

CHAPTER 60**(HB 170)**

AN ACT relating to child protection.

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

Section 1. KRS 600.020 is amended to read as follows:

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

- (1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:
 - (a) Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
 - (b) Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
 - (c) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005(12);
 - (d) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
 - (e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
 - (f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
 - (g) Abandons or exploits the child;~~or~~
 - (h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child; *or*
 - (i) *Fails to make sufficient progress toward identified goals as set forth in the courtapproved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months;*
- (2) "*Aggravated circumstances*" means the existence of one or more of the following conditions:
 - (a) *The parent has not attempted or has not had contact with the child for a period of not less than ninety (90) days;*

- (b) *The parent is incarcerated and will be unavailable to care for the child for a period of at least one (1) year from the date of the child's entry into foster care and there is no appropriate relative placement available during this period of time;*
 - (c) *The parent has sexually abused the child and has refused available treatment;*
 - (d) *The parent has been found by the cabinet to have engaged in abuse of the child that required removal from the parent's home two (2) or more times in the past two (2) years; or*
 - (e) *The parent has caused the child serious physical injury;*
- (3) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;
- (4)~~(3)~~—"Cabinet" means the Cabinet for Families and Children;
- (5)~~(4)~~"Certified juvenile holding facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;
- (6)~~(5)~~"Child" means any person who has not reached his eighteenth birthday unless otherwise provided;
- (7)~~(6)~~"Child-caring facility" means any facility or group home other than a state facility, Department of Juvenile Justice contract facility or group home, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;
- (8)~~(7)~~"Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;
- (9)~~(8)~~"Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;
- (10)~~(9)~~"Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Families and Children, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless the commitment is discharged under KRS Chapter 605 or the committing court terminates or extends the order;
- (11)~~(10)~~"Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;
- (12)~~(11)~~"Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;

- (13)~~(12)~~ "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;
- (14)~~(13)~~ "Court-designated worker" means that organization or individual delegated by the administrative office of the courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;
- (15)~~(14)~~ "Deadly weapon" has the same meaning as it does in KRS 500.080;
- (16)~~(15)~~ "Department" means the Department for Social Services;
- (17)~~(16)~~ "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;
- (18)~~(17)~~ "Detain" means, upon a valid court order, to confine a child pending further proceedings in an intermittent holding facility, a juvenile holding facility, a secure juvenile detention facility, or an alternative form of detention;
- (19)~~(18)~~ "Diversion agreement" means an agreement entered into between a court-designated worker and a child charged with the commission of offenses set forth in KRS Chapters 630 and 635, the purpose of which is to serve the best interest of the child and to provide redress for those offenses without court action and without the creation of a formal court record;
- (20)~~(19)~~ "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;
- (21)~~(20)~~ "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his age, development, culture, and environment as testified to by a qualified mental health professional;
- (22)~~(21)~~ "Family service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;
- (23)~~(22)~~ "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- (24)~~(23)~~ "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;
- (25)~~(24)~~ "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;
- (26)~~(25)~~ "Habitual truant" means any child who has been found by the court to have been absent from school without valid excuse for three (3) or more days during a one (1) year period or tardy for three (3) or more days on at least three (3) occasions during a one (1) year period;

- ~~(27)~~~~(26)~~ "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;
- ~~(28)~~~~(27)~~ "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;
- ~~(29)~~~~(28)~~ "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;
- ~~(30)~~~~(29)~~ "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;
- ~~(31)~~~~(30)~~ "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which children are supervised and observed on a regular basis;
- ~~(32)~~~~(31)~~ "Juvenile holding facility" means a physically secure setting, approved by the Department of Juvenile Justice, which is an entirely separate facility or portion or wing of a building containing an adult jail, which provides total separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile holding facility staff to provide twenty-four (24) hours per day supervision. Employees of jails who meet the qualifications of the Department of Juvenile Justice may supervise juvenile as well as adult prisoners;
- ~~(33)~~~~(32)~~ "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; and is conducted at the suitable available facility closest to the child's place of residence;
- ~~(34)~~~~(33)~~ "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189 or 189A, KRS 177.300, 304.39-110, or 304.39-117;
- ~~(35)~~~~(34)~~ "Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;
- ~~(36)~~~~(35)~~ "Needs of the child" means necessary food, clothing, health, shelter, and education; ~~[-]~~
- ~~(37)~~~~(36)~~ "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;
- ~~(38)~~~~(37)~~ "Parent" means the biological or adoptive mother or father of a child;
- ~~(39)~~~~(38)~~ "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;
- ~~(40)~~~~(39)~~ "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;

- ~~(41)~~~~(40)~~ "Physical injury" means substantial physical pain or any impairment of physical condition;
- ~~(42)~~~~(41)~~ "Public offense action" means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;
- ~~(43)~~~~(42)~~ "Qualified mental health professional" means:
- (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;
 - (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
 - (c) A licensed psychologist at the doctoral level or certified at the master's level under the provisions of KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to make examinations under KRS Chapters 600 to 645;
 - (d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center; or
 - (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;
- ~~(44)~~~~(43)~~ "Residential treatment facility" means a facility or group home with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;
- ~~(45)~~~~(44)~~ "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;
- ~~(46)~~~~(45)~~ "School personnel" means those certified persons under the supervision of the local public or private education agency;

- ~~(47)~~~~(46)~~ "Secretary" means the secretary of the Cabinet for Families and Children;
- ~~(48)~~~~(47)~~ "Secure juvenile detention facility" means any facility used for the secure detention of children other than a jail, police station, lockup, intermittent holding facility, or any building which is a part of, or attached to, any facility in which adult prisoners are confined or which shares staff with a facility in which adult prisoners are confined;
- ~~(49)~~~~(48)~~ "Secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;
- ~~(50)~~~~(49)~~ "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;
- ~~(51)~~~~(50)~~ "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;
- ~~(52)~~~~(51)~~ "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;
- ~~(53)~~~~(52)~~ "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew or possession of alcoholic beverages;
- ~~(54)~~~~(53)~~ "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;
- ~~(55)~~~~(54)~~ "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;
- ~~(56)~~~~(55)~~ "Youth alternative center" means a nonsecure facility, approved by the Department of Juvenile Justice, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 610.267 and the administrative regulations promulgated thereunder; and
- ~~(57)~~~~(56)~~ "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

Section 2. KRS 610.010 is amended to read as follows:

- (1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county shall have exclusive jurisdiction in proceedings concerning any child

living or found within the county who has not reached his eighteenth birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years, who allegedly:

- (a) Has committed a public offense prior to his eighteenth birthday, except a motor vehicle offense involving a child sixteen (16) years of age or older. A child sixteen (16) years of age or older taken into custody upon the allegation that he has committed a motor vehicle offense shall be treated as an adult and shall have the same conditions of release applied to him as an adult. A child taken into custody upon the allegation that he has committed a motor vehicle offense who is not released under conditions of release applicable to adults shall be held, pending his appearance before the District Court, in a secure juvenile detention facility or a juvenile holding facility or, if neither is available, in an intermittent holding facility. Children sixteen (16) years of age or older who are convicted of, or plead guilty to, a motor vehicle offense shall, if sentenced to a term of confinement, be placed in a secure juvenile detention facility or a juvenile holding facility. The term "motor vehicle offense" shall not be deemed to include the offense of stealing or converting a motor vehicle nor operating the same without the owner's consent nor any offense which constitutes a felony;
 - (b) Has not subjected himself to the reasonable control of his parent or guardian, school personnel, or other person exercising custodial control or supervision of the child;
 - (c) Is an habitual truant from school;
 - (d) Is an habitual runaway from his parent or other person exercising custodial control or supervision of the child;
 - (e) Is dependent, neglected, or abused; or (f) Is mentally ill.
- (2) Actions brought under subsection (1)(a) of this section shall be considered to be public offense actions.
 - (3) Actions brought under subsection (1)(b), (c), and (d) of this section shall be considered to be status offense actions.
 - (4) Actions brought under subsection (1)(e) of this section shall be considered to be dependency actions.
 - (5) Actions brought under subsection (1)(f) of this section shall be considered to be mental health actions.
 - (6) Nothing in this chapter shall deprive other courts of the jurisdiction to determine the custody or guardianship of children upon writs of habeas corpus or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of other causes pending in such other courts; nor shall anything in this chapter affect the jurisdiction of Circuit Courts over adoptions and proceedings for termination of parental rights.
 - (7) The court shall have no jurisdiction to make permanent awards of custody of a child *except as provided by Section 5 of this Act.* ~~[- but]~~
 - (8) If the court finds an emergency to exist affecting the welfare of a child, it may make temporary orders for his custody; however, if the case involves allegations of dependency, neglect, or abuse, no emergency removal or temporary custody orders shall be effective unless the

provisions of KRS Chapter 620 are followed. Such orders shall be entirely without prejudice to the proceedings for permanent custody of the child and shall remain in effect until modified or set aside by the court. Upon the entry of a temporary or final judgment in the Circuit Court awarding custody of such child, all prior orders of the juvenile session of the District Court in conflict therewith shall be deemed canceled. This section shall not work to deprive the Circuit Court of jurisdiction over cases filed in Circuit Court.

- ~~(9)~~~~(7)~~ The court of each county wherein a public offense, as defined in paragraph (a) of subsection (1) of this section, is committed by a child who is a resident of another county of this state shall have concurrent jurisdiction over such child with the court of the county wherein the child resides or the court of the county where the child is found. Whichever court first acquires jurisdiction of such child may proceed to final disposition of his case, or in its discretion may make an order transferring the case to the court of the county of his residence or the county wherein the offense was committed, as the case may be.
- ~~(10)~~~~(8)~~ Nothing in this chapter shall prevent the District Court from holding a child in contempt of court to enforce valid court orders previously issued by the court.
- ~~(11)~~~~(9)~~ Except as provided in KRS 635.060(3), nothing in this chapter shall confer upon the District Court jurisdiction over the actions of the Department of Juvenile Justice or the cabinet in the placement, care, or treatment of a child committed to the Department of Juvenile Justice or the cabinet; or to require the department or the cabinet to perform, or to refrain from performing, any specific act in the placement, care, or treatment of any child committed to the department or the cabinet.
- ~~(12)~~~~(10)~~ Unless precluded by KRS Chapter 635 or 640, in addition to informal adjustment, the court shall have the discretion to amend the petition to reflect jurisdiction pursuant to the proper chapter of the Kentucky Unified Juvenile Code.
- ~~(13)~~~~(11)~~ The court shall have continuing jurisdiction over a child pursuant to subsection (1) of this section, to review dispositional orders, and to conduct *permanency*~~[dispositional]~~ hearings under 42 U.S.C. sec. 675(5)(c) until the child is placed for adoption, returned home to his parents with all the court imposed conditions terminated, or reaches the age of eighteen (18) years.

Section 3. KRS 610.125 is amended to read as follows:

- (1) If a child has been removed from the home and placed in the custody of the Department of Juvenile Justice or the cabinet, a judge of the District Court shall conduct a *permanency*~~[dispositional review]~~ hearing no later than twelve (12) months after the date the child is considered to have entered foster care, and every twelve (12) months thereafter if custody and out-of-home placement continues, to determine the future status of the child. For purposes of this section, a child shall be considered to have entered foster care on the earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect or the date that is sixty (60) days after the date on which the child is removed from the home.

The court shall address the following areas:

- (a) If parental rights have not been terminated, whether the child should be returned to the parent;
- ~~(b) Whether the child should continue in out-of-home care for a specified period of time;~~

~~(e) Whether the child should be placed for adoption; ~~and~~~~

(c) *Whether the child should be placed with a permanent custodian; and*

(d) *Whether the cabinet has documented a compelling reason that it is in the best interest of the child to be placed in another planned permanent living arrangement other than those listed in this subsection* ~~[special circumstances indicate that the child's needs can best be met by continuation in out-of-home care on a permanent or long-term basis].~~

- (2) If the cabinet or the Department of Juvenile Justice determines that reasonable efforts to reunify the child with the child's *parent* ~~[family]~~ will not be made, the cabinet or Department of Juvenile Justice shall file a case permanency plan as defined by KRS 620.230 or case progress report with the court that documents the reasons for not making reasonable efforts. The court shall hold a *permanency* ~~[dispositional review]~~ hearing within thirty (30) days of the filing of the cabinet's or Department of Juvenile Justice's plan or report with the Court.
- (3) The Department of Juvenile Justice or the cabinet shall inform the court not less than sixty (60) days prior to the expiration of the time in which the hearing shall be held and within the time established in subsection (1) of this section, and shall further inform the court of the name and address of the child's foster parents, preadoptive parents, or relatives providing care to the child; court-appointed special advocate; and foster care review board member assigned to the case. For the hearing to be held pursuant to subsection (2) of this section, the names and addresses of the persons identified in this subsection shall be provided in the case permanency plan or case progress report to be filed with the court. The court shall set a time for the hearing and notify the child's parent, foster parents, preadoptive parents, or relatives providing care to the child; court-appointed special advocate; foster care review board member assigned to the case; attorney for the child; attorney for the parent, if any; and the Department of Juvenile Justice or the cabinet.
- (4) The Department of Juvenile Justice or the cabinet shall present evidence to the court concerning the care and progress of the child since the last *permanency* ~~[dispositional]~~ hearing, including the following:
- (a) The length of time the child has been committed to the Department of Juvenile Justice or the cabinet;
 - (b) The number, location, and date for each placement during the total period of the child's commitment;
 - (c) A description of the services and assistance provided to the parent or arranged by the Department of Juvenile Justice or the cabinet since the last case permanency plan or case progress report, and the results achieved;
 - (d) A description of the efforts and progress of the child's parent since the last case permanency plan and case progress report, including the number and dates of parental visits and the extent, quality, and frequency of the parent's communication with the child;
 - (e) The familial and institutional barriers to:
 1. Returning the child to the home;
 2. Ending the commitment of the child to the Department of Juvenile Justice or the cabinet; and

3. Delivery of appropriate services needed by the child;
 - (f) Recommendations of services needed to make the transition from out-of-home care to independent living for children who have reached the age of sixteen (16) years;
 - (g) An evaluation of the child's current placement and services provided to the child;
 - (h) Recommendations for necessary services required to terminate the commitment of the child to the cabinet, to return the child home, or to facilitate another permanent placement; and
 - (i) Recommendations as to the permanency goal for the child.
- (5) The child's parent, foster parent, preadoptive parent, relative providing care to the child, attorney for the parent, attorney for the child, or court-appointed special advocate, if deemed appropriate by the court, may present any evidence relevant to the determination of a permanency goal for the child.
 - (6) Upon conclusion of the hearing the court shall make a written *order determining*~~[finding regarding the adequacy of]~~ the permanency plan~~[, the extent to which the permanency plan complies with KRS 620.230(2), and the services intended to achieve permanency]~~ for the child.
 - (7) If *necessary, the case may be redocketed for further review of the progress toward the implementation of the permanency plan established at the permanency hearing*~~[the court finds that the permanency plan is not adequate, it shall redocket the case within sixty (60) days for further review]~~.

SECTION 4. A NEW SECTION OF KRS CHAPTER 610 IS CREATED TO READ AS FOLLOWS:

Reasonable efforts as defined in KRS 620.020(9) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction determines that the parent has: (1) Subjected the child to aggravated circumstances as defined in Section 1 of this Act;

- (2) *Been convicted in a criminal proceeding of having caused or contributed to the death of another child of the parent;*
- (3) *Committed a felony assault that resulted in serious bodily injury to the child or to another child of the parent;*
- (4) *Had their parental rights to another child terminated involuntarily;*
- (5) *Engaged in a pattern of conduct due to alcohol or other drug abuse as defined in KRS 222.005(12) for a period of not less than ninety (90) days that has rendered the parent incapable of caring for the immediate and ongoing needs of the child, and the parent has refused or failed to complete available treatment for alcohol or other drug abuse;*
- (6) *Mental illness as defined in KRS 202A.011(9) or mental retardation as defined in KRS 202B.010(9) or other developmental disability as defined in KRS 387.510(7) that places the child at substantial risk of physical or emotional injury even if the most appropriate and available services were provided to the parent for twelve (12) months; or*
- (7) *Other circumstances in existence that make continuation or implementation of reasonable efforts to preserve or reunify the family inconsistent with the best interests of the child and with the permanency plan for the child.*

Section 5. KRS 620.027 is amended to read as follows:

The District Court has jurisdiction, concurrent with that of the Circuit Court, to determine matters of child custody and visitation in cases *that come before the District Court* where the need for a permanent~~[relative]~~ placement and custody order is established as set forth in this chapter~~[and the order is requested by the relative custodian]~~. The District Court, in making these determinations, shall utilize the provisions of KRS Chapter 403 relating to child custody and visitation.~~[In no event shall permanent custody orders be entered if the relative custodian elects to pursue approval as a provisional foster parent with the cabinet.]~~ In any case where the child is actually residing with a grandparent in a stable relationship, the court may recognize the grandparent as having the same standing as a parent for evaluating what custody arrangements are in the best interest of the child.

Section 6. KRS 625.090 is amended to read as follows:

- (1) The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that:
 - (a) 1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction;
 2. The child is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding; or
 3. The parent has been convicted of a criminal charge relating to the physical or sexual abuse or neglect of any child and that physical or sexual abuse, neglect, or emotional injury to the child named in the present termination action is likely to occur if the parental rights are not terminated; and (b) Termination would be in the best interest of the child.
- (2) No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:
 - (a) That the parent has abandoned the child for a period of not less than ninety (90) days;
 - (b) That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;
 - (c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;
 - (d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to any child;
 - (e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;
 - (f) That the parent has caused or allowed the child to be sexually abused or exploited;
 - (g) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;

- (h) That:
 - 1. The parent's parental rights to another child have been involuntarily terminated;
 - 2. The child named in the present termination action was born subsequent to or during the pendency of the previous termination; and
 - 3. The conditions or factors which were the basis for the previous termination finding have not been corrected;
 - (i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect; or
 - (j) That the child has been in foster care under the responsibility of the cabinet for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights.
- (3) In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:
- (a) Mental illness as defined by KRS 202A.011(9), or mental retardation as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;
 - (b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;
 - (c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents ***unless one or more of the circumstances enumerated in Section 4 of this Act for not requiring reasonable efforts have been substantiated in a written finding by the District Court;***
 - (d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;
 - (e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and
 - (f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.
- (4) If the child has been placed with the cabinet, the parent may present testimony concerning the reunification services offered by the cabinet and whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent.
- (5) If the parent proves by a preponderance of the evidence that the child will not continue to be an abused or neglected child as defined in KRS 600.020(1) if returned to the parent the court in its discretion may determine not to terminate parental rights.
- (6) Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter findings of fact, conclusions of law, and a decision as to each parent-respondent within thirty (30) days either:

- (a) Terminating the right of the parent; or
- (b) Dismissing the petition and stating whether the child shall be returned to the parent or shall remain in the custody of the state.

Approved March 6, 2000