

1 AN ACT relating to background checks.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 4 of this Act:*

- 6 *(1) "Criminal offense against a minor" means a conviction or guilty plea to any of*
7 *the following offenses if the victim is under the age of eighteen (18) at the time of*
8 *the commission of the offense:*
- 9 *(a) Kidnapping, as in KRS 509.040, except by a parent;*
 - 10 *(b) Unlawful imprisonment, as in KRS 509.020, except by a parent;*
 - 11 *(c) Sexual misconduct, as in KRS 510.140;*
 - 12 *(d) Use of a minor in a sexual performance, as in KRS 531.310;*
 - 13 *(e) Promoting a sexual performance by a minor, as in KRS 531.320;*
 - 14 *(f) Possession or viewing of matter portraying a sexual performance by a*
15 *minor, as in KRS 531.335;*
 - 16 *(g) Distribution of matter portraying a sexual performance by a minor, as in*
17 *KRS 531.340;*
 - 18 *(h) Promoting sale of material portraying a sexual performance by a minor, as*
19 *in KRS 531.350;*
 - 20 *(i) Advertising material portraying a sexual performance by a minor, as in*
21 *KRS 531.360;*
 - 22 *(j) Using minors to distribute material portraying a sexual performance by a*
23 *minor, as in KRS 531.370;*
 - 24 *(k) Human trafficking involving commercial sexual activity, as in KRS*
25 *529.100;*
 - 26 *(l) Promoting prostitution, as in KRS 529.040, when the defendant advances or*
27 *profits from the prostitution of a person under the age of eighteen (18);*

1 (m) Unlawful transaction with a minor in the first degree, as in KRS
2 530.064(1)(a);

3 (n) Any attempt to commit any of the offenses described in paragraphs (a) to
4 (m) of this subsection; or

5 (o) Solicitation to commit any of the offenses described in paragraphs (a) to (m)
6 of this subsection;

7 (2) "Sex crime" means a conviction or a plea of guilty to any of the following
8 offenses:

9 (a) Rape in the first degree, as in KRS 510.040;

10 (b) Rape in the second degree, as in KRS 510.050;

11 (c) Rape in the third degree, as in KRS 510.060;

12 (d) Sodomy in the first degree, as in KRS 510.070;

13 (e) Sodomy in the second degree, as in KRS 510.080;

14 (f) Sodomy in the third degree, as in KRS 510.100;

15 (g) Sodomy in the fourth degree, as in KRS 510.100;

16 (h) Sexual abuse in the first degree, as in KRS 510.110;

17 (i) Sexual abuse in the second degree, as in KRS 510.120;

18 (j) Sexual abuse in the third degree, as in KRS 510.130;

19 (k) Indecent exposure in the first degree, as in KRS 510.148;

20 (l) Indecent exposure in the second degree, as in KRS 510.150;

21 (m) Unlawful use of electronic means originating or received within the
22 Commonwealth to induce a minor to engage in sexual or other prohibited
23 activities, as in KRS 510.155; or

24 (n) Incest, as in KRS 530.020;

25 (3) "Violent offender" means a person who has been convicted of or who has
26 entered a guilty plea to the commission of a capital offense, Class A felony, Class
27 B felony involving the death of or serious physical injury to the victim, rape in the

1 first degree, or sodomy in the first degree; and

2 (4) "Youth camp" or "camp" means:

3 (a) Any camp required to obtain a permit to operate pursuant to KRS 211.180;

4 and

5 (b) Any program offered, whether free or for a fee, for recreational,

6 educational, sports training, or vacation purposes to children under

7 eighteen (18) years of age that a child attends outside the presence of his or

8 her parent or legal guardian.

9 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO
10 READ AS FOLLOWS:

11 Sections 1 to 4 of this Act shall not apply to:

12 (1) Public school districts or programs sponsored by the school district;

13 (2) Private schools;

14 (3) (a) Child-care centers;

15 (b) Child-caring and child-placing agencies;

16 (c) Family child-care homes; and

17 (d) Foster care, relative caregiver services, or adoptive homes otherwise

18 governed by KRS Chapter 199; or

19 (4) Babysitting or child-care arrangements made by a child's parent or guardian and

20 occurring within a private home.

21 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO
22 READ AS FOLLOWS:

23 (1) No youth camp shall employ, contract, or utilize as a volunteer, in any position,

24 any person who has been convicted of or who has entered a guilty plea to a

25 criminal offense against a minor or a sex crime, who is a violent offender, or who

26 has been found by the Cabinet for Health and Family Services or a court to have

27 abused or neglected a child.

- 1 (2) Prior to employing, contracting with, or allowing to engage in volunteer work,
2 each youth camp shall obtain from the Justice and Public Safety Cabinet a state
3 criminal background check of the applicant, contractor, or volunteer prior to the
4 individual's presence at the camp or involvement in any program of the camp.
- 5 (3) Each application form provided by a youth camp to an applicant, contractor, or
6 volunteer shall in a prominent place and legible font conspicuously state the
7 following: "STATE LAW REQUIRES A STATE CRIMINAL BACKGROUND
8 CHECK AS A CONDITION OF EMPLOYMENT OR INVOLVEMENT IN
9 THIS PROGRAM."
- 10 (4) Any request for records under subsection (2) of this section shall be on a form
11 approved by the Justice and Public Safety Cabinet, and the cabinet may charge a
12 fee to be paid by the subject of the records request in an amount no greater than
13 the actual cost of processing the request.
- 14 (5) This section shall apply to all applicants, contractors, and volunteers in a position
15 which involves supervisory or disciplinary power over a minor.
- 16 (6) This section shall not be construed to prohibit an exempted organization from
17 requiring its employees, contractors, or volunteers to submit to a background
18 check.
- 19 (7) This section shall not be construed to require a youth camp to employ, contract
20 with, or allow volunteer work by an individual solely on the basis of an
21 acceptable criminal background check.
- 22 (8) This section shall not limit a youth camp's ability to establish a more stringent
23 background check process for its employees, contractors, or volunteers regarding
24 other criminal offenses which, in the discretion of the youth camp, would
25 disqualify the individual from involvement with the youth camp.

26 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 211 IS CREATED TO
27 READ AS FOLLOWS:

1 (1) Failure to comply with Section 3 of this Act will result in the immediate
2 suspension of the entity's permit until compliance is reached.

3 (2) If any employee, contractor, or volunteer is discovered to have been a violent
4 offender, convicted of a sex crime or a criminal offense against a minor, or found
5 by the Cabinet for Health and Family Services or a court to have abused or
6 neglected a child, he or she shall be immediately terminated from the
7 participation with the program and removed from the property.

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

13 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO
14 READ AS FOLLOWS:

15 (1) A parent or legal guardian employing a child care provider for his or her minor
16 child may request a background check of the child abuse and neglect records
17 maintained by the cabinet by submitting the same form and paying the same fee
18 that would be submitted by an entity required by law to request a background
19 check on an employee, contractor, or volunteer for the purpose of determining
20 whether there has been a substantiated finding of child abuse or neglect for the
21 child care provider. The form shall contain the signature of the individual child
22 care provider consenting to the background check.

23 (2) The cabinet shall make the form for requesting a background check of the child
24 abuse and neglect records maintained by the cabinet available on its Web site
25 along with information on how to locate a child care provider certified or
26 licensed by the cabinet and how to request a criminal background check for a
27 child care provider.

1 **(3) The cabinet shall promulgate administrative regulations to implement subsection**
2 **(1) of this section.**

3 ➔Section 6. KRS 160.380 is amended to read as follows:

4 (1) As used in this section:

5 (a) "Alternative education program" means a program that exists to meet the
6 needs of students that cannot be addressed in a traditional classroom setting
7 but through the assignment of students to alternative classrooms, centers, or
8 campuses that are designed to remediate academic performance, improve
9 behavior, or provide an enhanced learning experience. Alternative education
10 programs do not include career or technical centers or departments;

11 (b) "Contractor" means an adult who is permitted access to school grounds
12 pursuant to a current or prospective contractual agreement with the school,
13 school board, school district, or school-affiliated entity, at times when
14 students are present. The term "contractor" includes an employee of a
15 contractor;

16 (c) "Relative" means father, mother, brother, sister, husband, wife, son, daughter,
17 aunt, uncle, son-in-law, and daughter-in-law; and

18 (d) "Vacancy" means any certified position opening created by the resignation,
19 dismissal, nonrenewal of contract, transfer, or death of a certified staff
20 member of a local school district, or a new position created in a local school
21 district for which certification is required. However, if an employer-employee
22 bargained contract contains procedures for filling certified position openings
23 created by the resignation, dismissal, nonrenewal of contract, transfer, or death
24 of a certified staff member, or creation of a new position for which
25 certification is required, a vacancy shall not exist, unless certified positions
26 remain open after compliance with those procedures.

27 (2) Except as provided in KRS 160.346:

- 1 (a) All appointments, promotions, and transfers of principals, supervisors,
2 teachers, and other public school employees shall be made only by the
3 superintendent of schools, who shall notify the board of the action taken. All
4 employees of the local district shall have the qualifications prescribed by law
5 and by the administrative regulations of the Kentucky Board of Education and
6 of the employing board. Supervisors, principals, teachers, and other
7 employees may be appointed by the superintendent for any school year at any
8 time after February 1 preceding the beginning of the school year. No
9 superintendent of schools shall appoint or transfer himself or herself to
10 another position within the school district;
- 11 (b) When a vacancy occurs in a local school district, the superintendent shall
12 notify the chief state school officer thirty (30) days before the position shall be
13 filled. The chief state school officer shall keep a registry of local district
14 vacancies which shall be made available to the public. The local school
15 district shall post position openings in the local board office for public
16 viewing;
- 17 (c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent
18 disruption of necessary instructional or support services of the school district,
19 the superintendent may seek a waiver from the chief state school officer. If the
20 waiver is approved, the appointment shall not be made until the person
21 recommended for the position has been approved by the chief state school
22 officer. The chief state school officer shall respond to a district's request for
23 waiver or for approval of an appointment within two (2) working days;
- 24 (d) When a vacancy occurs in a local district, the superintendent shall conduct a
25 search to locate minority teachers to be considered for the position. The
26 superintendent shall, pursuant to administrative regulations of the Kentucky
27 Board of Education, report annually the district's recruitment process and the

1 activities used to increase the percentage of minority teachers in the district;

2 (e) No relative of a superintendent of schools shall be an employee of the school
3 district. However, this shall not apply to a relative who is a classified or
4 certified employee of the school district for at least thirty-six (36) months
5 prior to the superintendent assuming office, or prior to marrying a relative of
6 the superintendent, and who is qualified for the position the employee holds.
7 A superintendent's spouse who has previously been employed in a school
8 system may be an employee of the school district. A superintendent's spouse
9 who is employed under this provision shall not hold a position in which the
10 spouse supervises certified or classified employees. A superintendent's spouse
11 may supervise teacher aides and student teachers. However, the
12 superintendent shall not promote a relative who continues employment under
13 an exception of this subsection;

14 (f) No superintendent shall employ a relative of a school board member of the
15 district, unless on July 13, 1990, the board member's relative is an employee
16 of the district, the board member is holding office, and the relative was not
17 initially hired by the district during the tenure of the board member. A relative
18 employed in 1989-90 and initially hired during the tenure of a board member
19 serving on July 13, 1990, may continue to be employed during the remainder
20 of the board member's term. However, the superintendent shall not promote
21 any relative of a school board member who continues employment under the
22 exception of this subsection; and

23 (g) 1. No principal's relative shall be employed in the principal's school, except
24 a relative who is not the principal's spouse and who was employed in the
25 principal's school during the 1989-90 school year.

26 2. No spouse of a principal shall be employed in the principal's school,
27 except:

- 1 a. A principal's spouse who was employed in the principal's school
2 during the 1989-90 school year for whom there is no position for
3 which the spouse is certified to fill in another school operated in
4 the district; or
- 5 b. A principal's spouse who was employed in the 1989-90 school year
6 and is in a school district containing no more than one (1)
7 elementary school, one (1) middle school, and one (1) high school.
- 8 3. A principal's spouse who is employed in the principal's school shall be
9 evaluated by a school administrator other than the principal.
- 10 4. The provisions of KRS 161.760 shall not apply to any transfer made in
11 order to comply with the provisions of this paragraph.
- 12 (3) No superintendent shall assign a certified or classified staff person to an alternative
13 education program as part of any disciplinary action taken pursuant to KRS 161.011
14 or 161.790 as part of a corrective action plan established pursuant to the local
15 district evaluation plan.
- 16 (4) No superintendent shall employ in any position in the district any person who is a
17 violent offender or has been convicted of a sex crime as defined by KRS 17.165
18 which is classified as a felony. The superintendent may employ, **except at a**
19 **Kentucky Educational Collaborative for State Agency Children program**, at his
20 discretion, persons convicted of sex crimes classified as a misdemeanor **or persons**
21 **with a substantiated finding of child abuse and neglect in records maintained by**
22 **the Cabinet for Health and Family Services**.
- 23 (5) (a) A superintendent shall require a national and state criminal background check
24 **and a name-based background check of child abuse and neglect records**
25 **maintained by the Cabinet for Health and Family Services** on all new
26 certified hires in the school district and student teachers assigned within the
27 district. Excluded are certified individuals who were employed in another

1 certified position in a Kentucky school district within six (6) months of the
2 date of hire and who had previously submitted to a national and state criminal
3 background check and a name-based background check of child abuse and
4 neglect records maintained by the Cabinet for Health and Family Services
5 for the previous employment.

6 (b) The superintendent shall require that each new certified hire and student
7 teacher, as set forth in paragraph (a) of this subsection, submit to a national
8 and state criminal history background check by the Department of Kentucky
9 State Police and the Federal Bureau of Investigation and a name-based
10 background check of child abuse and neglect records maintained by the
11 Cabinet for Health and Family Services.

12 (c) All fingerprints requested under this section shall be on an applicant
13 fingerprint card provided by the Department of Kentucky State Police. The
14 fingerprint cards shall be forwarded to the Federal Bureau of Investigation
15 from the Department of Kentucky State Police after a state criminal
16 background check is conducted. The results of the state and federal criminal
17 background check and the results of a name-based background check of
18 child abuse and neglect records maintained by the Cabinet for Health and
19 Family Services shall be sent to the hiring superintendent. Any fee charged by
20 the Department of Kentucky State Police, ~~and~~ the Federal Bureau of
21 Investigation, and the Cabinet for Health and Family Services, shall be an
22 amount no greater than the actual cost of processing the request and
23 conducting the search.

24 (d) The Education Professional Standards Board may promulgate administrative
25 regulations to impose additional qualifications to meet the requirements of
26 Public Law 92-544.

27 (6) (a) A superintendent shall require a state criminal background check and a name-

1 **based background check of child abuse and neglect records maintained by**
2 **the Cabinet for Health and Family Services** on all classified initial hires.

3 (b) The superintendent shall require that each classified initial hire submit to a
4 state criminal history background check by the Department of Kentucky State
5 Police **and a name-based background check of child abuse and neglect**
6 **records maintained by the Cabinet for Health and Family Services**. If an
7 applicant has been a resident of Kentucky twelve (12) months or less, the
8 superintendent may require a national criminal history background check as a
9 condition of employment.

10 (c) Any request for **any criminal background** records under this section shall be
11 on an applicant fingerprint card provided by the Department of Kentucky
12 State Police. The results of the state criminal background check and the results
13 of the national criminal history background check, if requested under the
14 provisions of paragraph (b) of this subsection, **and the results of a name-**
15 **based background check of child abuse and neglect records maintained by**
16 **the Cabinet for Health and Family Services** shall be sent to the hiring
17 superintendent. Any fee charged by the Department of Kentucky State Police
18 **and the Cabinet for Health and Family Services** shall be an amount no
19 greater than the actual cost of processing the request and conducting the
20 search.

21 (7) The superintendent may require a contractor, volunteer, or visitor to submit to a
22 national and state criminal history background check by the Department of
23 Kentucky State Police and the Federal Bureau of Investigation **and a name-based**
24 **background check of child abuse and neglect records maintained by the Cabinet**
25 **for Health and Family Services**. Any request for records under this section shall be
26 on an applicant fingerprint card provided by the Department of Kentucky State
27 Police. The results of the state criminal background check and the results of the

1 national criminal history background check, if requested, and the results of a
2 name-based background check of child abuse and neglect records maintained by
3 the Cabinet for Health and Family Services shall be sent to the hiring
4 superintendent. Any fee charged by the Department of Kentucky State Police and
5 the Cabinet for Health and Family Services shall be an amount no greater than the
6 actual cost of processing the request and conducting the search.

- 7 (8) (a) If a school term has begun and a certified or classified position remains
8 unfilled or if a vacancy occurs during a school term, a superintendent may
9 employ an individual, who will have supervisory or disciplinary authority over
10 minors, on probationary status pending receipt of the criminal history
11 background check and a name-based background check of child abuse and
12 neglect records maintained by the Cabinet for Health and Family Services.
13 Application for the criminal record and for a name-based background check
14 of child abuse and neglect records maintained by the Cabinet for Health
15 and Family Services of a probationary employee shall be made no later than
16 the date probationary employment begins.
- 17 (b) Employment shall be contingent on the receipt of the criminal history
18 background check documenting that the probationary employee has no record
19 of a sex crime nor as a violent offender as defined in KRS 17.165.
- 20 (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary,
21 probationary employment under this section shall terminate on receipt by the
22 school district of a criminal history background check documenting a record
23 of a sex crime or as a violent offender as defined in KRS 17.165 and no
24 further procedures shall be required.
- 25 (d) The provisions of KRS 161.790 shall apply to terminate employment of a
26 certified employee on the basis of a criminal record other than a record of a
27 sex crime or as a violent offender as defined in KRS 17.165.

- 1 (9) (a) Each application or renewal form, provided by the employer to an applicant
2 for a classified position, shall conspicuously state the following: "FOR THIS
3 TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE
4 CRIMINAL HISTORY BACKGROUND CHECK AND A NAME-BASED
5 BACKGROUND CHECK OF CHILD ABUSE AND NEGLECT
6 RECORDS MAINTAINED BY THE CABINET FOR HEALTH AND
7 FAMILY SERVICES AS A CONDITION OF EMPLOYMENT. UNDER
8 CERTAIN CIRCUMSTANCES, A NATIONAL CRIMINAL HISTORY
9 BACKGROUND CHECK MAY BE REQUIRED AS A CONDITION OF
10 EMPLOYMENT."
- 11 (b) Each application or renewal form, provided by the employer to an applicant
12 for a certified position, shall conspicuously state the following: "FOR THIS
13 TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND
14 STATE CRIMINAL HISTORY BACKGROUND CHECK AND A NAME-
15 BASED BACKGROUND CHECK OF CHILD ABUSE AND NEGLECT
16 RECORDS MAINTAINED BY THE CABINET FOR HEALTH AND
17 FAMILY SERVICES AS A CONDITION OF EMPLOYMENT."
- 18 (c) Each application form for a district position shall require the applicant to:
- 19 1. Identify the states in which he or she has maintained residency,
20 including the dates of residency; and
 - 21 2. Provide picture identification.
- 22 (10) The provisions of subsections (5), (6), (7), (8) and (9) of this section shall apply to a
23 nonfaculty coach or nonfaculty assistant as defined under KRS 161.185.
- 24 (11) A school-based decision-making council parent member, as defined under KRS
25 160.345, shall submit to a state and national fingerprint-supported criminal history
26 background check by the Department of Kentucky State Police and the Federal
27 Bureau of Investigation and a name-based background check of child abuse and

1 *neglect records maintained by the Cabinet for Health and Family Services*. The
2 results of the state criminal history background check and the results of the national
3 criminal history background check, if requested, *and the results of a name-based*
4 *background check of child abuse and neglect records maintained by the Cabinet*
5 *for Health and Family Services* shall be sent to the district superintendent. Any fee
6 charged by the Department of Kentucky State Police *and the Cabinet for Health*
7 *and Family Services* shall be an amount no greater than the actual cost of
8 processing the request and conducting the search. A parent member may serve prior
9 to the receipt of the criminal history background check report but shall be removed
10 from the council on receipt by the school district of a report documenting a record
11 of a sex crime or criminal offense against a victim who is a minor as defined in
12 KRS 17.500 or as a violent offender as defined in KRS 17.165, and no further
13 procedures shall be required.

14 (12) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary,
15 when an employee of the school district is charged with any offense which is
16 classified as a felony, the superintendent may transfer the employee to a second
17 position until such time as the employee is found not guilty, the charges are
18 dismissed, the employee is terminated, or the superintendent determines that further
19 personnel action is not required. The employee shall continue to be paid at the same
20 rate of pay he or she received prior to the transfer. If an employee is charged with an
21 offense outside of the Commonwealth, this provision may also be applied if the
22 charge would have been treated as a felony if committed within the Commonwealth.
23 Transfers shall be made to prevent disruption of the educational process and district
24 operations and in the interest of students and staff and shall not be construed as
25 evidence of misconduct.

26 *(13) (a) Every two (2) years of employment of each certified and classified employee*
27 *of the school district, the superintendent shall require a name-based*

1 background check of child abuse and neglect records maintained by the
2 Cabinet for Health and Family Services. Any results from the name-based
3 background check shall be sent to the superintendent.

4 (b) If a certified or classified employee transfers from a district and seeks
5 employment in another district, a name-based background check of child
6 abuse and neglect records maintained by the Cabinet for Health and Family
7 Services shall be conducted upon the completion of four (4) years of
8 employment from the last name-based background check of child abuse and
9 neglect records maintained by the Cabinet for Health and Family Services.
10 Any results from the name-based background check shall be sent to the
11 hiring superintendent.