

**CHAPTER 534****(SB 256)**

AN ACT relating to juvenile justice.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

- (1) *Any county, urban-county, or charter county may apply to the Department of Juvenile Justice to construct, operate, or contract for the operation of a youth alternative center.***
- (2) *The youth alternative center shall be a nonsecure facility and shall be under the jurisdiction of that governing body, subject to the provisions of this chapter.***
- (3) *The youth alternative center shall be used only for the detention of juveniles. The youth alternative center shall not be part of a county jail or other facility that houses adult offenders.***
- (4) *The youth alternative center may be used as a place of detention for juveniles by order of a court prior to adjudication and after adjudication regardless of whether the child is a status offender, public offender, or youthful offender.*** Section 2. KRS 15A.040 is amended to read as follows:

- (1) The Criminal Justice Council shall advise and recommend to the Governor and the General Assembly policies and direction for long-range planning regarding all elements of the criminal justice system. The council shall review and make written recommendations on subjects including but not limited to administration of the criminal justice system, the rights of crime victims, sentencing issues, capital litigation, a comprehensive strategy to address gangs and gang problems, and the Penal Code. Recommendations for these and all other issues shall be submitted to the Governor and the Legislative Research Commission at least six (6) months prior to every regular session of the Kentucky General Assembly. The council shall:
  - (a) Make recommendations to the justice secretary with respect to the award of state and federal grants and ensure that the grants are consistent with the priorities adopted by the Governor, the General Assembly, and the council;
  - (b) Conduct comprehensive planning to promote the maximum benefits of grants;
  - (c) Develop model criminal justice programs;
  - (d) Disseminate information on criminal justice issues and crime trends;
  - (e) Work with community leaders to assess the influence of gangs and the problems that gangs cause for local communities, assist local communities in mobilizing community resources to address their problems, sponsor multidisciplinary training to help communities focus on proven strategies to address gang problems, and conduct an ongoing assessment of gang problems in local communities;
  - (f) Recommend any modifications of law necessary to insure that the laws adequately address problems identified in local communities relating to gangs;
  - (g) Provide technical assistance to all criminal justice agencies;

- (h) Review and evaluate proposed legislation affecting criminal justice; and
  - (i) All reports and proposed legislation shall be presented to the Interim Joint Committee on Judiciary not later than July 1 of the year prior to the beginning of each regular session of the General Assembly.
- (2) Membership of the Criminal Justice Council shall consist of the following:
- (a) The secretary of the Justice Cabinet or his designee;
  - (b) The director of the Administrative Office of the Courts or his designee;
  - (c) The Attorney General or his designee;
  - (d) Two (2) members of the House of Representatives as designated by the Speaker of the House;
  - (e) Two (2) members of the Senate as designated by the President of the Senate;
  - (f) A crime victim, as defined in KRS Chapter 346, to be selected and appointed by the Governor;
  - (g) A victim advocate, as defined in KRS 421.570, to be selected and appointed by the Governor;
  - (h) A Kentucky college or university professor specializing in criminology, corrections, or a similar discipline to be selected and appointed by the Governor;
  - (i) The public advocate or his designee;
  - (j) The president of the Kentucky Sheriffs' Association;
  - (k) The commissioner of state police or his designee;
  - (l) A person selected by the Kentucky State Lodge of the Fraternal Order of Police;
  - (m) The president of the Kentucky Association of Chiefs of Police;
  - (n) A member of the Prosecutors Advisory Council as chosen by the council;
  - (o) The Chief Justice or a justice or judge designated by him;
  - (p) One (1) member of the Kentucky Association of Criminal Defense Lawyers, appointed by the president of the organization;
  - (q) One (1) member of the Kentucky Jailers' Association appointed by the president of the organization;
  - (r) One (1) member of the Circuit Clerks' Association;
  - (s) Three (3) criminal law professors, one each from the University of Kentucky College of Law, the Louis D. Brandeis School of Law at the University of Louisville, and the Salmon P. Chase College of Law at Northern Kentucky University, to be selected and appointed by the Governor;
  - (t) One (1) District Judge, designated by the Chief Justice;
  - (u) One (1) Circuit Judge, designated by the Chief Justice;
  - (v) One (1) Court of Appeals Judge, designated by the Chief Justice;

- (w) One (1) representative from an organization dedicated to restorative principles of justice involving victims, the community, and offenders;~~and~~
  - (x) One (1) individual with a demonstrated commitment to youth advocacy, to be selected and appointed by the Governor;
  - (y) *The commissioner of the Department of Juvenile Justice or his designee;*
  - (z) *The commissioner of the Department of Corrections, or his designee; and*
  - (aa) *The commissioner of the Department of Criminal Justice Training or his designee.*
- (3) The secretary of justice shall serve ex officio as chairman of the council. Each member of the council shall have one (1) vote. Members of the council shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the performance of their duties.
  - (4) The council shall meet at least once every three (3) months.
  - (5) The council may hold additional meetings:
    - (a) On the call of the chairman;
    - (b) At the request of the Governor to the chairman; or
    - (c) At the written request of the members to the chairman, signed by a majority of the members.
  - (6) Two-thirds (2/3) members of the council shall constitute a quorum for the conduct of business at a meeting.
  - (7) Failure of any member to attend two (2) meetings within a six (6) month period shall be deemed a resignation from the council and a new member shall be named by the appointing authority.
  - (8) The council is authorized to establish committees and appoint additional persons who may not be members of the council as necessary to effectuate its purposes, including but not limited to:
    - (a) Uniform Criminal Justice Information System committee;
    - (b) Committee on sentencing; and (c) Penal Code committee.
  - (9) The council's administrative functions shall be performed by a full-time executive director appointed by the secretary of the Justice Cabinet and supported by the administrative, clerical, and other staff as allowed by budgetary limitations and as needed to fulfill the council's role and mission and to coordinate its activities.

Section 3. KRS 15A.067 is amended to read as follows:

- (1) As used in this section, "facility" means any of the facilities specified in KRS 15A.200 operated by a political subdivision of the Commonwealth of Kentucky for the care of juveniles alleged to be delinquent or adjudicated delinquent.
- (2) There is established within the Department of Juvenile Justice, a Division of Educational Services, that shall be responsible for *ensuring* the delivery of appropriate educational programs to incarcerated youth. Each facility shall provide educational services to

~~youth~~ [adjudicated delinquents] who may be ordered by the court to remain in the juvenile detention facility for an indeterminate period.

- (3) Any other statutes to the contrary notwithstanding, the Department of Juvenile Justice shall have access to all educational records, public or private, of any juvenile in a facility or program or informal adjustment authorized by law.
- (4) The Division of Educational Services shall ensure that all incarcerated youth be provided appropriate screening and educational programs as follows:
  - (a) For students identified before incarceration as having an educational disability, the Division of Educational Services shall make specially designed instruction and related services available as required by Kentucky Board of Education administrative regulations applicable to students with disabilities.
  - (b) For students incarcerated for more than fourteen (14) days, the division shall ensure that appropriate screening is provided to all youth. Screening shall include, but not be limited to, seeking the juvenile's educational record.
  - (c) For students incarcerated for more than thirty (30) days, the division shall ensure that all youth are provided an appropriate education.
- (5) The Department of Juvenile Justice shall be responsible for providing, in its contracts with private juvenile detention facilities and county jails, the specific obligations of those entities to provide educational services to incarcerated juveniles consistent with this section, including funding provisions.
- (6) The Department of Education and all local school district administrators shall cooperate with officials responsible for the operation of juvenile detention facilities and with the Division of Educational Services to ensure that all documents necessary to establish educational status and need shall follow the students who are being held in these facilities so the students can be afforded educational opportunities.
- (7)
  - (a) Upon disposition by the juvenile court that an adjudicated juvenile shall stay in a juvenile detention facility for any period of time, the facility shall notify the juvenile's last resident school district of the student's whereabouts.
  - (b) Within five (5) days after the juvenile is released, the Division of Educational Services shall notify the district in which the student will reside of the youth's release and educational status and forward any educational records.
- (8) The Department of Juvenile Justice shall, after consultation with the Department of Education, promulgate an administrative regulation for the effective implementation of this section.

Section 4. KRS 15A.200 is amended to read as follows:

As used in KRS 15A.210 to 15A.240 and KRS 15A.990:

- (1) "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;
- (2) "Intermittent holding facility" means a physically secure setting, ***approved by the Department of Juvenile Justice***, 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 seventy-two (72) hours, exclusive of weekends and holidays, prior to a detention hearing as provided in KRS 610.265, and in which children are supervised and observed on a regular basis by certified juvenile facility staff. Employees of jails who meet the qualifications of the Department of Juvenile Justice may supervise juvenile as well as adult prisoners;*

- (3) "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 exclusively 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;~~[-and]-~~
- (4) "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; *and*
- (5) *"Youth alternative center" means a nonsecure facility, approved by the Department of Juvenile Justice, for the nonsecure detention of juveniles.*

Section 5. KRS 600.010 is amended to read as follows:

- (1) KRS Chapters 600 to 645 shall be known as the Kentucky Unified Juvenile Code.
- (2) KRS Chapters 600 to 645 shall be interpreted to effectuate the following express legislative purposes:
  - (a) The Commonwealth shall direct its efforts to promoting protection of children; to the strengthening and encouragement of family life for the protection and care of children; to strengthen and maintain the biological family unit; and to offer all available resources to any family in need of them;
  - (b) It also shall be declared to be the policy of this Commonwealth that all efforts shall be directed toward providing each child a safe and nurturing home;
  - (c) The court shall show that other less restrictive alternatives have been attempted or are not feasible in order to insure that children are not removed from families except when absolutely necessary;
  - (d) Any child brought before the court under KRS Chapters 600 to 645 shall have a right to treatment reasonably calculated to bring about an improvement of his condition;~~[-and]-~~
  - (e) *KRS Chapter 635 shall be interpreted to promote the best interests of the child through providing treatment and sanctions to reduce recidivism and assist in making the child a productive citizen by advancing the principles of personal responsibility, accountability, and reformation, while maintaining public safety, and seeking restitution and reparation;*
  - (f) *KRS Chapter 640 shall be interpreted to promote public safety and the concept that every child be held accountable for his or her conduct through the use of restitution, reparation, and sanctions, in an effort to rehabilitate delinquent youth; and*

- (g) It shall further be the policy of this Commonwealth to provide judicial procedures in which rights and interests of all parties, including the parents *and victims*, are recognized and all parties are assured prompt and fair hearings. Unless otherwise provided, such protections belong to the child individually and may not be waived by any other party.

Section 6. 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) "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;
- (3) "Cabinet" means the Cabinet for Families and Children;
- (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;
- (5) "Child" means any person who has not reached his eighteenth birthday unless otherwise provided;

- (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;
- (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;
- (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;
- (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;
- (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;
- (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;
- (12) "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;
- (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;
- (14) "Deadly weapon" has the same meaning as it does in KRS 500.080;
- (15) "Department" means the Department for Social Services;
- (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;
- (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;
- (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;

- (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;
- (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;
- (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;
- (22) "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- (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;
- (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;
- (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;
- (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;
- (27) "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;
- (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;
- (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;
- (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;
- (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;

- (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;
- (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;
- (34) "Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;
- (35) "Needs of the child" means necessary food, clothing, health, shelter, and education.
- (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;
- (37) "Parent" means the biological or adoptive mother or father of a child;
- (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;
- (39) "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;
- (40) "Physical injury" means substantial physical pain or any impairment of physical condition;
- (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;
- (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;
- (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;
- (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;
- (45) "School personnel" means those certified persons under the supervision of the local public or private education agency;
- (46) "Secretary" means the secretary of the Cabinet for Families and Children;
- (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;
- (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;
- (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;
- (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;
- (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;

- (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;
- (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;
- (54) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;
- (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 *Section 1 of this Act* [~~KRS 610.267 and the administrative regulations promulgated thereunder~~]; and
- (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 7. KRS 605.080 is amended to read as follows:

- (1) Any child ordered to be transported, by a committing *or sentencing* court, shall be transported by the sheriff or the jailer of that county. Any other law enforcement agency may enter into agreements with the court, sheriff, or jailer to transport juveniles.
- (2) Any peace officer who conveys a child from the committing court or from the detention facility of the committing court to a residential treatment facility or other facility operated by the Department of Juvenile Justice or the cabinet shall be allowed an amount prescribed by regulation adopted by the Finance and Administration Cabinet calculated by the nearest traveled route, and shall be paid for all necessary expenses for feeding, lodging, and transporting the child. The officer shall make out a full account of all expenses so incurred by him and give the distance traveled. The account shall be verified by the officer upon oath before the District Court and certified by the circuit clerk to the Department of Juvenile Justice or the cabinet, as appropriate, for payment out of funds appropriated to the Department of Juvenile Justice or the cabinet for this purpose. The child's presence shall be necessary at a postdispositional proceeding only as required by court order for good cause. Transportation shall be provided as in subsection (1) of this section and expenses for transportation of a child to a proceeding from a residential treatment facility or other facility operated by the Department of Juvenile Justice or the cabinet shall be paid out of the State Treasury.
- (3) No child shall be transported to any residential treatment facility or other facility, pursuant to order of any court or direction of the cabinet, unless accompanied by an attendant of the same gender, or, when authorized in writing by the court, the Department of Juvenile Justice, or the cabinet, by a parent, grandparent, or adult brother or sister.
- (4) The agent of any residential treatment facility or other facility which receives a child transported to the facility shall report any violation of subsection (2) of this section to the Commonwealth's attorney of the judicial circuit in which the facility is located.
- (5) The Department of Juvenile Justice or the cabinet may pay the necessary traveling expenses of children committed to it for care and treatment from their homes to the residential treatment

facility or other facility or home to which they are committed, and the traveling expenses of such children from the facility or home to their homes when discharged or placed on supervised placement.

Section 8. KRS 610.170 is amended to read as follows:

If it appears from the investigation required in KRS 610.100 or otherwise that the parent or other person exercising custodial control or supervision of any child, or the estate of any child, who has been found to fall within the purview of KRS Chapters 600 to 645 and who has been left in his own home or in the home of a relative, placed on probation or placed in a foster home or boarding home, or in the care of a public or private facility or agency, or the Department of Juvenile Justice or the cabinet, is able to contribute to the support of the child, the court shall enter an order requiring the parent or estate to pay a reasonable sum for the support, maintenance, or education of the child. The order shall direct that the money be paid to the circuit clerk to be disbursed as ordered by the court or be paid to the person, facility, agency, or the Department of Juvenile Justice or cabinet to which the child was committed or probated. On application and on such notice as the court may direct, the court may make alterations in the requirement for contribution. The court may issue such orders necessary to compel payment of the sum due. The enforcement of a sentence imposed on a parent who fails to comply with the order of the court may be suspended at the discretion of the court, but the suspension may be revoked at the discretion of the court upon the failure of the parent to obey further orders of the court. This section shall not apply when the parent or other person exercising custodial control or supervision of the child was the victim of the child's criminal conduct *under KRS Chapters 635 or 640*, or filed the complaint against the child *under other provisions of the Unified Juvenile Code*.

Section 9. KRS 610.220 is amended to read as follows:

- (1) *Except as otherwise provided by statute*, 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, *youth alternative center*, 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 in facilities listed in subsection (1) of this section for the period of retention.

Section 10. KRS 610.310 is amended to read as follows:

- (1) When the **mental or physical** health~~[or physical condition]~~ of any child before the juvenile court requires it, the court may order the child to be placed in a public or private hospital or institution for **examination, evaluation**, treatment, or care~~[. In order to ascertain the physical condition of a child, the court may cause the child to be examined]~~ by a health officer, **comprehensive care center**,~~[or]~~ children's clinic, or any reputable physician **or psychologist** who will conduct the examination. **The cabinet and the Department of Juvenile Justice may furnish services under agreements with the individual juvenile courts. For this purpose, any county judge/executive or chief executive officer of an urban-county or charter county government may enter into a contract on behalf of his or her county with the cabinet or the Department of Juvenile Justice for the furnishings of these services.**
- (2) The court may order or consent to necessary medical treatment, including surgical procedures, except for the purpose of abortion, electroshock therapy or psychosurgery as provided in KRS Chapter 645, or sterilization, after a hearing conducted to determine the necessity of such treatment or procedure. In making the order, the court may take into consideration the religious beliefs and practices of the child and his parents or guardian. Reasonable notice, taking into account any emergency circumstances, shall be provided to the parents, guardian or person exercising custodial control or supervision of the child to enable them to attend the hearing.

Section 11. KRS 635.020 is amended to read as follows:

- (1) If, prior to an adjudicatory hearing, there is a reasonable cause to believe that a child before the court has committed a felony other than those described in subsections (2) and (3) of this section, a misdemeanor, or a violation, the court shall initially proceed in accordance with the provisions of this chapter.
- (2) If a child charged with a capital offense, Class A felony, or Class B felony, had attained age fourteen (14) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (3) If a child charged with a Class C or Class D felony has on one (1) prior separate occasion been adjudicated a public offender for a felony offense and had attained the age of sixteen (16) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (4) Any other provision of KRS Chapters ~~610~~~~[600]~~ to 645 to the contrary notwithstanding, if a child charged with a felony in which a firearm, **whether functional or not**, was used in the commission of the offense had attained the age of fourteen (14) years at the time of the commission of the alleged offense, he shall be transferred to the Circuit Court for trial as an adult if, following a preliminary hearing, the District Court finds probable cause to believe that the child committed a felony, that a firearm was used in the commission of that felony, and that the child was fourteen (14) years of age or older at the time of the commission of

the alleged felony. If convicted in the Circuit Court, he shall be subject to the same penalties as an adult offender, except that until he reaches the age of eighteen (18) years, he shall be confined in a secure detention facility for juveniles or for youthful offenders, unless the provisions of KRS 635.025 apply or unless he is released pursuant to expiration of sentence or parole, and at age eighteen (18) he shall be transferred to an adult facility operated by the Department of Corrections to serve any time remaining on his sentence.

- (5) If a child previously convicted as a youthful offender under the provisions of KRS Chapter 640 is charged with a felony allegedly committed prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (6) A child who is charged as is provided in subsection (2) of this section and is also charged with a Class C or D felony, a misdemeanor, or a violation arising from the same course of conduct shall have all charges included in the same proceedings; and the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (7) If a person who is eighteen (18) or older and before the court is charged with a felony that occurred prior to his eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (8) All offenses arising out of the same course of conduct shall be tried with the felony arising from that course of conduct, whether the charges are adjudicated under this chapter or under KRS Chapter 640 and transferred to Circuit Court.

Section 12. KRS 635.025 is amended to read as follows:

- (1) Upon motion of the Department of Juvenile Justice, the sentencing Circuit Court may, after notice and hearing, order a youth, transferred under KRS 635.020(4), committed to an adult facility operated by the Department of Corrections if it is established by a preponderance of the evidence that the juvenile:
  - (a) By his or her violent behavior, injured or endangered the life or health of another youthful offender or staff members in the facility or program;
  - (b) Escaped from the facility or program from which the juvenile is being held ~~on more than one (1) occasion~~;
  - (c) By his or her actions, caused disruption in the facility or program by encouraging other residents to engage in violent behavior which has injured or endangered the life or health of other residents or staff of the facility or program;
  - (d) By his or her actions, caused disruption in the facility or program, smuggled contraband into the facility or program, caused contraband to be smuggled into the facility or program, or engaged in other types of behavior which have endangered the life or health of other residents or staff of the facility or program; or

- (e) By his or her actions has established a pattern of disruptive behavior not conducive to the established policies and procedures of the program.
- (2) The hearing described in subsection (1) of this section shall be held in the sentencing Circuit Court within ten (10) days of the filing of the motion provided for in subsection (1) of this section.
  - (3) Upon a youth's admission to a facility or program operated by the Department of Juvenile Justice, the department shall advise that youth of the provisions of this section.
  - (4) Upon motion of the Department of Juvenile Justice, the sentencing Circuit Court may, after notice and hearing, order a youth committed to the Department of Corrections, if the Department of Juvenile Justice establishes by a preponderance of the evidence that the youth is mentally ill, dangerous to himself or others, and cannot be adequately treated in the program. The court shall presume that a youth is mentally ill if the youth has pled guilty to, or has been convicted of, a felony and has been found by the court or jury to be guilty but mentally ill.
  - (5) Any youth remanded to the Department of Corrections under any provision of this chapter shall not later be placed in a facility operated by the Department of Juvenile Justice.

Section 13. 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, *youth alternative center, or an alternative to detention program approved by the Department of Juvenile Justice.*

Section 14. KRS 635.070 is amended to read as follows:

The ~~governing authorities of the~~ Department of Juvenile Justice ~~agency, or facility~~ may discharge the child ~~unless the court directs otherwise. Prior to discharge, two (2) weeks~~ **from commitment after providing fourteen (14) days prior** written notice ~~shall be given~~ to the committing court, to the legal representative of the child, and to the county attorney of the county in which the committing court presides, **which may object to the discharge by holding a court review under KRS 610.120.** During the period of commitment or placement, the court may review a dispositional order and may continue or terminate such order as the court deems essential to the best interests of the child. ~~In committing a child to a child-caring facility or a child-placing agency, the court shall select one (1) that is approved by the Department of Juvenile Justice, and children committed to such a facility or agency shall be subject to the visitation and supervision of a probation officer of the Department of Juvenile Justice.~~

Section 15. KRS 635.100 is amended to read as follows:

- (1) Any child committed to the Department of Juvenile Justice who is placed in a treatment facility or program and who escapes or is absent without leave shall be taken into custody and returned to the custody of the Department of Juvenile Justice by any juvenile probation officer or by any peace officer on direction of the Department of Juvenile Justice.
- (2) Any child committed to the Department of Juvenile Justice who is placed on supervised placement by the Department of Juvenile Justice and who violates the terms or conditions of supervised placement may be ~~taken into custody and~~ returned to active custody of the

Department of Juvenile Justice ***and may be taken into custody*** by any juvenile probation officer or by any peace officer on direction of the Department of Juvenile Justice.

- (3) A~~The~~ child ~~may be~~ taken into custody ***may be***~~and~~ held in a Department of Juvenile Justice facility, program, or contract facility, prior to the administrative hearing, provided a preliminary hearing is held by a person designated by the Department of Juvenile Justice within five (5) days, ***exclusive of weekends and holidays***, of the holding, ***unless the child or his representative request or agree to a longer period of time***, to determine if there is probable cause to believe that the child violated his supervised placement conditions and, if so, to determine if the best interest of the child requires that the child be held in custody pending an administrative hearing pursuant to subsection (4) of this section. The child and his parent or other person exercising custodial control or supervision shall be given an opportunity to be heard and to be represented by counsel at the preliminary hearing.
- (4) If the child is returned to the active custody of the Department of Juvenile Justice ***as provided in subsection (3) of this section***~~pending a hearing, before readmitting the child to a treatment program pursuant to this section, except as provided in subsection (3) of this section,~~ an administrative hearing shall be held within ten (10)~~working~~ days, ***exclusive of weekends and holidays***, of the preliminary hearing unless the child and his representative request or agree to a longer period of time. The hearing shall be held by one (1) hearing officer designated by the Department of Juvenile Justice to hear such matters at which time the child and his parent or other person exercising custodial control or supervision shall be given an opportunity to be heard and be represented by counsel.
- (5) ***The Department shall have the power to administer oaths and to issue subpoenas compelling the attendance of witnesses as it may deem necessary to the case of any child before it. Disobedience of a subpoena may be punished as contempt of court, after a hearing before the committing juvenile court.***
- (6) Administrative hearings conducted under this section and administrative regulations promulgated under this section shall be exempt from the requirements of KRS Chapter 13B.
- (7)~~(6)~~ The Department of Juvenile Justice ***shall***~~may~~ promulgate administrative regulations to ***govern at least the following aspects of this section:***
  - (a) ***Commissioner's warrant;***
  - (b) ***Procedural aspects of the hearing;***
  - (c) ***Burden of proof;***
  - (d) ***Standard of proof; and***
  - (e) ***Administrative appeal process***

~~implement the provisions of this chapter.~~

Section 16. KRS 640.010 is amended to read as follows:

- (1) For children who are alleged to be youthful offenders by falling in the purview of KRS 635.020(2), (3), (5), (6), (7), ***or*** (8),~~or (9),~~ the court shall at arraignment assure that the child's rights as specified in KRS 610.060 have been explained and followed.
- (2) In the case of a child alleged to be a youthful offender by falling within the purview of KRS 635.020(2), (3), (5), (6), (7), ***or*** (8),~~or (9),~~ the District Court shall, upon motion by the



county attorney to proceed under this chapter, and after the county attorney has consulted with the Commonwealth's attorney, conduct a preliminary hearing to determine if the child should be transferred to Circuit Court as a youthful offender. The preliminary hearing shall be conducted in accordance with the Rules of Criminal Procedure.

- (a) At the preliminary hearing, the court shall determine if there is probable cause to believe that an offense was committed, that the child committed the offense, and that the child is of sufficient age and has the requisite number of prior adjudications, if any, necessary to fall within the purview of KRS 635.020.
- (b) If the District Court determines probable cause exists, the court shall consider the following factors before determining whether the child's case shall be transferred to the Circuit Court:
  - 1. The seriousness of the alleged offense;
  - 2. Whether the offense was against persons or property, with greater weight being given to offenses against persons;
  - 3. The maturity of the child as determined by his environment;
  - 4. The child's prior record;
  - 5. The best interest of the child and community;
  - 6. The prospects of adequate protection of the public;
  - 7. The likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available to the juvenile justice system; and
  - 8. Evidence of a child's participation in a gang.
- (c) If, following the completion of the preliminary hearing, the District Court finds, after considering the factors enumerated in paragraph (b) of this subsection, that two (2) or more of the factors specified in paragraph (b) of this subsection are determined to favor transfer, the child may be transferred to Circuit Court, and if the child is transferred the District Court shall issue an order transferring the child as a youthful offender and shall state on the record the reasons for the transfer. The child shall then be proceeded against in the Circuit Court as an adult, except as otherwise provided in this chapter.
- (d) If, following completion of the preliminary hearing, the District Court is of the opinion, after considering the factors enumerated in paragraph (b) of this subsection, that the child shall not be transferred to the Circuit Court, the case shall be dealt with as provided in KRS Chapter 635.

- (3) If the child is transferred to Circuit Court under this section and the grand jury does not find that there is probable cause to indict the child as a youthful offender, as defined in KRS 635.020(2), (3), (5), (6), (7), and (8), but does find that there is probable cause to indict the child for another criminal offense, the child shall not be tried as a youthful offender in Circuit Court but shall be returned to District Court to be dealt with as provided in KRS Chapter 635.

Section 17. KRS 640.050 is amended to read as follows:

- (1) Any period of probation or conditional discharge required by the sentencing court to be served shall be supervised~~[, as the court may determine by written order,]~~ by:

- (a) The Department of Juvenile Justice, *if the youthful offender is under the age of eighteen (18)*;
  - (b) The Department of Corrections, *upon the youthful offender attaining the age of eighteen (18)*; or
  - (c) The designated representative of either of the above.
- (2) The Department of Juvenile Justice may make recommendations to the Circuit Court concerning the disposition of the youthful offender.
- ~~[(3) The court may order any of the above alternatives without regard to the age of the youthful offender.]~~

Section 18. KRS 640.070 is amended to read as follows:

- (1) Upon motion of the Department of Juvenile Justice, the sentencing Circuit Court may, after notice and hearing, order a youthful offender committed to an adult facility operated by the Department of Corrections if it is established by a preponderance of the evidence that the youthful offender has:
  - (a) By his violent behavior, injured or endangered the life or health of another youthful offender or staff members in the facility or program;
  - (b) Escaped from the facility or program from which he is being held~~[on more than one (1) occasion]~~;
  - (c) By his actions, caused disruption in the facility or program by encouraging other residents to engage in violent behavior which has injured or endangered the life or health of other residents or staff of the facility or program;
  - (d) By his actions, caused disruption in the facility or program, smuggled contraband into the facility or program, caused contraband to be smuggled into the facility or program, or engaged in other types of behavior which have endangered the life or health of other residents or staff of the facility or program; or
  - (e) By his actions has established a pattern of disruptive behavior not conducive to the established policies and procedures of the program.
- (2) The hearing shall be held in the sentencing Circuit Court within ten (10) days of the filing of the motion provided for in subsection (1) of this section.
- (3) Upon admission to a facility or program operated by the Department of Juvenile Justice, the department shall advise the youthful offender of the provisions of this section.
- (4) Upon motion of the Department of Juvenile Justice, the sentencing Circuit Court may, after notice and hearing, order a youthful offender committed to the Department of Corrections if it is established by a preponderance of the evidence that the youthful offender is mentally ill and is dangerous to himself or others, and cannot be adequately treated in the youthful offender program. It shall be presumed that a youthful offender is mentally ill if he has pled guilty to or has been convicted of a felony and has been found by the court or jury to be guilty but mentally ill.
- (5) Any youth remanded to the Department of Corrections under any provision of this chapter shall not later be placed in a facility operated by the Department of Juvenile Justice.

Section 19. KRS 605.110 is amended to read as follows:

- (1) Unless provided otherwise, when any child committed to the Department of Juvenile Justice or the cabinet requires medical or surgical care or treatment, the Department of Juvenile Justice or the cabinet may provide the same or arrange for the furnishing thereof by other public or private agencies, and may give consent to the medical or surgical treatment. For this purpose, the services and facilities of local health officers and departments shall be made available, at a cost not to exceed the Medicaid reimbursement rate, to the Department of Juvenile Justice or the cabinet, and as far as practicable, any publicly-owned hospital shall provide hospitalization without charge for any such child who is a resident of the political subdivision by which the hospital is owned or operated. This section does not authorize nor shall permission be granted for abortion or sterilization.
- (2) Any child placed in a foster home by an agency duly authorized in KRS Chapter 620 to place a child in a foster home shall receive a complete medical, visual, and dental examination by a professional authorized by the Kentucky Revised Statutes to conduct such examinations. Arrangements for a child placed in a foster home to receive such examinations shall be made within two (2) weeks of his placement in a foster home and not less than every twelve (12) months thereafter.
- (3) Children maintained in any of the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet shall, so far as possible, receive a common school education.
  - (a) The Kentucky Educational Collaborative for State Agency Children shall be established to serve children in facilities and programs operated or contracted by the Department of Juvenile Justice or the Cabinet for Families and Children, residential, day treatment, clinical, and group home programs. All policies and procedures necessary to educate state agency children shall be approved by the Kentucky Board of Education. All duties, responsibilities, rights, and privileges specifically imposed on or granted to the local education administration units shall be imposed on or granted to the Department of Juvenile Justice or the Cabinet for Families and Children and contracted agencies with regard to educating agency children. Classrooms for the Kentucky Educational Collaborative for State Agency Children shall be within or near the facilities and programs operated or contracted by the Department of Juvenile Justice or the cabinet. The Kentucky Department of Education, the Department of Juvenile Justice, and the Cabinet for Families and Children, Department for Social Services, shall develop a biennial plan regarding the educational needs and provisions of educational programs, with emphasis on the coordination of all treatment services and funds available to provide for the education of state agency children. The biennial plan shall include strategies to assure that teacher preparation programs include content related to working with state agency children and that adequate professional development opportunities for better meeting the needs of these students are available for teachers and schools.
  - (b) Teachers and other staff shall be hired on contract through a local school district or if ~~a~~ the local school district is not willing to participate, teachers ~~may~~ ~~shall~~ be hired by the Kentucky Educational ~~Collaborative~~ ~~Cooperative~~ for State Agency Children *or a contract may be entered into with a private provider of educational services*. All certified educational staff ~~hired by~~ ~~of~~ the Kentucky Educational

*Collaborative*~~[Cooperative]~~ for State Agency Children shall be members of the Kentucky Teachers' Retirement System.

- (c) Beginning July 1, 1993, the Kentucky Education Collaborative for State Agency Children shall be financed through:
1. The amount generated by state agency children under the Support Education Excellence in Kentucky program as provided in KRS 157.360 for the guaranteed base and adjustments for the number of at-risk students, exceptional students, and transportation costs;
  2. A per-pupil distribution of professional development funds with the collaborative serving as a consortium for state agency children;
  3. A per-pupil distribution of technology funds in accordance with the state education technology plan pursuant to KRS 156.670 and the formula for the distribution of funds to local school districts;
  4. A per-pupil distribution of textbook funds pursuant to KRS 157.100 and 157.190;
  5. The funding for school services for state agency children authorized by KRS 158.135; and
  6. Other grants and entitlements, including federal funds, identified in the implementation plan developed pursuant to paragraph (f) of this subsection for the education of Kentucky's children.
- (d) The commissioner of Juvenile Justice and the secretary of the Cabinet for Families and Children shall promulgate administrative regulations, pursuant to KRS Chapter 13A, with the assistance of the Kentucky Department of Education and upon recommendation of the Kentucky Board of Education regarding the governance, curriculum, and other topics necessary to educate state agency children. The regulations shall:
1. Provide for the development and implementation of interagency agreements that:
    - a. Define the financial responsibility of each state and local agency for providing services to state agency children;
    - b. Establish procedures for resolving interagency disputes among agencies that are parties to the agreements; and
  2. Provide procedures for the implementation of the Kentucky statutes regarding school-based decision making, student outcomes, accountability, assessment, rewards and sanctions, technology, staff development, salaries, and the development of coordinated individual treatment, education, and transition plans to ensure compliance with present education and treatment laws and regulations specific to the needs of children in the programs of the Cabinet for Families and Children.
- (e) When the placement of a state agency child is changed so that the state agency child must transfer from one school or educational facility to a different school or educational facility, the school or educational facility that the state agency child is leaving shall, within two (2) days of the state agency child leaving, prepare an educational passport for the child, which shall be delivered to the cabinet or the Department of Juvenile Justice. The cabinet or the Department of Juvenile Justice shall, within two (2) days of

enrolling a state agency child in a new school or educational facility, present the educational passport to the receiving school or educational facility.

- (f) The commissioner of Juvenile Justice and the secretary of the Cabinet for Families and Children and the commissioner of the state Department of Education shall initiate development of a plan for implementation of the Kentucky Educational Collaborative for State Agency Children.

Section 20. The following KRS section is repealed:

610.267 Youth alternative centers.

**Approved April 26, 2000**