by a law enforcement agency or the cabinet relating to the abuse of a child.
- (8) Nothing in this section shall prohibit employees or designated agents of a children's advocacy center from disclosing information during a multidisciplinary team review of a child sexual abuse case as set forth under KRS 620.040. Persons receiving this information shall sign a confidentiality statement consistent with statutory prohibitions on disclosure of this information.
- (9) Employees or designated agents of a children's advocacy center may confirm to another children's advocacy center that a child has been seen for services. If an information release has been signed by the guardian of the child, a children's advocacy center may disclose relevant information to another children's advocacy

center.

- (10) (a) An interview of a child recorded at a children's advocacy center shall not be duplicated, except that the Commonwealth's or county attorney prosecuting the case may:
1. Make and retain one (1) copy of the interview; and
 2. Make one (1) copy for the defendant's counsel that the defendant's counsel shall not duplicate.
- (b) The defendant's counsel shall file the copy with the court clerk at the close of the case.
- (c) Unless objected to by the victim or victims, the court, on its own motion, or on motion of the attorney for the Commonwealth shall order all recorded interviews that are introduced into evidence or are in the possession of the children's advocacy center, law enforcement, the prosecution, or the court to be sealed.
- (d) The provisions of this subsection shall not be construed as to contravene the Rules of Criminal Procedure relating to discovery.
- (11) Identifying information concerning the individual initiating the report under KRS 620.030 shall not be disclosed except:
- (a) To law enforcement officials that have a legitimate interest in the case;
 - (b) To the agency designated by the cabinet to investigate or assess the report;
 - (c) To members of multidisciplinary teams as defined by KRS 620.020 that operated under KRS 431.600
 - (d) Under a court order, after the court has conducted an in camera review of the record of the state related to the report and has found reasonable cause to believe that the reporter knowingly made a false report; or
 - (e) The external child fatality and near fatality review panel established by KRS 620.055.

- (12) (a) Information may be publicly disclosed by the cabinet in a case where child abuse or neglect has resulted in a child fatality or near fatality.
- (b) The cabinet shall conduct an internal review of any case where child abuse or neglect has resulted in a child fatality or near fatality and the cabinet had prior involvement with the child or family. The cabinet shall prepare a summary that includes an account of:
1. The cabinet's actions and any policy or personnel changes taken or to be taken, including the results of appeals, as a result of the findings from the internal review; and
 2. Any cooperation, assistance, or information from any agency of the state or any other agency, institution, or facility providing services to the child or family that were requested and received by the cabinet during the investigation of a child fatality or near fatality.
- (c) The cabinet shall submit a report by September 1 of each year containing an analysis of all summaries of internal reviews occurring during the previous year and an analysis of historical trends to the Governor, the General Assembly, and the state child fatality review team created under KRS 211.684.
- (13) When an adult who is the subject of information made confidential by subsection (5) of this section publicly reveals or causes to be revealed any significant part of the confidential matter or information, the confidentiality afforded by subsection (5) of this section is presumed voluntarily waived, and confidential information and records about the person making or causing the public disclosure, not already disclosed but related to the information made public, may be disclosed if disclosure is in the best interest of the child or is necessary for the administration of the cabinet's duties under this chapter.
- (14) As a result of any report of suspected child abuse or neglect, photographs and X-

rays or other appropriate medical diagnostic procedures may be taken or caused to be taken, without the consent of the parent or other person exercising custodial control or supervision of the child, as a part of the medical evaluation or investigation of these reports. These photographs and X-rays or results of other medical diagnostic procedures may be introduced into evidence in any subsequent judicial proceedings. The person performing the diagnostic procedures or taking photographs or X-rays shall be immune from criminal or civil liability for having performed the act. Nothing herein shall limit liability for negligence.

(15) A report of suspected child dependency, neglect, or abuse pursuant to this chapter shall not abrogate the constitutional rights of the persons subjected to investigation as a result. A report alone shall not serve as justification for a warrantless search of any person, vehicle, or premises, and shall not serve to compel any individual to submit to drug testing.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 620 IS CREATED TO READ AS FOLLOWS:

(1) In order to ensure that the rights of persons being investigated on a report of an abused, neglected, or dependent child pursuant to this chapter are preserved, the cabinet shall develop a form to be acknowledged in writing by persons subjected to an investigation informing them of their rights.

(2) The form shall describe the rights of each person subjected to an investigation, including but not limited to:

(a) Protection against warrantless arrest and unreasonable search and seizure under the Fourth Amendment to the Constitution of the United States and Section 10 of the Constitution of Kentucky;

(b) Protection against arbitrary power under Section 2 of the Constitution of Kentucky;

(c) Due process protections under the Fifth and Fourteenth Amendments to the

Constitution of the United States;

(d) The right against self-incrimination, the right to remain silent, and the right to stop answering questions at any time, as guaranteed by the Fifth Amendment to the Constitution of the United States and Section 11 of the Constitution of Kentucky;

(e) The right to refuse to submit to a drug test absent a court order;

(f) The right to refuse to allow a search of his or her home or property absent a court order; and

(g) The rights and protections described in this subsection continue to apply when employees of the cabinet are accompanied by law enforcement officers.

(3) (a) Prior to an initial interview with a parent, custodian, or de facto custodian pursuant to a complaint alleging that a child is dependent, neglected, or abused, the employee of the cabinet conducting the interview shall present the form developed pursuant to subsection (1) of this section to the person to be interviewed.

(b) The person to be interviewed shall be given the opportunity to read, sign, and acknowledge the form, and refusal to sign the form shall constitute an assertion of the right against self-incrimination and shall terminate the interview.

(c) After the person to be interviewed has been given the opportunity to sign the form, the cabinet employee conducting the interview shall sign and date the form.