

CHAPTER 87**(HB 393)**

AN ACT relating to children's advocacy centers.

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

Section 1. KRS 620.020 is amended to read as follows:

The definitions in KRS Chapter 600 shall apply to this chapter. In addition, as used in this chapter, unless the context requires otherwise:

- (1) "Case permanency plan" means a document identifying decisions made by the cabinet, for both the biological family and the child, concerning action which needs to be taken to assure that the child in foster care expeditiously obtains a permanent home;
- (2) "Case progress report" means a written record of goals that have been achieved in the case of a child;
- (3) "Case record" means a cabinet file of specific documents and a running record of activities pertaining to the child;
- (4) "Children's advocacy center" means an agency that advocates on behalf of children alleged to have been abused; that assists in the coordination of the investigation of child abuse by providing a location for forensic interviews *and medical examinations*, and *by* promoting the coordination of services for children alleged to have been abused; and that provides, *directly or by formalized agreements*, services that include, but are not limited to, forensic *interviews*, medical examinations, mental health and related support services, court advocacy, consultation, training, and staffing of multidisciplinary teams;
- (5) "Foster care" means the provision of temporary twenty-four (24) hour care for a child for a planned period of time when the child is:
 - (a) Removed from his parents or person exercising custodial control or supervision and subsequently placed in the custody of the cabinet; and
 - (b) Placed in a foster home or private child-caring facility or child-placing agency but remains under the supervision of the cabinet;
- (6) "Local citizen foster care review board" means a citizen board which provides periodic permanency reviews of children placed in the custody of the cabinet by a court order of temporary custody or commitment under this chapter;
- (7) "Multidisciplinary teams" means local teams operating under protocols governing roles, responsibilities, and procedures developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse pursuant to KRS 431.600;
- (8) "Permanence" means a relationship between a child and an adult which is intended to last a lifetime, providing commitment and continuity in the child's relationships and a sense of belonging;
- (9) "Preventive services" means those services which are designed to help maintain and strengthen the family unit by preventing or eliminating the need for removal of children from the family;
- (10) "Reasonable efforts" means the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community in accordance

with the state plan for Public Law 96-272 which are necessary to enable the child to safely live at home;

- (11) "Reunification services" means remedial and preventive services which are designed to strengthen the family unit, to secure reunification of the family and child where appropriate, as quickly as practicable, and to prevent the future removal of the child from the family; and
- (12) "State citizen foster care review board" means a board created by KRS 620.310.

Section 2. KRS 620.050 is amended to read as follows:

- (1) Anyone acting upon reasonable cause in the making of a report or acting under KRS 620.030 to 620.050 in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report or action. However, any person who knowingly makes a false report and does so with malice shall be guilty of a Class A misdemeanor.
- (2) *Any employee or designated agent of a children's advocacy center shall be immune from any civil liability arising from performance within the scope of the person's duties as provided in KRS 620.030 to 620.050. Any such person shall have the same immunity with respect to participation in any judicial proceeding. Nothing in this subsection shall limit liability for negligence. Upon the request of an employee or designated agent of a children's advocacy center, the Attorney General shall provide for the defense of any civil action brought against the employee or designated agent as provided under KRS 12.211 to 12.215.*
- (3) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.
- ~~(4)~~⁽³⁾ Upon receipt of a report of an abused, neglected, or dependent child pursuant to this chapter, the cabinet as the designated agency or its delegated representative shall initiate a prompt investigation or assessment of family needs, take necessary action, and shall offer protective services toward safeguarding the welfare of the child. The cabinet shall work toward preventing further dependency, neglect, or abuse of the child or any other child under the same care, and preserve and strengthen family life, where possible, by enhancing parental capacity for adequate child care.
- ~~(5)~~⁽⁴⁾ The report of suspected child abuse, neglect, or dependency and all information obtained by the cabinet or its delegated representative, as a result of an investigation or assessment made pursuant to this chapter, ***except for those records provided for in subsection (6) of this section***, shall not be divulged to anyone except:
 - (a) Persons suspected of causing dependency, neglect, or abuse;
 - (b) The custodial parent or legal guardian of the child alleged to be dependent, neglected, or abused;
 - (c) Persons within the cabinet with a legitimate interest or responsibility related to the case;

- (d) Other medical, psychological, educational, or social service agencies, child care administrators, corrections personnel, or law enforcement agencies, including the county attorney's office, the coroner, and the local child fatality response team, that have a legitimate interest in the case;
 - (e) A noncustodial parent when the dependency, neglect, or abuse is substantiated;
 - (f) Members of multidisciplinary teams as defined by KRS 620.020 and which operate pursuant to KRS 431.600~~[- Members may include staff from a children's advocacy center];~~~~[-or]~~
 - (g) *Employees or designated agents of a children's advocacy center; or*
 - (h) Those persons so authorized by court order.
- (6) (a) *Files, reports, notes, photographs, records, electronic and other communications, and working papers used or developed by a children's advocacy center in providing services under this chapter are confidential and shall not be disclosed except to the following persons:*
- 1. *Staff employed by the cabinet, law enforcement officers, and Commonwealth's and county attorneys who are directly involved in the investigation or prosecution of the case;*
 - 2. *Medical and mental health professionals listed by name in a release of information signed by the guardian of the child, provided that the information shared is limited to that necessary to promote the physical or psychological health of the child or to treat the child for abuse-related symptoms; and*
 - 3. *The court and those persons so authorized by a court order.*
- (b) *The provisions of this subsection shall not be construed as to contravene the Rules of Criminal Procedure relating to discovery.*
- (7) *Nothing in this section shall prohibit a parent or guardian from accessing records for his or her child providing that the parent or guardian is not currently under investigation by a law enforcement agency or the cabinet relating to the abuse of a child.*
- (8) *Nothing in this section shall prohibit employees or designated agents of a children's advocacy center from disclosing information during a multidisciplinary team review of a child sexual abuse case as set forth under KRS 620.040. Persons receiving this information shall sign a confidentiality statement consistent with statutory prohibitions on disclosure of this information.*
- (9) *Employees or designated agents of a children's advocacy center may confirm to another children's advocacy center that a child has been seen for services. If an information release has been signed by the guardian of the child, a children's advocacy center may disclose relevant information to another children's advocacy center.*
- (10) (a) *An interview of a child recorded at a children's advocacy center shall not be duplicated except that the Commonwealth's or county attorney prosecuting the case may:*
- 1. *Make and retain one (1) copy of the interview; and*
 - 2. *Make one (1) copy for the defendant's counsel that the defendant's counsel shall not duplicate.*

- (b) *The defendant's counsel shall file the copy with the court clerk at the close of the case.*
- (c) *Unless objected to by the victim or victims, the court, on its own motion, or on motion of the attorney for the Commonwealth shall order all recorded interviews that are introduced into evidence or are in the possession of the children's advocacy center, law enforcement, the prosecution, or the court to be sealed.*
- (d) *The provisions of this subsection shall not be construed as to contravene the Rules of Criminal Procedure relating to discovery.*
- (11)~~(5)~~ Identifying information concerning the individual initiating the report under KRS 620.030 shall not be disclosed except:
- (a) To law enforcement officials that have a legitimate interest in the case;
 - (b) To the agency designated by the cabinet to investigate or assess the report;
 - (c) To members of multidisciplinary teams as defined by KRS 620.020 that operated under KRS 431.600; or
 - (d) Under a court order, after the court has conducted an in camera review of the record of the state related to the report and has found reasonable cause to believe that the reporter knowingly made a false report.
- (12)~~(6)~~ Information may be publicly disclosed by the cabinet in a case where child abuse or neglect has resulted in a child fatality or near fatality.
- (13)~~(7)~~ When an adult who is the subject of information made confidential by subsection (5)~~(4)~~ of this section publicly reveals or causes to be revealed any significant part of the confidential matter or information, the confidentiality afforded by subsection (5)~~(4)~~ of this section is presumed voluntarily waived, and confidential information and records about the person making or causing the public disclosure, not already disclosed but related to the information made public, may be disclosed if disclosure is in the best interest of the child or is necessary for the administration of the cabinet's duties under this chapter.
- (14)~~(8)~~ As a result of any report of suspected child abuse or neglect, photographs and X-rays or other appropriate medical diagnostic procedures may be taken or caused to be taken, without the consent of the parent or other person exercising custodial control or supervision of the child, as a part of the medical evaluation or investigation of these reports. These photographs and X-rays or results of other medical diagnostic procedures may be introduced into evidence in any subsequent judicial proceedings. The person performing the diagnostic procedures or taking photographs or X-rays shall be immune from criminal or civil liability for having performed the act. Nothing herein shall limit liability for negligence.

Section 3. KRS 610.127 is amended to read as follows:

Reasonable efforts as defined in KRS 620.020~~(9)~~ shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction determines that the parent has:

- (1) Subjected the child to aggravated circumstances as defined in KRS 600.020;
- (2) Been convicted in a criminal proceeding of having caused or contributed to the death of another child of the parent;
- (3) Committed a felony assault that resulted in serious bodily injury to the child or to another child of the parent;

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

Approved March 28, 2002