

1 AN ACT relating to crimes and punishments.

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

3 ➔Section 1. KRS 17.500 is amended to read as follows:

4 As used in KRS 17.500 to 17.580:

5 (1) "Approved provider" means a mental health professional licensed or certified in  
6 Kentucky whose scope of practice includes providing mental health treatment  
7 services and who is approved by the Sex Offender Risk Assessment Advisory  
8 Board, under administrative regulations promulgated by the board, to provide  
9 comprehensive sex offender presentence evaluations or treatment to adults and  
10 youthful offenders, as defined in KRS 600.020;

11 (2) "Cabinet" means the Justice and Public Safety Cabinet;

12 (3) (a) Except as provided in paragraph (b) of this subsection, "criminal offense  
13 against a victim who is a minor" means any of the following offenses if the  
14 victim is under the age of eighteen (18) at the time of the commission of the  
15 offense:

- 16 1. Kidnapping, as set forth in KRS 509.040, except by a parent;
- 17 2. Unlawful imprisonment, as set forth in KRS 509.020, except by a  
18 parent;
- 19 3. Sex crime;
- 20 4. Promoting a sexual performance of a minor, as set forth in KRS  
21 531.320;
- 22 5. Human trafficking involving commercial sexual activity, as set forth in  
23 KRS 529.100;
- 24 6. Promoting human trafficking involving commercial sexual activity, as  
25 set forth in KRS 529.110;
- 26 7. Promoting prostitution, as set forth in KRS 529.040, when the defendant  
27 advances or profits from the prostitution of a person under the age of

- 1                   eighteen (18);
- 2                   8. Use of a minor in a sexual performance, as set forth in KRS 531.310;
- 3                   9. Sexual abuse, as set forth in KRS 510.120 and 510.130;
- 4                   10. Unlawful transaction with a minor in the first degree, as set forth in KRS
- 5                   530.064(1)(a);
- 6                   11. Any offense involving a minor or depictions of a minor, as set forth in
- 7                   KRS Chapter 531;
- 8                   12. Any attempt to commit any of the offenses described in subparagraphs
- 9                   1. to 11. of this paragraph;
- 10                  13. Solicitation to commit any of the offenses described in subparagraphs 1.
- 11                  to 11. of this paragraph; or
- 12                  14. Any offense from another state or territory, any federal offense, or any
- 13                  offense subject to a court martial of the United States Armed Forces,
- 14                  which is similar to any of the offenses described in subparagraphs 1. to
- 15                  13. of this paragraph.
- 16                  (b) Conduct which is criminal only because of the age of the victim shall not be
- 17                  considered a criminal offense against a victim who is a minor if the
- 18                  perpetrator was under the age of eighteen (18) at the time of the commission
- 19                  of the offense;
- 20                  (4) "Law enforcement agency" means any lawfully organized investigative agency,
- 21                  sheriff's office, police unit, or police force of federal, state, county, urban-county
- 22                  government, charter county, city, consolidated local government, or a combination
- 23                  of these, responsible for the detection of crime and the enforcement of the general
- 24                  criminal federal or state laws;
- 25                  (5) "Registrant" means:
- 26                  (a) Any person eighteen (18) years of age or older at the time of the offense or
- 27                  any youthful offender, as defined in KRS 600.020, who has committed:

- 1           1. A sex crime; or
- 2           2. A criminal offense against a victim who is a minor; or
- 3           (b) Any person required to register under KRS 17.510; or
- 4           (c) Any sexually violent predator; or
- 5           (d) Any person whose sexual offense has been diverted pursuant to KRS 533.250,
- 6           until the diversionary period is successfully completed;
- 7 (6) "Registrant information" means the name, including any lawful name change
- 8 together with the previous name, Social Security number, age, race, sex, date of
- 9 birth, height, weight, hair and eye color, fingerprints, palm prints, DNA sample, a
- 10 photograph, aliases used, residence, motor vehicle operator's license number as well
- 11 as any other government-issued identification card numbers, if any, a brief
- 12 description of the crime or crimes committed, and other information the cabinet
- 13 determines, by administrative regulation, may be useful in the identification of
- 14 registrants;
- 15 (7) "Residence" means any place where a person sleeps. For the purposes of this
- 16 statute, a registrant may have more than one (1) residence. A registrant is required
- 17 to register each residence address;
- 18 (8) "Sex crime" means:
- 19           (a) A felony offense defined in KRS Chapter 510, KRS 529.100 or 529.110
- 20           involving commercial sexual activity, 530.020, 530.064(1)(a), 531.310,
- 21           531.320, ~~or~~ 531.335, or Section 10 of this Act;
- 22           (b) A felony attempt to commit a felony offense specified in paragraph (a) of this
- 23           subsection; or
- 24           (c) A federal felony offense, a felony offense subject to a court-martial of the
- 25           United States Armed Forces, or a felony offense from another state or a
- 26           territory where the felony offense is similar to a felony offense specified in
- 27           paragraph (a) of this subsection;

- 1 (9) "Sexual offender" means any person convicted of, pleading guilty to, or entering an  
2 Alford plea to a sex crime as defined in this section, as of the date the verdict is  
3 entered by the court;
- 4 (10) "Sexually violent predator" means any person who has been subjected to  
5 involuntary civil commitment as a sexually violent predator, or a similar  
6 designation, under a state, territory, or federal statutory scheme;
- 7 (11) "The board" means the Sex Offender Risk Assessment Advisory Board created  
8 under KRS 17.554;
- 9 (12) "Victim" has the same meaning as in KRS 421.500;
- 10 (13) "DNA sample" or "deoxyribonucleic acid sample" means a blood or swab specimen  
11 from a person, as prescribed by administrative regulation, that is required to provide  
12 a DNA sample pursuant to KRS 17.170 or 17.510, that shall be submitted to the  
13 Department of Kentucky State Police forensic laboratory for law enforcement  
14 identification purposes and inclusion in law enforcement identification databases;  
15 and
- 16 (14) "Authorized personnel" means an agent of state government who is properly trained  
17 in DNA sample collection pursuant to administrative regulation.

18 ➔Section 2. KRS 531.010 is amended to read as follows:

19 As used in this chapter:

- 20 (1) **"Child sex doll" means an anatomically correct or anatomically precise doll,**  
21 **mannequin, or robot that may consist of an entire body, pelvis, or any other body**  
22 **part, with features of, or with features that resemble, those of a minor and**  
23 **intended for use in sexual acts;**
- 24 (2) **"Computer-generated image" means an image, motion picture, or visual**  
25 **depiction of a person or likeness of a person that was created, adapted, or**  
26 **modified by, or with the use of, a computer-based processor or program;**
- 27 (3) **"Digitization" means an image that has been altered in a realistic manner**

1 utilizing an image or images of a person, other than the person depicted, or  
 2 computer-generated images;

3 (4) "Distribute" means to transfer possession of, whether with or without  
 4 consideration;~~[-]~~

5 (5)~~[(2)]~~ "Matter" means any:

6 (a) Book, magazine, newspaper, or other printed or written material;~~[- or any]~~

7 (b) Picture, drawing, photograph, motion picture, digitization, live image  
 8 transmitted over the internet or other electronic network, or other pictorial  
 9 representation or any statue, child sex doll, or other figure; or~~[- or any]~~

10 (c) Recording, transcription, or mechanical, chemical, or electrical reproduction,  
 11 or any other articles, equipment, machines, or materials;~~[-]~~

12 (6)~~[(3)]~~ "Obscene" means:

13 (a) To the average person, applying contemporary community standards, the  
 14 predominant appeal of the matter, taken as a whole, is to prurient interest in  
 15 sexual conduct;~~[- and]~~

16 (b) The matter depicts or describes the sexual conduct in a patently offensive  
 17 way; and

18 (c) The matter, taken as a whole, lacks serious literary, artistic, political, or  
 19 scientific value;~~[-]~~

20 (7)~~[(4)]~~ "Private erotic matter" means an obscene visual image, including a  
 21 photograph, film, video recording, digitization, or digital reproduction, of an  
 22 identifiable person, depicting sexual conduct or the exposure of uncovered human  
 23 genitals, buttocks, or nipple of the female breast. A person may be identifiable from  
 24 the image itself or from information distributed in connection with the visual  
 25 image; and~~[-]~~

26 (8)~~[(5)]~~ "Sexual conduct" means acts of masturbation, homosexuality, lesbianism,  
 27 bestiality, sexual intercourse, or deviate~~[- deviant]~~ sexual intercourse; or physical

1 contact with the genitals, flagellation, or excretion for the purpose of sexual  
2 stimulation or gratification.

3 ➔Section 3. KRS 531.300 is amended to read as follows:

4 As used in KRS 531.080 and 531.300~~[531.310]~~ to 531.370:

- 5 (1) ~~["Distribute" means to transfer possession of, whether with or without~~  
6 ~~consideration;~~
- 7 ~~(2) "Matter" means any book, magazine, newspaper, or other printed or written~~  
8 ~~material or any picture, drawing, photograph, motion picture, live image transmitted~~  
9 ~~over the Internet or other electronic network, or other pictorial representation or any~~  
10 ~~statue or other figure, or any recording transcription or mechanical, chemical or~~  
11 ~~electrical reproduction or any other articles, equipment, machines, or materials;~~
- 12 ~~(3) "Obscene" means the predominate appeal of the matter taken as a whole is to a~~  
13 ~~prurient interest in sexual conduct involving minors;~~
- 14 **(2) "Performance" means any play, motion picture, photograph, dance, or any other**  
15 **visual representation or digitization exhibited before an audience;**
- 16 **(3) "Promote" means to prepare, publish, print, procure, or manufacture, or to offer**  
17 **or agree to do the same;**
- 18 **(4)**~~[(4)] "Sexual conduct by a minor" means:~~
- 19 (a) Acts of masturbation, homosexuality, lesbianism, **bestiality**~~[bestiality],~~  
20 sexual intercourse, or **deviate**~~[deviant]~~ sexual intercourse, actual or simulated;
- 21 (b) Physical contact with, or willful or intentional exhibition of the genitals;
- 22 (c) Flagellation or excretion for the purpose of sexual stimulation or gratification;
- 23 or
- 24 (d) The exposure, in an obscene manner, of the unclothed or apparently unclothed  
25 human male or female genitals, pubic area or buttocks, or the female breast,  
26 whether or not subsequently obscured by a mark placed thereon, or otherwise  
27 altered, in any resulting motion picture, photograph, **digitization** or other

1 visual representation, exclusive of exposure portrayed in matter of a private,  
2 family nature not intended for distribution outside the family;{

3 ~~(5) "Performance" means any play, motion picture, photograph or dance. Performance~~  
4 ~~also means any other visual representation exhibited before an audience;}~~

5 ~~(5){(6)}~~ "Sexual performance" means any performance or part thereof which includes  
6 sexual conduct by a minor; and

7 ~~(6){(7)}~~ **"Traffic" means to manufacture, distribute, sell, transfer, or possess with**  
8 **intent to manufacture, distribute, sell, or transfer**~~["Promote" means to prepare,~~  
9 ~~publish, print, procure or manufacture, or to offer or agree to do the same].~~

10 ➔SECTION 4. A NEW SECTION OF KRS 531.300 TO 531.370 IS CREATED  
11 TO READ AS FOLLOWS:

12 **(1) A person is guilty of possession of a child sex doll when he or she knowingly**  
13 **possesses a child sex doll.**

14 **(2) Possession of a child sex doll is a Class D felony.**

15 ➔SECTION 5. A NEW SECTION OF KRS 531.300 TO 531.370 IS CREATED  
16 TO READ AS FOLLOWS:

17 **(1) A person is guilty of trafficking a child sex doll when he or she knowingly traffics**  
18 **a child sex doll.**

19 **(2) Any person who has in his or her possession more than one (1) child sex doll**  
20 **shall be rebuttably presumed to have that child sex doll in his or her possession**  
21 **with the intent to traffic it.**

22 **(3) Trafficking a child sex doll is a Class C felony.**

23 ➔SECTION 6. A NEW SECTION OF KRS 531.300 TO 531.370 IS CREATED  
24 TO READ AS FOLLOWS:

25 **(1) A person is guilty of importing a child sex doll when he or she knowingly**  
26 **transports a child sex doll into the Commonwealth by any means with the intent**  
27 **to distribute, sell, or transfer the child sex doll.**

1 (2) Any person who has in his or her possession more than one (1) child sex doll  
 2 shall be rebuttably presumed to have that child sex doll in his or her possession  
 3 with the intent to distribute, sell, or transfer it.

4 (3) Importing a child sex doll is a Class C felony.

5 ➔SECTION 7. A NEW SECTION OF KRS 531.300 TO 531.370 IS CREATED  
 6 TO READ AS FOLLOWS:

7 (1) A person is guilty of permitting or promoting the use of a child sex doll when, he  
 8 or she having possession or control of a child sex doll or having possession or  
 9 control of a premises which he or she knows or has reasonable cause to know is  
 10 being used for the purposes of utilizing a child sex doll, fails to make reasonable  
 11 and timely effort to halt or abate such use.

12 (2) Permitting or promoting the use of a child sex doll is a Class C felony.

13 ➔Section 8. KRS 531.320 is amended to read as follows:

14 (1) A person is guilty of promoting a sexual performance by a minor when, knowing  
 15 the character and content thereof, he or she produces, directs, or promotes any  
 16 performance which includes sexual conduct by a minor or digitization of a minor.

17 (2) Promoting a sexual performance by a minor is:

18 (a) A Class C felony if the minor or digitization of a minor involved in the  
 19 sexual performance is less than eighteen (18) years old at the time the minor  
 20 or digitization of a minor engages in the prohibited activity;

21 (b) A Class B felony if the minor or digitization of a minor involved in the  
 22 sexual performance is less than sixteen (16) years old at the time the minor or  
 23 digitization of a minor engages in the prohibited activity; and

24 (c) A Class A felony if the minor involved in the sexual performance incurs  
 25 physical injury thereby.

26 ➔Section 9. KRS 531.330 is amended to read as follows:

27 (1) For purposes of KRS 529.040 where the offense involves commercial sexual



1 activity and for the purposes of KRS 530.070, 531.080, and 531.300 to 531.370,  
 2 any person who appears to be under the age of eighteen (18), or under the age of  
 3 sixteen (16), shall be presumed to be under the age of eighteen (18), or under the  
 4 age of sixteen (16), as the case may be.

5 (2) In any prosecution under KRS 529.040 where the offense involves commercial  
 6 sexual activity by a minor and in any prosecution under KRS 530.070, 531.080, and  
 7 531.300 to 531.370, the defendant may prove in exculpation that he or she in good  
 8 faith reasonably believed that the person involved in the performance was not a  
 9 minor.

10 (3) *In any prosecution under KRS 531.300 to 531.370 where the offense involves a*  
 11 *digitization that used an actual minor or minors as the source, the presumption of*  
 12 *minority shall be the age of the actual minor or minors.*

13 (4) The presumption raised in subsection (1) or (3) of this section may be rebutted by  
 14 any competent evidence.

15 ➔Section 10. KRS 531.340 is amended to read as follows:

16 (1) A person is guilty of distribution of matter portraying a sexual performance by a  
 17 minor when, having knowledge of its content and character, he or she:

18 (a) Sends or causes to be sent into this state for sale or distribution;~~or~~

19 (b) Brings or causes to be brought into this state for sale or distribution; or

20 (c) In this state~~, he or she~~:

21 1. Exhibits for profit or gain;~~or~~

22 2. Distributes;~~or~~

23 3. Offers to distribute; or

24 4. Has in his or her possession with intent to distribute, exhibit for profit or  
 25 gain or offer to distribute;~~or~~

26 any matter portraying a sexual performance by a minor *or digitization of a*  
 27 *minor.*

1 (2) Any person who has in his or her possession more than one (1) unit of **matter, as**  
 2 **defined by Section 2 of this Act,**~~material coming within the provision of KRS~~  
 3 ~~531.300(2)]~~ shall be rebuttably presumed to have **that matter**~~[such material]~~ in his  
 4 or her possession with the intent to distribute it.

5 (3) Distribution of matter portraying a sexual performance by a minor is:

6 (a) A Class D felony for the first offense, and a Class C felony for each  
 7 subsequent offense, if the person knows that the minor **or digitization of a**  
 8 **minor** portrayed is less than eighteen (18) years old at the time of the sexual  
 9 performance; and

10 (b) A Class C felony for the first offense, and a Class B felony for each  
 11 subsequent offense, if the person knows that the minor **or digitization of a**  
 12 **minor** portrayed is less than twelve (12) years old at the time of the sexual  
 13 performance.

14 ➔Section 11. KRS 531.350 is amended to read as follows:

15 (1) A person is guilty of promoting sale of material portraying a sexual performance by  
 16 a minor when he **or she** knowingly, as a condition to a sale, allocation,  
 17 consignment, or delivery for resale of any paper, magazine, book, periodical,  
 18 publication or other merchandise, requires that the purchaser or consignee receive  
 19 any matter portraying a sexual performance by a minor **or digitization of a minor,**  
 20 or he **or she** denies or threatens to deny a franchise, revokes or threatens to revoke,  
 21 or imposes any penalty, financial or otherwise, by reason of the failure of any  
 22 person to accept such matter, or by reason of the return of such matter.

23 (2) Promoting sale of matter portraying a sexual performance by a minor is a:

24 **(a)** Class A misdemeanor for the first offense;~~[-]~~

25 **(b)** ~~[-]~~Class D felony for the second offense;~~[-]~~ and

26 **(c)** ~~[-]~~Class C felony for **the third or**~~[-]~~ subsequent offense.

27 ➔Section 12. KRS 531.360 is amended to read as follows:

1 (1) A person is guilty of advertising material portraying a sexual performance by a  
 2 minor when, having knowledge of its content and character thereof, he or she writes  
 3 or creates advertising or solicits anyone to publish such advertising or otherwise  
 4 promotes the sale or distribution of matter portraying a sexual performance by a  
 5 minor **or a digitization of a minor.**

6 (2) Advertising material portraying a sexual performance by a minor is a

7 **(a)** Class D felony for the first offense; and

8 **(b)** ~~Class C felony for~~ **the second or** ~~each~~ subsequent offense.

9 ➔Section 13. KRS 531.370 is amended to read as follows:

10 (1) A person is guilty of using minors to distribute material portraying a sexual  
 11 performance by a minor when knowing a person to be a minor, or having  
 12 possession of such facts that he **or she** should reasonably know such person is a  
 13 minor, and knowing of the content and character of the material, he **or she**  
 14 knowingly:

15 (a) Hires; ~~or~~

16 (b) Employs; or

17 (c) Uses,

18 a minor to do or assist in doing any of the acts prohibited by KRS 531.340.

19 (2) Using minors to distribute material portraying a sexual performance by a minor is a  
 20 Class D felony unless the defendant has previously been convicted of violation of  
 21 this section or KRS 531.030, in which case it shall be a Class C felony.

22 ➔SECTION 14. A NEW SECTION OF KRS 531.300 TO 531.370 IS CREATED  
 23 TO READ AS FOLLOWS:

24 **In any prosecution under KRS 531.300 to 531.370 where the offense involves matter or**  
 25 **material portraying a digitization of a minor, the Commonwealth shall not be required**  
 26 **to prove the actual identity or age of the digitized minor, or that the minor actually**  
 27 **exists.**