

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO. _____

DAVID M. WARD

and

KENTUCKY ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS, INC.

PLAINTIFFS

v.

SECRETARY OF STATE, *ex rel.*
MICHAEL G. ADAMS, In His Official
Capacity

SERVE:

Attorney General of Kentucky
Room 118, Capitol Building
700 Capital Avenue
Frankfort, KY 40601-3449

and

THE KENTUCKY STATE BOARD OF
ELECTIONS, *ex rel.*
MICHAEL G. ADAMS, In His Official
Capacity as Chief Election Official for the
Commonwealth

and

A. B. CHANDLER III, In His Official
Capacity As Chairman

SERVE:

Attorney General of Kentucky
Room 118, Capitol Building
700 Capital Avenue
Frankfort, KY 40601-3449

DEFENDANTS

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT
AND FOR PERMANENT INJUNCTION**

Plaintiffs David M. Ward and Kentucky Association of Criminal Defense Lawyers, by counsel, bring this action for declaration of rights and permanent injunction against the Defendants Secretary of State and Kentucky Board of Elections, in their official capacities, to prevent the Secretary of State from placing upon the ballot the proposed constitutional amendment enacted as Senate Bill 15 and now compiled as 2020 *Kentucky Acts*, Chapter 85, and to preclude tabulation of votes by the Board on this proposal. As shown by this Complaint, the enactment is invalid because, among other things, it violates the Kentucky Constitution by combining multiple proposed constitutional amendments into a single ballot question; it fails to abide by the rules in the Constitution and state law for general publication of proposed amendments prior to the election; and it will be presented in an election for which a significant portion of the electorate will be disenfranchised by new voter identification requirements. A vote on an invalid proposition, because it involves expenditure of public funds, would constitute irreparable injury.

Pursuant to KRS 418.050 and CR 57, Plaintiffs request expedited review. Because of time constraints as to Defendant Secretary of State, the Court must act promptly to prevent the doing of a futile and costly act.

IDENTITY OF THE PARTIES

1. Plaintiff David M. Ward is a resident of this Commonwealth who pays taxes to the Commonwealth.

2. Plaintiff Kentucky Association of Criminal Defense Attorneys is a non-profit corporation in good standing qualified to operate under the provisions of KRS Chapter 273. It is also a corporation operating under 26 U. S. C. §501(c)(6). It has standing to sue and be sued in its own name and to advocate on behalf of its membership which is composed almost exclusively of

attorneys engaged in the defense of criminal prosecutions in the Court of Justice. These attorneys are also taxpayers in the Commonwealth of Kentucky.

3. Defendant Michael G. Adams is being sued in his official capacity as the Kentucky Secretary of State. He is a constitutional officer with powers and duties assigned by the Constitution of Kentucky and by the Kentucky Revised Statutes.

4. Defendants A. B. Chandler III and the Kentucky Board of Elections are being sued in their official capacities. They have the ministerial duty of counting the votes cast at the Election that is scheduled for November 3, 2020. The Board also has a duty, pursuant to Constitution Section 256, to certify to the Secretary of State the final vote on any ballot question. Upon certification, if a majority of voters favor the amendment, it becomes part of the Constitution without any further intervention by any government agency or officer.

JURISDICTION AND VENUE

5. An actual and justiciable controversy exists. The Defendants are compelled to discharge ministerial duties by Sections 256 and 257 of the Constitution and various sections of the Kentucky Revised Statutes. The Court has jurisdiction to declare rights and law pursuant to KRS 418.040. The Court has jurisdiction pursuant to Constitution Section 112(5) to grant the injunctive relief requested.

6. Venue lies in this Court pursuant to KRS 452.405 and KRS 452.480 because the primary offices of the Defendants are located within Franklin County.

COUNT ONE

7. Section 256 of the Constitution requires submission of the entire text of a proposed amendment to the voters.

8. If anything less than the full text of an amendment is submitted for a vote, the

proposed amendment violates Section 256 and is void.

9. The proposed Victims' Bill of Rights is contained in Section (2) of 2020 *Kentucky Acts*, Chapter 85. The text of Chapter 85, Section (2) is reproduced in Exhibit 1 to this Complaint.

10. The anticipated beneficiaries of Chapter 85 are not identified in any part of Chapter 85. The term "victim" is mentioned but not defined.

11. Chapter 85, Section (2) states that "a victim, as defined by law which takes effect upon the enactment of this section and which may be expanded by the General Assembly" shall have the rights proposed by Section (2).

12. The statute referred to is not identified at any point in Chapter 85.

13. Constitution Section 256 states that after adoption by both Houses of the General Assembly "such proposed amendment or amendments shall be submitted to the voters of the State for their ratification or rejection."

14. It appears that the statute referred to in Chapter 85, Section (2) is found in Chapter 101 of the 2020 *Kentucky Acts*, which is attached as Exhibit 2 to this Complaint.

15. In Section (5) of Chapter 85, the General Assembly directed the Secretary of State to certify "the entirety of the proposed amendment to the Constitution of Kentucky contained in Section 2 of this Act" to the County Clerks.

16. The General Assembly made no provision for certifying the language found in Chapter 101.

17. The General Assembly has not taken the necessary steps to submit the whole amendment to the people for a vote.

18. An amendment proposal that does not comply with Section 256 of the Constitution is void *ab initio*.

19. A vote on a void amendment proposal would amount to a waste of taxpayer money and would be an arbitrary action in violation of Section 2 of the Bill of Rights.

20. Plaintiffs urge the Court to declare 2020 Kentucky Acts, Chapter 85 void.

21. Plaintiffs urge the Court to enter an order enjoining the Secretary of State from certifying Chapter 85(2) as a ballot question for the election to be held on November 3, 2020.

COUNT TWO

22. Plaintiffs adopt and incorporate by reference paragraphs 1-21 of the Complaint.

23. On April 14, 2020 at 6:29 p.m., SB-15 was lodged in the Office of the Secretary of State. Defendant Michael G. Adams personally acknowledged receipt on April 14, 2020.

24. The face of SB-15 shows that it was not submitted to the Governor for consideration; 2020 Kentucky Acts, Ch. 85 states that SB-15 was “[d]elivered to the Secretary of State.”

25. Chapter 85 consists of five sections. Section (2) sets out the partial text of the proposed amendment to the Constitution.

26. Plaintiffs acknowledge that Chapter 85, Sections (1) and (3) fall within the authorization set out in Section 256 of the Constitution.

27. Section (3) of Chapter 85 provides:

This amendment shall be submitted to the voters of the Commonwealth for their ratification or rejection at the time and in the manner provided for under Sections 256 and 257 of the Constitution and under Sections 4 and 5 of this Act.

28. Chapter 85, Section (4) directs the Secretary of State to publish the proposed amendment in at least one newspaper of general circulation. As such, Chapter 85, Section (4) does not fall under the exemption of Section 256 as set out above.

29. Constitution Section 257 reads:

Before an amendment shall be submitted to a vote, the Secretary of State shall cause such proposed amendment, and the time same is to be voted upon, to be published at least ninety days before the vote is to be taken thereon *in such manner as may be prescribed by law*.

30. Section 257 places the duty of publicity on the Secretary of State, requiring Mr. Adams to publish the “proposed amendment” and to give notice of the time it is to be voted upon.

31. The only role for the General Assembly in Section 257 is to prescribe the manner of publication “by law,” that is, by statute.

32. Constitution Section 88 provides that “[e]very bill which shall have passed the two Houses shall be presented to the Governor . . .”

33. Constitution Section 89 mandates:

“[E]very order, resolution or vote, in which the concurrence of both Houses may be necessary, except on a question of adjournment, or as otherwise provided in this Constitution, shall be presented to the Governor, . . .”

34. Nothing in Section 257 of the Constitution exempts publicity statutes enacted under its authority from the operation of Constitution Sections 88 and 89.

35. Because Section (4) of Chapter 85 was not presented to the Governor for consideration, it is not a law. Section 26 of the Bill of Rights declares it void ab initio.

36. Chapter 85, Section (3) unambiguously expresses the intent of the 2020 General Assembly as to this proposed amendment. The amendment must be submitted “under Sections 256 and 257 of the Constitution and under Sections 4 and 5 of this Act.”

37. But the proposal cannot be submitted “in the manner provided for” because Section (4) does not, as a matter of law, exist.

38. Because one of the conditions precedent established by the 2020 General Assembly cannot be satisfied, no valid vote on Chapter 85(2) can be held. The Court must so declare and grant relief.

COUNT THREE

39. Plaintiffs adopt and incorporate by reference paragraphs 1-38 of the Complaint.

40. Constitution Section 51 provides: “[N]o law enacted by the General Assembly shall relate to more than one subject, and that shall be expressed in its title. . . .”

41. 2020 Kentucky Acts, Chapter 101 bears the title “AN ACT relating to crime victims’ rights.” (Exhibit 2, hereto).

42. Chapter 101 has an undisclosed second purpose, however. It is intended to provide a definition for the proposed constitutional amendment set out in Chapter 85 of the 2020 Kentucky Acts.

43. The title fails to reflect this significant second purpose.

44. Chapter 101 thus violates Section 51 and is void ab initio.

45. Because Chapter 101 is void, there is no “law” to which Chapter 85, Section (2) can refer.

46. Neither Chapter 101 nor Chapter 85 of the 2020 Kentucky Acts can be enforced.

47. Plaintiffs ask the Court to declare Chapter 101 and Chapter 85 void and to enter an order enjoining a vote on Chapter 85.

COUNT FOUR

48. Plaintiffs adopt and incorporate by reference paragraphs 1-47 of the Complaint.

49. Chapter 101 contains an irreconcilable internal conflict that makes it impossible for any court to determine the intent of the 2020 General Assembly.

50. In Section (1) of the Act, the General Assembly repealed and re-enacted KRS 421.576.

51. Section 1 (2) of the Act reads: “The rights established by KRS 421.500 to 421.576

shall apply in all felony and misdemeanor proceedings in a District or Circuit Court of the Commonwealth.”

52. Section 2 adds a new Section (1)(a) to KRS 421.500 that is also repealed and reenacted.

53. Section (1)(a) defines “victim” to mean a person harmed by the commission of a felony or misdemeanor, if the misdemeanor involves “threatened or actual physical injury, harassment or restraint,” “a child or incompetent person or “a sexual offense or a trespass.”

54. By contrast, Section 1 affords rights “in all felony and misdemeanor proceedings in a District or Circuit Court,” Section 2 simultaneously limits the availability of rights based on the kind of offense charged.

55. Both statutes were repealed and reenacted in Chapter 101.

56. There is no reasonable way to reconcile the statutes.

57. The General Assembly has not exercised its power in an intelligible way.

58. Chapter 101 is void for uncertainty.

59. Because Chapter 101 is void, there is no “law” to which Chapter 85, Section (2) can refer.

60. Neither Chapter 101 nor Chapter 85 of the 2020 Kentucky Acts can be enforced.

61. Plaintiffs ask the Court to declare Chapter 101 and Chapter 85 void and to enter an order enjoining a vote on Chapter 85.

COUNT FIVE

62. Plaintiffs adopt and incorporate by reference paragraphs 1-61 of the Complaint.

63. In Section 4 of the Bill of Rights, the people of Kentucky have retained for themselves the “inalienable and indefeasible right to alter, reform or abolish their government in

such manner as they may deem proper.”

64. Section 256 of the Constitution delegates to the General Assembly the job of assisting the people in the exercise of their power to change the form of their government. The General Assembly does this by proposing amendments for the people to ratify or reject.

65. As the fiduciary of the people, the General Assembly must act in their interest and must disclose to the people sufficient information to allow an intelligent and prudent exercise of the Section 4 right to change the Constitution.

66. Toward that end, Section 256 places limitations on what may be submitted for consideration at any particular election.

67. Section 256 provides that “[n]ot more than four amendments shall be voted upon at any one time.” On its face, Kentucky Acts, Chapter 85 violates Section 256 because it reflects more than four amendments.

68. If two or more amendments are submitted for a vote at the same time, “they shall be submitted in such manner that the electors shall vote for or against each of the amendments separately. . . .”

69. Section 256 also provides that an amendment “may relate to a single subject or to related subject matters and may amend or modify as many articles and as many sections of the Constitution as may be necessary and appropriate to accomplish the objectives of the amendment.”

70. *Kentucky Acts* Chapter 85 violates Section 256 because, in the guise of a single amendment, it actually presents at least four significant amendments which do not relate to a single subject or to related subject matters. *Kentucky Acts* Chapter 85’s combination of separate amendments into a single proposal therefore violates Section 256’s requirement that “[i]f two or

more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.”

71. At minimum, Chapter 85(2) proposes:

(a) to create certain rights and remedies for persons deemed to be victims of crime;

(b) to alter the structure of government by giving the Legislative Department exclusive power to “protect” the rights granted;

(c) to extend the shield of civil immunity to government agencies, officers and employees not currently protected; and

(d) to limit the rights of persons accused of crime.

72. Chapter 85 also violates Section 256 because it purports to “amend and modify” several sections of the existing Constitution by implication. The plain language of Section 256 mandates that when an enactment will amend or modify articles or sections of the extant Constitution, the enactment must expressly identify and disclose those articles and sections to be modified or amended.

73. The amendments set out in Paragraph 71 should have been proposed in a way that allows a separate vote on each.

74. Because Chapter 85 violates the plain language of Constitution Section 256, it is void *ab initio*.

75. Because there can be no valid vote on a legal nullity, the Court must bar submission to the voters or the counting of votes.

COUNT SIX

76. Plaintiffs adopt and incorporate by reference paragraphs 1-75 of the Complaint.

77. On April 14, 2020, the General Assembly re-passed Senate Bill 2 over a veto and delivered it to the Secretary of State. It is now codified as 2020 *Kentucky Acts*, Chapter 89.

78. The mechanics of the new scheme are found in Sections 15, 16, 23 and 32 of Chapter 89.

79. Section 15(1) amends KRS 117.225 to read:

Any person desiring to vote on election day shall give his *or her* name and address to the clerk of the election *and shall provide proof of identification as defined in Section 23 of this Act.*

80. Section 15(3) permits voting on the following conditions: ¹

If the *voter's* name is listed on the precinct list furnished by the State Board of Elections as provided in KRS 117.025, the voter provides proof of identification, *the voter is exempt pursuant to subsection (3) of this section, or the voter otherwise satisfies the requirements of Section 1 of this Act,* and if no challenge is made, *then he or she* shall sign his *or her* name on the precinct list in the space opposite his *or her* printed name.

The voter's signature shall constitute *the voter's* verification that *the voter* is a properly registered and qualified voter.

The voter shall then retire alone to cast his *or her* vote on the voting machine. [* * *].

81. Section 16 amends KRS 117.227 to state the duty of elections officers with regard to voter identity:

Except as otherwise provided, election officers shall confirm the identity of each voter *by proof of identification as defined in Section 23 of this Act.* The election officer confirming the identity shall sign the precinct voter roster and list the method of *proof of identification.*

82. Section 23(12) amends KRS 117.375 by creating a new definition:

"Proof of identification" means a document that was issued by:

(a) *The United States or the Commonwealth of Kentucky, and the document contains:*

1. *The name of the individual to whom the document was issued; and*

¹ The pertinent sentences of Section (3) are set out separately for ease of reading and analysis.

2. *A photograph of the individual to whom the document was issued;*
- (b) *The United States Department of Defense, a branch of the uniformed services, the Merchant Marines, or the Kentucky National Guard, and if the document contains:*
 1. *The name of the individual to whom the document was issued; and*
 2. *A photograph of the individual to whom the document was issued;*
- (c) *A public or private college, university, or postgraduate technical or professional school located within the United States, and contains:*
 1. *The name of the individual to whom the document was issued; and*
 2. *A photograph of the individual to whom the document was issued;*
- (d) *Any city government, county government, urban-county government, charter county government, consolidated local government, or unified local government, which is located within this state, and the document contains:*
 1. *The name of the individual to whom the document was issued; and*
 2. *A photograph of the individual to whom the document was issued.*

83. Section 32(9) amends KRS 186.531 by creating a new exemption from the fees otherwise charged for operator's licenses or personal identity cards:

There shall be no fee assessed for the initial, renewal, or duplicate standard personal identification card to an individual, if the individual:

- (a) *Does not possess a valid operator's license or a commercial driver's license; and*
- (b) *Is at least eighteen years of age on or before the day of the next regular election.*

84. The effective date of legislation that does not have an emergency declaration or delayed effective date is, as stated by Attorney General Opinion 2020-8, July 15, 2020.

85. To comply with Chapter 89, registered voters who wish to vote on November 3, 2020, and who do not already have an acceptable form of photo identification, will have to procure a document that falls within the definition set out in Section 23(12).

86. Under Constitution Section 150, the General Assembly must enact laws that support “free suffrage.” Constitution Section 6 mandates that “[a]ll elections shall be free and equal.” The proof of identity provisions of Chapter 89 violate both provisions.

87. With three explicit exceptions, Constitution Section 145 declares:

[E]very citizen of the United States of the age eighteen years who has resided in the state one year, and in the county six months, and the precinct in which he offers to vote sixty days next preceding the election, *shall be a voter* in said precinct and not elsewhere

88. Section 147 of the Constitution imposes the only constitutional qualification on the right to vote: “[W]here registration is required, only persons registered shall have the right to vote.”

89. Chapter 89 attempts to add a third condition for voting that is arbitrary under the current circumstances of medical emergency.

90. With one exception for public or private post-secondary schools, Section 23(12) requires photo identification documents that can be obtained only from government agencies.

91. Because of the current pandemic, a substantial number of otherwise qualified voters who could have satisfied the identification requirements of KRS 117.225 and KRS 117.227 before July 15, 2020, will not be able to provide the required “proof of identity.”

92. In particular, those persons who will be required to seek the free ID card afforded by Section 32(9) will have insufficient time to avail themselves of this option.

93. ID cards are available only from the Circuit Court Clerks in each county.

94. Under Supreme Court and Executive Orders, Circuit Clerks' Offices have been unable to offer in person services, more particularly operator's licenses and identity cards, since March 2020. Offices that could provide the documents necessary to apply for licenses or ID cards also have been closed. These offices could not reopen until June 1, 2020, at the earliest.

95. The "free" option for ID cards will not be available until July 15, 2020.

96. There are 77 weekdays between July 15, 2020, and November 3, 2020, excluding Labor Day and Election Day, on which persons seeking to comply with Chapter 89 can apply for the operator's licenses or identification cards required by the new law.

97. Chapter 89 violates the Section 150 injunction to pass laws supporting free suffrage. It violates the Section 6 mandate to conduct free and equal elections because a substantial number of persons otherwise qualified to vote will not be able to do so. In the peculiar circumstances of this election cycle, permitting a vote on the Act Chapter 85(2) will violate the constitutional prohibition against arbitrary government action enforced by Section 2 of the Bill of Rights.

98. A change in the fundamental law of Kentucky can be made only after all persons possessing the right to vote conferred by Constitution Sections 145 and 147 have a fair chance to go to the polls and ratify or reject the proposal.

99. Because a substantial number of qualified persons will be barred from participating in the vote for or against SB-15 by circumstances beyond their control, the Court must enjoin placement of Acts Chapter 85, Sections (1) and (2) on the November 3, 2020, ballot. Alternatively, the Court must prohibit counting and certification of any votes that are cast.

WHEREFORE, Plaintiffs demand:

1. A declaration that 2020 *Kentucky Acts*, Chapter 85 cannot be placed on the ballot for a vote on November 3, 2020, because the unambiguous mandates of Sections 256 and 257 of the Constitution have not and cannot be complied with.
2. A declaration that 2020 *Kentucky Acts*, Chapter 101 is void.
3. A declaration that a vote on 2020 *Kentucky Acts*, Chapter 85 cannot be held because there is insufficient time and opportunity for registered voters to obtain the identification documents required by 2020 *Kentucky Acts*, Chapter 89 and that a vote on the amendment proposed by Chapter 85 would be arbitrary under the circumstances.
4. A declaration that the General Assembly, when it acts under Section 256, is under a fiduciary duty to the people who, under Section 4 of the Bill of Rights, are asked to consider changes in the fundamental organic law of the Commonwealth.
5. A declaration that the General Assembly must identify the sections that will be amended or modified, when it proposes amendments in the Constitution under Section 256, and that Chapter 85 violates this mandate.
6. A declaration that 2020 *Kentucky Acts*, Chapter 85 violates the Section 256 requirement of separate submission of unrelated questions for consideration and voting.
7. A declaration that, under all the circumstances, submission of the proposed amendment for a vote would be arbitrary in violation of Section 2 of the Bill of Rights and a violation of the plain language of Sections 256 and 257 and Sections 145 and 147 of the Constitution.
8. Entry of an order permanently enjoining the Secretary of State from certifying to any County Clerk the proposed amendment set out in 2020 *Kentucky Acts*, Ch. 85. If the Secretary

of State has already certified this proposal, entry of an order enjoining him to rescind the certification forthwith.

9. Entry of an order permanently enjoining the State Board of Elections from tabulating any votes for or against 2020 *Kentucky Acts*, Chapter 85 that might be cast at the election conducted on November 3, 2020.

10. Entry of an order permanently enjoining the State Board of Elections from certifying to any person or entity the number votes for or against the proposed amendment and from issuing any certificates based on that vote.

Respectfully submitted,

/s/ Virginia H. Snell

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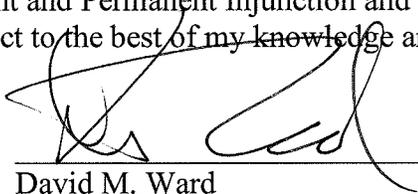
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*Counsel for Plaintiff Kentucky Association of
Criminal Defense Lawyers, Inc.*

VERIFICATION

I, David M. Ward, upon being duly sworn, do hereby swear that I have read the foregoing verified Complaint for Declaratory Judgment and Permanent Injunction and that the factual allegations set out therein are true and correct to the best of my knowledge and belief.



David M. Ward

COMMONWEALTH OF KENTUCKY

COUNTY OF Clark

Subscribed, sworn to and acknowledged before me on this 1st of ~~May~~ June, 2020, by David M. Ward.

Barbara M. Christopher
Notary Public

Printed Name: Barbara M. Christopher

My Commission Expires: March 7, 2023
ID No 618211

VERIFICATION

I, Angela M. Rea, upon being duly sworn, do hereby swear that I have read the foregoing verified Complaint for Declaratory Judgment and Permanent Injunction and that the factual allegations set out therein are true and correct to the best of my knowledge and belief.

Angela M Rea
Angela M Rea, President, KACDL

COMMONWEALTH OF KENTUCKY

COUNTY OF Jefferson

Subscribed, sworn to and acknowledged before me on this 27th of May, 2020, by Angela M. Rea.

Bridget D. Hess
Notary Public

Printed Name: Bridget D. Hess

My Commission Expires: November 21, 2021

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EXHIBIT 1

CHAPTER 85
(SB 15)

AN ACT proposing to create a new section of the Constitution of Kentucky relating to crime victims' rights.

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

➔Section 1. Are you in favor of creating a new section of the Constitution of Kentucky relating to crime victims, as proposed in Section 2 below?

➔SECTION 2. IT IS PROPOSED THAT A NEW SECTION BE ADDED TO THE CONSTITUTION OF KENTUCKY TO READ AS FOLLOWS:

To secure for victims of criminal acts or public offenses justice and due process and to ensure crime victims a meaningful role throughout the criminal and juvenile justice systems, a victim, as defined by law which takes effect upon the enactment of this section and which may be expanded by the General Assembly, shall have the following rights, which shall be respected and protected by law in a manner no less vigorous than the protections afforded to the accused in the criminal and juvenile justice systems: victims shall have the reasonable right, upon request, to timely notice of all proceedings and to be heard in any proceeding involving a release, plea, sentencing, or in the consideration of any pardon, commutation of sentence, granting of a reprieve, or other matter involving the right of a victim other than grand jury proceedings; the right to be present at the trial and all other proceedings, other than grand jury proceedings, on the same basis as the accused; the right to proceedings free from unreasonable delay; the right to consult with the attorney for the Commonwealth or the attorney's designee; the right to reasonable protection from the accused and those acting on behalf of the accused throughout the criminal and juvenile justice process; the right to timely notice, upon request, of release or escape of the accused; the right to have the safety of the victim and the victim's family considered in setting bail, determining whether to release the defendant, and setting conditions of release after arrest and conviction; the right to full restitution to be paid by the convicted or adjudicated party in a manner to be determined by the court, except that in the case of a juvenile offender the court shall determine the amount and manner of paying the restitution taking into consideration the best interests of the juvenile offender and the victim; the right to fairness and due consideration of the crime victim's safety, dignity, and privacy; and the right to be informed of these enumerated rights, and shall have standing to assert these rights. The victim, the victim's attorney or other lawful representative, or the attorney for the Commonwealth upon request of the victim may seek enforcement of the rights enumerated in this section and any other right afforded to the victim by law in any trial or appellate court with jurisdiction over the case. The court shall act promptly on such a request and afford a remedy for the violation of any right. Nothing in this section shall afford the victim party status, or be construed as altering the presumption of innocence in the criminal justice system. The accused shall not have standing to assert the rights of a victim. Nothing in this section shall be construed to alter the powers, duties, and responsibilities of the prosecuting attorney. Nothing in this section or any law enacted under this section creates a cause of action for compensation, attorney's fees, or damages against the Commonwealth, a county, city, municipal corporation, or other political subdivision of the Commonwealth, an officer, employee, or agent of the Commonwealth, a county, city, municipal corporation, or

any political subdivision of the Commonwealth, or an officer or employee of the court. Nothing in this section or any law enacted under this section shall be construed as creating:

- (1) A basis for vacating a conviction; or
- (2) A ground for any relief requested by the defendant.

➔ Ugevqap"50""Vj ku'co gpf o gpv'uj cmi'dg'uwo kwgf "v"vj g"xqvtu"qh'vj g'Ego o qpy gcnj "hqt"vj gkt"tvcv'k'ecv'k'p"qt" tglgev'k'p"cv'vj g'vko g'cpf "kp"vj g'o cppgt"r tqxkf gf "hqt"wpf gt"Ugev'k'p"478"cpf "479"qh'vj g'Eapuk'w'k'p"cpf "wpf gt" Ugev'k'p"6"cpf "7"qh'vj ku'Cev'0

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➔ Ugev'k'p"70""P qwy kj uc'p'f kpi "cp{"rcpi wci g'lp"MTU'33: 0637"v"vj g'eqvtct{"vj g'Uget'g'ct{"qh'U'cv'g."p'q'v'rc'v'gt" vj cp'vj g'uge'q'p'f "O q'p'f c{"ch'gt"vj g'uge'q'p'f "V'w'g'uf c{"kp"C'wi wuv'r t'ge'gf kpi "vj g'p'gz'v't'gi w'ct"gr'gev'k'p"cv'y j lej "o go d'gtu'qh' vj g'I g'p'gt'cn'Cu'ugo dn'f "ct'g"v'q"dg"ej qu'gp'kp"c"{"g'ct"kp'y j lej "vj g't'g'ku'p'q'v'c'p"gr'gev'k'p"hqt"Rt'g'ul'f gp'v'c'p'f "X'le'g'Rt'g'ul'f gp'v'q'h' vj g'W'p'k'g'f "U'cv'gu."qt'p'q'v'rc'v'gt"vj cp'vj g'Vj w'uf c{"ch'gt"vj g'ht'uv'V'w'g'uf c{"kp"U'gr v'go d'gt'r t'ge'gf kpi "c't'gi w'ct"gr'gev'k'p"kp" c" {"g'ct"kp'y j lej "vj g't'g'ku'c'p"gr'gev'k'p"hqt"Rt'g'ul'f gp'v'c'p'f "X'le'g'Rt'g'ul'f gp'v'q'h'vj g'W'p'k'g'f "U'cv'gu."uj cni'egt'v'k'f "vj g'"s w'gu'k'p"kp" Ugev'k'p"3"qh'vj ku'Cev'cpf "vj g'gp'v'k'g'v' "qh'vj g'r t'qr qugf "co gpf o gpv'v'vj g'Eapuk'w'k'p"qh' Mgp'wen'f "eqp'ck'p'gf "kp" Ugev'k'p"4"qh'vj ku'Cev'v'q"vj g'eq'w'p'v'f "eng't'ni'q'h'g'cej "eq'w'p'v'f."cpf "vj g'eq'w'p'v'f "eng't'ni'uj cni'j cx'g'vj g'"s w'gu'k'p"kp"Ugev'k'p"3"qh' vj ku'Cev'cpf "vj g'gp'v'k'g'v' "qh'vj g'co gpf o gpv'eq'p'ck'p'gf "kp"Ugev'k'p"4"qh'vj ku'Cev'cu'u'q'egt'v'k'g'f."kp'f k'ec'v'gf "q'p'vj g'd'cn'q'w' r tq'x'kf gf "v"vj g"x'q'v'tu"kp"r cr gt"qt"gr'gev'k'p'le"ht'o "cu'cr r r'k'ec'd'ng"v"vj g"x'q'v'k'pi "o cej k'p'gu"kp"w'ug"kp"g'cej "eq'w'p'v'f "qt" r t'ge'k'p'ev'0

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EXHIBIT 2

CHAPTER 101

(SB 80)

AN ACT relating to crime victims' rights.

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

➔Section 1. KRS 421.576 is repealed and reenacted to read as follows:

- (1) In order to establish the minimum conduct of criminal justice professionals with respect to crime victims and to communicate the intent of the General Assembly that victims of crime play an integral role in the criminal justice process, KRS 421.500 to 421.575 is hereby named the Kentucky Crime Victim Bill of Rights.
- (2) The rights established by KRS 421.500 to 421.575 shall apply in all felony and misdemeanor proceedings in a District or Circuit Court of the Commonwealth.
- (3) Nothing in KRS 421.500 to 421.575 shall provide grounds for the victim to challenge a charging decision or a conviction, to obtain a stay of trial, or to compel a new trial. Law enforcement agencies, county attorneys, and Commonwealth's attorneys and courts shall make every reasonable effort to ensure that victims of crime receive the benefits of the rights set out in KRS 421.500 to 421.575.

➔Section 2. KRS 421.500 is repealed, reenacted, and amended to read as follows:

- (1) (a) As used in KRS 421.500 to 421.575, "victim" means ***an individual directly and proximately harmed as a result of:***
 1. ***The commission of a crime classified as a felony; a misdemeanor involving threatened or actual physical injury, harassment, or restraint; a misdemeanor involving a child or incompetent person; or a misdemeanor involving a sexual offense or a trespass; or***
 2. ***Conduct which, if committed by an adult, would be classified as a felony or a misdemeanor described in subparagraph 1. of this paragraph.***

If the victim is a minor, incapacitated, or deceased, "victim" also means one (1) or more of the victim's spouse, parents, siblings, children, or other lawful representatives which shall be designated by the court unless the person is the defendant or a person the court finds would not act in the best interests of the victim.
- (b) ***In a case in which the number of victims makes it impracticable to accord all victims those rights provided by KRS 421.500 to 421.575, the court may fashion a reasonable procedure that does not unduly complicate or prolong the proceeding, to give effect to this section.***
- (c) ~~an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime classified as stalking, unlawful imprisonment, use of a minor in a sexual performance, unlawful transaction with a minor in the first degree, terroristic threatening, menacing, harassing communications, intimidating a witness, criminal homicide, robbery, rape, assault, sodomy, kidnapping, burglary in the first or second degree, sexual abuse, wanton endangerment, criminal abuse, human trafficking, or incest. If the victim is a minor or legally incapacitated, "victim" means a parent, guardian, custodian or court appointed special advocate.~~
- (a) ~~If the victim is deceased and the relation is not the defendant, the following relations shall be designated as "victim" for the purpose of exercising those rights contained in KRS 421.500 to 421.575:~~
 1. ~~The spouse;~~
 2. ~~An adult child if subparagraph 1. of this paragraph does not apply;~~

- ~~3. A parent if subparagraphs 1. and 2. of this paragraph do not apply;~~
- ~~4. A sibling if subparagraphs 1. to 3. of this paragraph do not apply; and~~
- ~~5. A grandparent if subparagraphs 1. to 4. do not apply.~~

~~(b)~~ If the victim is deceased and the relation is not the defendant, the following relations shall be designated as "victims" for the purpose of presenting victim impact testimony under KRS 532.055(2)(a)7.:

- 1. A spouse;
 - 2. An adult child;
 - 3. A parent;
 - 4. A sibling; and
 - 5. A grandparent.
- (2) If any court believes that the health, safety, or welfare of a victim who is a minor or is legally incapacitated would not otherwise adequately be protected, the court may appoint a special advocate to represent the interest of the victim and to exercise those rights provided for by KRS 421.500 to 421.575. Communication between the victim and the special advocate shall be privileged.
- (3) Law enforcement personnel shall ensure that victims receive information on available protective, emergency, social, and medical services upon initial contact with the victim and are given information on the following as soon as possible:
- (a) Availability of crime victim compensation where applicable;
 - (b) Community- based treatment programs;
 - (c) The criminal justice process as it involves the participation of the victim or witness;
 - (d) The arrest of the accused; and
 - (e) How to register to be notified when a person has been released from prison, jail, a juvenile detention facility, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A.
- (4) Law enforcement officers and attorneys for the Commonwealth shall provide information to victims and witnesses on how they may be protected from intimidation, harassment, and retaliation as defined in KRS 524.040 or 524.055.
- (5) Attorneys for the Commonwealth shall make a reasonable effort to insure that:
- (a) All victims and witnesses who are required to attend criminal justice proceedings are notified promptly of any scheduling changes that affect their appearances;
 - (b) If victims so desire and if they provide the attorney for the Commonwealth with a current address and telephone number, they shall receive prompt notification, if possible, of judicial proceedings relating to their case, including but not limited to the defendant's release on bond and any special conditions of release; of the charges against the defendant, the defendant's pleading to the charges, and the date set for the trial; of notification of changes in the custody of the defendant and changes in trial dates; of the verdict, the victim's right to make an impact statement for consideration by the court at the time of sentencing of the defendant, the date of sentencing, the victim's right to receive notice of any parole board hearing held for the defendant, and that the office of Attorney General will notify the victim if an appeal of the conviction is pursued by the defendant; and of a scheduled hearing for shock probation or for bail pending appeal and any orders resulting from that hearing;
 - (c) The victim knows how to register to be notified when a person has been released from a prison, jail, a juvenile detention facility, or a psychiatric facility or forensic psychiatric facility if the case involves a violent crime as defined in KRS 439.3401 and the person charged with or convicted of the offense has been involuntarily hospitalized pursuant to KRS Chapter 202A;
 - (d) The victim receives information on available:
 - 1. Protective, emergency, social, and medical services;

2. Crime victim compensation, where applicable;
 3. Restitution, where applicable;
 4. Assistance from a victim advocate; and
 5. Community-based treatment programs; and
- (e) The victim of crime may, pursuant to KRS 15.247, receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts.
- (6) The victim shall be consulted by the attorney for the Commonwealth on the disposition of the case, including dismissal, release of the defendant pending judicial proceedings, any conditions of release, a negotiated plea, and entry into a pretrial diversion program.
 - (7) In prosecution for offenses listed in this section for the purpose of defining "victim," law enforcement agencies and attorneys for the Commonwealth shall promptly return a victim's property held for evidentiary purposes unless there is a compelling reason for retaining it. Photographs of such property shall be received by the court as competent evidence in accordance with the provisions of KRS 422.350.
 - (8) A victim or witness who so requests shall be assisted by law enforcement agencies and attorneys for the Commonwealth in informing employers that the need for victim or witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work.
 - (9) The Attorney General, where possible, shall provide technical assistance to law enforcement agencies and attorneys for the Commonwealth if such assistance is requested for establishing a victim assistance program.
 - (10) If a defendant seeks appellate review of a conviction and the Commonwealth is represented by the Attorney General, the Attorney General shall make a reasonable effort to notify victims promptly of the appeal, the status of the case, and the decision of the appellate court.
 - (11) ***Full restitution to a named victim, if there is a named victim, shall be ordered by the court to be paid by the convicted or adjudicated party in a manner consistent, insofar as possible, with this section and KRS 439.563, 532.032, 532.033, 533.020, and 533.030 in addition to any other penalty.***
 - (12) ***Nothing in KRS 421.500 to 421.575 shall be construed as altering the presumption of innocence in the criminal justice system, or to be a waiver of sovereign immunity or any other immunity or privilege maintained by the Commonwealth; its cabinets, departments, bureaus, political subdivisions, and agencies; and its officers, agents, and employees.***

➔Section 3. KRS 421.510 is repealed and reenacted to read as follows:

- (1) Where the victim is less than sixteen (16) years old and the crime is a sexual offense including violations of KRS 510.040 to 510.150, 530.020, 530.064(1)(a), 530.070, 531.310, 531.320, and 531.370, a speedy trial may be scheduled as provided in subsection (2) of this section.
- (2) The court, upon motion by the attorney for the Commonwealth for a speedy trial, shall set a hearing date on the motion within ten (10) days of the date of the motion. If the motion is granted, the trial shall be scheduled within ninety (90) days from the hearing date.
- (3) In ruling on any motion or other request for a delay or continuance of the proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of a child victim or witness.

➔Section 4. KRS 421.520 is repealed and reenacted to read as follows:

- (1) The attorney for the Commonwealth shall notify the victim that, upon conviction of the defendant, the victim has the right to submit a written victim impact statement to the probation officer responsible for preparing the presentence investigation report for inclusion in the report or to the court should such a report be waived by the defendant.
- (2) The impact statement may contain, but need not be limited to, a description of the nature and extent of any physical, psychological or financial harm suffered by the victim, the victim's need for restitution and whether the victim has applied for or received compensation for financial loss, and the victim's recommendation for an appropriate sentence.
- (3) The victim impact statement shall be considered by the court prior to any decision on the sentencing or release, including shock probation, of the defendant.

➔Section 5. KRS 421.530 is repealed and reenacted to read as follows:

- (1) If a defendant is sentenced to a period of incarceration and his release is subject to the authority of the parole board, the victim may submit a written impact statement to the parole board that it shall consider when making a decision on the release of the defendant.
- (2) The impact statement may contain, but need not be limited to, a description of the long-term consequences of the crime, including but not necessarily limited to, the physical, psychological and financial harm suffered by the victim, and whether the victim has applied for or received compensation for financial loss.

➔Section 6. KRS 421.550 is amended to read as follows:

- (1) Nothing in KRS ~~421.500 to 421.575~~~~[421.510 to 421.540],~~~~[or KRS]~~ 15.245, ~~or 196.280,~~ ~~or 421.500~~ creates a cause of action for money damages against the state, a county, a municipality, or any of their agencies, public officials, or employees.
- (2) The jailer or chief administrator of a juvenile detention facility, regional jail, or county jail, or any of their respective designees who acts in good faith in making available the release information required by KRS 196.280, or in good faith fails or is unable to provide the release information required by KRS 196.280, shall be immune from any criminal liability.
- (3) The jailer or chief administrator of a juvenile detention facility, regional jail, or county jail, or any of their respective designees, who acts in good faith in making available the release information required by KRS 196.280, or in good faith fails or is unable to provide the release information required by KRS 196.280, and who is sued for any act or omission in relation to KRS 196.280, and who has a judgment rendered against him and who personally suffers actual financial loss, unreimbursed from any source, by the enforcement and satisfaction of the judgment, including any costs or attorney's fees awarded pursuant thereto, shall be indemnified by the Commonwealth from funds appropriated to the Finance and Administration Cabinet for the payment of judgments, to the extent of his actual financial loss. The indemnification shall not be construed to abrogate or limit any privilege, immunity, or matter of defense otherwise available to the person claiming indemnification and shall not constitute a waiver of any privilege, immunity, or matter of defense, including the sovereign immunity of the Commonwealth.
- (4) The Attorney General shall defend the jailer, chief administrator, or designee upon request, in any suit related to the provision of information under KRS 196.280.
- (5) *An attorney for the Commonwealth who acts in good faith in his or her ministerial duties under KRS 421.500 to 421.575 shall be immune from criminal or civil liability. The immunity shall not be construed to abrogate or limit any privilege, immunity, or matter of defense otherwise available and shall not constitute a waiver of any privilege, immunity, or matter of defense, including the sovereign immunity of the Commonwealth.*

➔Section 7. The following KRS section is repealed:

421.540 Effect of failure to provide required notification.

➔Section 8. This Act shall take effect only upon the ratification, in the general election of November 3, 2020, of a Constitutional amendment providing for the protection of crime victims' rights. If such an amendment is not ratified, this Act shall be void.

Signed by Governor April 24, 2020.