

1 AN ACT relating to the protection of children.

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

3 ➔Section 1. KRS 15A.190 is amended to read as follows:

4 The Justice and Public Safety Cabinet, in consultation with the Cabinet for Health and
5 Family Services, the Kentucky Commission on Women, and any other agency concerned
6 with particular acts of criminal activity, shall:

7 (1) Design, print, and distribute to all law enforcement agencies in the Commonwealth,
8 an electronic or paper uniform reporting form, to be known as the JC-3, which
9 provides statistical information relating to the crimes involving:

10 **(a)** Domestic violence;~~§~~

11 **(b)** Child abuse;~~§~~

12 **(c)** ***Childhood sexual assault or abuse as defined in Section 3 of this Act;***

13 **(d)** Victimization of the elderly, including but not limited to elder abuse, neglect,
14 and exploitation and other crimes against the elderly;~~§~~ or

15 **(e)** Any other particular area of criminal activity deemed by the secretary of
16 justice and public safety to require research as to its frequency; and

17 (2) Promulgate administrative regulations, in accordance with KRS Chapter 13A, to
18 provide that the information required in KRS 209A.122 be provided to the Criminal
19 Justice Statistical Analysis Center.

20 ➔Section 2. KRS 160.380 is amended to read as follows:

21 (1) As used in this section:

22 (a) "Administrative finding of child abuse or neglect" means a substantiated
23 finding of child abuse or neglect issued by the Cabinet for Health and Family
24 Services that is:

25 1. Not appealed through an administrative hearing conducted in
26 accordance with KRS Chapter 13B;

27 2. Upheld at an administrative hearing conducted in accordance with KRS

- 1 Chapter 13B and not appealed to a Circuit Court; or
- 2 3. Upheld by a Circuit Court in an appeal of the results of an
- 3 administrative hearing conducted in accordance with KRS Chapter 13B;
- 4 (b) "Alternative education program" means a program that exists to meet the
- 5 needs of students that cannot be addressed in a traditional classroom setting
- 6 but through the assignment of students to alternative classrooms, centers, or
- 7 campuses that are designed to remediate academic performance, improve
- 8 behavior, or provide an enhanced learning experience. Alternative education
- 9 programs do not include career or technical centers or departments;
- 10 (c) "Clear CA/N check" means a letter from the Cabinet for Health and Family
- 11 Services indicating that there are no administrative findings of child abuse or
- 12 neglect relating to a specific individual;
- 13 (d) "Relative" means father, mother, brother, sister, husband, wife, son and
- 14 daughter; and
- 15 (e) "Vacancy" means any certified position opening created by the resignation,
- 16 dismissal, nonrenewal of contract, transfer, or death of a certified staff
- 17 member of a local school district, or a new position created in a local school
- 18 district for which certification is required. However, if an employer-employee
- 19 bargained contract contains procedures for filling certified position openings
- 20 created by the resignation, dismissal, nonrenewal of contract, transfer, or
- 21 death of a certified staff member, or creation of a new position for which
- 22 certification is required, a vacancy shall not exist, unless certified positions
- 23 remain open after compliance with those procedures.
- 24 (2) Except as provided in KRS 160.346, the school district personnel actions identified
- 25 in this section shall be carried out as follows:
- 26 (a) All appointments, promotions, and transfers of principals, supervisors,
- 27 teachers, and other public school employees shall be made only by the

1 superintendent of schools, who shall notify the board of the action taken. All
2 employees of the local district shall have the qualifications prescribed by law
3 and by the administrative regulations of the Kentucky Board of Education and
4 of the employing board. Supervisors, principals, teachers, and other
5 employees may be appointed by the superintendent for any school year at any
6 time after February 1 preceding the beginning of the school year. No
7 superintendent of schools shall appoint or transfer himself or herself to
8 another position within the school district;

9 (b) When a vacancy occurs in a local school district, the superintendent shall
10 submit the job posting to the statewide job posting system described in KRS
11 160.152 fifteen (15) days before the position shall be filled. The local school
12 district shall post position openings in the local board office for public
13 viewing;

14 (c) When a vacancy needs to be filled in less than fifteen (15) days' time to
15 prevent disruption of necessary instructional or support services of the school
16 district, the superintendent may seek a waiver from the chief state school
17 officer. If the waiver is approved, the appointment shall not be made until the
18 person recommended for the position has been approved by the chief state
19 school officer. The chief state school officer shall respond to a district's
20 request for waiver or for approval of an appointment within two (2) working
21 days; and

22 (d) When a vacancy occurs in a local district, the superintendent shall conduct a
23 search to locate minority teachers to be considered for the position. The
24 superintendent shall, pursuant to administrative regulations of the Kentucky
25 Board of Education, report annually the district's recruitment process and the
26 activities used to increase the percentage of minority teachers in the district.

27 (3) Restrictions on employment of relatives shall be as follows:

- 1 (a) No relative of a superintendent of schools shall be an employee of the school
2 district. However, this shall not apply to a relative who is a classified or
3 certified employee of the school district for at least thirty-six (36) months
4 prior to the superintendent assuming office and who is qualified for the
5 position the employee holds. A superintendent's spouse who has previously
6 been employed in a school system may be an employee of the school district.
7 A superintendent's spouse who is employed under this provision shall not hold
8 a position in which the spouse supervises certified or classified employees. A
9 superintendent's spouse may supervise teacher aides and student teachers.
10 However, the superintendent shall not promote a relative who continues
11 employment under an exception of this subsection;
- 12 (b) No superintendent shall employ a relative of a school board member of the
13 district;
- 14 (c) No principal's relative shall be employed in the principal's school; and
- 15 (d) A relative that is ineligible for employment under paragraph (a), (b), or (c) of
16 this subsection may be employed as a substitute for a certified or classified
17 employee if the relative is not:
- 18 1. A regular full-time or part-time employee of the district;
 - 19 2. Accruing continuing contract status or any other right to continuous
20 employment;
 - 21 3. Receiving fringe benefits other than those provided other substitutes; or
 - 22 4. Receiving preference in employment or assignment over other
23 substitutes.
- 24 (4) No superintendent shall assign a certified or classified staff person to an alternative
25 education program as part of any disciplinary action taken pursuant to KRS 161.011
26 or 161.790 as part of a corrective action plan established pursuant to the local
27 district evaluation plan.

- 1 (5) No superintendent shall ~~initially~~ employ in any position in the district any person
 2 who:
- 3 **(a) Has been convicted of an offense that would classify a person as** ~~is~~ a
 4 violent offender **under KRS 439.3401;** ~~or~~
- 5 **(b) Has been convicted of a sex crime as defined by KRS 17.500 or a**
 6 **misdemeanor offense under KRS Chapter 510;** ~~17.165 which is classified as~~
 7 a felony ~~or~~
- 8 **(c) Is required to register as a sex offender under KRS 17.500 to 17.580; or**
- 9 **(d) Has** ~~persons with~~ an administrative finding of child abuse or neglect in
 10 records maintained by the Cabinet for Health and Family Services. ~~The~~
 11 ~~superintendent may employ, at his discretion, except at a Kentucky~~
 12 ~~Educational Collaborative for State Agency Children program, persons~~
 13 ~~convicted of sex crimes classified as a misdemeanor.]~~
- 14 (6) Requirements for background checks shall be as follows:
- 15 (a) A superintendent shall require the following individuals to submit to a
 16 national and state criminal background check by the Department of Kentucky
 17 State Police and the Federal Bureau of Investigation and have a clear CA/N
 18 check, provided by the individual:
- 19 1. Each new certified or classified hire;
 - 20 2. A nonfaculty coach or nonfaculty assistant as defined under KRS
 21 161.185;
 - 22 3. A student teacher;
 - 23 4. A school-based decision making council parent member; and
 - 24 5. Any adult who is permitted access to school grounds on a regularly
 25 scheduled and continuing basis pursuant to a written agreement for the
 26 purpose of providing services directly to a student or students as part of
 27 a school-sponsored program or activity;

- 1 (b) 1. The requirements of paragraph (a) of this subsection shall not apply to:
- 2 a. Classified and certified individuals employed by the school district
- 3 prior to June 27, 2019;
- 4 b. Certified individuals who were employed in another certified
- 5 position in a Kentucky school district within six (6) months of the
- 6 date of hire and who had previously submitted to a national and
- 7 state criminal background check and who have a clear CA/N check
- 8 for the previous employment; or
- 9 c. Student teachers who have submitted to and provide a copy of a
- 10 national and state criminal background check by the Department
- 11 of Kentucky State Police and the Federal Bureau of Investigation
- 12 through an accredited teacher education institution in which the
- 13 student teacher is enrolled and who have a clear CA/N check.
- 14 2. The Education Professional Standards Board may promulgate
- 15 administrative regulations to impose additional qualifications to meet
- 16 the requirements of Public Law 92-544;
- 17 (c) A parent member may serve prior to the receipt of the criminal history
- 18 background check and CA/N letter required by paragraph (a) of this
- 19 subsection but shall be removed from the council on receipt by the school
- 20 district of a report documenting a record of abuse or neglect, or a sex crime or
- 21 criminal offense against a victim who is a minor as defined in KRS 17.500, or
- 22 as a violent offender as defined in KRS 17.165, and no further procedures
- 23 shall be required; and
- 24 (d) A superintendent may require a volunteer or a visitor to submit to a national
- 25 and state criminal history background check by the Department of Kentucky
- 26 State Police and the Federal Bureau of Investigation and have a clear CA/N
- 27 check, provided by the individual.

- 1 (7) (a) If a certified or classified position remains unfilled after July 31 or if a
2 vacancy occurs during a school term, a superintendent may employ an
3 individual, who will have supervisory or disciplinary authority over minors,
4 on probationary status pending receipt of the criminal history background
5 check and a clear CA/N check, provided by the individual. Application for the
6 criminal record and a request for a clear CA/N check of a probationary
7 employee shall be made no later than the date probationary employment
8 begins.
- 9 (b) Employment shall be contingent on the receipt of the criminal history
10 background check documenting that the probationary employee has no record
11 of a sex crime nor as a violent offender as defined in KRS 17.165 and receipt
12 of a letter, provided by the individual, from the Cabinet for Health and Family
13 Services stating the employee is clear to hire based on no administrative
14 findings of child abuse or neglect found through a background check of child
15 abuse and neglect records maintained by the Cabinet for Health and Family
16 Services.
- 17 (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary,
18 probationary employment under this section shall terminate on receipt by the
19 school district of a criminal history background check documenting a record
20 of a sex crime or as a violent offender as defined in KRS 17.165 and no
21 further procedures shall be required.
- 22 (8) The provisions of KRS 161.790 shall apply to terminate employment of a certified
23 employee on the basis of a criminal record other than a record of a sex crime or as a
24 violent offender as defined in KRS 17.165, or on the basis of a CA/N check
25 showing an administrative finding of child abuse or neglect.
- 26 (9) (a) All fingerprints requested under this section shall be on an applicant
27 fingerprint card provided by the Department of Kentucky State Police. The

1 fingerprint cards shall be forwarded to the Federal Bureau of Investigation
2 from the Department of Kentucky State Police after a state criminal
3 background check is conducted. The results of the state and federal criminal
4 background check shall be sent to the hiring superintendent. Any fee charged
5 by the Department of Kentucky State Police, the Federal Bureau of
6 Investigation, and the Cabinet for Health and Family Services shall be an
7 amount no greater than the actual cost of processing the request and
8 conducting the search.

9 (b) Each application form, provided by the employer to an applicant for a
10 certified or classified position, shall conspicuously state the following: "FOR
11 THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL
12 AND STATE CRIMINAL HISTORY BACKGROUND CHECK AND A
13 LETTER, PROVIDED BY THE INDIVIDUAL, FROM THE CABINET
14 FOR HEALTH AND FAMILY SERVICES STATING THE APPLICANT
15 HAS NO ADMINISTRATIVE FINDINGS OF CHILD ABUSE OR
16 NEGLECT FOUND THROUGH A BACKGROUND CHECK OF CHILD
17 ABUSE AND NEGLECT RECORDS MAINTAINED BY THE CABINET
18 FOR HEALTH AND FAMILY SERVICES."

19 (c) Each application form for a district position shall require the applicant to:

- 20 1. Identify the states in which he or she has maintained residency,
21 including the dates of residency; and
- 22 2. Provide picture identification.

23 (10) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary,
24 when an employee of the school district is charged with any offense which is
25 classified as a felony, the superintendent may transfer the employee to a second
26 position until such time as the employee is found not guilty, the charges are
27 dismissed, the employee is terminated, or the superintendent determines that further

1 personnel action is not required. The employee shall continue to be paid at the same
2 rate of pay he or she received prior to the transfer. If an employee is charged with
3 an offense outside of the Commonwealth, this provision may also be applied if the
4 charge would have been treated as a felony if committed within the
5 Commonwealth. Transfers shall be made to prevent disruption of the educational
6 process and district operations and in the interest of students and staff and shall not
7 be construed as evidence of misconduct.

8 (11) Notwithstanding any law to the contrary, each certified and classified employee of
9 the school district shall notify the superintendent if he or she has been found by the
10 Cabinet for Health and Family Services to have abused or neglected a child, and if
11 he or she has waived the right to appeal a substantiated finding of child abuse or
12 neglect or if the substantiated incident was upheld upon appeal. Any failure to
13 report this finding shall result in the certified or classified employee being subject
14 to dismissal or termination.

15 (12) The form for requesting a CA/N check shall be made available on the Cabinet for
16 Health and Family Services website.

17 ➔Section 3. KRS 413.249 is amended to read as follows:

18 (1) As used in this section:

19 (a) "Childhood sexual assault or abuse" means an act or series of acts against a
20 person less than eighteen (18) years old and which meets the criteria defining
21 a misdemeanor or felony in:

- 22 1. KRS Chapter 510;
- 23 2. KRS 529.040 when the defendant advances or profits from the
24 prostitution of a minor;
- 25 3. KRS 529.100 when the offense involves commercial sexual activity;
- 26 4. KRS 529.110 when the offense involves commercial sexual activity;
- 27 5. KRS 530.020 or 530.064(1)(a);

- 1 6. KRS Chapter 531 involving a minor or depiction of a minor; or
 2 7. KRS 506.010 or 506.030 for attempt to commit or solicitation to commit
 3 any of the offenses described in subparagraphs 1. to 6. of this paragraph.

4 No prior criminal prosecution or conviction of the civil defendant for the act
 5 or series of acts shall be required to bring a civil action for redress of
 6 childhood sexual assault or abuse;

- 7 (b) "Entity" means a firm, partnership, company, corporation, trustee, association,
 8 or any private or public entity, including the Commonwealth, a city, county,
 9 urban-county, consolidated local government, unified local government, or
 10 charter county government, or any of their agencies, departments, or any KRS
 11 58.180 nonprofit nonstock corporation; and

- 12 (c) "Injury or illness" means either a physical or psychological injury or illness.

- 13 (2) A civil action for recovery of damages for injury or illness suffered as a result of
 14 childhood sexual assault or abuse **is not subject to a period of limitation and may**
 15 **be commenced at any time**~~[shall be brought before whichever of the following~~
 16 ~~periods last expires:~~

- 17 ~~(a) Within ten (10) years of the commission of the act or the last of a series of~~
 18 ~~acts by the same perpetrator;~~

- 19 ~~(b) Within ten (10) years of the date the victim knew, or should have known, of~~
 20 ~~the act;~~

- 21 ~~(c) Within ten (10) years after the victim attains the age of eighteen (18) years; or~~

- 22 ~~(d) Within ten (10) years of the conviction of a civil defendant for an offense~~
 23 ~~included in the definition of childhood sexual assault or abuse.~~

- 24 ~~(3) The time periods set forth in subsection (2) of This section shall apply to a civil~~
 25 ~~action for recovery of damages for injury or illness] against:[:;]~~

- 26 (a) A person alleged to have committed the act of childhood sexual assault or
 27 abuse; or

1 (b) An entity that owed a duty of care to the plaintiff, where a wrongful or
2 negligent act by an employee, officer, director, official, volunteer,
3 representative, or agent of the entity was a legal cause of the childhood sexual
4 assault or abuse that resulted in the injury to the plaintiff.

5 ~~(3)[(4)] [If a complaint is filed alleging that an act of childhood sexual assault or~~
6 ~~abuse occurred more than ten (10) years prior to the date that the action is~~
7 ~~commenced,]The complaint shall be accompanied by a motion to seal the record~~
8 ~~and the complaint shall immediately be sealed by the clerk of the court. The~~
9 ~~complaint shall remain sealed until:~~

10 (a) The court rules upon the motion to seal;

11 (b) Any motion to dismiss under CR 12.02 is ruled upon, and if the complaint is
12 dismissed, the complaint and any related papers or pleadings shall remain
13 sealed unless opened by a higher court; or

14 (c) The defendant files an answer and a motion to seal the record upon grounds
15 that a valid factual defense exists, to be raised in a motion for summary
16 judgment pursuant to CR 56. The record shall remain sealed by the clerk until
17 the court rules upon the defendant's motion to close the record. If the court
18 grants the motion to close, the record shall remain sealed until the defendant's
19 motion for summary judgment is granted. The complaint, motions, and other
20 related papers or pleadings shall remain sealed unless opened by a higher
21 court.

22 ~~(4)[(5)] A victim of childhood sexual assault or abuse shall not have a cause of action~~
23 ~~against a third party, unless the third party failed to act as a reasonable person or~~
24 ~~entity in complying with their duties to the victim. [If a victim of childhood sexual~~
25 ~~assault or abuse has a cause of action under this section, the cause of action shall be~~
26 ~~commenced within the time period set forth in subsection (2) of this section.]~~

27 ~~(5)[(6)] (a) Neither the husband-wife nor any professional-client/patient privilege,~~

1 except the attorney-client and clergy-penitent privilege, shall be a ground for
2 excluding evidence regarding childhood sexual assault or abuse or the cause
3 thereof when an exception to the Kentucky Rules of Evidence is met, in any
4 judicial proceeding. This subsection shall also apply in any criminal
5 proceeding in District or Circuit Court regarding childhood sexual assault or
6 abuse.

7 (b) As used in paragraph (a) of this subsection, the clergy-penitent privilege is
8 limited to information received solely through confidential communications
9 with a clergy member, privately or in a confessional setting, when in the
10 course of the discipline or practice of the clergy member's church,
11 denomination, or organization, he or she is authorized or accustomed to
12 hearing those communications, and under the discipline, tenets, customs, or
13 practices of his or her church, denomination, or organization, has a duty to
14 keep those communications secret.

15 ~~(6)~~~~(7)~~ (a) As was its intention with the passage of 2017 Ky. Acts ch. 114, sec. 2,
16 the General Assembly hereby states that the amendments enacted in 2017 Ky.
17 Acts ch. 114, sec. 2 shall be applied retroactively to actions accruing before its
18 effective date of June 29, 2017. This section is a remedial statute which is to
19 be given the most liberal interpretation to provide remedies for victims of
20 childhood sexual assault or abuse.

21 (b) Notwithstanding any provision of law to the contrary, any claim for childhood
22 sexual assault or abuse that was barred as of March 23, 2021, because the
23 applicable statute of limitations had expired is hereby revived, and the action
24 may be brought if commenced within five (5) years of the date on which the
25 applicable statute of limitations expired.

26 **(7) The provisions of subsection (2) of this section shall apply to any victim whose**
27 **statute of limitation has not run prior to the effective date of this Act.**

1 ➔Section 4. KRS 510.050 is amended to read as follows:

2 (1) A person is guilty of rape in the second degree when:

3 (a) Being eighteen (18) years old or more, he or she engages in sexual intercourse
4 with another person less than fourteen (14) years old; or

5 (b) He or she engages in sexual intercourse with another person who is mentally
6 incapacitated or who is incapable of consent because he or she is an individual
7 with an intellectual disability.

8 (2) Rape in the second degree is a Class C felony, **unless the defendant is a person in**
9 **a position of authority or position of special trust as those terms are defined in**
10 **KRS 532.045, in which case it is a Class B felony.**

11 ➔Section 5. KRS 510.080 is amended to read as follows:

12 (1) A person is guilty of sodomy in the second degree when:

13 (a) Being eighteen (18) years old or more, he or she engages in deviate sexual
14 intercourse with another person less than fourteen (14) years old; or

15 (b) He or she engages in deviate sexual intercourse with another person who is
16 mentally incapacitated or who is incapable of consent because he or she is an
17 individual with an intellectual disability.

18 (2) Sodomy in the second degree is a Class C felony, **unless the defendant is a person**
19 **in a position of authority or position of special trust as those terms are defined in**
20 **KRS 532.045, in which case it is a Class B felony.**

21 ➔Section 6. KRS 510.155 is amended to read as follows:

22 (1) It shall be unlawful for any person to knowingly use a communications system,
23 including computers, computer networks, computer bulletin boards, cellular
24 telephones, or any other electronic means, for the purpose of:

25 (a) Procuring or promoting the use of a minor, including a peace officer, or a
26 person working in coordination with law enforcement, posing as a minor if
27 the person believes that the peace officer or the person working in

1 coordination with law enforcement is a minor or is wanton or reckless in that
2 belief; ~~or~~

3 (b) Procuring or promoting the use of a minor from an adult intermediary,
4 including a peace officer, or a person working in coordination with law
5 enforcement, posing as an adult intermediary for a minor if the person
6 believes that the peace officer or the person working in coordination with law
7 enforcement is an adult intermediary for a minor or is wanton or reckless in
8 that belief;

9 for any activity in violation of KRS 510.040, 510.050, 510.060, 510.070, 510.080,
10 510.090, 510.110, 529.100 where that offense involves commercial sexual activity,
11 or 530.064(1)(a), or KRS Chapter 531.

12 (2) No person shall be convicted of this offense and an offense specified in KRS
13 506.010, 506.030, 506.040, or 506.080 for a single course of conduct intended to
14 consummate in the commission of the same offense with the same minor or peace
15 officer.

16 (3) Each day a person knowingly uses a communications system for the purpose of
17 procuring or promoting the use of a minor shall be a separate violation of this
18 section.

19 (4) The solicitation of a minor through electronic communication under subsection (1)
20 of this section shall be prima facie evidence of the person's intent to commit the
21 offense, and the offense is complete at that point without regard to whether the
22 person met or attempted to meet the minor.

23 (5) This section shall apply to electronic communications originating within or received
24 within the Commonwealth.

25 (6) Except as provided in subsection (7) of this section, a violation of this section is
26 punishable as a Class C~~Class D~~ felony.

27 (7) A violation of this section is punishable as a Class B~~Class C~~ felony if:

- 1 (a) The minor or perceived minor procured or promoted is under twelve (12)
 2 years old;
- 3 (b) *The offender is a person in a position of authority or position of special*
 4 *trust as those terms are defined in KRS 532.045;*
- 5 (c) The offender is a registrant;~~{or}~~
- 6 (d)~~{(e)}~~ A person enters into the Commonwealth from another jurisdiction for
 7 the purpose of procuring or promoting the use of a minor or perceived minor
 8 in violation of this section; or
- 9 (e) *The minor or perceived minor procured or promoted is for an activity in*
 10 *violation of Section 7 of this Act where that offense involves commercial*
 11 *sexual activity.*

12 ➔Section 7. KRS 529.100 is amended to read as follows:

- 13 (1) A person is guilty of human trafficking when the person intentionally subjects one
 14 (1) or more persons to engage in:
- 15 (a) Forced labor or services; or
- 16 (b) Commercial sexual activity through the use of force, fraud, or coercion,
 17 except that if the person is under the age of eighteen (18), the commercial
 18 sexual activity need not involve force, fraud, or coercion.
- 19 (2) ~~{(a)}~~ Human trafficking is a *Class B*~~{Class C}~~ felony unless ~~{it involves serious~~
 20 ~~physical injury to a trafficked person, in which case it is a Class B felony.~~
- 21 ~~{(b)}~~ If ~~{the}~~ victim of human trafficking is under eighteen (18) years of age, *in*
 22 *which case it is a Class A felony*~~{the penalty for the offense shall be one (1)}~~
 23 ~~level higher than the level otherwise specified in this section}.~~

24 ➔Section 8. KRS 529.110 is amended to read as follows:

- 25 (1) A person is guilty of promoting human trafficking when the person intentionally:
- 26 (a) Benefits financially or receives anything of value from knowing participation
 27 in human trafficking; or

1 (b) Recruits, entices, harbors, transports, provides, or obtains by any means, or
 2 attempts to recruit, entice, harbor, transport, provide, or obtain by any means,
 3 another person, knowing that the person will be subject to human trafficking.

4 (2) Promoting human trafficking is a Class C~~Class D~~ felony unless a victim of the
 5 trafficking is under eighteen (18), in which case it is a Class B~~Class C~~ felony.

6 ➔Section 9. KRS 531.340 is amended to read as follows:

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

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

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

11 (c) In this state, he or she:

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

13 2. Distributes;~~or~~

14 3. Offers to distribute; or

15 4. Has in his or her possession with intent to distribute, exhibit for profit or
 16 gain or offer to distribute, any matter portraying a sexual performance
 17 by a minor.

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

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

23 (a) A ~~Class D felony for the first offense, and a~~ Class C felony ~~for each~~
 24 ~~subsequent offense, if~~ the person knows that the minor portrayed is less than
 25 eighteen (18) years old at the time of the sexual performance; and

26 (b) A ~~Class C felony for the first offense, and a~~ Class B felony ~~for each~~
 27 ~~subsequent offense, if~~ the person knows that the minor portrayed is less than

1 twelve (12) years old at the time of the sexual performance.

2 **(4) Any person convicted under this section shall not be released on probation or**
3 **parole until he or she has served at least eighty-five percent (85%) of the sentence**
4 **imposed.**

5 ➔Section 10. KRS 532.060 is amended to read as follows:

- 6 (1) A sentence of imprisonment for a felony shall be an indeterminate sentence, the
7 maximum of which shall be fixed within the limits provided by subsection (2) **of**
8 **this section**, and subject to modification by the trial judge pursuant to KRS
9 532.070.
- 10 (2) Unless otherwise provided by law, the authorized maximum terms of imprisonment
11 for felonies are:
- 12 (a) For a Class A felony, not less than twenty (20) years nor more than fifty (50)
13 years, or life imprisonment;
- 14 (b) For a Class B felony, not less than ten (10) years nor more than twenty (20)
15 years;
- 16 (c) For a Class C felony, not less than five (5) years nor more than ten (10) years;
17 and
- 18 (d) For a Class D felony, not less than one (1) year nor more than five (5) years.
- 19 (3) For any felony specified in KRS Chapter 510 ~~or~~ KRS 530.020, 530.064(1)(a), ~~or~~
20 ~~§531.310,~~ **531.320, 531.335, or Section 7, 8, or 9 of this Act,** the sentence shall
21 include an additional five (5) year period of postincarceration supervision which
22 shall be added to the maximum sentence rendered for the offense. During this
23 period of postincarceration supervision, if a defendant violates the provisions of
24 postincarceration supervision, the defendant may be reincarcerated for:
- 25 (a) The remaining period of his **or her** initial sentence, if any is remaining; and
26 (b) The entire period of postincarceration supervision, or if the initial sentence
27 has been served, for the remaining period of postincarceration supervision.

1 (4) In addition to the penalties provided in this section, for any person subject to a
2 period of postincarceration supervision pursuant to KRS 532.400 his or her
3 sentence shall include an additional one (1) year period of postincarceration
4 supervision following release from incarceration upon expiration of sentence if the
5 offender is not otherwise subject to another form of postincarceration supervision.
6 During this period of postincarceration supervision, if an offender violates the
7 provisions of supervision, the offender may be reincarcerated for the remaining
8 period of his or her postincarceration supervision.

9 (5) The actual time of release within the maximum established by subsection (1) ***of this***
10 ***section***, or as modified pursuant to KRS 532.070, shall be determined under
11 procedures established elsewhere by law.

12 ➔Section 11. KRS 532.200 is amended to read as follows:

13 As used in KRS 532.210 to 532.250, unless the context otherwise requires:

14 (1) "Home" means the temporary or permanent residence of a defendant consisting of
15 the actual living area. If more than one (1) residence or family is located on a single
16 piece of property, "home" does not include the residence of any other person who is
17 not part of the social unit formed by the defendant's immediate family. A hospital,
18 nursing care facility, hospice, half-way house, group home, residential treatment
19 facility, or boarding house may serve as a "home" under this section;

20 (2) "Home incarceration" means the use of a monitoring device approved by the
21 commissioner of the Department of Corrections to facilitate a prisoner's ability to
22 maintain gainful employment or to participate in programs approved as a condition
23 of his or her incarceration, or both, using the person's home for purposes of
24 confinement;

25 (3) "Violent felony offense" means an offense ***that would classify a person as a violent***
26 ***offender under KRS 439.3401***~~defined in KRS 507.020 (murder), 507.030~~
27 ~~(manslaughter in the first degree), 508.010 (assault in the first degree), 508.020~~

1 ~~(assault in the second degree), 509.040 (kidnapping), 510.040 (rape in the first~~
2 ~~degree), 510.070 (sodomy in the first degree), 510.110 (sexual abuse in the first~~
3 ~~degree), 511.020 (burglary in the first degree), 513.020 (arson in the first degree),~~
4 ~~513.030 (arson in the second degree), 513.040 (arson in the third degree), 515.020~~
5 ~~(robbery in the first degree), 515.030 (robbery in the second degree), 520.020~~
6 ~~(escape in the first degree), any criminal attempt to commit the offense (KRS~~
7 ~~506.010), or conviction as a persistent felony offender (KRS 532.080) when the~~
8 ~~offender has a felony conviction for any of the above listed offenses within the five~~
9 ~~(5) year period preceding the date of the latest conviction];~~

10 (4) "Terminal illness" means a medically recognized disease for which the prognosis is
11 death within six (6) months to a reasonable degree of medical certainty; and

12 (5) "Approved monitoring device" means an electronic device or apparatus which is
13 capable of recording, tracking, or transmitting information as to the prisoner's
14 location or verifying the prisoner's presence or non-presence in the home, or both.
15 The devices shall be minimally intrusive. Devices shall not be used without the
16 prisoner's knowledge to record or transmit:

17 (a) Visual images other than the defendant's face;

18 (b) Oral or wire communications or any auditory sound other than the defendant's
19 voice; or

20 (c) Information as to the prisoner's activities while inside the home.