

1 AN ACT relating to child fatalities and near fatalities.

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

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

- 4 (1) (a) Upon receipt of a report alleging abuse or neglect by a parent, guardian, fictive
5 kin, person in a position of authority, person in a position of special trust, or
6 person exercising custodial control or supervision, pursuant to KRS
7 620.030(1) or (2), or a report alleging a child is a victim of human trafficking
8 pursuant to KRS 620.030(3), the recipient of the report shall immediately
9 notify the cabinet or its designated representative, the local law enforcement
10 agency or the Department of Kentucky State Police, and the Commonwealth's
11 or county attorney of the receipt of the report unless they are the reporting
12 source.
- 13 (b) Based upon the allegation in the report, the cabinet shall immediately make an
14 initial determination as to the risk of harm and immediate safety of the child.
15 Based upon the level of risk determined, the cabinet shall investigate the
16 allegation or accept the report for an assessment of family needs and, if
17 appropriate, may provide or make referral to any community-based services
18 necessary to reduce risk to the child and to provide family support. A report of
19 sexual abuse or human trafficking of a child shall be considered high risk and
20 shall not be referred to any other community agency.
- 21 (c) The cabinet shall, within seventy-two (72) hours, exclusive of weekends and
22 holidays, make a written report to the Commonwealth's or county attorney and
23 the local enforcement agency or the Department of Kentucky State Police
24 concerning the action that has been taken on the investigation.
- 25 (d) If the report alleges abuse or neglect by someone other than a parent, guardian,
26 fictive kin, person in a position of authority, person in a position of special
27 trust, or person exercising custodial control or supervision, or the human

1 trafficking of a child, the cabinet shall immediately notify the
2 Commonwealth's or county attorney and the local law enforcement agency or
3 the Department of Kentucky State Police.

4 (2) (a) Upon receipt of a report alleging dependency pursuant to KRS 620.030(1) and
5 (2), the recipient shall immediately notify the cabinet or its designated
6 representative.

7 (b) Based upon the allegation in the report, the cabinet shall immediately make an
8 initial determination as to the risk of harm and immediate safety of the child.
9 Based upon the level of risk, the cabinet shall investigate the allegation or
10 accept the report for an assessment of family needs and, if appropriate, may
11 provide or make referral to any community-based services necessary to reduce
12 risk to the child and to provide family support. A report of sexual abuse or
13 human trafficking of a child shall be considered high risk and shall not be
14 referred to any other community agency.

15 (c) The cabinet need not notify the local law enforcement agency or the
16 Department of Kentucky State Police or county attorney or Commonwealth's
17 attorney of reports made under this subsection unless the report involves the
18 human trafficking of a child, in which case the notification shall be required.

19 (3) If the cabinet or its designated representative receives a report of abuse by a person
20 other than a parent, guardian, fictive kin, person in a position of authority, person in
21 a position of special trust, or other person exercising custodial control or
22 supervision of a child, it shall immediately notify the local law enforcement agency
23 or the Department of Kentucky State Police and the Commonwealth's or county
24 attorney of the receipt of the report and its contents, and they shall investigate the
25 matter. The cabinet or its designated representative shall participate in an
26 investigation of noncustodial physical abuse or neglect at the request of the local
27 law enforcement agency or the Department of Kentucky State Police. The cabinet

1 shall participate in all investigations of reported or suspected sexual abuse or human
2 trafficking of a child.

3 (4) School personnel or other persons listed in KRS 620.030(2) do not have the
4 authority to conduct internal investigations in lieu of the official investigations
5 outlined in this section.

6 (5) (a) If, after receiving the report, the law enforcement officer, the cabinet, or its
7 designated representative cannot gain admission to the location of the child, a
8 search warrant shall be requested from, and may be issued by, the judge to the
9 appropriate law enforcement official upon probable cause that the child is
10 dependent, neglected, or abused. If, pursuant to a search under a warrant, a
11 child is discovered and appears to be in imminent danger, the child may be
12 removed by the law enforcement officer.

13 (b) If a child who is in a hospital or under the immediate care of a physician
14 appears to be in imminent danger if he or she is returned to the persons having
15 custody of him or her, the physician or hospital administrator may hold the
16 child without court order, provided that a request is made to the court for an
17 emergency custody order at the earliest practicable time, not to exceed
18 seventy-two (72) hours.

19 (c) Any appropriate law enforcement officer may take a child into protective
20 custody and may hold that child in protective custody without the consent of
21 the parent or other person exercising custodial control or supervision if there
22 exist reasonable grounds for the officer to believe that the child is in danger of
23 imminent death or serious physical injury, is being sexually abused, or is a
24 victim of human trafficking and that the parents or other person exercising
25 custodial control or supervision are unable or unwilling to protect the child.
26 The officer or the person to whom the officer entrusts the child shall, within
27 twelve (12) hours of taking the child into protective custody, request the court

1 to issue an emergency custody order.

2 (d) When a law enforcement officer, hospital administrator, or physician takes a
3 child into custody without the consent of the parent or other person exercising
4 custodial control or supervision, he or she shall provide written notice to the
5 parent or other person stating the reasons for removal of the child. Failure of
6 the parent or other person to receive notice shall not, by itself, be cause for
7 civil or criminal liability.

8 **(e) 1. If a report includes a child fatality or near fatality, and the law**
9 **enforcement officer has reasonable grounds to believe any parent or**
10 **person exercising custodial control or supervision of the child was**
11 **under the influence of alcohol or drugs at the time the fatality or near**
12 **fatality occurred, the law enforcement officer shall request a test of**
13 **blood, breath, or urine from that person.**

14 **2. If, after making the request, consent is not given for the test of blood,**
15 **breath, or urine, a search warrant shall be requested from and may be**
16 **issued by the judge to the appropriate law enforcement official upon**
17 **probable cause that a child fatality or near fatality has occurred and**
18 **that the person exercising custodial control or supervision of the child**
19 **at the time of the fatality or near fatality was under the influence.**

20 **3. Any test requested under this section shall be conducted pursuant to**
21 **the testing procedures and requirements in KRS 189A.103.**

22 (6) To the extent practicable and when in the best interest of a child alleged to have
23 been abused, interviews with the child shall be conducted at a children's advocacy
24 center.

25 (7) (a) One (1) or more multidisciplinary teams may be established in every county or
26 group of contiguous counties.

27 (b) Membership of the multidisciplinary team shall include but shall not be

1 limited to social service workers employed by the Cabinet for Health and
2 Family Services and law enforcement officers. Additional team members may
3 include Commonwealth's and county attorneys, children's advocacy center
4 staff, mental health professionals, medical professionals, victim advocates
5 including advocates for victims of human trafficking, educators, and other
6 related professionals, as deemed appropriate.

7 (c) The multidisciplinary team shall review child sexual abuse cases and child
8 human trafficking cases involving commercial sexual activity referred by
9 participating professionals, including those in which the alleged perpetrator
10 does not have custodial control or supervision of the child or is not
11 responsible for the child's welfare. The purpose of the multidisciplinary team
12 shall be to review investigations, assess service delivery, and to facilitate
13 efficient and appropriate disposition of cases through the criminal justice
14 system.

15 (d) The team shall hold regularly scheduled meetings if new reports of sexual
16 abuse or child human trafficking cases involving commercial sexual activity
17 are received or if active cases exist. At each meeting, each active case shall be
18 presented and the agencies' responses assessed.

19 (e) The multidisciplinary team shall provide an annual report to the public of
20 nonidentifying case information to allow assessment of the processing and
21 disposition of child sexual abuse cases and child human trafficking cases
22 involving commercial sexual activity.

23 (f) Multidisciplinary team members and anyone invited by the multidisciplinary
24 team to participate in a meeting shall not divulge case information, including
25 information regarding the identity of the victim or source of the report. Team
26 members and others attending meetings shall sign a confidentiality statement
27 that is consistent with statutory prohibitions on disclosure of this information.

- 1 (g) The multidisciplinary team shall, pursuant to KRS 431.600 and 431.660,
 2 develop a local protocol consistent with the model protocol issued by the
 3 Kentucky Multidisciplinary Commission on Child Sexual Abuse. The local
 4 team shall submit the protocol to the commission for review and approval.
- 5 (h) The multidisciplinary team review of a case may include information from
 6 reports generated by agencies, organizations, or individuals that are
 7 responsible for investigation, prosecution, or treatment in the case, KRS
 8 610.320 to KRS 610.340 notwithstanding.
- 9 (i) To the extent practicable, multidisciplinary teams shall be staffed by the local
 10 children's advocacy center.
- 11 (8) Nothing in this section shall limit the cabinet's investigatory authority under KRS
 12 620.050 or any other obligation imposed by law.
- 13 ➔Section 2. KRS 620.055 is amended to read as follows:
- 14 (1) An external child fatality and near fatality review panel is hereby created and
 15 established for the purpose of conducting comprehensive reviews of child fatalities
 16 and near fatalities, reported to the Cabinet for Health and Family Services,
 17 suspected to be a result of abuse or neglect. The panel shall be attached to the
 18 Justice and Public Safety Cabinet for staff and administrative purposes.
- 19 (2) The external child fatality and near fatality review panel shall be composed of the
 20 following five (5) ex officio nonvoting members and ***seventeen (17)***~~fifteen (15)~~
 21 voting members:
- 22 (a) ***Two (2) members***~~[The chairperson of the House Health and Welfare~~
 23 ~~Committee]~~ of the Kentucky General Assembly, ***one (1) appointed by the***
 24 ***President of the Senate and one (1) appointed by the Speaker of the House***
 25 ***of Representatives,*** who shall be ~~{an}~~ ex officio nonvoting
 26 ***members***~~[member];~~
- 27 (b) ~~[The chairperson of the Senate Health and Welfare Committee of the~~

1 ~~Kentucky General Assembly, who shall be an ex officio nonvoting member;~~

2 ~~{(e)}~~ The commissioner of the Department for Community Based Services, who
3 shall be an ex officio nonvoting member;

4 ~~(c){(d)}~~ The commissioner of the Department for Public Health, who shall be an
5 ex officio nonvoting member;

6 ~~(d){(e)}~~ A family court judge selected by the Chief Justice of the Kentucky
7 Supreme Court, who shall be an ex officio nonvoting member;

8 ~~(e){(f)}~~ A pediatrician from the University of Kentucky's Department of
9 Pediatrics who is licensed and experienced in forensic medicine relating to
10 child abuse and neglect to be selected by the Attorney General from a list of
11 three (3) names provided by the dean of the University of Kentucky School of
12 Medicine;

13 ~~(f){(g)}~~ A pediatrician from the University of Louisville's Department of
14 Pediatrics who is licensed and experienced in forensic medicine relating to
15 child abuse and neglect to be selected by the Attorney General from a list of
16 three (3) names provided by the dean of the University of Louisville School of
17 Medicine;

18 ~~(g){(h)}~~ The state medical examiner or designee;

19 ~~(h){(i)}~~ A court-appointed special advocate (CASA) program director to be
20 selected by the Attorney General from a list of three (3) names provided by
21 the Kentucky CASA Association;

22 ~~(i){(j)}~~ A peace officer with experience investigating child abuse and neglect
23 fatalities and near fatalities to be selected by the Attorney General from a list
24 of three (3) names provided by the commissioner of the Kentucky State
25 Police;

26 ~~(j){(k)}~~ A representative from Prevent Child Abuse Kentucky, Inc. to be selected
27 by the Attorney General from a list of three (3) names provided by the

1 president of the Prevent Child Abuse Kentucky, Inc. board of directors;

2 ~~(k)~~~~(4)~~ A practicing local prosecutor to be selected by the Attorney General;

3 ~~(l)~~~~(m)~~ The executive director of the Kentucky Domestic Violence Association
4 or the executive director's designee;

5 ~~(m)~~~~(n)~~ The chairperson of the State Child Fatality Review Team established in
6 accordance with KRS 211.684 or the chairperson's designee;

7 ~~(n)~~~~(o)~~ A practicing social work clinician to be selected by the Attorney General
8 from a list of three (3) names provided by the Board of Social Work;

9 ~~(o)~~~~(p)~~ A practicing addiction counselor to be selected by the Attorney General
10 from a list of three (3) names provided by the Kentucky Association of
11 Addiction Professionals;

12 ~~(p)~~~~(q)~~ A representative from the family resource and youth service centers to
13 be selected by the Attorney General from a list of three (3) names submitted
14 by the Cabinet for Health and Family Services;

15 ~~(q)~~~~(r)~~ A representative of a community mental health center to be selected by
16 the Attorney General from a list of three (3) names provided by the Kentucky
17 Association of Regional Mental Health and Mental Retardation Programs,
18 Inc.;

19 ~~(r)~~~~(s)~~ A member of a citizen foster care review board selected by the Chief
20 Justice of the Kentucky Supreme Court;~~and~~

21 ~~(s)~~~~(t)~~ An at-large representative who shall serve as chairperson to be selected
22 by the Secretary of State;

23 ~~(t)~~ **The president of the Kentucky Coroners Association; and**

24 ~~(u)~~ **A practicing medication-assisted treatment provider to be selected by the**
25 **Attorney General from a list of three (3) names provided by the Kentucky**
26 **Board of Medical Licensure.**

27 (3) (a) By August 1, 2013, the appointing authority or the appointing authorities, as

1 the case may be, shall have appointed panel members. Initial terms of
2 members, other than those serving ex officio, shall be staggered to provide
3 continuity. Initial appointments shall be: five (5) members for terms of one (1)
4 year, five (5) members for terms of two (2) years, and five (5) members for
5 terms of three (3) years, these terms to expire, in each instance, on June 30
6 and thereafter until a successor is appointed and accepts appointment.

7 (b) Upon the expiration of these initial staggered terms, successors shall be
8 appointed by the respective appointing authorities, for terms of two (2) years,
9 and until successors are appointed and accept their appointments. Members
10 shall be eligible for reappointment. Vacancies in the membership of the panel
11 shall be filled in the same manner as the original appointments.

12 (c) At any time, a panel member shall recuse himself or herself from the review
13 of a case if the panel member believes he or she has a personal or private
14 conflict of interest.

15 (d) If a voting panel member is absent from two (2) or more consecutive,
16 regularly scheduled meetings, the member shall be considered to have
17 resigned and shall be replaced with a new member in the same manner as the
18 original appointment.

19 (e) If a voting panel member is proven to have violated subsection (13) of this
20 section, the member shall be removed from the panel, and the member shall
21 be replaced with a new member in the same manner as the original
22 appointment.

23 (4) The panel shall meet at least quarterly and may meet upon the call of the
24 chairperson of the panel.

25 (5) Members of the panel shall receive no compensation for their duties related to the
26 panel, but may be reimbursed for expenses incurred in accordance with state
27 guidelines and administrative regulations.

- 1 (6) Each panel member shall be provided copies of all information set out in this
2 subsection, including but not limited to records and information, upon request, to be
3 gathered, unredacted, and submitted to the panel within thirty (30) days by the
4 Cabinet for Health and Family Services from the Department for Community Based
5 Services or any agency, organization, or entity involved with a child subject to a
6 fatality or near fatality:
- 7 (a) Cabinet for Health and Family Services records and documentation regarding
8 the deceased or injured child and his or her caregivers, residents of the home,
9 and persons supervising the child at the time of the incident that include all
10 records and documentation set out in this paragraph:
- 11 1. All prior and ongoing investigations, services, or contacts;
 - 12 2. Any and all records of services to the family provided by agencies or
13 individuals contracted by the Cabinet for Health and Family Services;
14 and
 - 15 3. All documentation of actions taken as a result of child fatality internal
16 reviews conducted pursuant to KRS 620.050(12)(b);
- 17 (b) Licensing reports from the Cabinet for Health and Family Services, Office of
18 Inspector General, if an incident occurred in a licensed facility;
- 19 (c) All available records regarding protective services provided out of state;
- 20 (d) All records of services provided by the Department for Juvenile Justice
21 regarding the deceased or injured child and his or her caregivers, residents of
22 the home, and persons involved with the child at the time of the incident;
- 23 (e) Autopsy reports;
- 24 (f) Emergency medical service, fire department, law enforcement, coroner, and
25 other first responder reports, including but not limited to photos and
26 interviews with family members and witnesses;
- 27 (g) Medical records regarding the deceased or injured child, including but not

1 limited to all records and documentation set out in this paragraph:

- 2 1. Primary care records, including progress notes; developmental
- 3 milestones; growth charts that include head circumference; all laboratory
- 4 and X-ray requests and results; and birth record that includes record of
- 5 delivery type, complications, and initial physical exam of baby;
- 6 2. In-home provider care notes about observations of the family, bonding,
- 7 others in home, and concerns;
- 8 3. Hospitalization and emergency department records;
- 9 4. Dental records;
- 10 5. Specialist records; and
- 11 6. All photographs of injuries of the child that are available;

12 (h) Educational records of the deceased or injured child, or other children residing
13 in the home where the incident occurred, including but not limited to the
14 records and documents set out in this paragraph:

- 15 1. Attendance records;
- 16 2. Special education services;
- 17 3. School-based health records; and
- 18 4. Documentation of any interaction and services provided to the children
19 and family.

20 The release of educational records shall be in compliance with the Family
21 Educational Rights and Privacy Act, 20 U.S.C. sec. 1232g and its
22 implementing regulations;

23 (i) Head Start records or records from any other child care or early child care
24 provider;

25 (j) Records of any Family, Circuit, or District Court involvement with the
26 deceased or injured child and his or her caregivers, residents of the home and
27 persons involved with the child at the time of the incident that include but are

- 1 not limited to the juvenile and family court records and orders set out in this
2 paragraph, pursuant to KRS Chapters 199, 403, 405, 406, and 600 to 645:
- 3 1. Petitions;
 - 4 2. Court reports by the Department for Community Based Services,
5 guardian ad litem, court-appointed special advocate, and the Citizen
6 Foster Care Review Board;
 - 7 3. All orders of the court, including temporary, dispositional, or
8 adjudicatory; and
 - 9 4. Documentation of annual or any other review by the court;
- 10 (k) Home visit records from the Department for Public Health or other services;
- 11 (l) All information on prior allegations of abuse or neglect and deaths of children
12 of adults residing in the household;
- 13 (m) All law enforcement records and documentation regarding the deceased or
14 injured child and his or her caregivers, residents of the home, and persons
15 involved with the child at the time of the incident; and
- 16 (n) Mental health records regarding the deceased or injured child and his or her
17 caregivers, residents of the home, and persons involved with the child at the
18 time of the incident.
- 19 (7) The panel may seek the advice of experts, such as persons specializing in the fields
20 of psychiatric and forensic medicine, nursing, psychology, social work, education,
21 law enforcement, family law, or other related fields, if the facts of a case warrant
22 additional expertise.
- 23 (8) The panel shall post updates after each meeting to the Web site of the Justice and
24 Public Safety Cabinet regarding case reviews, findings, and recommendations.
- 25 (9) The panel chairperson, or other requested persons, shall report a summary of the
26 panel's discussions and proposed or actual recommendations to the Interim Joint
27 Committee on Health and Welfare of the Kentucky General Assembly monthly or at

1 the request of a committee co-chair. The goal of the committee shall be to ensure
2 impartiality regarding the operations of the panel during its review process.

3 (10) (a) The panel shall publish an annual report by February~~December~~ 1 of each
4 year consisting of case reviews, findings, and recommendations for system
5 and process improvements to help prevent child fatalities and near fatalities
6 that are due to abuse and neglect. The report shall be submitted to the
7 Governor, the secretary of the Cabinet for Health and Family Services, the
8 Chief Justice of the Supreme Court, the Attorney General, and the director of
9 the Legislative Research Commission for distribution to the Child Welfare
10 Oversight and Advisory Committee established in KRS 6.943 and the
11 Judiciary Committee.

12 (b) The panel shall determine which agency is responsible for implementing
13 each recommendation, and shall forward each recommendation in writing
14 to the appropriate agency.

15 (c) Any agency that receives a recommendation from the panel shall, within
16 ninety (90) days of receipt:

17 1. Respond to the panel with a written notice of intent to implement the
18 recommendation, an explanation of how the recommendation will be
19 implemented, and an approximate time frame of implementation; or

20 2. Respond to the panel with a written notice that the agency does not
21 intend to implement the recommendation, and a detailed explanation
22 of why the recommendation cannot be implemented.

23 (11) Information and record copies that are confidential under state or federal law and
24 are provided to the external child fatality and near fatality review panel by the
25 Cabinet for Health and Family Services, the Department for Community Based
26 Services, or any agency, organization, or entity for review shall not become the
27 information and records of the panel and shall not lose their confidentiality by virtue

1 of the panel's access to the information and records. The original information and
2 records used to generate information and record copies provided to the panel in
3 accordance with subsection (6) of this section shall be maintained by the
4 appropriate agency in accordance with state and federal law and shall be subject to
5 the Kentucky Open Records Act, KRS 61.870 to 61.884. All open records requests
6 shall be made to the appropriate agency, not to the external child fatality and near
7 fatality review panel or any of the panel members. Information and record copies
8 provided to the panel for review shall be exempt from the Kentucky Open Records
9 Act, KRS 61.870 to 61.884. At the conclusion of the panel's examination, all copies
10 of information and records provided to the panel involving an individual case shall
11 be destroyed by the Justice and Public Safety Cabinet.

12 (12) Notwithstanding any provision of law to the contrary, the portions of the external
13 child fatality and near fatality review panel meetings during which an individual
14 child fatality or near fatality case is reviewed or discussed by panel members may
15 be a closed session and subject to the provisions of KRS 61.815(1) and shall only
16 occur following the conclusion of an open session. At the conclusion of the closed
17 session, the panel shall immediately convene an open session and give a summary
18 of what occurred during the closed session.

19 (13) Each member of the external child fatality and near fatality review panel, any person
20 attending a closed panel session, and any person presenting information or records
21 on an individual child fatality or near fatality shall not release information or
22 records not available under the Kentucky Open Records Act, KRS 61.870 to 61.884
23 to the public.

24 (14) A member of the external child fatality and near fatality review panel shall not be
25 prohibited from making a good faith report to any state or federal agency of any
26 information or issue that the panel member believes should be reported or disclosed
27 in an effort to facilitate effectiveness and transparency in Kentucky's child

1 protective services.

2 (15) A member of the external child fatality and near fatality review panel shall not be
3 held liable for any civil damages or criminal penalties pursuant to KRS 620.990 as a
4 result of any action taken or omitted in the performance of the member's duties
5 pursuant to this section and KRS 620.050, except for violations of subsection (11),
6 (12), or (13) of this section.

7 **(16) The proceedings, records, opinions, and deliberations of the external child**
8 **fatality and near fatality review panel shall be privileged and shall not be subject**
9 **to discovery, subpoena, or introduction into evidence in any civil or criminal**
10 **actions in any manner that would directly or indirectly identify specific persons**
11 **or cases reviewed by the panel. Nothing in this subsection shall be construed to**
12 **restrict or limit the right to discover or use in any civil action any evidence that is**
13 **discoverable independent of the proceedings of the panel.**

14 **(17)**~~(16)~~ ~~[Beginning in 2014]~~ The Legislative Oversight and Investigations Committee
15 of the Kentucky General Assembly shall conduct an annual evaluation of the
16 external child fatality and near fatality review panel established pursuant to this
17 section to monitor the operations, procedures, and recommendations of the panel
18 and shall report its findings to the General Assembly.

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

20 (1) The coroner of each county shall investigate the cause and manner of all deaths that
21 are defined by KRS 72.405 as a coroner's case.

22 (2) The coroner may, in his sound discretion, when investigating a coroner's case,
23 request the assistance of the district medical examiner and the Office of the
24 Kentucky State Medical Examiner, order an autopsy, and hold an inquest.

25 (3) (a) Upon notification of the death of a child under the age of eighteen (18) years
26 which meets the criteria for a coroner's case as defined in KRS 72.405 and
27 72.025, the coroner shall **immediately**~~[as soon as practicable]~~ contact the local

1 office of the Department for Community Based Services, law enforcement
2 agencies with local jurisdiction, and the local health department to determine
3 the existence of relevant information concerning the case.

4 (b) Any agency of the state or any other agency, institution, or facility providing
5 services to the child or the child's family, shall provide to the coroner upon his
6 or her request the cooperation, assistance, and information to enable the
7 coroner to comply with the provisions of this chapter. This section shall not be
8 deemed to abrogate the attorney-client nor the clergy-penitent privilege or the
9 confidentiality of records provided by KRS 311.377(2). If other privileged or
10 confidential records are disclosed to the coroner pursuant to this section, the
11 records shall remain confidential or privileged and shall not be disclosed
12 except as authorized by this section, to the state or local child fatality response
13 team, or as otherwise required by law.