

# UPDATE

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### 2016 LEGISLATIVE UPDATE

The following is a summary of legislation passed by the 2016 Kentucky General Assembly impacting victims of crime, with particular emphasis on victims of child abuse, sexual assault, domestic violence and human trafficking. Any of the complete texts, listed below, may be found at: <http://www.lrc.ky.gov/record/16RS/record.htm>

#### **SB 60 [Continuous Course of Conduct, Vulnerable Victim] - AN ACT relating to offenses committed in a continuing course of conduct against vulnerable victims.**

This bill creates a new section of KRS Chapter 501, to

1. define "offense against a vulnerable victim" and,
2. establish a mechanism for charging a person with the commission of an offense against a vulnerable victim in a continuous course of conduct.

This bill specifies the following:

1. Defines "offense against a vulnerable victim" to mean any violation of the following statutes:

Criminal Abuse (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>) (KRS 508.100, 110, 120); Rape (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>) (KRS 510.040, 050, 060); Sodomy (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>) (KRS 510.070, 080, 090); Sexual Abuse (1<sup>st</sup>, 2<sup>nd</sup>) (KRS 510.110, 120); and Incest (KRS 530.020), if the victim is under the age of 14 or is an individual with an intellectual disability, physically helpless, or mentally incapacitated.

Human Trafficking or Promoting Human Trafficking (if the victim is a minor) (includes Labor Trafficking and Sex Trafficking) (KRS 529.100, 110).

Unlawful Transaction with a Minor, 1<sup>st</sup> degree (involving illegal sexual activity) (*KRS 530.064(1) (a)*).

Use of Minor in a Sexual Performance, (*KRS 531.310*).

Promoting a Sexual Performance by a Minor, (*KRS 531.320*).

Any felony in KRS Chapter 209 (Protection of Adults).

2. Requires proof that the unlawful act was committed by the Defendant against the same person two (2) or more times over a specified period of time.
3. Requires that the indictment shall clearly charge that the crime was committed in a continuing course of conduct.
4. Requires that the jury unanimously agree that two (2) or more acts in violation of this statute occurred during a specific period of time. The jury does not need to agree on which specific acts occurred.
5. Provides that the Defendant may not be convicted of both an offense against a vulnerable victim in a continuous course of conduct and the individual unlawful acts that were part of the continuing course of conduct.
6. Provides that the penalty, probation and parole eligibility, and other consequences of an offense charged under this statute are the same as the offense when charged based on an individual act.
7. Provides that applicability of this section shall be governed by the age of the victim at the time of the offense.
8. Declares an Emergency allowing the law to be enforced effective, April 9, 2016, the date the legislation was signed into law.

**SB 63 [S.A.F.E. Act of 2016, Sexual Assault Kits] – An ACT relating to evidence.**

This bill amends KRS 15.440 to require law enforcement agencies to have approved policies on the disposition of sexual assault evidence collection kits, amends KRS 17.175 to set processing timelines for state police forensic laboratory processing of sexual assault evidence collection kits, and requires that all kits collected prior to this bill and which were not yet tested be submitted to the forensic laboratory by January 1, 2017.

The bill sets out the following requirements:

**Submit All Kits:**

All sexual assault examination kits collected pursuant to KRS 216B.400 prior to the effective date of this Act which have not been subjected to serological or deoxyribonucleic

acid testing shall be submitted to the Department of Kentucky State Police forensic laboratory by January 1, 2017.

The Department of Kentucky State Police forensic laboratory shall collaborate with every Kentucky law enforcement and prosecutorial agency responsible for the collection, storage, and maintenance of sexual assault examination kits to develop a plan for the submission and testing of all such kits.

### **Law Enforcement Agencies Shall Develop Policy & Procedures**

Possesses by January 1, 2017, a written policy and procedures manual related to sexual assault examinations that meets the standards set forth by, and has been approved by, the Justice and Public Safety Cabinet, and which includes:

1. A requirement that evidence collected as a result of an examination performed under Section 4 of this Act be taken into custody within five (5) days of notice from the collecting facility that the evidence is available for retrieval;
2. A requirement that evidence received from a collecting facility relating to an incident which occurred outside the jurisdiction of the department be transmitted to a department with jurisdiction within ten (10) days of its receipt by the department;
3. A requirement that all evidence retrieved from a collecting facility under this paragraph be transmitted to the Department of Kentucky State Police forensic laboratory within thirty (30) days of its receipt by the department;
4. A requirement that a suspect standard, if available, be transmitted to the Department of Kentucky State Police forensic laboratory with the evidence received from a collecting facility; and
5. A process for notifying the victim from whom the evidence was collected of the progress of the testing, whether the testing resulted in a match to other DNA samples, and if the evidence is to be destroyed. The policy may include provisions for delaying notice until a suspect is apprehended or the office of the Commonwealth's attorney consents to the notification, but shall not automatically require the disclosure of the identity of any person to whom the evidence matched.

Failure to meet a deadline established in a policy adopted pursuant to subsection (1)(i) of this section for the retrieval or submission of evidence shall not be a basis for a dismissal of a criminal action or a bar to the admissibility of the evidence in a criminal action.

## **Evidence not to be destroyed**

No item of evidence gathered by law enforcement, prosecutorial, or defense authorities that may be subject to deoxyribonucleic acid (DNA) evidence testing and analysis in order to confirm the guilt or innocence of a criminal defendant shall be disposed of prior to trial of a criminal defendant unless:

- (a) The evidence has been in custody not less than fifty (50) years; or
- (b) The evidence has been in custody not less than ten (10) years; and
  - 1. The prosecution has determined that the defendant will not be tried for the criminal offense; and
  - 2. The prosecution has made a motion, before the court in which the case would have been tried, to destroy the evidence; and

### **Kentucky State Police Crime Lab Shall:**

The department shall analyze and classify all sexual assault evidence collection kits it receives. In cases where a suspect has been identified, the department may give priority to analysis and classification of sexual assault evidence collection kits where the reference standard for comparison is provided with the kit. Except as provided in subsection (3)(e) of this section, by July 1, 2018, the average completion rate for this analysis and classification shall not exceed ninety (90) days, and by July 1, 2020, the average completion rate for this analysis and classification shall not exceed sixty (60) days.

Failure to meet the completion time goals established in subsection (3)(a) of this section shall not be a basis for a dismissal of a criminal action or a bar to the admissibility of evidence.

(c) The Department of Kentucky State Police shall, by August 1 of each year, report to the Legislative Research Commission the yearly average completion rate for the immediately preceding five (5) fiscal years.

(d) With approval by the secretary of the Justice and Public Safety Cabinet in situations in which an equipment casualty necessitates the expedited acquisition or repair of laboratory equipment required for the analysis of evidence, the acquisition or repair shall be exempt from the Finance and Administration Cabinet's competitive bidding process for both acquisition and repair purposes. Each time the authority granted by this paragraph is used, the equipment acquisition or repair shall be fully documented within thirty (30) days by the agency head in a written or electronic letter to the secretary of the Finance and Administration Cabinet, attached to an ordering or payment document in the state's procurement system, which shall include:

1. An explanation of the equipment acquired or repaired;

2. The name of the vendor selected;
3. The amount of procurement;
4. Other price quotations obtained; and
5. The basis for selection of the vendor.

(e) To the extent appropriated funds are insufficient to meet the average completion time goals established in subsection (3)(a) of this section, the Department of Kentucky State Police forensic laboratory shall no longer be required to meet the average completion time goals.

#### **Kentucky State Police Data Collection:**

(1) The Department of Kentucky State Police shall request from other law enforcement agencies, pursuant to KRS 17.150, and shall collect statistical data regarding the reporting and investigation of any person charged with committing, attempting to commit, or complicity to a sexual offense as defined by KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, 510.130, 510.140, 530.020, 530.064(1)(a), and 531.310, and on the number of sexual assault evidence kits, as defined in Section 4 of this Act, which are submitted to law enforcement agencies, the number of such kits submitted to the Department of Kentucky State Police forensic laboratory, and the number of kits tested.

(2) The information collected pursuant to this section for the previous calendar year shall be provided by May 1, 2018, and by each May 1 thereafter to the Sexual Assault Response Team Advisory Committee as defined in Section 5 of this Act.

#### **Hospitals shall:**

If the victim chooses to report to law enforcement, the hospital shall notify law enforcement within twenty-four (24) hours.

All samples collected pursuant to this section shall be stored for at least one (1) year [ninety (90) days] from the date of collection in accordance with the administrative regulation promulgated pursuant to this subsection.

Notwithstanding KRS 524.140, samples collected during exams where the victim chose not to report immediately or file a report within one (1) year[ninety (90) days] after collection may be destroyed as set forth in accordance with the administrative regulation promulgated pursuant to this subsection. The victim shall be informed of this process at the time of the examination. No hospital, sexual assault examination facility, or designated storage facility shall be liable for destruction of samples after the required storage period has expired.

## **SANE-Ready Hospitals**

(1) The secretary of the Cabinet for Health and Family Services shall designate as a SANE-ready hospital any acute care hospital which has certified, and recertifies annually, that a sexual assault nurse examiner as defined in KRS 314.011 is available on call twenty-four (24) hours each day for the examination of persons seeking treatment as victims of sexual offenses as defined by KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, 510.130, 510.140, 530.020, 530.064(1)(a), and 531.310.

(2) The secretary shall suspend or revoke an acute care hospital's designation as SANE-ready hospital if the hospital fails to recertify annually, or if it notifies the secretary that it no longer meets the requirements of this section.

(3) (a) The cabinet shall maintain a list of SANE-ready hospitals and post the list on its Web site. The cabinet shall provide the list and periodic updates to the Kentucky Board of Emergency Medical Services.

(b) The Kentucky Board of Emergency Medical Services shall share the list with each local emergency medical services provider at least annually, and as new centers and hospitals are designated and certified.

### **The Department of Criminal Justice Training (DOCJT) shall:**

Beginning January 1, 2017, the council shall require that a law enforcement basic training course include at least eight (8) hours of training relevant to sexual assault.

Beginning January 1, 2017, the council shall establish a forty (40) hour sexual assault investigation training course. By January 1, 2019, agencies shall have one (1) or more officers trained in this curriculum, as follows:

1. Agencies with five (5) or fewer officers shall have at least one (1) officer trained in sexual assault investigation;
2. Agencies with more than five (5) officers but fewer than thirty (30) officers shall have at least two (2) officers trained in sexual assault investigation; and
3. Agencies with thirty (30) or more officers shall have at least four (4) officers trained in sexual assault investigation.

### **The Administrative Office of the Courts shall:**

The Administrative Office of the Courts shall collect statistical data regarding the prosecution, dismissal, conviction, or acquittal of any person charged with committing, attempting to commit, or complicity to a sexual offense as defined by KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 510.120, 510.130, 510.140, 530.020, 530.064(1)(a), and 531.310.

The information collected pursuant to this section for the previous calendar year shall be provided by May 1 of 2018 and by each May 1 thereafter to the Sexual Assault Response Team Advisory Committee as defined in Section 5 of this Act.

**The Sexual Assault Response Team Advisory Committee (SART-AC) shall:**

Add the executive director of the Kentucky Association of Children's Advocacy Centers to the SART-AC;

Provide assistance to each regional rape crisis center, as designated by the Cabinet for Health and Family Services, in establishing a regional sexual assault response teams

Must develop model policies for law enforcement agencies related to handling sexual assault examination kits and investigating sexual assaults with a victim-centered, evidence-based approach;

By January 1, 2018, must report to the General Assembly on the results of the analysis of previously untested sexual assault examination kits submitted to the Department of Kentucky State Police forensic laboratory pursuant to Section 1 of this Act, including whether analysis of those kits led to the identification and prosecution of suspects and the cost to society of the offenses committed by the suspects identified;

By July 1, 2018, and by each July 1 thereafter, report to the General Assembly and to the secretary of the Justice and Public Safety Cabinet on the number of sexual assaults reported, the number of sexual assault examination kits submitted to the Department of Kentucky State Police forensic laboratory, the number of kits tested, and the number of charges filed and convictions obtained in sexual assault cases in the previous calendar year.

**SB 217 [Military Justice]- AN ACT relating to military justice.**

This bill amends the Kentucky Code of Military Justice to bring it into compliance with Federal Law and the Uniform Code of Military Justice. Specifically the bill does the following:

Section 1- Amends KRS 35.010, relating to the code of military justice, to clarify definitions;

Section 2- Amends KRS 35.070 to change the maximum fine or forfeiture of pay that a commanding officer may impose as well as clarify other non-judicial punishments; (forfeiture of not more than 14 days' pay or a fine of not more than 14 days).

Section 3- Amend KRS 35.125 to clarify who is eligible to serve as a military judge.

Section 4- amend KRS 35.215 to exempt sexual crimes from a statute of limitations (i.e. No Statute of Limitations for Crimes set forth in Sections, KRS 35.678 (new), 35.680 (new), 35.681, 35.683 (new), 35.685, and 35.690.

Section 5 - create a new section of KRS Chapter 35 to move those definitions previously found under each individual sexual crime into one statute (KRS 35.678).

Section 6- creates a new section of KRS Chapter 35 (35.680) to create the crime of sexual harassment;

Section 7- amends KRS 35.681 to remove the definitions related to rape from the statute;

Section 8- creates a new section of KRS Chapter 35 (35.683) to create the crime of rape of a child;

Section 9- amends KRS 35.685 to remove the definitions related to stalking from the statute;

Section 10- amends KRS 35.690 to remove the definitions related to other sexual crimes.

**HB 162 [Student Harassing Communications and Electronic Communication] - AN ACT relating to harassing communications.**

This bill amends KRS 525.080 to include electronic communications within the definition of harassing communications.

**HB 111 [Child Abuse] – AN ACT relating to schools.**

This bill amends KRS 156.095 to require every public school to post the Kentucky child abuse hotline number. Specifically, the Statute states,

“Every Public School shall prominently display the statewide child abuse hotline number administered by the Cabinet for Health and Family Services.”

**SB 40 [Family Court Pilot Project/ Juvenile Proceedings Open to Public] – An ACT relating to open proceedings.**

This bill creates new sections of KRS 21A to request that the Supreme Court establish a pilot project (of at least four years) to permit participating courts (a minimum of 3 diverse judicial districts or circuits) to make specified juvenile proceedings presumptively

open to the public. The bill also establishes guidelines and provides a mechanism for a participating court to close a specific hearing upon a finding of cause.

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For more training or information on legislation impacting victims or if you have comments or suggestions for future issues of Update please feel free to contact:

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