

AN ACT relating to child pornography.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 531 IS CREATED TO READ AS FOLLOWS:

(1) This chapter shall not apply to:

- (a) Peace officers and other law enforcement personnel possessing or viewing matter in the course of an investigation or prosecution of a violation of a criminal offense to which the matter relates;*
- (b) Prosecutors, their personnel, and any individual the prosecution seeks to qualify as an expert possessing or viewing matter in the course of preparing for and litigating a criminal case to which the matter relates;*
- (c) Judges, jurors, and other personnel of the Court of Justice possessing or viewing matter in the course of their official duties during a criminal or civil litigation to which the matter relates;*
- (d) Criminal defense counsel and their personnel, private civil counsel and their personnel, and any individual the defense or private counsel seeks to qualify as an expert viewing matter in the course of preparing for and litigating a criminal or civil case to which the matter relates, provided that the matter remains in the custody, and under the supervision of a court, a prosecutor's office, or a law enforcement agency;*
- (e) A litigant in any criminal or civil litigation to which the matter relates viewing the matter in the course of preparing for and litigating the case, provided that:*
 - 1. The matter remains in the custody of a court, a prosecutor's office, or a law enforcement agency;*
 - 2. The litigant is in the physical presence of counsel and court, prosecutor, or law enforcement personnel during every examination*

of the matter; and

3. Neither the litigant nor counsel copies, photographs, duplicates, or otherwise reproduces any visual or audio depiction of the matter; and

(f) A litigant, counsel, or expert witness in any criminal or civil litigation to which the matter relates possessing or viewing the matter in the course of preparing for and litigating the case, provided that:

1. The litigant files a motion to possess or view the matter in any criminal or civil litigation pursuant to this section;

2. The court sets a date for a hearing and notifies the prosecutor and the law enforcement agency which conducted the forensic inspection of the motion and hearing;

3. The court, after an evidentiary hearing at which the litigant and the prosecution shall be allowed to present witnesses and documentary evidence, and cross-examine adverse witnesses, finds that:

a. The possession and viewing is sought for the purpose of scientific or forensic analysis of the authenticity of the matter;

b. The scientific or forensic authenticity of the matter is reasonably in question based upon evidence presented by the defendant;

c. The authenticity of the matter is relevant to the case, that the authenticity of the matter relates to an essential defense to be presented in the case, and that a denial of the opportunity to present that defense would violate the defendant's due process rights; and

d. The scientific or forensic testing of the matter cannot reasonably be accomplished while the matter remains in the custody of a court, a prosecutor's office, or a law enforcement agency and that independent outside testing is required; and

4. The court enters an order:

- a. Directing the government agency that conducted the forensic inspection of the matter to produce a forensic image of the original media which contains the matter the litigant seeks to examine;
- b. Naming the specific litigant, counsel, or expert witness who may receive the requested forensic image of the matter;
- c. Prohibiting the named individual from duplicating the forensic image of the matter beyond what is strictly necessary for the examination;
- d. Prohibiting the named individual from allowing any other individual to possess or view the forensic image of the matter;
- e. Requiring that the forensic image of the matter be stored on a device that is not connected to the Internet or internal or external computer network and
- f. Requiring the named individual to return the forensic image of the matter to the court, prosecutor, or law enforcement agency upon completion of the examination.

(2) Any person who is not exempt under subsection (1) of this section and who possesses, distributes, or views matter in contravention of any provision of this chapter shall be subject to:

- (a) Criminal prosecution for the violation of this chapter; and
- (b) Contempt for a violation of a court order entered under this section.