

**CHAPTER 106****( HB 278 )**

AN ACT relating to the protection of children.

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

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

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

- (1) Design, print, and distribute to all law enforcement agencies in the Commonwealth, an electronic or paper uniform reporting form, to be known as the JC-3, which provides statistical information relating to the crimes involving:
  - (a) Domestic violence;~~{ }~~
  - (b) Child abuse;~~{ }~~
  - (c) ***Childhood sexual assault or abuse as defined in Section 3 of this Act;***
  - (d) Victimization of the elderly, including but not limited to elder abuse, neglect, and exploitation and other crimes against the elderly;~~{ }~~ or
  - (e) Any other particular area of criminal activity deemed by the secretary of justice and public safety to require research as to its frequency; and
- (2) Promulgate administrative regulations, in accordance with KRS Chapter 13A, to provide that the information required in KRS 209A.122 be provided to the Criminal Justice Statistical Analysis Center.

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

- (1) As used in this section:
  - (a) "Administrative finding of child abuse or neglect" means a substantiated finding of child abuse or neglect issued by the Cabinet for Health and Family Services that is:
    1. Not appealed through an administrative hearing conducted in accordance with KRS Chapter 13B;
    2. Upheld at an administrative hearing conducted in accordance with KRS Chapter 13B and not appealed to a Circuit Court; or
    3. Upheld by a Circuit Court in an appeal of the results of an administrative hearing conducted in accordance with KRS Chapter 13B;
  - (b) "Alternative education program" means a program that exists to meet the needs of students that cannot be addressed in a traditional classroom setting but through the assignment of students to alternative classrooms, centers, or campuses that are designed to remediate academic performance, improve behavior, or provide an enhanced learning experience. Alternative education programs do not include career or technical centers or departments;
  - (c) "Clear CA/N check" means a letter from the Cabinet for Health and Family Services indicating that there are no administrative findings of child abuse or neglect relating to a specific individual;
  - (d) "Relative" means father, mother, brother, sister, husband, wife, son and daughter; and
  - (e) "Vacancy" means any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.

- (2) Except as provided in KRS 160.346, the school district personnel actions identified in this section shall be carried out as follows:
- (a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the Kentucky Board of Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any time after February 1 preceding the beginning of the school year. No superintendent of schools shall appoint or transfer himself or herself to another position within the school district;
  - (b) When a vacancy occurs in a local school district, the superintendent shall submit the job posting to the statewide job posting system described in KRS 160.152 fifteen (15) days before the position shall be filled. The local school district shall post position openings in the local board office for public viewing;
  - (c) When a vacancy needs to be filled in less than fifteen (15) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days; and
  - (d) When a vacancy occurs in a local district, the superintendent shall conduct a search to locate minority teachers to be considered for the position. The superintendent shall, pursuant to administrative regulations of the Kentucky Board of Education, report annually the district's recruitment process and the activities used to increase the percentage of minority teachers in the district.
- (3) Restrictions on employment of relatives shall be as follows:
- (a) No relative of a superintendent of schools shall be an employee of the school district. However, this shall not apply to a relative who is a classified or certified employee of the school district for at least thirty-six (36) months prior to the superintendent assuming office and who is qualified for the position the employee holds. A superintendent's spouse who has previously been employed in a school system may be an employee of the school district. A superintendent's spouse who is employed under this provision shall not hold a position in which the spouse supervises certified or classified employees. A superintendent's spouse may supervise teacher aides and student teachers. However, the superintendent shall not promote a relative who continues employment under an exception of this subsection;
  - (b) No superintendent shall employ a relative of a school board member of the district;
  - (c) No principal's relative shall be employed in the principal's school; and
  - (d) A relative that is ineligible for employment under paragraph (a), (b), or (c) of this subsection may be employed as a substitute for a certified or classified employee if the relative is not:
    1. A regular full-time or part-time employee of the district;
    2. Accruing continuing contract status or any other right to continuous employment;
    3. Receiving fringe benefits other than those provided other substitutes; or
    4. Receiving preference in employment or assignment over other substitutes.
- (4) No superintendent shall assign a certified or classified staff person to an alternative education program as part of any disciplinary action taken pursuant to KRS 161.011 or 161.790 as part of a corrective action plan established pursuant to the local district evaluation plan.
- (5) No superintendent shall ~~initially~~ employ in any position in the district any person who:
- (a) ***Has been convicted of an offense that would classify a person as*** ~~is~~ a violent offender ***under KRS 439.3401;*** ~~or~~
  - (b) ***Has been convicted of a sex crime as defined by KRS 17.500 or a misdemeanor offense under KRS Chapter 510;*** ~~17.165 which is classified as a felony or~~
  - (c) ***Is required to register as a sex offender under KRS 17.500 to 17.580; or***

- (d) ~~Has persons with~~ an administrative finding of child abuse or neglect in records maintained by the Cabinet for Health and Family Services. ~~[- The superintendent may employ, at his discretion, except at a Kentucky Educational Collaborative for State Agency Children program, persons convicted of sex crimes classified as a misdemeanor.]~~
- (6) Requirements for background checks shall be as follows:
- (a) A superintendent shall require the following individuals to submit to a national and state criminal background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a clear CA/N check, provided by the individual:
1. Each new certified or classified hire;
  2. A nonfaculty coach or nonfaculty assistant as defined under KRS 161.185;
  3. A student teacher;
  4. A school-based decision making council parent member; and
  5. Any adult who is permitted access to school grounds on a regularly scheduled and continuing basis pursuant to a written agreement for the purpose of providing services directly to a student or students as part of a school-sponsored program or activity;
- (b) 1. The requirements of paragraph (a) of this subsection shall not apply to:
- a. Classified and certified individuals employed by the school district prior to June 27, 2019;
  - b. Certified individuals who were employed in another certified position in a Kentucky school district within six (6) months of the date of hire and who had previously submitted to a national and state criminal background check and who have a clear CA/N check for the previous employment; or
  - c. Student teachers who have submitted to and provide a copy of a national and state criminal background check by the Department of Kentucky State Police and the Federal Bureau of Investigation through an accredited teacher education institution in which the student teacher is enrolled and who have a clear CA/N check.
2. The Education Professional Standards Board may promulgate administrative regulations to impose additional qualifications to meet the requirements of Public Law 92-544;
- (c) A parent member may serve prior to the receipt of the criminal history background check and CA/N letter required by paragraph (a) of this subsection but shall be removed from the council on receipt by the school district of a report documenting a record of abuse or neglect, or a sex crime or criminal offense against a victim who is a minor as defined in KRS 17.500, or as a violent offender as defined in KRS 17.165, and no further procedures shall be required; and
- (d) A superintendent may require a volunteer or a visitor to submit to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a clear CA/N check, provided by the individual.
- (7) (a) If a certified or classified position remains unfilled after July 31 or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the criminal history background check and a clear CA/N check, provided by the individual. Application for the criminal record and a request for a clear CA/N check of a probationary employee shall be made no later than the date probationary employment begins.
- (b) Employment shall be contingent on the receipt of the criminal history background check documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165 and receipt of a letter, provided by the individual, from the Cabinet for Health and Family Services stating the employee is clear to hire based on no administrative findings of child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the school district of a criminal history

background check documenting a record of a sex crime or as a violent offender as defined in KRS 17.165 and no further procedures shall be required.

- (8) The provisions of KRS 161.790 shall apply to terminate employment of a certified employee on the basis of a criminal record other than a record of a sex crime or as a violent offender as defined in KRS 17.165, or on the basis of a CA/N check showing an administrative finding of child abuse or neglect.
- (9) (a) All fingerprints requested under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation from the Department of Kentucky State Police after a state criminal background check is conducted. The results of the state and federal criminal background check shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police, the Federal Bureau of Investigation, and the Cabinet for Health and Family Services shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (b) Each application form, provided by the employer to an applicant for a certified or classified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND STATE CRIMINAL HISTORY BACKGROUND CHECK AND A LETTER, PROVIDED BY THE INDIVIDUAL, FROM THE CABINET FOR HEALTH AND FAMILY SERVICES STATING THE APPLICANT HAS NO ADMINISTRATIVE FINDINGS OF CHILD ABUSE OR NEGLECT FOUND THROUGH A BACKGROUND CHECK OF CHILD ABUSE AND NEGLECT RECORDS MAINTAINED BY THE CABINET FOR HEALTH AND FAMILY SERVICES."
- (c) Each application form for a district position shall require the applicant to:
1. Identify the states in which he or she has maintained residency, including the dates of residency; and
  2. Provide picture identification.
- (10) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, when an employee of the school district is charged with any offense which is classified as a felony, the superintendent may transfer the employee to a second position until such time as the employee is found not guilty, the charges are dismissed, the employee is terminated, or the superintendent determines that further personnel action is not required. The employee shall continue to be paid at the same rate of pay he or she received prior to the transfer. If an employee is charged with an offense outside of the Commonwealth, this provision may also be applied if the charge would have been treated as a felony if committed within the Commonwealth. Transfers shall be made to prevent disruption of the educational process and district operations and in the interest of students and staff and shall not be construed as evidence of misconduct.
- (11) Notwithstanding any law to the contrary, each certified and classified employee of the school district shall notify the superintendent if he or she has been found by the Cabinet for Health and Family Services to have abused or neglected a child, and if he or she has waived the right to appeal a substantiated finding of child abuse or neglect or if the substantiated incident was upheld upon appeal. Any failure to report this finding shall result in the certified or classified employee being subject to dismissal or termination.
- (12) The form for requesting a CA/N check shall be made available on the Cabinet for Health and Family Services website.

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

- (1) As used in this section:
- (a) "Childhood sexual assault or abuse" means an act or series of acts against a person less than eighteen (18) years old and which meets the criteria defining a misdemeanor or felony in:
1. KRS Chapter 510;
  2. KRS 529.040 when the defendant advances or profits from the prostitution of a minor;
  3. KRS 529.100 when the offense involves commercial sexual activity;
  4. KRS 529.110 when the offense involves commercial sexual activity;
  5. KRS 530.020 or 530.064(1)(a);
  6. KRS Chapter 531 involving a minor or depiction of a minor; or

7. KRS 506.010 or 506.030 for attempt to commit or solicitation to commit any of the offenses described in subparagraphs 1. to 6. of this paragraph.

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

- (b) "Entity" means a firm, partnership, company, corporation, trustee, association, or any private or public entity, including the Commonwealth, a city, county, urban-county, consolidated local government, unified local government, or charter county government, or any of their agencies, departments, or any KRS 58.180 nonprofit nonstock corporation; and
- (c) "Injury or illness" means either a physical or psychological injury or illness.
- (2) A civil action for recovery of damages for injury or illness suffered as a result of childhood sexual assault or abuse shall be brought ~~before whichever of the following periods last expires:~~
- (a) ~~Within ten (10) years of the commission of the act or the last of a series of acts by the same perpetrator;~~
- (b) ~~Within ten (10) years of the date the victim knew, or should have known, of the act;~~
- (c) ~~within ten (10) years after the victim attains the age of eighteen (18) years;~~ ~~or~~
- (d) ~~Within ten (10) years of the conviction of a civil defendant for an offense included in the definition of childhood sexual assault or abuse.~~
- (3) The time ~~period~~ ~~periods~~ set forth in subsection (2) of this section shall apply to a civil action for recovery of damages for injury or illness against: ~~;~~
- (a) A person alleged to have committed the act of childhood sexual assault or abuse; or
- (b) An entity that owed a duty of care to the plaintiff, where a wrongful or negligent act by an employee, officer, director, official, volunteer, representative, or agent of the entity was a legal cause of the childhood sexual assault or abuse that resulted in the injury to the plaintiff.
- (4) ~~If a complaint is filed alleging that an act of childhood sexual assault or abuse occurred more than ten (10) years prior to the date that the action is commenced,~~ The complaint shall be accompanied by a motion to seal the record and the complaint shall immediately be sealed by the clerk of the court. The complaint shall remain sealed until:
- (a) The court rules upon the motion to seal;
- (b) Any motion to dismiss under CR 12.02 is ruled upon, and if the complaint is dismissed, the complaint and any related papers or pleadings shall remain sealed unless opened by a higher court; or
- (c) The defendant files an answer and a motion to seal the record upon grounds that a valid factual defense exists, to be raised in a motion for summary judgment pursuant to CR 56. The record shall remain sealed by the clerk until the court rules upon the defendant's motion to close the record. If the court grants the motion to close, the record shall remain sealed until the defendant's motion for summary judgment is granted. The complaint, motions, and other related papers or pleadings shall remain sealed unless opened by a higher court.
- (5) A victim of childhood sexual assault or abuse shall not have a cause of action against a third party, unless the third party failed to act as a reasonable person or entity in complying with their duties to the victim. ~~If a victim of childhood sexual assault or abuse has a cause of action under this section, the cause of action shall be commenced within the time period set forth in subsection (2) of this section.~~
- (6) (a) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for excluding evidence regarding childhood sexual assault or abuse or the cause thereof when an exception to the Kentucky Rules of Evidence is met, in any judicial proceeding. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding childhood sexual assault or abuse.
- (b) As used in paragraph (a) of this subsection, the clergy-penitent privilege is limited to information received solely through confidential communications with a clergy member, privately or in a confessional setting, when in the course of the discipline or practice of the clergy member's church, denomination, or organization, he or she is authorized or accustomed to hearing those communications,

and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

- (7) (a) As was its intention with the passage of 2017 Ky. Acts ch. 114, sec. 2, the General Assembly hereby states that the amendments enacted in 2017 Ky. Acts ch. 114, sec. 2 shall be applied retroactively to actions accruing before its effective date of June 29, 2017. This section is a remedial statute which is to be given the most liberal interpretation to provide remedies for victims of childhood sexual assault or abuse.
- (b) Notwithstanding any provision of law to the contrary, any claim for childhood sexual assault or abuse that was barred as of March 23, 2021, because the applicable statute of limitations had expired is hereby revived, and the action may be brought if commenced within five (5) years of the date on which the applicable statute of limitations expired.

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

- (1) A person is guilty of rape in the second degree when:
- (a) Being eighteen (18) years old or more, he or she engages in sexual intercourse with another person less than fourteen (14) years old; or
- (b) He or she engages in sexual intercourse with another person who is mentally incapacitated or who is incapable of consent because he or she is an individual with an intellectual disability.
- (2) Rape in the second degree is a Class C felony, ***unless the defendant is a person in a position of authority or position of special trust as those terms are defined in KRS 532.045, in which case it is a Class B felony.***

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

- (1) A person is guilty of sodomy in the second degree when:
- (a) Being eighteen (18) years old or more, he or she engages in deviate sexual intercourse with another person less than fourteen (14) years old; or
- (b) He or she engages in deviate sexual intercourse with another person who is mentally incapacitated or who is incapable of consent because he or she is an individual with an intellectual disability.
- (2) Sodomy in the second degree is a Class C felony, ***unless the defendant is a person in a position of authority or position of special trust as those terms are defined in KRS 532.045, in which case it is a Class B felony.***

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

- (1) It shall be unlawful for any person to knowingly use a communications system, including computers, computer networks, computer bulletin boards, cellular telephones, or any other electronic means, for the purpose of:
- (a) Procuring or promoting the use of a minor, including a peace officer, or a person working in coordination with law enforcement, posing as a minor if the person believes that the peace officer or the person working in coordination with law enforcement is a minor or is wanton or reckless in that belief; ~~or~~
- (b) Procuring or promoting the use of a minor from an adult intermediary, including a peace officer, or a person working in coordination with law enforcement, posing as an adult intermediary for a minor if the person believes that the peace officer or the person working in coordination with law enforcement is an adult intermediary for a minor or is wanton or reckless in that belief;

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

- (2) No person shall be convicted of this offense and an offense specified in KRS 506.010, 506.030, 506.040, or 506.080 for a single course of conduct intended to consummate in the commission of the same offense with the same minor or peace officer.
- (3) Each day a person knowingly uses a communications system for the purpose of procuring or promoting the use of a minor shall be a separate violation of this section.
- (4) The solicitation of a minor through electronic communication under subsection (1) of this section shall be prima facie evidence of the person's intent to commit the offense, and the offense is complete at that point without regard to whether the person met or attempted to meet the minor.

- (5) This section shall apply to electronic communications originating within or received within the Commonwealth.
- (6) Except as provided in subsection (7) of this section, a violation of this section is punishable as a **Class C**~~Class D~~ felony.
- (7) A violation of this section is punishable as a **Class B**~~Class C~~ felony if:
- (a) The minor or perceived minor procured or promoted is under twelve (12) years old;
  - (b) ***The offender is a person in a position of authority or position of special trust as those terms are defined in KRS 532.045;***
  - (c) The offender is a registrant;~~or~~
  - ~~(d)~~~~(e)~~ A person enters into the Commonwealth from another jurisdiction for the purpose of procuring or promoting the use of a minor or perceived minor in violation of this section; ***or***
  - (e) ***The minor or perceived minor procured or promoted is for an activity in violation of Section 7 of this Act where that offense involves commercial sexual activity.***

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

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

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

- (1) 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.
- (2) Promoting human trafficking is a **Class C**~~Class D~~ felony unless a victim of the trafficking is under eighteen (18), in which case it is a **Class B**~~Class C~~ felony.

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

- (1) A person is guilty of distribution of matter portraying a sexual performance by a minor when, having knowledge of its content and character, he or she:
- (a) Sends or causes to be sent into this state for sale or distribution;~~or~~
  - (b) Brings or causes to be brought into this state for sale or distribution; or
  - (c) In this state, he or she:
    1. Exhibits for profit or gain;~~or~~
    2. Distributes;~~or~~
    3. Offers to distribute; or
    4. Has in his or her possession with intent to distribute, exhibit for profit or gain or offer to distribute, any matter portraying a sexual performance by a minor.

- (2) Any person who has in his or her possession more than one (1) unit of *matter, as defined by* ~~material coming within the provision of~~ KRS 531.300(2) shall be rebuttably presumed to have *that matter* ~~[such material]~~ in his or her possession with the intent to distribute it.
- (3) Distribution of matter portraying a sexual performance by a minor is:
- A ~~Class D felony for the first offense, and a~~ Class C felony ~~for each subsequent offense,~~ if the person knows that the minor portrayed is less than eighteen (18) years old at the time of the sexual performance; and
  - A ~~Class C felony for the first offense, and a~~ Class B felony ~~for each subsequent offense,~~ if the person knows that the minor portrayed is less than twelve (12) years old at the time of the sexual performance.
- (4) *Any person convicted under this section shall not be released on probation or parole until he or she has served at least eighty-five percent (85%) of the sentence imposed.*

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

- A sentence of imprisonment for a felony shall be an indeterminate sentence, the maximum of which shall be fixed within the limits provided by subsection (2) *of this section*, and subject to modification by the trial judge pursuant to KRS 532.070.
- Unless otherwise provided by law, the authorized maximum terms of imprisonment for felonies are:
  - For a Class A felony, not less than twenty (20) years nor more than fifty (50) years, or life imprisonment;
  - For a Class B felony, not less than ten (10) years nor more than twenty (20) years;
  - For a Class C felony, not less than five (5) years nor more than ten (10) years; and
  - For a Class D felony, not less than one (1) year nor more than five (5) years.
- For any felony specified in KRS Chapter 510 ~~or~~ KRS 530.020, 530.064(1)(a), ~~or~~ 531.310, **531.320, 531.335, or Section 7, 8, or 9 of this Act**, the sentence shall include an additional five (5) year period of postincarceration supervision which shall be added to the maximum sentence rendered for the offense. During this period of postincarceration supervision, if a defendant violates the provisions of postincarceration supervision, the defendant may be reincarcerated for:
  - The remaining period of his *or her* initial sentence, if any is remaining; and
  - The entire period of postincarceration supervision, or if the initial sentence has been served, for the remaining period of postincarceration supervision.
- In addition to the penalties provided in this section, for any person subject to a period of postincarceration supervision pursuant to KRS 532.400 his or her sentence shall include an additional one (1) year period of postincarceration supervision following release from incarceration upon expiration of sentence if the offender is not otherwise subject to another form of postincarceration supervision. During this period of postincarceration supervision, if an offender violates the provisions of supervision, the offender may be reincarcerated for the remaining period of his or her postincarceration supervision.
- The actual time of release within the maximum established by subsection (1) *of this section*, or as modified pursuant to KRS 532.070, shall be determined under procedures established elsewhere by law.

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

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

- "Home" means the temporary or permanent residence of a defendant consisting of the actual living area. If more than one (1) residence or family is located on a single piece of property, "home" does not include the residence of any other person who is not part of the social unit formed by the defendant's immediate family. A hospital, nursing care facility, hospice, half-way house, group home, residential treatment facility, or boarding house may serve as a "home" under this section;
- "Home incarceration" means the use of a monitoring device approved by the commissioner of the Department of Corrections to facilitate a prisoner's ability to maintain gainful employment or to participate in programs approved as a condition of his or her incarceration, or both, using the person's home for purposes of confinement;



- (3) "Violent felony offense" means an offense *that would classify a person as a violent offender under KRS 439.3401* [defined in KRS 507.020 (murder), 507.030 (manslaughter in the first degree), 508.010 (assault in the first degree), 508.020 (assault in the second degree), 509.040 (kidnapping), 510.040 (rape in the first degree), 510.070 (sodomy in the first degree), 510.110 (sexual abuse in the first degree), 511.020 (burglary in the first degree), 513.020 (arson in the first degree), 513.030 (arson in the second degree), 513.040 (arson in the third degree), 515.020 (robbery in the first degree), 515.030 (robbery in the second degree), 520.020 (escape in the first degree), any criminal attempt to commit the offense (KRS 506.010), or conviction as a persistent felony offender (KRS 532.080) when the offender has a felony conviction for any of the above listed offenses within the five (5) year period preceding the date of the latest conviction];
- (4) "Terminal illness" means a medically recognized disease for which the prognosis is death within six (6) months to a reasonable degree of medical certainty; and
- (5) "Approved monitoring device" means an electronic device or apparatus which is capable of recording, tracking, or transmitting information as to the prisoner's location or verifying the prisoner's presence or non-presence in the home, or both. The devices shall be minimally intrusive. Devices shall not be used without the prisoner's knowledge to record or transmit:
- Visual images other than the defendant's face;
  - Oral or wire communications or any auditory sound other than the defendant's voice; or
  - Information as to the prisoner's activities while inside the home.

➔Section 12. The General Assembly hereby finds and declares that:

- Pornography is creating a public health crisis and having a corroding influence on minors;
- Due to advances in technology, the universal availability of the internet, and limited age verification requirements, minors are being exposed to pornography earlier in age;
- Pornography contributes to the hyper-sexualization of teens and prepubescent children and may lead to low self-esteem, body image disorders, an increase in problematic sexual activity at younger ages, and increased desire among adolescents to engage in risky sexual behavior;
- Pornography may also impact brain development and functioning, contribute to emotional and medical illnesses, shape deviate sexual arousal, and lead to difficulty in forming or maintaining positive, intimate relationships, as well as harmful sexual behaviors and addiction; and
- It is in the interest of the people of the Commonwealth of Kentucky to protect minors from being able to access obscene or erotic matter through the internet or other digital networks.

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 13 to 18 of this Act:*

- "Age verification" means verifying that the person seeking access to the matter is eighteen (18) years old or older, through any of the following methods:
  - State-issued form of identification, including but not limited to an operator's license or personal identification card issued under KRS Chapter 186 that establishes age;
  - Identification issued by any agency of the United States government that establishes age; or
  - Any commercially reasonable method of identification that relies on public or private transactional data to verify that the person attempting to access the matter is at least eighteen (18) years of age or older;
- "Covered platform" means an entity that:
  - Is a website; and
  - Is in the regular course of trade or business to create, host, or make available content that meets the definition of matter harmful to minors under subsection (8) of this section, with the objective of earning a profit, regardless of whether:
    - The entity actually earns a profit on the activities described in this paragraph; or

2. *Creating, hosting, or making available content that meets the definition of matter harmful to minors under subsection (8) of this section is the sole source of income or principal business of the entity;*
- (3) *"Distribute" means to issue, sell, give, provide, deliver, transfer, transmit, circulate, or disseminate by any means, with or without consideration;*
- (4) *"Information content provider" has the same meaning as in 47 U.S.C. sec. 230(f)(3);*
- (5) *"Interactive computer service" has the same meaning as in 47 U.S.C. sec. 230(f)(2);*
- (6) *"Internet" has the same meaning as in 47 U.S.C. sec. 230(f)(1);*
- (7) *"Matter" has the same meaning as in KRS 531.010;*
- (8) *"Matter harmful to minors" means:*
- (a) *Any matter that the average person, applying contemporary community standards, and taking the matter as a whole with respect to minors, would find is designed to appeal to, or pander to, the prurient interest;*
  - (b) *Any matter that exploits, is devoted to, or principally consists of descriptions of actual, simulated, or animated display or depiction of any of the following, in a manner patently offensive with respect to minors:*
    1. *Pubic area, anus, vulva, genitals, or nipple of the female breast;*
    2. *Touching, caressing, or fondling of buttocks, anuses, pubic areas, genitals, or nipples of the female breast; or*
    3. *Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions, or any other sexual act; and*
  - (c) *The matter taken as a whole lacks serious literary, artistic, political, or scientific value for minors;*
- (9) *"Minor" means any person under the age of eighteen (18) years;*
- (10) *"Publish" means to communicate or make information available to another person or entity on the internet; and*
- (11) *"Transactional data" means a sequence of information that documents an exchange, agreement, or transfer between an individual, commercial entity, or third party used for the purpose of satisfying a request or event, including but not limited to records from mortgage, utility, and education entities or other reliable document that establishes age.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO READ AS FOLLOWS:

- (1) *Any covered platform that knowingly and intentionally publishes or distributes material on the internet, more than one-third (1/3) of which is matter harmful to minors, and fails to perform age verification, either by itself or through a third party, of individuals attempting to access the matter shall be liable as provided in this section.*
- (2) *Any person injured by a violation of this section, or a parent or legal guardian on behalf of any minor injured by a violation of this section, may bring a civil action against the covered platform to recover:*
- (a) *Damages of ten thousand dollars (\$10,000) per instance that the covered platform failed to perform age verification to restrict the minor's access to matter harmful to minors; and*
  - (b) *Actual damages, court costs, and reasonable attorney's fees.*
- (3) *This section shall only apply to a minor who:*
- (a) *Is a permanent resident of this state;*
  - (b) *Has resided in this state for more than one (1) year; or*
  - (c) *Has been sojourning in this state for a period of at least thirty-one (31) consecutive days.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO READ AS FOLLOWS:

- (1) *Any covered platform or third party that performs the age verification required under Section 14 of this Act shall not retain any identifying information of the individual after access has been granted to the matter.*

- (2) *A covered platform or third party that is found to have knowingly retained identifying information of the individual after access has been granted to the matter shall be liable to the individual for:*
- (a) *Damages of one thousand dollars (\$1,000) for each twenty-four (24) hour period that the information is retained; and*
- (b) *Actual damages, court costs, and reasonable attorney's fees.*

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO READ AS FOLLOWS:

- (1) *Any party filing a civil action under Section 14 or 15 of this Act shall:*
- (a) *Bring the action in:*
1. *The Circuit Court of the county where the alleged violation occurred;*
  2. *The Circuit Court of the county in which the person bringing the action resides; or*
  3. *Franklin Circuit Court; and*
- (b) *Have the right to a jury trial, and the jury shall decide both liability and damages.*
- (2) *An individual may bring an action under Section 14 or 15 of this Act regardless of whether another court has declared any provision of Sections 13 to 18 of this Act unconstitutional, unless that court decision is binding upon the court in which the action is brought.*
- (3) *Nonmutual issue preclusion and nonmutual claim preclusion shall not be defenses to an action brought under Section 14 or 15 of this Act.*
- (4) *Notwithstanding any other law:*
- (a) *The requirements of Sections 13 to 18 of this Act shall be enforced exclusively through private civil actions; and*
- (b) *Direct or indirect enforcement of Sections 13 to 18 of this Act shall not be taken or threatened by:*
1. *The Commonwealth of Kentucky;*
  2. *A political subdivision of the Commonwealth;*
  3. *The Attorney General;*
  4. *A Commonwealth's attorney or county attorney; or*
  5. *An executive or administrative officer or employee of the Commonwealth in his or her official capacity;*
- against any person or entity, in any manner whatsoever.*

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO READ AS FOLLOWS:

- (1) *Nothing in Sections 13 to 18 of this Act shall be construed to impose liability on:*
- (a) *An internet service provider, or its affiliates or subsidiaries;*
- (b) *A general purpose search engine; or*
- (c) *A cloud service provider;*
- when acting in its capacity as a provider of those services to the extent the provider is not responsible for the creation of the content of the communication that constitutes matter harmful to minors.*
- (2) *Nothing in Sections 13 to 18 of this Act shall be construed to limit or bar any cause of action or preclude the imposition of sanctions or penalties, including criminal penalties, that would otherwise be available under state or federal law.*
- (3) *Compliance with Sections 13 to 18 of this Act shall not excuse any person from any other legal duties or preclude any person from any other legal remedies.*
- (4) *Sections 13 to 18 of this Act shall not subject a covered platform to any cause of action or liability to the extent it is protected from causes of action or liability by federal law, including but not limited to 47 U.S.C. sec. 230.*

- (5) *The provisions of Sections 13 to 18 of this Act shall not apply in cases to the extent the provisions would violate the Commerce Clause of the Constitution of the United States.*

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 436 IS CREATED TO READ AS FOLLOWS:

- (1) *A waiver, purported waiver, or estoppel of a person's right to bring a civil action under Section 14 or 15 of this Act, or of any remedy or any other protection provided by Sections 13 to 18 of this Act, shall be void and unenforceable as against public policy, and a court or arbitrator shall not enforce or give effect to any waiver or estoppel, notwithstanding any choice-of-law or other provision in any contract or other agreement.*
- (2) *The waiver and estoppel prohibition under subsection (1) of this section:*
- (a) *Shall not apply to contractual waivers to the extent any application of the prohibition would impair the obligation of contract in violation of the Constitution of Kentucky or the Constitution of the United States;*
- (b) *Is a public policy limitation on contractual and other waivers or estoppels; and*
- (c) *Shall be enforced to the full extent permitted by the Constitution of Kentucky and the Constitution of the United States.*
- (3) *Any contract, agreement, or arrangement made or entered in violation of Sections 13 to 18 of this Act shall be void and unenforceable as against public policy.*

➔Section 19. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**Signed by Governor April 5, 2024.**