

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 4, 5, 6, 7, or 11 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" means electronic, magnetic, optical, electrochemical, or other high-
25 speed data processing device performing logical, arithmetic, or storage functions,
26 including but not limited to personal computers, laptops, computer software,
27 computer servers, processors, coprocessors, memory devices, storage devices, and

1 input and output devices;

2 (3) "Computer-generated image" means any visual depiction, including any
3 photograph, film, video, or picture, where the depiction has been created,
4 adapted, or modified by a computer to appear to be an identifiable person;

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

7 (5) "Identifiable person" means a person who is recognizable by the person's face,
8 likeness, or other distinguishing characteristic;

9 (6)[(2)] "Matter" means any:

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

11 (b) Picture, drawing, photograph, motion picture, live image transmitted over the
12 internet or other electronic network,[- or] other pictorial representation, or
13 computer-generated image;[- or]

14 (c) [~~any~~]Statue, child sex doll, or other figure; or[- or any]

15 (d) Recording, transcription, or mechanical, chemical, or electrical reproduction,
16 or any other articles, equipment, machines, or materials;[-]

17 (7)[(3)] "Obscene" means:

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

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

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

25 (8)[(4)] "Private erotic matter" means an obscene visual image, including a
26 photograph, film, video recording, computer-generated image, or digital
27 reproduction, of an identifiable person, depicting sexual conduct or the exposure of

1 uncovered human genitals, buttocks, or nipple of the female breast. A person may
 2 be identifiable from the image itself or from information distributed in connection
 3 with the visual image; ~~and~~[-]

4 ~~(9)~~[-~~5~~] "Sexual conduct" means acts of masturbation, homosexuality, lesbianism,
 5 bestiality, sexual intercourse, or ~~deviate~~[-~~deviant~~] sexual intercourse; or physical
 6 contact with the genitals, flagellation, or excretion for the purpose of sexual
 7 stimulation or gratification.

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

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

10 (1) ~~["Distribute" means to transfer possession of, whether with or without~~
 11 ~~consideration;~~

12 ~~(2) "Matter" means any book, magazine, newspaper, or other printed or written~~
 13 ~~material or any picture, drawing, photograph, motion picture, live image transmitted~~
 14 ~~over the Internet or other electronic network, or other pictorial representation or any~~
 15 ~~statue or other figure, or any recording transcription or mechanical, chemical or~~
 16 ~~electrical reproduction or any other articles, equipment, machines, or materials;~~

17 ~~(3) "Obscene" means the predominate appeal of the matter taken as a whole is to a~~
 18 ~~prurient interest in sexual conduct involving minors;~~

19 **(2) "Performance" means any play, motion picture, photograph, dance, or any other**
 20 **visual representation or computer-generated image exhibited before an audience;**

21 **(3) "Promote" means to prepare, publish, print, procure, or manufacture, or to offer**
 22 **or agree to do the same;**

23 ~~(4)~~[-~~4~~] "Sexual conduct by a minor" means:

24 (a) Acts of masturbation, homosexuality, lesbianism, ~~bestiality~~[-~~bestiality~~],
 25 sexual intercourse, or ~~deviate~~[-~~deviant~~] sexual intercourse, actual or simulated;

26 (b) Physical contact with, or willful or intentional exhibition of the genitals;

27 (c) Flagellation or excretion for the purpose of sexual stimulation or gratification;

1 or

2 (d) The exposure, in an obscene manner, of the unclothed or apparently unclothed
 3 human male or female genitals, pubic area or buttocks, or the female breast,
 4 whether or not subsequently obscured by a mark placed thereon, or otherwise
 5 altered, in any resulting motion picture, photograph, **computer-generated**
 6 **image**, or other visual representation, exclusive of exposure portrayed in
 7 matter of a private, family nature not intended for distribution outside the
 8 family;†

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

11 ~~(5)†(6) "Sexual performance" means any performance or part thereof which includes~~
 12 ~~sexual conduct by a minor; and~~

13 ~~(6)†(7) "**Traffic**" means to manufacture, distribute, sell, transfer, or possess with~~
 14 ~~**intent to manufacture, distribute, sell, or transfer**["Promote" means to prepare,~~
 15 ~~publish, print, procure or manufacture, or to offer or agree to do the same].~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (1) A person is guilty of promoting a sexual performance by a minor when, knowing
21 the character and content thereof, he **or she** produces, directs, or promotes any
22 performance which includes sexual conduct by a minor **or computer-generated**
23 **image of a minor.**

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

25 (a) A Class C felony if the minor **or computer-generated image of a minor**
26 involved in the sexual performance is less than eighteen (18) years old at the
27 time the minor **or computer-generated image of a minor** engages in the

1 prohibited activity;

2 (b) A Class B felony if the minor *or computer-generated image of a minor*
3 involved in the sexual performance is less than sixteen (16) years old at the
4 time the minor *or computer-generated image of a minor* engages in the
5 prohibited activity; and

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

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

9 (1) For purposes of KRS 529.040 where the offense involves commercial sexual
10 activity and for the purposes of KRS 530.070, 531.080, and 531.300 to 531.370,
11 any person who appears to be under the age of eighteen (18), or under the age of
12 sixteen (16), shall be presumed to be under the age of eighteen (18), or under the
13 age of sixteen (16), as the case may be.

14 (2) In any prosecution under KRS 529.040 where the offense involves commercial
15 sexual activity by a minor and in any prosecution under KRS 530.070, 531.080, and
16 531.300 to 531.370, the defendant may prove in exculpation that he *or she* in good
17 faith reasonably believed that the person involved in the performance was not a
18 minor.

19 (3) *In any prosecution under KRS 531.300 to 531.370 where the offense involves a*
20 *computer-generated image that used an actual minor or minors as the source, the*
21 *presumption of minority shall be the age of the actual minor or minors.*

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

24 ➔Section 10. KRS 531.335 is amended to read as follows:

25 (1) A person is guilty of possession or viewing of matter portraying a sexual
26 performance by a minor when, having knowledge of its content, character, and that
27 the sexual performance is by a minor, he or she:

- 1 (a) Knowingly has in his or her possession or control any matter which visually
2 depicts an actual sexual performance by a minor person *or computer-*
3 *generated image of a minor person*; or
- 4 (b) Intentionally views any matter which visually depicts an actual sexual
5 performance by a minor person *or computer-generated image of a minor*
6 *person*.
- 7 (2) The provisions of subsection (1)(b) of this section:
- 8 (a) Shall only apply to the deliberate, purposeful, and voluntary viewing of matter
9 depicting sexual conduct by a minor person *or computer-generated image of*
10 *a minor person* and not to the accidental or inadvertent viewing of such
11 matter;
- 12 (b) Shall not apply to persons viewing the matter in the course of a law
13 enforcement investigation or criminal or civil litigation involving the matter;
14 and
- 15 (c) Shall not apply to viewing the matter by a minor or the minor's parents or
16 guardians, or to school administrators investigating violations of subsection
17 (1)(b) of this section.
- 18 (3) Possession or viewing of matter portraying a sexual performance by a minor is:
- 19 (a) A Class D felony if the person knows that the minor *or computer-generated*
20 *image of a minor* portrayed is less than eighteen (18) years old at the time of
21 the sexual performance; and
- 22 (b) A Class C felony if the person knows that the minor *or computer-generated*
23 *image of a minor person* portrayed is less than twelve (12) years old at the
24 time of the sexual performance.
- 25 ➔Section 11. KRS 531.340 is amended to read as follows:
- 26 (1) A person is guilty of distribution of matter portraying a sexual performance by a
27 minor when, having knowledge of its content and character, he or she:

- 1 (a) Sends or causes to be sent into this state for sale or distribution;~~[-or]~~
- 2 (b) Brings or causes to be brought into this state for sale or distribution; or
- 3 (c) In this state~~[-, he or she]~~:
- 4 1. Exhibits for profit or gain;~~[-or]~~
- 5 2. Distributes;~~[-or]~~
- 6 3. Offers to distribute; or
- 7 4. Has in his or her possession with intent to distribute, exhibit for profit or
- 8 gain or offer to distribute;~~[-]~~

9 any matter portraying a sexual performance by a minor **or computer-**

10 **generated image of a minor.**

11 (2) Any person who has in his or her possession more than one (1) unit of **matter, as**

12 **defined in Section 2 of this Act,**~~[material coming within the provision of KRS~~

13 ~~531.300(2)]~~ shall be rebuttably presumed to have **that matter**~~[such material]~~ in his

14 or her possession with the intent to distribute it.

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

16 (a) A Class D felony for the first offense, and a Class C felony for each

17 subsequent offense, if the person knows that the minor **or computer-**

18 **generated image of a minor** portrayed is less than eighteen (18) years old at

19 the time of the sexual performance; and

20 (b) A Class C felony for the first offense, and a Class B felony for each

21 subsequent offense, if the person knows that the minor **or computer-**

22 **generated image of a minor** portrayed is less than twelve (12) years old at the

23 time of the sexual performance.

24 ➔Section 12. KRS 531.350 is amended to read as follows:

25 (1) A person is guilty of promoting sale of material portraying a sexual performance by

26 a minor when he **or she** knowingly, as a condition to a sale, allocation,

27 consignment, or delivery for resale of any paper, magazine, book, periodical,

1 publication or other merchandise, requires that the purchaser or consignee receive
 2 any matter portraying a sexual performance by a minor **or computer-generated**
 3 **image of a minor**, or he **or she** denies or threatens to deny a franchise, revokes or
 4 threatens to revoke, or imposes any penalty, financial or otherwise, by reason of the
 5 failure of any person to accept such matter, or by reason of the return of such
 6 matter.

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

8 **(a)** Class A misdemeanor for the first offense;~~;~~

9 **(b)** ~~;~~Class D felony for the second offense;~~;~~ and

10 **(c)** ~~;~~Class C felony for **the third or**~~each~~ subsequent offense.

11 ➔Section 13. KRS 531.360 is amended to read as follows:

12 (1) A person is guilty of advertising material portraying a sexual performance by a
 13 minor when, having knowledge of its content and character thereof, he or she writes
 14 or creates advertising or solicits anyone to publish such advertising or otherwise
 15 promotes the sale or distribution of matter portraying a sexual performance by a
 16 minor **or a computer-generated image of a minor**.

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

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

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

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

22 **In any prosecution under KRS 531.300 to 531.370 where the offense involves matter or**
 23 **material portraying a computer-generated image of a minor, the Commonwealth shall**
 24 **not be required to prove the actual identity or age of the minor, or that the minor**
 25 **actually exists.**