

This section shall not limit a youth camp's ability to establish a more stringent background check process for its employees, contractors, or volunteers regarding other criminal offenses which, in the discretion of the youth camp, would disqualify the individual from involvement with the youth camp.

Section 4:

HB 361 creates a new section of Chapter 211 and provides for the following:
Failure to comply with the Section 3 requirements will result in the immediate suspension of the entity's permit until compliance is reached.

If any employer, contractor, or volunteer is later discovered to have been a violent offender or has been convicted of a sex crime or a criminal offense against a minor, or has been found by CHFS or a court to have abused or neglected a child, he or she will be terminated immediately and removed from the property.

Any person who owns or operates a youth camp and knowingly allows an individual to serve or continue to serve as an employee, contractor, or volunteer despite a conviction or offense specified in this section shall be guilty as a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

Sections 5 and 6, establishes that parents or legal guardians employing a child care provider may, with the consent of the childcare provider, request a background check from CHFS. The sections also expands the type of background checks that superintendents of school districts shall or may require of employees, contractors, volunteers, or visitors.

Section 7:

The list of places or grounds which a sex offender registrant is not allowed on is expanded to include publicly owned playground except with the written permission of the playground's owner or managing authority.

Section 8:

Expands the list of criminal offenses against a victim who is a minor to include promoting human trafficking involving commercial sexual activity. Human trafficking is defined in KRS 529.110 as:

A person is guilty of promoting human trafficking when the person intentionally:

- (a) Benefits financially or receives anything of value from knowing participation in human trafficking; or
- (b) Recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means, another person, knowing that the person will be subject to human trafficking.

Section 13:

The list defining whether a person is deemed incapable of sexual consent is expanded to include being sixteen or seventeen years old and the actor is at least ten years older than the victim at the time of the sexual act.

Section 14:

Expands the list of defenses to include whether the defendant knew at the time of the sexual act that the victim was sixteen or seventeen years old and he or her was at least ten years older than the victim, but only in a prosecution in which the victim's lack of consent is based solely on the victim's incapacity to consent due to that age difference.

Section 15:

Expands the list of acts for which a person is guilty of rape in the third degree (Class D felony) to include being at least ten years older than a victim who is sixteen or seventeen years old at the time of sexual intercourse.

Section 16:

Expands the list of acts for which a person is guilty of sodomy in the third degree (Class D felony) to include being at least ten years older than a victim who is sixteen or seventeen years old at the time of deviant sexual intercourse.

Section 17:

Provides that the Attorney General shall have concurrent jurisdiction with Commonwealth's Attorneys in the investigation and prosecution of offenses involving the engaging in, promoting, or permitting prostitution or human trafficking.

Section 19:

Expands the definition of "take into custody" to include "take into *protective custody*" and to mean the procedure by which a peace officer or authorized person initially assumes custody of a child. The period of protective custody shall not exceed two hours.

Section 20:

A peace officer may take a child into protective custody if:

- The child has been reported missing by the Kentucky Missing Child Information Center within the Justice and Public Safety Cabinet.
- There is reasonable cause to believe the child may be the victim of human trafficking.
- There is reasonable cause to believe the child is dependent, neglected, or abused.
- There is reasonable grounds to believe that the child is a habitual runaway.

A peace officer may hold a child in protective custody without the consent of the parent or custodial guardian if the officer believes that the child is in danger of imminent death or serious physical injury, being sexually abused, or is a victim of human trafficking and the parent or guardian is unable or unwilling to protect the child. Within twelve hours, the officer shall request the court to issue an emergency custody order.

A child taken into protective custody is not considered to have been arrested and may be held in an emergency shelter, crisis stabilization unit, hospital or clinic, or a child-caring or child-placing facility. A child taken into custody resulting from reasonable cause related to being a habitual runaway may be held in an emergency shelter, crisis stabilization unit, hospital or clinic, or a child-caring or child-placing facility while the officer conducts an initial investigation.

Section 21:

The peace officer may initiate detention or placement procedures pending a detention or custody hearing if the parent, guardian, or person exercising custodial control of the child cannot be identified or located, or if that person refuses to collect the child. If the person refuses to collect a child taken into protective custody, the peace officer shall notify the county attorney who may file charges of endangering a minor, and CHFS.

Section 22:

If a peace officer takes or receives a child into protective custody on reasonable grounds that the child is a habitual runaway, the child may be held at a police station, secure juvenile detention facility, youth alternative center, a nonsecure facility, or as necessary, a hospital or clinic for the following purposes:

- Identification and booking;
- Attempting to contact the parents, custodial person, relative, guardian, or other responsible person, or CHFS;
- Photographing;
- Fingerprinting;
- Physical exam, including exams for evidence;
- Evidence collection;
- Records check;
- Determining whether the child is subject to trial as an adult; and
- Other inquiries of a preliminary nature.

Provides that a nonoffender, a child alleged to be dependent, neglected, or abused and who has not been otherwise charged with a status or public offense, shall not be placed in secure or nonsecure detention.

Section 23:

Clarifies that a child can be taken into custody pursuant to an order for failure to appear for a previous offense and can be taken into protective custody on reasonable grounds that the child is a habitual runaway.

Section 24:

If, during the course of screening, assessing, or providing services to a child committed to or in the custody of the department or a secured juvenile detention facility, there is reasonable cause to believe that the child is a victim of human trafficking, the department of detention facility shall:

- File a report with CHFS;

- Notify the child's attorney; and
- If the child does not pose a threat to public safety, petition the court to transfer custody from CHFS.

Section 25:

Creates a new section of KRS Chapter 531 and provides for the following:

In a criminal or civil proceeding, any material portraying child pornography or a sexual performance by a minor shall remain secured or locked in the care, custody, and control of a law enforcement agency, the prosecutor, or the court.

A court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material portraying child pornography or a sexual performance by a minor as long as law enforcement agency, the prosecutor, or the court makes the property or material *reasonably available* to the defendant.

For purposes of this section, material is deemed to be *reasonably available* to the defendant if the prosecutor provides ample opportunity at a designated facility for the inspection, viewing, and examination of the property or material that portrays child pornography or a sexual performance by a minor by the defendant, his or her attorney, or a person whom the defendant uses as an expert witness during the discovery process or a court proceeding.

Section 26:

Expands the definition of "serious physical injury" to include for a child twelve years of age or less at the time of injury.

Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost

The fiscal impact of HB 361 on local governments is expected to be minimal.

The procedures, personnel, and facilities to implement HB 361 are already in place. There will be cost associated with disseminating the changes in law and training local law enforcement as to the changes in the law, most of which are expansions of the current law.

Any background check performed by CHFS on behalf of a youth camp or school district within the boundary of a local government is a reimbursable expense to CHFS and will have no fiscal impact on local government.

The following jail cost data from the Department of Corrections is relative to Sections 4, 7, 8, 15, and 16:

Class A misdemeanors: A person convicted of a Class A misdemeanor may be incarcerated for up to twelve months. Misdemeanants are housed in one of Kentucky's 76 full service jails or five life safety jails. While the expense of housing inmates varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem

and medical expenses that the Department of Corrections pays jails to house felony offenders. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.34 per day.

Class D and Class C felons: When a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 76 full service jails or five life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Upon sentencing, a Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. The Department of Corrections pays a jail \$31.34 per day to house a D felon. Since the per diem pays for the estimated average cost of housing a Class D felon, the per diem may be less than, equal to, or greater than the actual housing cost.

When a court denies bail to a Class C felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 76 full service jails or five life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Class C felons are ineligible for placement in local jails until they are classified at the lowest custody level with 24 months or less to their minimum expiration date or parole eligibility date. The Department of Corrections pays local jails \$31.34 per day to house these Class C felons. Since the per diem pays for the estimated average cost of housing a Class C felon, the per diem may be less than, equal to, or greater than the actual housing cost.

Section 4:

Any person who owns or operates a youth camp and knowingly allows an individual to serve or continue to serve as an employee, contactor, or volunteer despite a conviction of offense specified in this section shall be guilty as a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.

Section 7:

Sex offender registrant is not allowed on publicly owned playground except with the written permission of the playground's owner or managing authority. This is punishable as a Class A misdemeanor for a first offense and a Class D felony for subsequent offenses.

Section 8:

Promoting human trafficking when the victim is under the age of 18 is a Class C felony. Additionally, the offender would be required to register as a sex offender. Once on the register, the offender would be:

- Prohibited from residing in certain areas and being present on school grounds, punishable as a Class A misdemeanor for the first offense, Class D felony for subsequent offenses. (KRS 17.545)
- Prohibited from using social networking web sites, instant messaging, or chat room programs; nor shall the offender photograph, film, or video a minor without the consent of the minor's parent or guardian. Punishable as a Class A misdemeanor.

Section 15 and Section 16:

By expanding what constitutes a Class D felon to include rape in the third degree and sodomy in the third degree, an increase in the number of Class D felons being incarcerated might result.

Section 25:

The procedures, personnel, and facilities to implement this proposal are already in place. Minimal learning curve for local law enforcement or whoever acts as custodian of the property and materials regarding any new procedures dealing directly with this proposal.

Data Source(s): LRC Staff

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