

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 person
10 exercising custodial control or supervision of the child was under the
11 influence of alcohol or drugs at the time the fatality or near fatality
12 occurred, the law enforcement officer shall request a test of blood,
13 breath, or urine from such 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
16 be issued by, the judge to the appropriate law enforcement official
17 upon probable cause that a child fatality or near fatality has occurred
18 and that the person exercising custodial control or supervision of the
19 child at the time of the fatality or near fatality was under the
20 influence.

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

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

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

- 1 (b) Membership of the multidisciplinary team shall include but shall not be
2 limited to social service workers employed by the Cabinet for Health and
3 Family Services and law enforcement officers. Additional team members may
4 include Commonwealth's and county attorneys, children's advocacy center
5 staff, mental health professionals, medical professionals, victim advocates
6 including advocates for victims of human trafficking, educators, and other
7 related professionals, as deemed appropriate.
- 8 (c) The multidisciplinary team shall review child sexual abuse cases and child
9 human trafficking cases involving commercial sexual activity referred by
10 participating professionals, including those in which the alleged perpetrator
11 does not have custodial control or supervision of the child or is not
12 responsible for the child's welfare. The purpose of the multidisciplinary team
13 shall be to review investigations, assess service delivery, and to facilitate
14 efficient and appropriate disposition of cases through the criminal justice
15 system.
- 16 (d) The team shall hold regularly scheduled meetings if new reports of sexual
17 abuse or child human trafficking cases involving commercial sexual activity
18 are received or if active cases exist. At each meeting, each active case shall be
19 presented and the agencies' responses assessed.
- 20 (e) The multidisciplinary team shall provide an annual report to the public of
21 nonidentifying case information to allow assessment of the processing and
22 disposition of child sexual abuse cases and child human trafficking cases
23 involving commercial sexual activity.
- 24 (f) Multidisciplinary team members and anyone invited by the multidisciplinary
25 team to participate in a meeting shall not divulge case information, including
26 information regarding the identity of the victim or source of the report. Team
27 members and others attending meetings shall sign a confidentiality statement

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

- 1 ~~(e)~~] The commissioner of the Department for Community Based Services, who
2 shall be an ex officio nonvoting member;
- 3 (c) ~~[(d)]~~ The commissioner of the Department for Public Health, who shall be an
4 ex officio nonvoting member;
- 5 (d) ~~[(e)]~~ A family court judge selected by the Chief Justice of the Kentucky
6 Supreme Court, who shall be an ex officio nonvoting member;
- 7 (e) ~~[(f)]~~ A pediatrician from the University of Kentucky's Department of
8 Pediatrics who is licensed and experienced in forensic medicine relating to
9 child abuse and neglect to be selected by the Attorney General from a list of
10 three (3) names provided by the dean of the University of Kentucky School of
11 Medicine;
- 12 (f) ~~[(g)]~~ A pediatrician from the University of Louisville's Department of
13 Pediatrics who is licensed and experienced in forensic medicine relating to
14 child abuse and neglect to be selected by the Attorney General from a list of
15 three (3) names provided by the dean of the University of Louisville School of
16 Medicine;
- 17 (g) ~~[(h)]~~ The state medical examiner or designee;
- 18 (h) ~~[(i)]~~ A court-appointed special advocate (CASA) program director to be
19 selected by the Attorney General from a list of three (3) names provided by
20 the Kentucky CASA Association;
- 21 (i) ~~[(j)]~~ A peace officer with experience investigating child abuse and neglect
22 fatalities and near fatalities to be selected by the Attorney General from a list
23 of three (3) names provided by the commissioner of the Kentucky State
24 Police;
- 25 (j) ~~[(k)]~~ A representative from Prevent Child Abuse Kentucky, Inc. to be selected
26 by the Attorney General from a list of three (3) names provided by the
27 president of the Prevent Child Abuse Kentucky, Inc. board of directors;

- 1 **(k)** ~~[(l)]~~ A practicing local prosecutor to be selected by the Attorney General;
- 2 **(l)** ~~[(m)]~~ The executive director of the Kentucky Domestic Violence Association
- 3 or the executive director's designee;
- 4 **(m)** ~~[(n)]~~ The chairperson of the State Child Fatality Review Team established in
- 5 accordance with KRS 211.684 or the chairperson's designee;
- 6 **(n)** ~~[(o)]~~ A practicing social work clinician to be selected by the Attorney General
- 7 from a list of three (3) names provided by the Board of Social Work;
- 8 **(o)** ~~[(p)]~~ A practicing addiction counselor to be selected by the Attorney General
- 9 from a list of three (3) names provided by the Kentucky Association of
- 10 Addiction Professionals;
- 11 **(p)** ~~[(q)]~~ A representative from the family resource and youth service centers to
- 12 be selected by the Attorney General from a list of three (3) names submitted
- 13 by the Cabinet for Health and Family Services;
- 14 **(q)** ~~[(r)]~~ A representative of a community mental health center to be selected by
- 15 the Attorney General from a list of three (3) names provided by the Kentucky
- 16 Association of Regional Mental Health and Mental Retardation Programs,
- 17 Inc.;
- 18 **(r)** ~~[(s)]~~ A member of a citizen foster care review board selected by the Chief
- 19 Justice of the Kentucky Supreme Court;~~[-and]~~
- 20 **(s)** ~~[(t)]~~ An at-large representative who shall serve as chairperson to be selected
- 21 by the Secretary of State;~~[-]~~
- 22 **(t) The president of the Kentucky Coroners Association; and**
- 23 **(u) A practicing medication-assisted treatment provider to be selected by the**
- 24 **Attorney General from a list of three (3) names provided by the Kentucky**
- 25 **Board of Medical Licensure.**
- 26 (3) (a) By August 1, 2013, the appointing authority or the appointing authorities, as
- 27 the case may be, shall have appointed panel members. Initial terms of

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

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

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

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

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

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

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

27 (6) Each panel member shall be provided copies of all information set out in this

1 subsection, including but not limited to records and information, upon request, to be
2 gathered, unredacted, and submitted to the panel within thirty (30) days by the
3 Cabinet for Health and Family Services from the Department for Community Based
4 Services or any agency, organization, or entity involved with a child subject to a
5 fatality or near fatality:

6 (a) Cabinet for Health and Family Services records and documentation regarding
7 the deceased or injured child and his or her caregivers, residents of the home,
8 and persons supervising the child at the time of the incident that include all
9 records and documentation set out in this paragraph:

- 10 1. All prior and ongoing investigations, services, or contacts;
- 11 2. Any and all records of services to the family provided by agencies or
12 individuals contracted by the Cabinet for Health and Family Services;
13 and
- 14 3. All documentation of actions taken as a result of child fatality internal
15 reviews conducted pursuant to KRS 620.050(12)(b);

16 (b) Licensing reports from the Cabinet for Health and Family Services, Office of
17 Inspector General, if an incident occurred in a licensed facility;

18 (c) All available records regarding protective services provided out of state;

19 (d) All records of services provided by the Department for Juvenile Justice
20 regarding the deceased or injured child and his or her caregivers, residents of
21 the home, and persons involved with the child at the time of the incident;

22 (e) Autopsy reports;

23 (f) Emergency medical service, fire department, law enforcement, coroner, and
24 other first responder reports, including but not limited to photos and
25 interviews with family members and witnesses;

26 (g) Medical records regarding the deceased or injured child, including but not
27 limited to all records and documentation set out in this paragraph:

- 1 1. Primary care records, including progress notes; developmental
- 2 milestones; growth charts that include head circumference; all laboratory
- 3 and X-ray requests and results; and birth record that includes record of
- 4 delivery type, complications, and initial physical exam of baby;
- 5 2. In-home provider care notes about observations of the family, bonding,
- 6 others in home, and concerns;
- 7 3. Hospitalization and emergency department records;
- 8 4. Dental records;
- 9 5. Specialist records; and
- 10 6. All photographs of injuries of the child that are available;
- 11 (h) Educational records of the deceased or injured child, or other children residing
- 12 in the home where the incident occurred, including but not limited to the
- 13 records and documents set out in this paragraph:
- 14 1. Attendance records;
- 15 2. Special education services;
- 16 3. School-based health records; and
- 17 4. Documentation of any interaction and services provided to the children
- 18 and family.
- 19 The release of educational records shall be in compliance with the Family
- 20 Educational Rights and Privacy Act, 20 U.S.C. sec. 1232g and its
- 21 implementing regulations;
- 22 (i) Head Start records or records from any other child care or early child care
- 23 provider;
- 24 (j) Records of any Family, Circuit, or District Court involvement with the
- 25 deceased or injured child and his or her caregivers, residents of the home and
- 26 persons involved with the child at the time of the incident that include but are
- 27 not limited to the juvenile and family court records and orders set out in this

- 1 paragraph, pursuant to KRS Chapters 199, 403, 405, 406, and 600 to 645:
- 2 1. Petitions;
- 3 2. Court reports by the Department for Community Based Services,
- 4 guardian ad litem, court-appointed special advocate, and the Citizen
- 5 Foster Care Review Board;
- 6 3. All orders of the court, including temporary, dispositional, or
- 7 adjudicatory; and
- 8 4. Documentation of annual or any other review by the court;
- 9 (k) Home visit records from the Department for Public Health or other services;
- 10 (l) All information on prior allegations of abuse or neglect and deaths of children
- 11 of adults residing in the household;
- 12 (m) All law enforcement records and documentation regarding the deceased or
- 13 injured child and his or her caregivers, residents of the home, and persons
- 14 involved with the child at the time of the incident; and
- 15 (n) Mental health records regarding the deceased or injured child and his or her
- 16 caregivers, residents of the home, and persons involved with the child at the
- 17 time of the incident.
- 18 (7) The panel may seek the advice of experts, such as persons specializing in the fields
- 19 of psychiatric and forensic medicine, nursing, psychology, social work, education,
- 20 law enforcement, family law, or other related fields, if the facts of a case warrant
- 21 additional expertise.
- 22 (8) The panel shall post updates after each meeting to the Web site of the Justice and
- 23 Public Safety Cabinet regarding case reviews, findings, and recommendations.
- 24 (9) The panel chairperson, or other requested persons, shall report a summary of the
- 25 panel's discussions and proposed or actual recommendations to the Interim Joint
- 26 Committee on Health and Welfare of the Kentucky General Assembly monthly or at
- 27 the request of a committee co-chair. The goal of the committee shall be to ensure

1 impartiality regarding the operations of the panel during its review process.

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

10 (a) The panel shall determine which agency would be responsible for
11 implementing each recommendation, and shall forward each
12 recommendation in writing to the appropriate agency.

13 (b) Any agency that receives a recommendation from the panel shall, within
14 ninety (90) days of receipt:

15 1. Respond to the panel with a written notice of intent to implement the
16 recommendation, an explanation of how the recommendation will be
17 implemented, and an approximate time frame of implementation; or
18 2. Respond to the panel with written notice that the agency does not
19 intend to implement the recommendation, and a detailed explanation
20 of why the agency cannot implement the recommendation.

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

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

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

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

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

27 (15) A member of the external child fatality and near fatality review panel shall not be

1 held liable for any civil damages or criminal penalties pursuant to KRS 620.990 as a
2 result of any action taken or omitted in the performance of the member's duties
3 pursuant to this section and KRS 620.050, except for violations of subsection (11),
4 (12), or (13) of this section.

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

12 **(17)**~~(16)~~ Beginning in 2014 the Legislative Oversight and Investigations Committee of
13 the Kentucky General Assembly shall conduct an annual evaluation of the external
14 child fatality and near fatality review panel established pursuant to this section to
15 monitor the operations, procedures, and recommendations of the panel and shall
16 report its findings to the General Assembly.