The 2018 Kentucky General Assembly was a “long” session. EFFECTIVE JULY 14, 2018, unless otherwise indicated.

KENTUCKY SENATE BILLS

SB 3 CRIME VICTIMS RIGHTS
"Are you in favor of providing constitutional rights to victims of crime, including the right to be treated fairly, with dignity and respect, and the right to be informed and to have a voice in the judicial process?" CONSTITUTIONAL AMENDMENT CURRENTLY UNDER CHALLENGE

SB 19 SEX OFFENSES
Amends KRS 510.020 (Lack of consent)
Unable to communicate consent/unable to understand act
Amends KRS 510.050-510.090 (Rape)
Moved Intellectual Disability from Rape/Sodomy 3rd to Rape/Sodomy 2
Amends KRS 510.110 (Sexual Abuse, first)
Moved Intellectual Disability to Sexual Abuse 1

SB 30 CRIME VICTIM RIGHTS
This is a companion statute to SB 3 and will only take effect if SB 3 survives challenge and becomes law.
It serves to make the Constitutional Amendment an operational law and to provide specifics. KRS 421.500 - KRS 421.576

SB 57 TERRORISM
Adds definitions to KRS 411.025 and civil liability for terrorism.
Adds a new crime of terrorism under KRS 525.045.
Allows for forfeiture of real and personal property to satisfy a civil judgement.
SB 109  SEX OFFENSES
Adds “any body part” to the definition of Deviate Sexual Intercourse – in addition to a foreign object.
Adds “any body part” to the definition of Sexual Intercourse.
KRS 510.010

SB 116  MOTOR VEHICLES
Use of a truck platoon of 2 trucks only.
Must notify the Kentucky State Police and approved by Dept. of Vehicle Regulation.
KRS 281.010, KRS 281.764

SB 130  UNIVERSITY
Brings campus crime reporting into line with current federal law (CLERY ACT)
KRS 164.948 and KRS 164.9485

SB 133  PREGNANT INMATES
Adds handcuffing limitations for pregnant inmates.
Adds provision for filing for protective orders at shelters in addition to usual places.
KRS 196.173; KRS 403.725; KRS 456.030.

SB 137  RULES OF EVIDENCE
Creates a new Rule of Evidence to protect child witnesses (under 12) in testifying in court. KRE 804A

SB 142  TELE CPR
Institutes Telephone CPR as a requirement in basic training for telecommunicators.
Requires all PSAPs to use it, or have an agreement with one that does use it.
KRS 15.550

SB 182  MOTOR VEHICLES
Incorporates federal ATV standards into state law.
Children under 6 may not operate an ATV, even under supervision.
Minors under 16 may not have passengers on an ATV.
KRS 189.515

SB 210  FELON IN POSSESSION
Increases penalties for Felon In Possession under KRS 527.040

KENTUCKY HOUSE OF REPRESENTATIVES BILLS

HB 22  UNMANNED AIRCRAFT SYSTEM
A new section of KRS 500 relating to the use of UAVs.
Among other issues, limits the use of UAVs by LE to do a search unless a warrant is obtained.
May be used for other legitimate governmental purposes.
Denies the use of evidence collected under some circumstances.
Creates a crime under KRS 501 for offenses committed with a UAV.
Crimes a crime under KRS 525 to interfere with the use of a UAV by an emergency responder.
Creates a definition under KRS 446 for a UAV.
“Citizens’ Freedom from Unwarranted Surveillance Act”

**HB 33  BICYCLES**
Provides a process for passing bicycles.
Requires a 3 feet buffer between vehicles and bicycles when possible.
Allows a vehicle to cross a no passing zone line if it can be done safely to pass a bicycle.
Limits bicycles to two abreast on a single highway lane unless in a bicycle lane.
KRS 189.300; KRS 189.340

**HB 68  LAW ENFORCEMENT HEALTH AND WELLNESS**
Mandates the DOCJT create a Law Enforcement Professional Development and Wellness Program. EMERGENCY

**HB 68  LAW ENFORCEMENT HEALTH AND WELLNESS**
Shall be offered at least twice per year.
Reports generated as result of participation in the program are CONFIDENTIAL AND PRIVILEGED from disclosure in any civil/criminal proceedings.
Information CANNOT be subpoenaed.
Disclosure exceptions:
  1. Research and Data purposes.
  2. Specific communication of actual threat against specific person.

**HB 70  SEX OFFENDERS**
Defines Electronic Communications (KRS 17.546)
Prohibits a sex offender registrant from using electronic communication to communicate with or gather information about a minor
Exceptions: not part of the sentence or the registrant is the parent of the minor.
KRS 17.546

**HB 71  PRIVATE EROTIC MATTER**
Creates new crime of distributing to a third party any privately taken sexually explicit images without written consent. KRS 531.120

**HB 74  PAWNBROKERS**
Amends KRS 226.040.
Mandates the keeping of an online log accessible to law enforcement.
Mandates collection of certain identification from those pawning or selling articles.
Requires a photo (in some cases) and descriptive information of items pawned or sold, to be available to law enforcement.
Requires LE to provide a case report or documentation for stolen items before seizure of such property by LE.
HB 96  FIRE INVESTIGATORS
Creates a position of “certified fire investigator” and “fire investigator.”
Authorizes appropriate firefighters serving as fire investigators to attend training through KLEC. Delayed Enactment 1/19/2019

HB 101  SEXUAL OFFENSES
Adds to Lack of Consent provision (KRS 510.020) and Defense (KRS 510.030) that a victim of 16 or 17 cannot consent to sex with an actor at least 10 years older.
Adds above to Rape (.060) and Sodomy (.090)

HB 120  CHILD PORNOGRAPHY
Adds to KRS 531 that child pornography or related evidence shall remain in the custody of LE or prosecutor, rather than with the court, unless used as a trial exhibit.
Denies the defense the right to make a copy of above material (although it must be made available for their use. KRS 531.305

HB 140  KLEPF / POBOR
Tweaks definition of peace officers in KRS 15.410 (KLEPF)
Increases supplement to $4K and admin costs for agencies
Tweaks 15.520

HB 167  NEWBORN SAFETY
Adds staffed police stations (and other public safety locations) to the list of locations where a newborn may be surrendered safely. KRS 405.075

HB 168  RAILROAD CROSSINGS
Minor language changes in KRS 189.550 – from maintenance vehicles to “other on track equipment.”

HB 169  GANGS
Adds new penalties for crimes committed as a member of a criminal gang and for recruitment
“Gang Violence Prevention Act”
Encourages creation of a statewide gang violence prevention database  EMERGENCY

HB 185  DEATH BENEFITS
Changes benefits for surviving spouses/children in a LODD situation.
Maintains insurance benefits.
Retroactive effective January 1, 2017
Named for Officers Nick Rodman and Scotty Hamilton

HB 193  BODILY FLUIDS
Adds all peace officers to Assault 3 charges for bodily fluid exchange, under specific circumstances.
Allows misdemeanor cites outside officer’s presence, under specific circumstances
HB 213  KASPER  
Allows greater data sharing (with other jurisdictions) of KASPER data.

HB 275  SPECIAL DEPUTIES  
Allows sheriffs to appoint more special deputies. KRS 70.045

HB 324  TRESPASS  
Creates new crime of trespass on key infrastructure assets. KRS 511.100

HB 373  BODY-WORN CAMERAS  
Changes Open Records law concerning release (or non-release) of body-worn camera recordings. KRS 61.168

HB 530  VANITY PLATES  
Changes expiration dates for vanity plates to birth month, like regular plates. KRS 186.164/.174

U.S. SUPREME COURT 2017-18


ISSUE: May officers be held liable for making an arrest upon reasonable facts that a crime is being committed, even if it is later determined that arrest was incorrect?

HOLDING: Yes


ISSUE: Is an officer entitled to qualified immunity if the law is not clearly established?

HOLDING: Yes


ISSUE: May an unauthorized driver in a rental vehicle still have an expectation of privacy in that vehicle?

HOLDING: Yes


ISSUE: Does the “automobile exception” justify an entry into the curtilage to obtain evidence?

**ISSUE:** May a case be pursued for a retaliatory arrest under the First Amendment even if probable cause for the arrest exists?

**HOLDING:** Yes


**ISSUE:** Is a search warrant required for access to cell site location information for historical data?

**HOLDING:** Yes

**SEXTON (WARDEN) V. BEAUDREAX**, 138 S.Ct. 2555 (2018)

**ISSUE:** Is the reliability of a suspect identification a case-by-case evaluation?

**HOLDING:** Yes

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**Kentucky and Federal Courts**

**Sixth Circuit Court of Appeals, Kentucky Supreme Court and Kentucky Court of Appeals**

**Penal Code and related offenses**

**KRS 500 – DEFINITIONS**

**BROWN V. COM.**, 553 S.W.3d 826 (Ky. 2018)

**ISSUE:** Are stabbing injuries to the lungs a “serious physical injury?”

**HOLDING:** Yes.

**KRS 503 – MENTAL STATES**

**COM V. CAUDILL**, 540 S.W.3d 364 (Ky. 2018)

**ISSUE:** Is the wanton state of mind applicable in self-defense case?

**HOLDING:** No
**KRS 510 – SPECIAL TRUST**

*Caldwell v. Com.*, 554 S.W.3d 874 (Ky. App. 2018)

**ISSUE:** May a family friend be in a “position of special trust?”

**HOLDING:** Yes

**KRS 514 – THEFT**

*Hall v. Com.*, 551 S.W. 3d 7 (Ky. 2018)

**ISSUE:** Is taking a cruiser to escape necessarily a theft?

**HOLDING:** No

**KRS 527 – FIREARMS**

*Sykes v. Com.*, 550 S.W.3d 60 (Ky. App. 2018)

**ISSUE:** Is a gun revealed only when someone raises his or her arms concealed for purposes of Kentucky law?

**HOLDING:** Yes

**DOMESTIC VIOLENCE**


**ISSUE:** May a DVO be issued against a parent who allows another to harm his or her child?

**HOLDING:** Yes

**DUI**


**ISSUE:** Are hospitals limited on how much can be charged for an independent test?

**HOLDING:** No

ISSUE: Must the required observation period before an Intoxilyzer take place where test will actually be performed?

HOLDING: Yes

SEARCH WARRANT


ISSUE: Must a nexus be shown between criminal activity and the location for which the warrant is sought?

HOLDING: Yes.

**U.S. v. McCoy / Heard**, 905 F.3d 409 (6 Cir. 2018)

ISSUE: Will good faith reliance on a search warrant that was erroneously issued permit the admissibility of evidence obtained as a result of the execution of that warrant?

HOLDING: Yes

**U.S. v. Tagg**, 886 F.3d 579 (6 Cir. 2018)

ISSUE: May probable cause be shown by a subject visiting a website that includes child pornography, even if that site also includes legal material?

HOLDING: Yes


ISSUE: Must the phrase “evidence of a crime” contained within a search warrant affidavit be read in a commonsense way?

HOLDING: Yes

**U.S. v. Hines**, 885 F.3d 919 (6 Cir. 2018)

ISSUE: If an affidavit includes the basis of knowledge for an unnamed informant’s information, is that sufficient?

HOLDING: Yes

**Greer v. City of Highland Park**, 884 F.3d 310 (6 Cir. 2018)

ISSUE: Is knock and announce the default rule for a search warrant?
HOLDING:  Yes

CONSENT

_Harris v. Klare_, 902 F.3d 630 (6 Cir. 2018)

ISSUE:  Is a request to use the restroom, conditioned on consent to a search first, a coerced consent?

HOLDING:  Yes.

CURTILAGE

_Morgan / Graf v. Fairfield County (Ohio)_ 903 F.3d 553 (6 Cir. 2018)

ISSUE:  Is it proper to enter a back curtilage during a knock and talk?

HOLDING:  No.

CELL PHONE

_U.S. v. Sweeney_, 891 F.3d 232 (6 Cir. 2018)

FACTS:  May probation and parole, which has a legitimate reason to search a phone, also share what is found with other agencies?

HOLDING:  Yes

CONSTRUCTIVE POSSESSION


ISSUE:  Is a regular guest constructively responsible for items found in the bedroom the guest occupies?

HOLDING:  Yes

COLLECTIVE KNOWLEDGE

_Com. v. Blake_ 540 S.W.3d 369 (Ky. 2018)
**Com. v. Smith**, 542 S.W.3d 276 (Ky. 2018)

**ISSUE:** May collective knowledge provide justification for a stop?

**HOLDING:** Yes

**PLATE READERS**

**Traft v. Com.,** 539 S.W.3d 647 (Ky. 2018)

**ISSUE:** May an officer make a traffic stop when a license plate reader indicates that the registered owner of the vehicle has a warrant?

**HOLDING:** Yes, as there is no REP in a license plate.

**INTERROGATION**

**Shively v. Com.,** 542 S.W.3d 255 (Ky. 2018)

**ISSUE:** Is simply talking to a suspect interrogation?

**HOLDING:** No


**ISSUE:** Is being interviewed in one's own vehicle custodial?

**HOLDING:** No

**EMPLOYMENT**

**KRS 15.520**

**Lanham v. Elliott,** 540 S.W.3d 353 (Ky. 2018)

**ISSUE:** Do the due process provisions of KRS 15.520 apply to Kentucky deputy sheriffs?

**HOLDING:** No, under the prior version of KRS 15.520. Yes, under the current version of KRS 15.520.

**Hutchinson v. City of Independence,**


**ISSUE:** Is telling an officer who is being questioned in an internal investigation that their pension is in jeopardy due to misconduct considered coercion?
HOLDING:  No

For a handout that covers this Legal Review, please go to the DOCJT Legal Website.

If you have any questions concerning this presentation, please feel free to contact the Legal Training Section in one of the following ways:
Website:  www.docjt.ky.gov/legal
          Phone:    859-622-3801
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