

1 AN ACT relating to unborn children.

2 WHEREAS, the Fourteenth Amendment to the Constitution of the United States  
3 requires that no state "shall deny to any person within its jurisdiction the equal protection  
4 of the laws"; and

5 WHEREAS, innocent human life, created in the image of God, should be equally  
6 protected under the laws from fertilization to natural death; and

7 WHEREAS, to ensure the right to life and equal protection of the laws, all preborn  
8 children should be protected with the same homicide laws protecting all other human  
9 persons; and

10 WHEREAS, all persons potentially subject to such laws are entitled to due process  
11 protections; and

12 WHEREAS, pregnant mothers should be protected from being pressured to abort  
13 their children by repealing provisions that may otherwise allow a person to solicit,  
14 command, aid, or counsel a mother to abort her child;

15 NOW, THEREFORE,

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

17 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 507 IS CREATED TO  
18 READ AS FOLLOWS:

19 ***Unless specifically provided otherwise, in a prosecution under this chapter where the***  
20 ***victim is an unborn child, enforcement shall be subject to the same legal principles as***  
21 ***would apply to the homicide of a person who had been born alive, including***  
22 ***presumptions, defenses, justifications, laws of parties, immunities, and clemencies.***

23 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 507 IS CREATED TO  
24 READ AS FOLLOWS:

25 ***This chapter shall not apply to the unintentional death of an unborn child when the***  
26 ***death results from:***

27 ***(1) The undertaking of life-saving procedures on a pregnant woman when the***

1        *procedures are accompanied by reasonable steps, if available, to save the life of*  
 2        *her unborn child; or*

3        *(2) A spontaneous miscarriage.*

4        ➔Section 3. KRS 507.010 is amended to read as follows:

5        As used in this chapter:

6        (1) "Abuse" has the same meaning as in KRS 508.090;

7        (2) "Criminal homicide" means that a person is guilty of causing the death of another  
 8        human being under circumstances which constitute murder, manslaughter in the  
 9        first degree, manslaughter in the second degree, or reckless homicide;~~and~~

10       *(3) "Person" and "human being" include an unborn child;*

11       ~~(4)(3)~~ "Physically helpless" and "mentally helpless" have the same meaning as in  
 12       KRS 508.090;

13       *(5) "Spontaneous miscarriage" means the natural or accidental termination of a*  
 14       *pregnancy and the expulsion of the unborn child; and*

15       *(6) "Unborn child" means an individual from fertilization until live birth.*

16       ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 508 IS CREATED TO  
 17       READ AS FOLLOWS:

18       *As used in KRS 508.010, 508.020, 508.025, 508.030, 508.032, and 508.040 and Sections*  
 19       *4 to 6 of this Act:*

20       *(1) "Person" includes an unborn child;*

21       *(2) "Spontaneous miscarriage" means the natural or accidental termination of a*  
 22       *pregnancy and the expulsion of the unborn child; and*

23       *(3) "Unborn child" means an individual from fertilization until live birth.*

24       ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 508 IS CREATED TO  
 25       READ AS FOLLOWS:

26       *Unless specifically provided otherwise, in a prosecution under KRS 508.010, 508.020,*  
 27       *508.025, 508.030, 508.032, and 508.040 where the victim is an unborn child,*

1 enforcement shall be subject to the same legal principles as would apply to the assault  
2 of a person who had been born alive, including presumptions, defenses, justifications,  
3 laws of parties, immunities, and clemencies.

4 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 508 IS CREATED TO  
5 READ AS FOLLOWS:

6 This chapter shall not apply to the unintentional death of an unborn child when the  
7 death results from:

8 (1) The undertaking of life-saving procedures on a pregnant woman when the  
9 procedures are accompanied by reasonable steps, if available, to save the life of  
10 her unborn child; or

11 (2) A spontaneous miscarriage.

12 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO  
13 READ AS FOLLOWS:

14 The Attorney General shall have concurrent jurisdiction with Commonwealth's  
15 attorneys and county attorneys for the investigation and prosecution of offenses under  
16 KRS Chapter 507 and KRS 508.010, 508.020, 508.025, 508.030, 508.032, and 508.040  
17 when the victim is an unborn child as defined in Sections 3 and 4 of this Act.

18 ➔Section 8. KRS 501.090 is amended to read as follows:

19 (1) In any prosecution for an offense other than an intentional homicide, except as  
20 provided in subsection (2)(b) of this section, it is a defense that the defendant  
21 engaged in the proscribed conduct because he or she was coerced to do so by the  
22 use of, or a threat of the use of, unlawful physical force against him or her or  
23 another person which a person in his or her situation could not reasonably be  
24 expected to resist.

25 (2) The defense provided by subsection (1) of this section is:

26 (a) Unavailable if the defendant intentionally or wantonly placed himself or  
27 herself in a situation in which it was probable that he or she would be

1           subjected to coercion; and  
2           **(b) Available for an offense of intentional homicide when the victim is an**  
3           **unborn child as defined in Section 3 of this Act and the defendant is the**  
4           **child's mother.**

5           ➔Section 9. KRS 311.732 is amended to read as follows:

- 6           (1) For purposes of this section the following definitions shall apply:
- 7           (a) "Minor" means any person under the age of eighteen (18);
- 8           (b) "Emancipated minor" means any minor who is or has been married or has by  
9           court order or otherwise been freed from the care, custody, and control of her  
10           parents; and
- 11           (c) "Abortion" means the use of any instrument, medicine, drug, or any other  
12           substance or device with intent to terminate the pregnancy of a woman known  
13           to be pregnant with intent other than to increase the probability of a live birth,  
14           to preserve the life or health of the child after live birth, or to remove a dead  
15           fetus.
- 16           (2) No person shall perform an abortion upon a minor unless:
- 17           (a) The attending physician has secured the informed written consent of the  
18           minor and one (1) parent or legal guardian with joint or physical custody and  
19           the consenting parent or legal guardian of the minor has made a reasonable  
20           attempt to notify any other parent with joint or physical custody at least forty-  
21           eight (48) hours prior to providing the informed written consent.
- 22           1. Notice shall not be required to be provided to any parent who has:
- 23           a. Previously been enjoined by a domestic violence order or  
24           interpersonal protective order, regardless of whether or not the  
25           person to be protected by the order was the minor; or
- 26           b. Been convicted of, or entered into a diversion program for, a  
27           criminal offense against a victim who is a minor as defined in

1 KRS 17.500 or for a violent or sexual criminal offense under KRS  
2 Chapter 506, 507,~~507A,~~ 508, 509, 510, 529, 530, or 531.

- 3 2. The informed written consent shall include:
- 4 a. A copy of the minor's government-issued identification, a copy of  
5 the consenting parent's or legal guardian's government-issued  
6 identification, and written documentation including but not limited  
7 to a birth certificate, court-ordered custodial paperwork, or tax  
8 return, establishing that he or she is the lawful parent or legal  
9 guardian; and
- 10 b. The parent's or legal guardian's certification that he or she consents  
11 to the abortion. The certification shall be in a signed, dated, and  
12 notarized document that has been initialed on each page and that  
13 contains the following statement, which shall precede the signature  
14 of the parent or legal guardian: "I, (insert name of parent or legal  
15 guardian), am the (select "parent" or "legal guardian") of (insert  
16 name of minor) and give consent for (insert name of attending  
17 physician) to perform an abortion on her. Under penalties of  
18 perjury, I declare that I have read the foregoing statement and that  
19 the facts stated in it are true."
- 20 3. The attending physician shall keep a copy of the informed written  
21 consent in the medical file of the minor for five (5) years after the minor  
22 reaches eighteen (18) years of age or for seven (7) years, whichever is  
23 longer.
- 24 4. The attending physician securing the informed written consent from a  
25 parent or legal guardian under this subsection shall execute for inclusion  
26 in the medical record of the minor an affidavit stating: "I, (insert name  
27 of attending physician), certify that, according to my best information

- 1                   and belief, a reasonable person under similar circumstances would rely  
2                   on the information presented by both the minor and her parent or legal  
3                   guardian as sufficient evidence of identity.";
- 4           (b) The minor is emancipated and the attending physician has received the  
5           informed written consent of the minor; or
- 6           (c) The minor elects to petition any Circuit or District Court of the  
7           Commonwealth pursuant to subsection (3) of this section and obtain an order  
8           pursuant to subsection (4) of this section granting consent to the abortion and  
9           the attending physician has received the informed written consent of the  
10           minor.
- 11   (3) Every minor shall have the right to petition any Circuit or District Court of the  
12   Commonwealth for an order granting the right to self-consent to an abortion  
13   pursuant to the following procedures:
- 14           (a) The minor or her next friend may prepare and file a petition setting forth the  
15           request of the minor for an order of consent to an abortion;
- 16           (b) The court shall ensure that the minor prepares or her next friend is given  
17           assistance in preparing and filing the petition and shall ensure that the minor's  
18           identity is kept anonymous;
- 19           (c) The minor may participate in proceedings in the court on her own behalf or  
20           through her next friend and the court shall appoint a guardian ad litem for her.  
21           The court shall advise her that she has a right to court-appointed counsel and  
22           shall provide her with such counsel upon her request;
- 23           (d) All proceedings under this section shall be anonymous and shall be given  
24           preference over other matters to ensure that the court may reach a decision  
25           promptly, but in no case shall the court fail to rule within seventy-two (72)  
26           hours of the time of application, provided that the seventy-two (72) hour  
27           limitation may be extended at the request of the minor; and

- 1 (e) The court shall hold a hearing on the merits of the petition before reaching a  
2 decision. The court shall hear evidence at the hearing relating to:
- 3 1. The minor's:
- 4 a. Age;
- 5 b. Emotional development and stability;
- 6 c. Maturity;
- 7 d. Intellect;
- 8 e. Credibility and demeanor as a witness;
- 9 f. Ability to accept responsibility;
- 10 g. Ability to assess both the current and future life-impacting  
11 consequences of, and alternatives to, the abortion; and
- 12 h. Ability to understand and explain the medical risks of the abortion  
13 and to apply that understanding to her decision; and
- 14 2. Whether there may be any undue influence by another on the minor's  
15 decision to have an abortion.
- 16 (4) (a) If the court finds by:
- 17 1. Clear and convincing evidence that the minor is sufficiently mature to  
18 decide whether to have an abortion;
- 19 2. Clear and convincing evidence that the requirements of this section are  
20 not in the best interest of the minor; or
- 21 3. A preponderance of the evidence that the minor is the victim of child  
22 abuse or sexual abuse inflicted by one (1) or both of her parents or her  
23 legal guardian;
- 24 the court shall enter a written order, making specific factual findings and legal  
25 conclusions supporting its decision to grant the petition for an abortion.
- 26 (b) If the court does not make any of the findings specified in paragraph (a) of  
27 this subsection, the court shall deny the petition.

- 1 (c) As used in this subsection, "best interest of the minor" shall not include  
2 financial best interest, financial considerations, or the potential financial  
3 impact on the minor or the minor's family if the minor does not have an  
4 abortion.
- 5 (5) Any minor shall have the right of anonymous and expedited appeal to the Court of  
6 Appeals, and that court shall give precedence over other pending matters.
- 7 (6) All hearings under this section, including appeals, shall remain confidential and  
8 closed to the public. The hearings shall be held in chambers or in a similarly private  
9 and informal setting within the courthouse.
- 10 (7) No fees shall be required of any minor who declares she has no sufficient funds to  
11 pursue the procedures provided by this section.
- 12 (8) (a) The Supreme Court is respectfully requested to promulgate any rules and  
13 regulations it feels are necessary to ensure that proceedings under this section  
14 are handled in an expeditious and anonymous manner.
- 15 (b) The Supreme Court, through the Administrative Office of the Courts, shall  
16 report by February 1 of each year to the Legislative Research Commission  
17 and the cabinet on the number of petitions filed under subsection (3) of this  
18 section for the preceding year, and the timing and manner of disposal of the  
19 petition by each court. For each approved petition granting an abortion filed  
20 under subsection (3) of this section, the specific court finding in subsection  
21 (4) of this section shall be included in the report.
- 22 (9) (a) The requirements of subsections (2), (3), and (4) of this section shall not apply  
23 when, in the best medical judgment of the physician based on the facts of the  
24 case before him or her, a medical emergency exists that so complicates the  
25 pregnancy as to require an immediate abortion.
- 26 (b) If a medical emergency exists, the physician shall make reasonable attempts,  
27 whenever possible, and without endangering the minor, to contact the parent



1 or legal guardian of the minor, and may proceed, but must document reasons  
2 for the medical necessity in the minor's medical records.

3 (c) The physician shall inform the parent or legal guardian, in person or by  
4 telephone, within twenty-four (24) hours of the abortion, including details of  
5 the medical emergency that necessitated the abortion without the parent's or  
6 legal guardian's consent. The physician shall also provide this information in  
7 writing to the parent or legal guardian at his or her last known address by  
8 first-class mail or by certified mail, return receipt requested, with delivery  
9 restricted to the parent or legal guardian.

10 (10) A report indicating the basis for any medical judgment that warrants failure to  
11 obtain consent pursuant to this section shall be filed with the Cabinet for Health and  
12 Family Services on a form supplied by the cabinet. This report shall be confidential.

13 (11) Failure to obtain consent pursuant to the requirements of this section is prima facie  
14 evidence of failure to obtain informed consent and of interference with family  
15 relations in appropriate civil actions. The law of this state shall not be construed to  
16 preclude the award of exemplary damages in any appropriate civil action relevant to  
17 violations of this section. Nothing in this section shall be construed to limit the  
18 common-law rights of parents.

19 (12) A minor upon whom an abortion is performed is not guilty of violating this section.

20 ➔Section 10. KRS 402.205 is amended to read as follows:

21 (1) A minor who is seventeen (17) years of age may petition the family court in the  
22 county in which the minor resides, or the District Court in that county if a family  
23 court division has not been established in that county, for an order granting  
24 permission to marry. The petition shall contain the following:

25 (a) The petitioner's name, gender, age, date of birth, address, and how long the  
26 petitioner has resided at that address, as well as prior addresses and dates of  
27 residence for the six (6) months preceding the petition;

- 1 (b) The intended spouse's name, gender, age, date of birth, address, and how long  
2 the intended spouse has resided at that address, as well as prior addresses and  
3 dates of residence for the six (6) months preceding the petition;
- 4 (c) An affidavit attesting to the consent to marry signed by:
- 5 1. The father or the mother of the petitioner, if the parents are married, the  
6 parents are not legally separated, no legal guardian has been appointed  
7 for petitioner, and no court order has been issued granting custody of  
8 petitioner to a party other than the father or mother;
  - 9 2. Both the father and the mother, if both are living and the parents are  
10 divorced or legally separated, and a court order of joint custody to the  
11 parents of the petitioner has been issued and is in effect;
  - 12 3. The surviving parent, if the parents were divorced or legally separated,  
13 and a court order of joint custody to the parents of the petitioner was  
14 issued prior to the death of either the father or mother, which order  
15 remains in effect;
  - 16 4. The custodial parent, as established by a court order which has not been  
17 superseded, where the parents are divorced or legally separated and joint  
18 custody of the petitioner has not been ordered; or
  - 19 5. Another person having lawful custodial charge of the petitioner;
- 20 (d) A statement of the reasons why the petitioner desires to marry, how the parties  
21 came to know each other, and how long they have known each other;
- 22 (e) Evidence of the petitioner's maturity and capacity for self-sufficiency  
23 independent of the petitioner's parents and the intended spouse, including but  
24 not limited to:
- 25 1. Proof that the petitioner has maintained stable housing or employment  
26 for at least three (3) consecutive months prior to the petition; and
  - 27 2. Proof that the petitioner has completed high school, obtained a High

- 1                   School Equivalency Diploma, or completed a vocational training or  
2                   certificate program;
- 3           (f) Copies of any criminal records of either party to be married; and
- 4           (g) Copies of any domestic violence order or interpersonal protective order  
5           involving either party to be married.
- 6   (2) Upon the filing of the petition for permission to marry, the court shall set a date for  
7       an evidentiary hearing on the petition that is no sooner than thirty (30) days but not  
8       later than sixty (60) days from the date of the filing.
- 9   (3) The petitioner may be represented by counsel in court proceeding pertaining to the  
10       petition to marry.
- 11   (4) The court shall take reasonable measures to ensure that any representations made by  
12       a minor party are free of coercion, undue influence, or duress. Reasonable measures  
13       shall include but are not limited to in camera interviews.
- 14   (5) Following an evidentiary hearing, the court shall grant the minor's petition for  
15       permission to marry unless:
- 16       (a) The age difference between the parties is more than four (4) years;
- 17       (b) The intended spouse was or is a person in a position of authority or a position  
18       of special trust as defined in KRS 532.045 in relation to the minor;
- 19       (c) The intended spouse has previously been enjoined by a domestic violence  
20       order or interpersonal protective order, regardless of whether or not the person  
21       to be protected by the order was the minor petitioner;
- 22       (d) The intended spouse has been convicted of or entered into a diversion  
23       program for a criminal offense against a victim who is a minor as defined in  
24       KRS 17.500 or for a violent or sexual criminal offense under KRS Chapter  
25       506, 507, ~~507A,~~ 508, 509, 510, 529, 530, or 531;
- 26       (e) The court finds by a preponderance of the evidence that the minor was a  
27       victim and that the intended spouse was the perpetrator of a sexual offense

1           against the minor under KRS 510.040, 510.050, 510.060, 510.110, 510.120,  
2           or 510.130;

3           (f) The court finds by a preponderance of the evidence that abuse, coercion,  
4           undue influence, or duress is present; or

5           (g) The court finds that it would otherwise not be in the minor party's best interest  
6           to grant the petition to marry.

7           (6) A past or current pregnancy of the minor or the intended spouse shall not be  
8           sufficient evidence to establish that the best interests of the minor would be served  
9           by granting the petition for marriage.

10          (7) The granting of a petition for permission to marry filed under subsection (1) of this  
11          section shall remove the disabilities of minority. A minor emancipated by the  
12          petition shall be considered to have all the rights and responsibilities of an adult,  
13          except for specific constitutional or statutory age requirements, including but not  
14          limited to voting, the use of alcoholic beverages, and other health and safety  
15          regulations relevant to him or her because of his or her age.

16          (8) The minor shall be advised by the court of the rights and responsibilities of parties  
17          to a marriage and of emancipated minors. The minor shall be provided with a fact  
18          sheet on these rights and responsibilities to be developed by the Office of the  
19          Attorney General and the Cabinet for Health and Family Services. The fact sheet  
20          shall include referral information for legal aid agencies in the Commonwealth and  
21          national hotlines for domestic violence and sexual assault.

22          (9) The court may make any other orders that the court deems appropriate for the  
23          minor's protection and may impose any other condition on the grant of the petition  
24          that the court determines is reasonable under the circumstances for the minor's  
25          protection.

26          (10) The court may set a fee not to exceed twenty dollars (\$20) to file a petition for  
27          permission to marry under this section.

1           ➔Section 11. KRS 439.265 is amended to read as follows:

2       (1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any Circuit  
3       Court may, upon motion of the defendant made not earlier than thirty (30) days nor  
4       later than one hundred eighty (180) days after the defendant has been incarcerated  
5       in a county jail following his or her conviction and sentencing pending delivery to  
6       the institution to which he or she has been sentenced, or delivered to the keeper of  
7       the institution to which he or she has been sentenced, suspend the further execution  
8       of the sentence and place the defendant on probation upon terms the court  
9       determines. Time spent on any form of release following conviction shall not count  
10      toward time required under this section.

11      (2) The court shall consider any motion filed in accordance with subsection (1) of this  
12      section within sixty (60) days of the filing date of that motion, and shall enter its  
13      ruling within ten (10) days after considering the motion. The defendant may, in the  
14      discretion of the trial court, have the right to a hearing on any motion he or she may  
15      file, or have filed for him or her, that would suspend further execution of sentence.  
16      Any court order granting or denying a motion to suspend further execution of  
17      sentence is not reviewable.

18      (3) (a) During the period in which the defendant may file a motion pursuant to this  
19      statute, the sentencing judge, within his or her discretion, may order that the  
20      defendant be held in a local detention facility that is not at or above maximum  
21      capacity until such time as the court rules on said motion. During this period  
22      of detention, and prior to the court's ruling on said motion, the court may  
23      require the defendant to participate in any approved community work program  
24      or other forms of work release. Persons held in the county jail pursuant to this  
25      subsection shall not be subject to transfer to a state correctional facility until  
26      the decision is made not to place the petitioner on shock probation.

27      (b) The provisions concerning community work programs or other forms of work

1 release shall apply only to persons convicted of Class C or Class D felonies,  
2 and may be granted only after a hearing at which the Commonwealth's  
3 attorney has the opportunity to present arguments in favor or opposition  
4 thereto.

5 (4) ~~{(a)—}If the defendant is a violent offender as defined in KRS 439.3401, the~~  
6 ~~sentence shall not be probated under this section.{~~

7 ~~(b)—The sentence shall not be probated under this section if the defendant has been~~  
8 ~~convicted of:~~

9 ~~1.—A violation of either KRS 507.040 or 507A.040 and a violation of KRS~~  
10 ~~189A.010 arising out of the same incident; or~~

11 ~~2.—A violation of either KRS 507.050 or 507A.050 and a violation of KRS~~  
12 ~~189A.010 arising out of the same incident.]~~

13 (5) If the defendant has been convicted of an offense under KRS 510.050, 510.080,  
14 530.020, 530.064(1)(a), or 531.310, or criminal attempt to commit any of these  
15 offenses under KRS 506.010, the sentence shall not be suspended, in accordance  
16 with KRS 532.045.

17 (6) When a defendant has been convicted of a sex crime, as defined in KRS 17.500, the  
18 court shall order a comprehensive sex offender presentence evaluation, unless one  
19 has been provided within the past six (6) months, in which case the court may order  
20 an update of the comprehensive sex offender presentence evaluation of the  
21 defendant conducted by the sex offender treatment program operated or approved  
22 by the Department of Corrections or the Sex Offender Risk Assessment Advisory  
23 Board. The comprehensive sex offender presentence evaluation shall provide to the  
24 court a recommendation related to the risk of a repeat offense by the defendant and  
25 the defendant's amenability to treatment, and shall be considered by the court in  
26 determining whether to suspend the sentence. If the court suspends the sentence and  
27 places the defendant on probation, the provisions of KRS 532.045(3) to (7) shall

1 apply.

2 (7) The authority granted in this section shall be exercised by the judge who imposed  
3 sentence on the defendant, unless he or she is unable to act and it appears that his or  
4 her inability to act should continue beyond the expiration of the term of the court.  
5 In such case, the judge who imposed sentence shall assign a judge to dispose of a  
6 motion filed under this section, or as prescribed by the rules and practices  
7 concerning the responsibility for disposition of criminal matters.

8 (8) The provisions of this section shall not apply where a sentence of death has been  
9 imposed.

10 ➔Section 12. The following KRS sections are repealed:

11 507A.010 Definitions -- Exceptions.

12 507A.020 Fetal homicide in the first degree.

13 507A.030 Fetal homicide in the second degree.

14 507A.040 Fetal homicide in the third degree.

15 507A.050 Fetal homicide in the fourth degree.

16 507A.060 Death sentence prohibited.

17 ➔Section 13. The changes in law made by this Act apply only to conduct that  
18 occurs on or after the effective date of this Act. Conduct that occurs before the effective  
19 date of this Act is governed by the law in effect at the time the conduct occurred, and that  
20 law is continued in effect for that purpose.

21 ➔Section 14. Existing provisions relating to prenatal homicide or assault or  
22 regulating abortion or abortion facilities are not repealed but are superseded to the extent  
23 that those provisions may conflict with or may be inconsistent with Sections 1, 2, 3, 4, 5,  
24 6, 7, and 8 of this Act.

25 ➔Section 15. This Act may be cited as the Prenatal Equal Protection Act.