

CHAPTER 193**(HB 296)**

AN ACT relating to juvenile justice.

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;
- (2) ***"Beyond the control of school" means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all intervention strategies attempted by the school;***
- (3) ***"Beyond the control of parents" means a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency which behavior results in danger to the child or others, and which behavior does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645;***

- (4) "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;
- (5)~~(3)~~—"Cabinet" means the Cabinet for Families and Children;
- (6)~~(4)~~—"Certified juvenile ~~holding~~ facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training *in juvenile detention* developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;
- (7)~~(5)~~—"Child" means any person who has not reached his eighteenth birthday unless otherwise provided;
- (8)~~(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;
- (9)~~(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;
- (10)~~(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;
- (11)~~(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;
- (12)~~(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;
- (13)~~(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;
- (14)~~(12)~~—"Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;
- (15)~~(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;
- (16)~~(14)~~—"Deadly weapon" has the same meaning as it does in KRS 500.080;
- (17)~~(15)~~—"Department" means the Department for Social Services;

- (18)~~(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;
- (19) ***"Detention" means the safe and temporary custody of a juvenile who is accused of conduct subject to the jurisdiction of the court who requires a restricted environment for his or her own or the community's protection***~~(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;~~
- (20) ***"Detention hearing" means a hearing held by a judge or trial commissioner within twenty-four (24) hours, exclusive of weekends and holidays, of the start of any period of detention prior to adjudication;***
- (21)~~(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;
- (22)~~(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;
- (23)~~(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;
- (24)~~(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;
- (25)~~(22)~~ "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- (26)~~(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;
- (27)~~(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;
- (28)~~(25)~~ "Habitual truant" means any child who has been found by the court to have been ***reported as a truant as defined in KRS 159.150 three (3) or more times***~~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];~~
- (29)~~(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;
- (30)~~(27)~~ "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;

- (31)~~(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;
- (32)~~(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;
- (33)~~(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 a child accused of a public offense may be detained for a period not to exceed twenty-four (24) hours, exclusive of weekends and holidays prior to a detention hearing as provided for in KRS 610.265, and*** in which children are supervised and observed on a regular basis ***by certified juvenile facility staff***;
- (34)~~(31)~~ "Juvenile holding facility" means a physically secure ***facility***~~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 ***sight and sound*** 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~~;
- (35)~~(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; ***or protection of the community***, and is conducted at the suitable available facility closest to the child's place of residence;
- (36)~~(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;
- (37)~~(34)~~ "Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;
- (38)~~(35)~~ "Needs of the child" means necessary food, clothing, health, shelter, and education.
- (39)~~(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;
- (40) ***"Nonsecure setting" means a nonsecure facility or a residential home, including a child's own home, where a child may be temporarily placed pending further court action. Children before the court in a county that is served by a state operated secure detention facility, who are in the detention custody of the Department of Juvenile Justice, and who are placed in a nonsecure alternative by the Department of Juvenile Justice, shall be supervised by the Department of Juvenile Justice;***
- (41)~~(37)~~ "Parent" means the biological or adoptive mother or father of a child;

- (42)~~((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;
- (43)~~((39))~~ "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;
- (44)~~((40))~~ "Physical injury" means substantial physical pain or any impairment of physical condition;
- (45) ***"Physically secure facility" means a facility that relies primarily on the use of construction and hardware such as locks, bars, and fences to restrict freedom;***
- (46)~~((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;
- (47)~~((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;

- (48)~~((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;
- (49)~~((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;
- (50)~~((45))~~ "School personnel" means those certified persons under the supervision of the local public or private education agency;
- (51)~~((46))~~ "Secretary" means the secretary of the Cabinet for Families and Children;
- (52)~~((47))~~ "Secure juvenile detention facility" means any *physically secure* 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];~~
- (53)~~((48))~~ "*Staff* 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;
- (54)~~((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;
- (55)~~((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;
- (56)~~((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;
- (57)~~((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;
- (58)~~((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;
- (59) "*Valid court order*" means a court order issued by a judge to a child alleged or found to be a status offender:
- (a) *Who was brought before the court and made subject to the order;*

- (b) *Whose future conduct was regulated by the order;*
- (c) *Who was given written and verbal warning of the consequences of the violation of the order at the time the order was issued and whose attorney or parent or legal guardian was also provided with a written notice of the consequences of violation of the order, which notification is reflected in the record of the court proceedings ; and*
- (d) *Who received, before the issuance of the order, the full due process rights guaranteed by the Constitution of the United States.*

(60)~~(54)~~ "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;

(61)~~(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

(62)~~(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) *Is beyond the control of the school or beyond the control of parents as defined in Section 1 of this Act*~~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. The court shall have no jurisdiction to make permanent awards of custody of a child, but 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.
 - (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.
 - (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.
 - (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.
 - (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.

- (11) The court shall have continuing jurisdiction over a child pursuant to subsection (1) of this section, to review dispositional orders, and to conduct 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 610.100 is amended to read as follows:

- (1) Unless there is a suitable prior disposition investigation report or unless waived by the child ***who is represented by counsel***, before making disposition of the case of a child brought before the court under the provisions of KRS Chapters 630 or 635, whether by complaint pursuant to KRS 610.020, or by reason of having been taken into custody pursuant to KRS 610.190, the judge shall cause an investigation to be made concerning the nature of the specific act complained of and any surrounding circumstances which suggest the future care and guidance which should be given the child. The investigation shall include an inquiry into the child's age, habits, school record, general reputation, and everything that may pertain to his life, and character. The investigation shall also include an inquiry into the home conditions, life, and character of the person having custody of the child. The investigation shall also include an assessment of the parent or guardian's ability to pay all or part of the cost of the child's care and treatment should the child be ordered into a treatment program or placed on supervised probation. The result of the investigation shall be reported in writing to the court and to counsel for the parties three (3) days prior to the child's dispositional hearing and shall become a part of the record of the proceedings. The child may waive the three (3) day requirement. Objections by counsel at the dispositional hearing to portions of the dispositional report shall be noted in the record.
- (2) The investigation shall be conducted by ~~volunteer or salaried probation officers of the juvenile court or by~~ a suitable public or private agency. The cabinet and the Department of Juvenile Justice may furnish investigation services under agreements with the individual juvenile courts. For this purpose, any county judge/executive or chief executive officer of an urban-county government may enter into a contract on behalf of his county with the Department of Juvenile Justice or the cabinet for the furnishings of such services.
- (3) Upon the court's motion or the motion of any party, an informal adjustment may be made at any time during the proceedings and with the victim and with those persons specified in KRS 610.070 having prior notification of the motion.

Section 4. KRS 610.220 is amended to read as follows:

- (1) If an officer takes or receives a child into custody, the child may be held at a police station, secure juvenile detention facility, juvenile holding facility, intermittent holding facility, ***a nonsecure facility***, ~~the offices of the court designated worker,~~ or, as necessary, in a hospital or clinic for the following purposes:
 - (a) Identification and booking;
 - (b) Attempting to notify the parents or person exercising custodial control or supervision of the child, a relative, guardian, or other responsible person;
 - (c) Photographing;
 - (d) Fingerprinting;
 - (e) Physical examinations, including examinations for evidence;

- (f) Evidence collection, including scientific tests;
 - (g) Records checks;
 - (h) Determining whether the child is subject to trial as an adult; and (i) Other inquiries of a preliminary nature.
- (2) A child may be held in custody pursuant to this section for a period of time not to exceed two (2) hours, unless an extension of time is granted. Permission for an extension of time may be granted by the court, trial commissioner, or court-designated worker pursuant to KRS 610.200(5)(d) and the child may be retained in custody ***for up to an additional ten (10) hours at a facility of the type***~~[in facilities]~~ listed in subsection (1) of this section ***except for an intermittent holding facility*** for the period of retention.
- (3) ***Any child held in custody pursuant to this section shall be sight and sound separated from any adult prisoners held in secure custody at the same location.***

Section 5. KRS 610.265 is amended to read as follows:

- (1) Any child who is ***alleged to be a status offender or who is*** accused of ***being in contempt of court on an underlying finding that the child is a status offender may be detained in a nonsecure facility, a secure juvenile detention facility, or a juvenile holding facility for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays, pending a detention hearing. Any child who is accused of*** committing a~~[status or]~~ public offense or of being in contempt of court ***on an underlying public offense*** may be detained in a secure juvenile detention facility or juvenile holding facility ***for a period of time not to exceed forty-eight (48) hours, exclusive of weekends and holidays*** or, if neither is reasonably available, an intermittent holding facility, for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays ***pending a detention hearing.***
- (2) (a) Within~~[twenty four (24) hours of the start of]~~ the period of detention described in subsection (1) of this section, exclusive of weekends and holidays, a ***detention*** hearing shall be held by the judge or trial commissioner of the court for the purpose of determining whether the child shall be further detained. At the hearing held pursuant to this subsection, the court shall consider the nature of the offense, the child's background and history, and other information relevant to the child's conduct or condition.
- (b) If the court orders a~~[the]~~ child detained further~~[, and]~~ ***after the detention hearing, that detention shall be served as follows:***
1. If the child is charged with a capital offense, Class A felony, or Class B felony, detention shall occur in either a secure juvenile detention facility or a juvenile holding facility pending the child's next court appearance subject to the court's review of the detention order prior to that court appearance.
 2. ***If it is alleged that the child is a status offender, detention shall occur in a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance subject to the court's review of the detention order prior to the next court appearance.***
 3. ***If a status offender is charged with violating a valid court order, and the court orders the child to serve detention, that detention shall be served in a nonsecure setting approved by the Department of Juvenile Justice unless the court issues***

an order in accordance with the requirements of subparagraph 4. of this paragraph.

4. *Prior to ordering a status offender who is subject to a valid court order securely detained because the child violated the valid court order, the court shall:*
 - a. *Affirm that the requirements for a valid court order were met at the time the original order finding the child to be a status offender was issued;*
 - b. *Make a determination during the detention hearing that there is probable cause to believe that the child violated the valid court order; and*
 - c. *Within seventy-two (72) hours of the initial detention of the child, exclusive of weekends and holidays, receive an oral report in court and on the record delivered by an appropriate public agency other than the court or a law enforcement agency, or receive and review a written report prepared by an appropriate public agency other than the court or a law enforcement agency that reviews the behavior of the child and the circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate. If a sufficient prior written report is included in the child's file, that report may be used to satisfy this requirement. The child may be securely detained for a period not to exceed seventy-two (72) hours pending receipt and review of the report by the court. The court shall conduct a violation hearing within twenty-four (24) hours of the receipt of the report. If the report is available at the time of the detention hearing, the violation hearing may be conducted at the same time as the detention hearing. The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure detention of a status offender.*
5. *If the child is charged with a public offense, or contempt of court on an underlying public offense, and the county in which the case is before the court is not served by a state operated secure detention facility under the statewide detention plan, detention may occur in a secure juvenile detention facility, juvenile holding facility, or a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance, subject to the court's review of the detention order prior to that court appearance.*
6. *If the child is charged with a public offense, or contempt on a public offense, and the county in which the case is before the court is served by a state operated secure detention facility under the statewide detention plan, the child ~~Any other child ordered to be detained in a state operated facility pursuant to the statewide detention plan~~ shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance. ~~The security assessment shall be done at the facility where the juvenile is initially detained~~*

- (c) If the child is not released, the court-designated worker shall notify the parent, person exercising custodial control or supervision, a relative, guardian, or other responsible adult.

Section 6. KRS 610.280 is amended to read as follows:

- (1) ~~(a) If a child is detained pursuant to KRS 610.265 for the alleged commission of a public offense and not released, a hearing shall be held as soon as practical, but not to exceed twenty-four (24) hours, exclusive of weekends and holidays, of the commencement of detention if the child is detained in an intermittent holding facility. If the child is detained in a secure juvenile detention facility or a juvenile holding facility, then a hearing shall be held as soon as practical, but not to exceed forty-eight (48) hours, exclusive of weekends and holidays, of the commencement of detention.~~
- ~~(b) If a child is detained for the alleged commission of a status offense and not released, a hearing shall be held as soon as practical, but not to exceed twenty-four (24) hours, exclusive of weekends and holidays, of the commencement of detention.~~
- (2) ***At the detention*** ~~[The] hearing *held pursuant to Section 5 of this Act, the court shall make separate findings as follows*~~ ~~[shall address the following issues]:~~
- (a) If there is probable cause to believe that an offense has been committed and that the accused child committed that offense. Probable cause may be established in the same manner as in a preliminary hearing in cases involving adults accused of felonies. The child shall be afforded the right to confront and cross-examine witnesses. The Commonwealth shall bear the burden of proof, and if it should fail to establish probable cause, the child shall be released and the complaint or petition dismissed unless the court determines further detention is necessary to assure the appearance of the child in court on another pending case; ~~[and]~~
- (b) In determining ***whether a child should be further detained*** ~~[detention]~~, the court shall consider the seriousness of the alleged offense, the possibility that the child would commit an offense dangerous to himself or the community pending disposition of the alleged offense, the child's prior record, if any, and whether there are other charges pending against the child. ~~[Any child ordered to be detained in a state-operated facility pursuant to the statewide detention plan shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance. The security assessment shall be done at the facility where the juvenile is initially detained]~~
- (3) If, after completion of the detention hearing, the court is of the opinion that detention is necessary, the order shall state on the record the specific reasons for detention.

Section 7. KRS 610.290 is amended to read as follows:

- (1) Unless a hearing is held ***within the time frame established by Section 5 of this Act***, and the necessity for detention properly established, the child shall be released to the custody of his parents, person exercising custodial control or supervision or other responsible adult pending further disposition of the case. A child shall have a right to counsel at his detention hearing determining his right to freedom pending the disposition of his case, and his parents, person exercising custodial control or supervision or other responsible adult shall have a right to attend the hearing if such attendance will not unnecessarily delay the hearing. Any person

aggrieved by a proceeding under this subsection may proceed by habeas corpus to the Circuit Court.

- (2) Whether the child is released before or after a hearing, or is detained as a result of such hearing, the child and his parents, person exercising custodial control or supervision or other responsible adult shall be given written notice of the time and place of the adjudicatory hearing concerning the child and an account of the specific charges against the child, including the specific statute alleged to have been violated. Such notice shall be given at least seventy-two (72) hours prior to the initial hearing on the case.

Section 8. KRS 630.010 is amended to read as follows:

In addition to those purposes set forth in KRS 600.010, this chapter shall be interpreted and construed to effectuate the following purposes regarding status offenders:

- (1) The Commonwealth's courts shall utilize a separate and distinct set of guidelines for status offenders which reflect their individual needs;
- (2) It shall be declared to be the policy of this Commonwealth that all its efforts and resources be directed at involving the child and the family in remedying the problem for which they have been referred;
- (3) ***Status offenders shall not be detained***~~[Detention of status offenders]~~ in secure juvenile detention facilities or juvenile holding facilities ***after the initial detention hearing unless the child is accused of, or has an adjudication that the child has violated a valid court order, in which case the child may be securely detained for up to seventy-two (72) hours, exclusive of weekends and holidays, pending receipt of the report required under subsection (3) of Section 12 of this Act. Any period of secure detention prior to the detention hearing shall not exceed twenty-four (24) hours, exclusive of weekends and holidays;***~~[- should only be used for very specific and constructive purposes, when all other less restrictive alternatives to detention have been attempted and are not feasible; and]~~
- (4) ***Status offenders accused of violating a valid court order shall not be securely detained in intermittent holding facilities; and***
- (5) ***Status offenders accused of or found guilty of violating a valid court order***~~[Status offenders]~~ shall not be converted into public offenders by virtue of ***this***~~[status]~~ conduct.

Section 9. KRS 630.020 is amended to read as follows:

The court shall have exclusive jurisdiction in proceedings concerning any child living, or found within the district, who allegedly:

- (1) Has been an habitual runaway from his parent or person exercising custodial control or supervision of the child;
- (2) ***Is beyond the control of the school or beyond the control of parents as defined in Section 1 of this Act***~~[Has not subjected himself to the reasonable control of his parent or guardian or school personnel or person exercising custodial control or supervision of the child]; or~~
- (3) Has been an habitual truant from school.

Section 10. KRS 630.040 is amended to read as follows:

Any person taking a child into custody, with all reasonable speed, shall in this sequence:

- (1) Deliver the child suffering from a physical condition or illness which requires prompt medical treatment to a medical facility or physician. Children suspected of having a mental or emotional illness shall be evaluated in accordance with the provisions of KRS Chapter 645;
- (2) Contact a court designated worker who shall have the responsibility for determining appropriate placement pursuant to KRS 610.200(5);
- (3) If the court designated worker determines that the placements designated in KRS 610.200(5) and subsection (1) of this section have been exhausted *or are not appropriate*, a child may be delivered to a secure juvenile detention facility, ~~a~~ ~~or~~ juvenile holding facility, *or a nonsecure setting approved by the Department of Juvenile Justice pending the detention hearing*;
- (4) When the child has not been released to his parents or person exercising custodial control or supervision, the person taking the child into custody shall make a reasonable effort promptly to give oral notice to the parent or person exercising custodial control or supervision of the child;
- (5) In all instances the peace officer taking a child into custody shall provide a written statement to the court designated worker of the reasons for taking the child into custody;
- (6) If the child is placed in an emergency shelter or medical facility, during the adjudication and disposition of his case, the court may order his parents to be responsible for the expense of his care; and
- (7) The peace officer taking the child into custody shall within three (3) hours of taking a child into custody file a complaint with the court, stating the *basis for taking the child into custody*~~[status offense charged by KRS number]~~ and the reason why the child was not released to the parent or other adult exercising custodial control or supervision of the child, relative or other responsible adult, a court designated agency, an emergency shelter or medical facility. Pending further disposition of the case, the court or the court designated worker may release the child to the custody of any responsible adult who can provide adequate care and supervision.

Section 11. KRS 630.070 is amended to read as follows:

No *status offender*~~[child]~~ shall be placed in a secure juvenile detention facility or juvenile holding facility as a means or form of punishment except following a finding that *the child has violated a valid court order*~~[he is in contempt of court. When a child is detained for the alleged commission of a status offense, a detention hearing shall be held as soon as is practical, but within forty-eight (48) hours of the detention, exclusive of weekends and holidays].~~

Section 12. KRS 630.080 is amended to read as follows:

- (1) In order for the court to detain ~~a~~~~the~~ child~~[in a secure juvenile detention facility or juvenile holding facility]~~ after the *detention hearing*~~[twenty four (24) hour period]~~, the Commonwealth shall establish probable cause at the detention hearing that *the child is a status offender and that further detention of the child is necessary for the protection of the child or the community*~~[a status offense has been committed and that the child committed the offense].~~ If the Commonwealth fails to establish *probable cause that the child is a status offender*~~[these grounds]~~, the complaint shall be dismissed and the child shall be released. *If the Commonwealth establishes probable cause that the child is a status offender, but that further detention of the child is not necessary for the protection of the child or the*

community, the child shall be released to the parent or person exercising custodial control or supervision of the child. If ~~the~~ grounds are established that the child is a status offender, and that further detention is necessary, the child may be placed in a nonsecure setting approved by the Department of Juvenile Justice ~~held in a secure juvenile detention facility or juvenile holding facility, as provided in subsection (3) of KRS 630.040, pending an adjudicatory hearing only if the Commonwealth shows probable cause to believe one (1) of the following:~~

- ~~(1) All alternatives to secure detention have been exhausted;~~
- ~~(2) The child has, within the last year, failed to appear at court hearings and requires detention to assure his presence at subsequent hearings;~~
- ~~(3) The child has run away from a secure or nonsecure facility;~~
- ~~(4) The child has run away from his home, and his parent, guardian, or person exercising similar custodial control or supervision of the child has orally agreed to assume physical custody or pay for his transportation within forty eight (48) hours. The child may on his own motion present to the court reasons why he should not be returned to his parents or person exercising similar custodial control or supervision of the child. Upon consideration of such motion or if the parents refuse to assume custody of the child, the court may in its discretion place the youth in a nonsecure facility and concurrently order that a protective services investigation be commenced as allowed by KRS Chapter 620;~~
- ~~(2) ~~(5)~~ A status offender may be securely detained if the cabinet has initiated or intends to initiate transfer of the youth by competent document under the provisions of the interstate compact pursuant to KRS Chapter 615; ~~or~~~~
- (3) A status offender who is subject to a valid court order may be securely detained upon a finding that the child violated the valid court order if the court does the following prior to ordering that detention:**
 - (a) Affirms that the requirements for a valid court order were met at the time the original order finding the child to be a status offender was issued;**
 - (b) Makes a determination during the detention hearing that there is probable cause that the child violated the valid court order; and**
 - (c) Within seventy-two (72) hours of the initial detention of the child, exclusive of weekends and holidays, receives an oral report in court and on the record delivered by an appropriate public agency other than the court or a law enforcement agency, or receives and reviews a written report prepared by an appropriate public agency other than the court or a law enforcement agency that reviews the behavior of the child and the circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate. If a sufficient prior written report is included in the child's file, that report may be used to satisfy this requirement. The child may be securely detained for a period not to exceed seventy-two (72) hours pending receipt and review of the report by the court. The court shall conduct a violation hearing within twenty-four (24) hours of the receipt of the report, exclusive of weekends and holidays. If the report is available at the time of the detention hearing, the violation hearing may be conducted at the same**

time as the detention hearing. The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure detention of a status offender.

~~[(6) The child is a danger to himself or others, unless he is suspected of having a mental or emotional illness and requires medical attention in which case the provisions of KRS Chapter 645 shall be followed.]~~

Section 13. KRS 630.100 is amended to read as follows:

Except as otherwise provided in this chapter, no adjudicated status offender shall be *securely detained*~~[held in a secure juvenile detention facility or juvenile holding facility as provided in KRS 630.040 pending disposition for a period exceeding ten (10) days after the adjudicatory hearing, unless waived by the child and the court considers it in the child's best interest. A child shall not be held in a secure juvenile detention facility or juvenile holding facility more than ten (10) days after the exercise of this waiver].~~

Section 14. KRS 630.120 is amended to read as follows:

(1) *All dispositional hearings conducted under this chapter shall be conducted in accordance with the provisions of KRS 610.060 and 610.070. In addition, the court shall, at the time the dispositional order is issued:*

- (a) *Give the child adequate and fair warning of the consequences of the violation of the order; and*
- (b) *Provide the child and the child's attorney, parent, or legal guardian a written statement setting forth the conditions of the order and the consequences for violating the order.*

An order issued pursuant to this section is a valid court order and any child violating that order may be subject to the provisions of subsection (3) of Section 12 of this Act.~~[The general conduct of the dispositional hearings under this section relating to status offenders shall follow the procedures pursuant to KRS 610.070 and:]~~

(2) The court shall consider all appropriate local remedies to aid the child and *the child's*~~[his]~~ family subject to the following conditions:

- (a) Residential and nonresidential treatment programs for status offenders shall be community-based and nonsecure; and
- (b) With the approval of the education agency, the court may place the child in a nonsecure public or private education agency accredited by the Department of Education.

~~(3)~~~~(2)~~ At the disposition of a child adjudicated on a petition brought pursuant to this chapter, all information helpful in making a proper disposition, including oral and written reports, may be received by the court provided that the child, *the child's*~~[his]~~ parents, their counsel, the prosecuting attorney, the child's counsel, or other interested parties as determined by the judge shall be afforded an opportunity to examine and controvert the reports. For good cause, the court may allow the admission of hearsay evidence.

~~(4)~~~~(3)~~ The court shall *affirmatively*~~[first]~~ determine that all appropriate remedies have been considered and exhausted to assure that the least restrictive alternative method of treatment is utilized.

- (5)~~(4)~~—The court may order the child and *the child's*~~his~~ family to participate in any programs which are necessary to effectuate a change in the child and the family.
- (6)~~(5)~~—When all appropriate resources have been reviewed and considered insufficient to adequately address the needs of the child and *the child's*~~his~~ family, the court may commit the child to the cabinet for such services as may be necessary. The cabinet shall consider all appropriate local remedies to aid the *child*~~youth~~ and *the child's*~~his~~ family subject to the following conditions:
- (a) Treatment programs for status offenders shall be, unless excepted by federal law, community-based and nonsecure;
 - (b) The cabinet may place the child in a nonsecure public or private education agency accredited by the department of education;
 - (c) The cabinet may initiate proceedings pursuant to KRS 610.160 when the parents fail to participate in the cabinet's treatment programs; and
 - (d) The cabinet may discharge the child from commitment after providing ten (10) days' prior written notice to the committing court which may object to such discharge by holding court review of the commitment under KRS 610.120.

Section 15. KRS 635.055 is amended to read as follows:

No child who is found to be in contempt of court shall be committed as a public offender as a result of such finding, nor detained because of such finding in a facility other than a secure juvenile detention facility,~~or~~ juvenile holding facility, *or a nonsecure detention alternative*.

SECTION 16. A NEW SECTION OF KRS CHAPTER 630 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any provision of KRS Chapter 520 to the contrary, no child accused of being or who has been adjudicated as a status offender or who has been accused of or held in contempt of court based upon an underlying finding that the child is a status offender who is absent without leave from a nonsecure detention option or home detention, or who fails to comply with the conditions of supervised placement, shall be charged with escape for being absent without leave or failing to comply with the conditions of supervised placement.

Section 17. KRS 508.025 is amended to read as follows:

- (1) A person is guilty of assault in the third degree when the actor:
 - (a) Recklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury to:
 1. A state, county, city, or federal peace officer;
 2. An employee of a detention facility, or state residential treatment facility or state *staff* secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender;
 3. An employee of the Department for Social Services employed as a social worker to provide direct client services, if the event occurs while the worker is performing job related duties; or
 4. A probation and parole officer; or

(b) Being a person confined in a detention facility, or state residential treatment facility or state *staff* secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender, inflicts physical injury upon or throws or causes feces or urine to be thrown upon an employee of the facility.

(2) Assault in the third degree is a Class D felony.

SECTION 18. A NEW SECTION OF KRS CHAPTER 600 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other provision of KRS Chapter 600 to 645, the inherent contempt power of the court shall not be diminished.

Section 19. The following KRS sections are repealed:

610.250 Conditional releases.

630.090 Limitations on detention of alleged status offender.

630.110 Conduct of adjudicatory hearing.

630.130 Limitations on detention of status offender after disposition.

Approved March 29, 2000