

CHAPTER 263**(HB 144)**

AN ACT relating to juvenile justice.

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

Section 1. KRS 15A.065 is amended to read as follows:

- (1) The Department of Juvenile Justice shall be headed by a commissioner and shall develop and administer programs for:
 - (a) Prevention of juvenile crime;
 - (b) Identification of juveniles at risk of becoming status or public offenders and **development of** early intervention strategies for these children, and, except for adjudicated youth, participation in prevention programs shall be voluntary;
 - (c) Providing **educational information**~~[informational services]~~ to law enforcement, prosecution, victims, defense attorneys, **the courts, the educational community**, and the public **concerning**~~[relating to]~~ juvenile crime, its prevention, detection, trial, punishment, and rehabilitation~~[, and services for youth adjudicated delinquent or found guilty of public offenses or as youthful offenders]~~;
 - (d) The operation of or contracting for the operation of postadjudication treatment facilities **and services** for children adjudicated delinquent or found guilty of public offenses or as youthful offenders;
 - (e) The operation or contracting for the operation~~[of by the department]~~, and the encouragement of operation by others, including local governments, volunteer organizations, and the private sector, of programs to serve predelinquent and delinquent youth;
 - (f) Utilizing outcome-based planning and evaluation of programs to ascertain which programs are most appropriate and effective in promoting the goals of this section;
 - (g) Conducting research and comparative experiments to find the most effective means of:
 1. Preventing delinquent behavior;
 2. Identifying predelinquent youth;
 3. Preventing predelinquent youth from becoming delinquent;
 4. Assessing the needs of predelinquent and delinquent youth;
 5. Providing an effective and efficient program designed to treat and correct the behavior of delinquent youth and youthful offenders;
 6. Assessing the success of all programs of the department and those operated on behalf of the department and making recommendations for new programs, improvements in existing programs, or the modification, combination, or elimination of programs as indicated by the assessment and the research; and
 - ~~{7. Keeping the department, the educational community, police, prosecutors, the courts, and the public abreast of the latest programs, technology, counseling tools, and other aspects of juvenile counseling, correction, and treatment; and}~~

- (h) Seeking funding from public and private sources for demonstration projects, normal operation of programs, and alterations of programs.
- (2) The Department of Juvenile Justice may contract, with or without reimbursement, with a city, county, or urban-county government, for the provision of probation, diversion, and related services by employees of the contracting local government.
- (3) The Department of Juvenile Justice may contract~~[with other agencies]~~ for the provision of services, treatment, or facilities which the department finds in the best interest of any child, or for which a similar service, treatment, or facility is either not provided by the department or not available because the service or facilities of the department are at their operating capacity and unable to accept new commitments. ***The department shall, after consultation with the Finance and Administration Cabinet, promulgate administrative regulations to govern at least the following aspects of this subsection:***
 - (a) ***Bidding process; and***
 - (b) ***Emergency acquisition process.***
- (4) ***The Department of Juvenile Justice shall develop programs to:***
 - (a) ***Ensure that youth in state-operated or contracted residential treatment programs have access to an ombudsman to whom they may report program problems or concerns;***
 - (b) ***Review all treatment programs, state-operated or contracted, for their quality and effectiveness; and***
 - (c) ***Provide mental health services to committed youth according to their needs.***
- (5) (a) The Department of Juvenile Justice shall have an advisory board appointed by the Governor, which ***shall serve as the advisory group under the Juvenile Justice and Delinquency Prevention Act of 1974, Pub.L. 93-415, as amended, and which*** shall provide a formulation of and recommendations for meeting the requirements of this section not less than annually to the Governor, the Justice Cabinet, the Department of Juvenile Justice, the Cabinet for Families and Children, the Interim Joint Committees on Judiciary and on Appropriations and Revenue of the Legislative Research Commission when the General Assembly is not in session, and the Judiciary and the Appropriations and Revenue Committees of the House of Representatives and the Senate when the General Assembly is in session. The advisory board shall develop program criteria for early juvenile intervention, diversion, and prevention projects, develop statewide priorities for funding, and make recommendations for allocation of funds to the Commissioner of the Department of Juvenile Justice. The advisory board shall review grant applications from local juvenile delinquency prevention councils and include in its annual report the activities of the councils. The advisory board shall meet not less than quarterly.
 - (b) The advisory board shall be chaired by a private citizen member appointed by the Governor ***and shall serve a term of two (2) years and thereafter be elected by the board.*** ***The members of the board shall be appointed to staggered terms and thereafter to four (4) year terms.*** ***The membership of the*** advisory board shall consist of ***no fewer than fifteen (15) persons and no more than thirty-three (33) persons who have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice. A***

majority of the members shall not be full-time employees of any federal, state, or local government, and at least one-fifth (1/5) of the members shall be under the age of twenty-four (24) years at the time of appointment. On July 15, 2002, any pre-existing appointment of a member to the Juvenile Justice Advisory Board and the Juvenile Justice Advisory Committee shall be terminated unless that member has been re-appointed subsequent to January 1, 2002, in which case that member's appointment shall continue without interruption. The membership of the board shall include~~one (1) member of each of~~ the following:

- 1.~~{(a)}~~ *Three (3) current or former participants in the juvenile justice system*~~{Justice Cabinet};~~
- 2.~~{(b)}~~ *An employee of the* Department of Juvenile Justice;
- 3.~~{(c)}~~ *An employee of the* Cabinet for Families and Children;
- 4.~~{(d)}~~ *A person operating alternative detention programs*~~{Department for Medicaid Services};~~
- 5.~~{(e)}~~ *An employee of the* Department of Education;
- 6.~~{(f)}~~ *An employee of the* Department of Public Advocacy;
- 7.~~{(g)}~~ *An employee of the* Administrative Office of the Courts;
- ~~{(h)}~~ *Cabinet for Workforce Development;*
- 8.~~{(i)}~~ *A representative from a private nonprofit organization with an interest in youth services*~~{Attorney General};~~
- 9.~~{(j)}~~ *A representative from a local juvenile delinquency prevention council*~~{Kentucky Developmental Disabilities Council};~~
- 10.~~{(k)}~~ *A member of the* Circuit Judges Association;
- 11.~~{(l)}~~ *A member of the* District Judges Association;
- ~~{(m)}~~ *Commonwealth's Attorneys Association;*
- 12.~~{(n)}~~ *A member of the* County Attorneys Association;
- 13.~~{(o)}~~ *A member of the* County Judge/Executives Association;
- ~~{(p)}~~ *A person eighteen (18) to twenty five (25) years of age not associated with any other group listed in this paragraph;*
- 14.~~{(q)}~~ *A person from the business community not associated with any other group listed in this paragraph;*
- 15.~~{(r)}~~ *A parent not associated with any other group listed in this paragraph;*
- 16.~~{(s)}~~ *A youth advocate not associated with any other group listed in this paragraph;*
- 17.~~{(t)}~~ *A victim of a crime committed by a person under the age of eighteen (18) not associated with any other group listed in this paragraph;*
- 18.~~{(u)}~~ *A local school district special education administrator not associated with any other group listed in this paragraph;*

- 19.~~{(v)}~~ A peace officer not associated with any other group listed in this paragraph; and
- 20.~~{(w)}~~ A college or university professor specializing in law, criminology, corrections, *psychology*, or similar discipline with an interest in juvenile corrections programs.
- (c) *Failure of any member to attend three (3) meetings within a calendar year shall be deemed a resignation from the board. The board chair shall notify the Governor of any vacancy and submit recommendations for appointment.*
- (6) *The Department of Juvenile Justice shall, in cooperation with the Department of Public Advocacy, develop a program of legal services for juveniles committed to the department who are placed in state-operated residential treatment facilities and juveniles in the physical custody of the department who are detained in a state-operated detention facility, who have legal claims related to the conditions of their confinement involving violations of federal or state statutory or constitutional rights. This system may utilize technology to supplement personal contact. The Department of Juvenile Justice shall promulgate an administrative regulation to govern at least the following aspects of this subsection:*
- (a) *Facility access;*
- (b) *Scheduling; and*
- (c) *Access to residents' records.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 15A IS CREATED TO READ AS FOLLOWS:

No employee of the Department of Juvenile Justice shall be required to give personal attendance as a witness in any civil suit arising out of or related to his or her employment, out of the county of that employee's assigned work station, but his or her deposition shall be taken in lieu thereof; however, if the court in which the civil action is pending finds that the witness is a necessary witness for trial, that court may order the personal attendance of the witness at trial.

Section 3. KRS 605.090 is amended to read as follows:

- (1) Unless precluded by law, any child committed to the Department of Juvenile Justice or the cabinet may by the decision of the Department of Juvenile Justice or the cabinet or its designee, at any time during the period of his commitment, be:
- (a) Upon fourteen (14) days' prior written notice to the court, discharged from commitment. Written notice of discharge shall be given to the committing court and to any other parties as may be required by law;
- (b) Placed in the home of the child's parents, in the home of a relative, a suitable foster home, or boarding home, upon such conditions as the Department of Juvenile Justice or the cabinet may prescribe and subject to visitation and supervision by a social service worker or juvenile probation and parole officer. At the time a committed child is placed in the home of his parents by the Department of Juvenile Justice or the cabinet, the parents shall be informed in writing of the conditions of the placement and the criteria that will be used to determine whether removal is necessary;
- (c) Placed in one (1) of the facilities or programs operated by the Department of Juvenile Justice or the cabinet, except that no child committed under the provisions of KRS

610.010(1)(b), (c), or (d) shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as a public offender unless the cabinet and the department agree, and the court consents, that the placement is in the best interest of the child and that the placement does not exceed a group home level;

- (d) Placed in a child-caring facility operated by a local governmental unit or by a private organization willing to receive the child, upon such conditions as the cabinet may prescribe;
 - (e) Treated as provided in KRS Chapter 645;
 - (f) Following the transfer or placement of a child pursuant to paragraphs (b), (c), (d), or (e) of this subsection, the Department of Juvenile Justice or the cabinet shall, within fourteen (14) days, excluding weekends and holidays, give written notice to the court of the transfer, the placement, and the reasons therefor.
- (2) No child ten (10) years of age or under shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as public offenders, ***except that a child charged with the commission of a capital offense or with an offense designated as a Class A or Class B felony may be detained in a state-operated detention facility when there is no available less restrictive alternative;***
- (3) If a child committed to the cabinet as dependent, neglected, or abused is placed in the home of the child's parents, the child shall not be removed except in accordance with the following standards and procedures:
- (a) If the social service worker believes that the committed child continues to be dependent, neglected, or abused, but immediate removal is unnecessary to protect the child from imminent death or serious physical injury, the casework situation and evidence shall be reviewed with his supervisor to determine whether to continue work with the family intact or to remove the child. There shall be documentation that the social service worker, prior to the court hearing, made an effort to contact the parents to inform them of the specific problems that could lead to removal so they have an opportunity to take corrective action. If the parents are unavailable or do not respond to attempts to communicate, the specific circumstances shall be documented;
 - (b) If it appears that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm and there is not reasonably available an alternative less drastic than removal of the child from the home, the cabinet shall petition the District Court to review the commitment pursuant to KRS 610.120 in relation to the cabinet's intention to remove the child from the parent's home. The petition shall set forth the facts which constitute the need for removal of the child. The court shall serve notice of the petition and the time and place of the hearing on the parents; however, the social service worker shall also contact the parents to ensure that they received the notice and are aware of the right to be represented by counsel. If the parents' whereabouts are unknown, notice may be mailed to the last known address of an adult who is a near relative. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall not be removed from the parents' home;

- (c) If a social service worker finds a committed, unattended child who is too young to take care of himself, the social service worker shall make reasonable efforts to arrange for an emergency caretaker in the child's home until the parents return or fail to return within a reasonable time. If no in-home caretaker is available for the child, the social service worker shall request any appropriate law enforcement officer to take the child into protective custody. If, after a reasonable time, it appears the child has been abandoned, the cabinet shall petition the District Court to review the case; or
 - (d) If there exist reasonable grounds to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents are unable or unwilling to protect the child, the social service worker shall, with the assistance of a law enforcement officer, immediately remove the child prior to filing a petition for review. Within seventy-two (72) hours after the removal, the cabinet shall file a petition for review in District Court pursuant to KRS 610.120 with a request for an expeditious hearing. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall be returned to the parents' home.
- (4) The cabinet or the Department of Juvenile Justice, as appropriate, shall notify the juvenile court of the county of placement with the conditions of supervised placement of each child placed in that county from one (1) of the residential treatment facilities operated by the Department of Juvenile Justice or the cabinet. Notice of the conditions of such placement may be made available by the court to any law enforcement agency.
 - (5) The person in charge of any home to which a child is probated, and the governing authority of any private facility or agency to which a child is committed, shall make such reports to the court as the court may require, and such reports as the Department of Juvenile Justice or the cabinet may require in the performance of its functions under the law. The Department of Juvenile Justice or the cabinet shall have the power to make such visitations and inspections of the homes, facilities, and agencies in which children who have committed public offenses have been placed as it deems necessary to carry out its functions under the law.
 - (6) The Department of Juvenile Justice or the cabinet shall provide a written transfer summary to the person in charge of any foster home or any governing authority of any private facility or agency in which the Department of Juvenile Justice or the cabinet has placed a child. The written summary shall include, at a minimum, demographic information about the child, a narrative statement detailing the child's prior placements, the length of time the child has been committed, a description of the services and assistance provided to the child or the child's family since the most current case plan, a copy of the current case plan for the child and the child's family, and a copy of the child's medical and educational passport, if available, provided that no information shall be provided that violates any statutory confidentiality requirements. The transfer summary shall be provided by the Department of Juvenile Justice if it is responsible for the child, or the cabinet if it is responsible for the child, within seven (7) days of the placement of the child with the person, agency, or facility providing care to the child.
 - (7) The Department of Juvenile Justice may assist the courts in placing children who have committed public offenses in boarding homes, and, under agreements with the individual courts, may assume responsibility for making such placements. Counties may pay or

contribute towards the expenses of maintaining such children and, to the extent authorized by the fiscal court, the Department of Juvenile Justice may incur obligations chargeable to the county for such expenses.

Section 4. KRS 610.200 is amended to read as follows:

- (1) When a peace officer has taken or received a child into custody on a charge of committing an offense, the officer shall immediately inform the child of his constitutional rights and afford him the protections required thereunder, notify the parent, or if the child is committed, the Department of Juvenile Justice or the cabinet, as appropriate, and if the parent is not available, then a relative, guardian, person exercising custodial control or supervision of the child, that the child has been taken into custody, give an account of specific charges against the child, including the specific statute alleged to have been violated, and the reasons for taking the child into custody.
- (2) Unless the child is subject to trial as an adult or unless the nature of the offense or other circumstances are such as to indicate the necessity of retaining the child in custody, the officer shall release the child to the custody of his parent or if the child is committed, the Department of Juvenile Justice or the cabinet, as appropriate; or if the parent is not available, then a relative, guardian, person exercising custodial control or supervision or other responsible person or agency approved by the court upon the written promise, signed by such person or agency, to bring the child to the court at a stated time or at such time as the court may order. The written promise, accompanied by a written report by the officer, shall be submitted forthwith to the court or court-designated worker and shall detail the reasons for having taken custody of the child, the release of the child, the person to whom the child was released, and the reasons for the release.
- (3) If the person fails to produce the child as agreed or upon notice from the court, a summons, warrant, or custody order may be issued for the apprehension of the person or of the child, or both.
- (4) The release of a child pursuant to this section shall not preclude a peace officer from proceeding with a complaint against a child or any other person.
- (5) Unless the child is subject to trial as an adult, if the child is not released, the peace officer shall contact the court-designated worker who may:
 - (a) Release the child to his parents;
 - (b) Release the child to such other persons or organizations as are authorized by law;
 - (c) Release the child to either of the above subject to stated conditions; or
 - (d) ***Except as provided in subsection (6) of this section***, authorize the peace officer to retain custody of the child for an additional period not to exceed twelve (12) hours during which the peace officer may transport the child to a secure juvenile detention facility, ~~a~~ juvenile holding facility, ***or a nonsecure facility***. If the child is retained in custody, the court-designated worker shall give notice to the child's parents or person exercising custodial control or supervision of the fact that the child is being retained in custody.
- (6) (a) ***Except as provided in paragraph (b) of this subsection, no child ten (10) years of age or under shall be taken to or placed in a juvenile detention facility.***

- (b) *Any child ten (10) years of age or under who has been charged with the commission of a capital offense or with an offense designated as a Class A or Class B felony may be taken to or placed in a secure juvenile detention facility or youth alternative center when there is no available less restrictive alternative.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 610 IS CREATED TO READ AS FOLLOWS:

- (1) *Any statute to the contrary notwithstanding, detention costs shall not be assessed by a court against a parent unless the court has conducted a hearing and has determined:*
- (a) *That the child has previously been adjudicated as a habitual truant under KRS Chapter 630, a public offender under KRS Chapter 635, or a youthful offender under KRS Chapter 640, and now stands adjudicated guilty of a subsequent habitual truancy or public offense, or is now being considered for transfer to the Circuit Court for trial as a youthful offender; and*
- (b) *That the failure or neglect of the parent to properly supervise or control the child is a substantial contributing factor of the act or acts of the child upon which the proceeding is based; and*
- (c) *That the parent has the financial ability to pay any fees ordered.*
- (2) *Any orders for payment shall direct that payments be made to the fiscal court or legislative body of a consolidated local government, urban-county government, or charter government if detention is based upon adjudication related to a status offense and to the Department of Juvenile Justice if the adjudication is based upon a public offense or transfer as a youthful offender.*
- (3) *The fiscal court or legislative body of a consolidated local government, urban-county government, or charter government or the Department of Juvenile Justice, as appropriate, shall establish a payment schedule for parents against whom detention costs have been assessed, and may discharge any remaining portion of the debt upon proof of substantial change in circumstances of the parent.*
- (4) *The authority granted under subsection (3) of this section may be applied to all pre-existing court orders assessing detention costs in effect on the effective date of this legislation.*

Section 6. KRS 635.100 is amended to read as follows:

- (1) Any child committed to *or in the custody of* the Department of Juvenile Justice ~~[who is placed in a treatment facility or program and]~~ who escapes or is absent without leave *from his or her placement* 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 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 child taken into custody may be 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 (5){(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) *A child taken into custody as provided in subsection (1) of this section shall be returned to the active custody of the Department of Juvenile Justice within three (3) days, exclusive of weekends and holidays, and no administrative hearing shall be required.*
- (5) If the child is returned to the active custody of the Department of Juvenile Justice as provided in subsection (3) of this section an administrative hearing shall be held within ten (10) 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.
- ~~(6){(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.
- ~~(7){(6)}~~ Administrative hearings conducted under this section and administrative regulations promulgated under this section shall be exempt from the requirements of KRS Chapter 13B.
- ~~(8){(7)}~~ The Department of Juvenile Justice shall 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.

SECTION 7. A NEW SECTION OF KRS 635.500 TO 635.545 IS CREATED TO READ AS FOLLOWS:

Any other statute to the contrary notwithstanding, communications made in the application for or in the course of a sexual offender's diagnosis and treatment in the program, between a sexual offender or member of the sexual offender's family and any employee of the department who is assigned to work in the program, or any approved provider, shall be privileged from disclosure unless the sexual offender consents in writing to the disclosure or the communication is related to an ongoing criminal investigation. The privilege created by this section shall not extend to disclosures made for the purpose of determining whether the sexual offender should continue to participate in the program, to any communication regarding conduct in which the sexual offender was not a participant, or to any disclosure involving a

homicide. The sexual offender shall be informed in writing of the limits of the privilege created by this section.

Section 8. KRS 635.505 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) The "treatment program" means a continuum of services provided in community and institutional settings designed to provide early intervention and treatment services for juvenile sexual offenders.
- (2) A "juvenile sexual offender" as used in this chapter means an individual who was at the time of the commission of the offense under the age of eighteen (18) years who is not actively psychotic or mentally retarded and who has been adjudicated guilty of or has been convicted of or pled guilty to:
 - (a) A felony under KRS Chapter 510;
 - (b) Any other felony committed in conjunction with a misdemeanor described in KRS Chapter 510;
 - (c) Any felony under KRS 506.010 when the crime attempted is a felony or misdemeanor described in KRS Chapter 510;
 - (d) An offense under KRS 530.020;
 - (e) An offense under KRS 530.064;
 - (f) An offense under KRS 531.310; or
 - (g) A misdemeanor offense under KRS Chapter 510.
- (3) ***A "juvenile sexual offender assessment" means an assessment of the child's adolescent social development, medical history, educational history, legal history, family history, substance abuse history, sexual history, treatment history, and recent behaviors, which shall be prepared in order to assist the courts in determining whether the child should be declared a juvenile sexual offender, and to provide information regarding the risk for reoffending and recommendations for treatment.***
- (4) ***"Mentally retarded" as used in this section means a juvenile with a full scale intelligent quotient of seventy (70) or below.***

Section 9. KRS 635.510 is amended to read as follows:

- (1) A child, thirteen (13) years of age or older, shall be declared a juvenile sexual offender if the child has been adjudicated guilty of an offense listed in KRS 635.505(2)(a), (b), (c), (d), (e), or (f).
- (2)
 - (a) A child, less than thirteen (13) years of age, may be declared a juvenile sexual offender if the child has been adjudicated guilty of an offense listed in KRS 635.505(2).
 - (b) Any child, thirteen (13) years of age or older, may be declared a juvenile sexual offender if the child has been adjudicated guilty of an offense listed in KRS 635.505(2)(g).
- (3) Upon final adjudication by the juvenile court ***under subsection (2) of this section***, the juvenile court judge ~~or other authority designated by the juvenile court judge~~ shall order a ***juvenile sexual offender***~~mental health~~ assessment to be conducted on the child by the

program or by a qualified~~[mental health]~~ professional~~[as defined in KRS 600.020 and]~~ approved by the program which shall recommend the appropriate course of treatment. Upon receipt of the findings of the assessment, the juvenile court judge~~[or other authority designated by the juvenile court judge]~~ shall **determine whether the child shall be declared a juvenile sexual offender, and, if so, shall** initiate a referral to the program for~~[evaluation and]~~ treatment~~[as indicated]~~.

Section 10. KRS 635.515 is amended to read as follows:

- (1) A child declared a juvenile sexual offender shall be committed to the custody of the Department of Juvenile Justice and shall receive **sexual offender** treatment~~[in a juvenile sexual offender treatment program]~~ for~~[a minimum of two (2) years but]~~ not more than three (3) years, except that the juvenile sexual offender shall not remain in the care of the Department of Juvenile Justice after the age of twenty-one (21) years. If an individual in the care of the department as a juvenile sexual offender reaches the age of nineteen (19) years prior to the **completion of the sexual offender treatment program or the** expiration of **three (3)**~~[the minimum of two (2)]~~ years of treatment, that individual shall be returned to the sentencing court. At that time, the sentencing court may order the individual to complete the prescribed treatment **subject to the contempt powers of the court.**
- (2) Based on the assessment and evaluation of the juvenile sexual offender and his family, the Department of Juvenile Justice shall utilize the treatment setting which provides the least restrictive alternative as defined in KRS 600.020.
- (3) The program shall develop a written treatment agreement **upon the child's placement in a community setting**, detailing the responsibilities of the juvenile sexual offender, his family, and the program to include but not be limited to: attendance; participation in education; participation in planning and completion of treatment goals; curfew; visit of appropriate staff to the home; participation in parenting groups and family counseling; continued contact with the program, schools, and courts; insurance of legal rights; and discharge criteria.
- (4) The written treatment agreement shall be presented to the court, and the court shall include the agreement as part of the order except for good cause shown.
- (5) The program shall be responsible for sending written reports every sixty (60) days to the juvenile court judge concerning the participation of the juvenile sexual offender and family in the treatment program. The written report shall include information about the treatment received by the juvenile sexual offender and family, an assessment of the **sexual** offender's current condition, and recommendations by the program staff.
- (6) The case may be called for review upon the recommendation of the program staff or by the juvenile court judge at any time during the course of treatment. The review may be called to consider documentation of noncompliance, absenteeism, or unwillingness to acknowledge responsibility for sexually-inappropriate behavior **which may be remedied through the contempt powers of the court.**
- (7) A **court**~~[discharge]~~ review shall be requested by the program sixty (60) days prior to the recommended **program** release date. The juvenile court judge shall schedule a hearing to formally consider the recommendation of release from the program.

SECTION 11. A NEW SECTION OF KRS CHAPTER 640 IS CREATED TO READ AS FOLLOWS:

- (1) *Any other provision of KRS Chapter 640 to the contrary notwithstanding, any youthful offender ordered transferred to the Department of Corrections under KRS 640.030(2)(c) may, at the discretion of the Department of Juvenile Justice, after consultation with the Department of Corrections, remain in the custody of the Department of Juvenile Justice and in a Department of Juvenile Justice facility or program, until expiration of sentence or until the youthful offender is released on parole, but in no event past the age of twenty-one (21).*
- (2) *Any youthful offender whose custody has been retained by the Department of Juvenile Justice under subsection (1) of this section may be immediately transferred to the Department of Corrections, at such location within this state as the Department of Corrections directs, if the youthful offender causes any disruption to the program or attempts to escape.*
- (3) *Any youthful offender who attains the age of twenty-one (21) while in the custody of the Department of Juvenile Justice shall be immediately transferred to the Department of Corrections at such location within this state as the Department of Corrections directs.*
- (4) *Any youthful offender whose custody has been retained under subsection (1) of this section and who has not been released under other provision of law or delivered to the Department of Corrections under subsection (2) of this section, may, on one (1) occasion and after the completion of a minimum twelve (12) months additional service of sentence, petition the sentencing Circuit Court for reconsideration of probation and, except as provided in KRS 439.3401, may be considered for early parole eligibility.*

Section 12. KRS 640.030 is amended to read as follows:

A youthful offender, ~~who~~~~if he~~ is convicted of, or pleads guilty to, a felony offense in Circuit Court, shall be subject to the same type of sentencing procedures and duration of sentence, including probation and conditional discharge, as an adult convicted of a felony offense, except that:

- (1) The presentence investigation required by KRS 532.050 shall be prepared by the Department of Juvenile Justice or by its designated representative;
- (2) Except as provided in KRS 640.070, any sentence imposed upon the youthful offender shall be served in a ~~youth~~ facility or program operated *or contracted* by the Department of Juvenile Justice until the expiration of the sentence, the youthful offender is paroled, the youthful offender is probated, or the youthful offender reaches the age of eighteen (18), whichever first occurs. *The Department of Juvenile Justice shall take custody of a youthful offender, remanded into its custody, within sixty (60) days following sentencing.* If an individual sentenced as a youthful offender attains the age of eighteen (18) prior to the expiration of his sentence, and has not been probated or released on parole, that individual shall be returned to the sentencing court. At that time, the sentencing court shall make one (1) of the following determinations:
 - (a) Whether the youthful offender shall be placed on probation or conditional discharge;
 - (b) Whether the youthful offender shall be returned to the Department of Juvenile Justice to complete a treatment program, which treatment program shall not exceed a period in excess of six (6) months. At the conclusion of the treatment program or at the expiration of six (6) months, whichever first occurs, the individual shall be *returned to the sentencing court for a determination under paragraphs (a) or (c) of this subsection*~~finally discharged~~; or

- (c) Whether the youthful offender shall be incarcerated in an institution operated by the Department of Corrections;
- (3) If a *youthful offender*~~[child]~~ has attained the age of eighteen (18) prior to sentencing, *that individual*~~[he]~~ shall be returned to the sentencing court at the end of a six (6) month period if *that individual*~~[he]~~ has been sentenced to a period of placement or treatment *with the*~~[in a]~~ Department of Juvenile Justice~~[youth facility or program]~~. The court shall have the same dispositional options as currently provided in subsection (2)(a) and (c) of this section~~;~~ except that youthful offenders shall not remain in the care of the Department of Juvenile Justice after the age of nineteen (19); and
- (4) ***KRS 197.420 to the contrary notwithstanding***, a youthful offender who is a sexual offender as defined by KRS 197.410(1) shall be provided a sexual offender treatment program~~[as mandated by KRS 439.340(10)]~~ by the Department of Juvenile Justice pursuant to KRS 635.500 *and as mandated by KRS 439.340(11) unless*~~[if]~~ the youthful offender has~~[not]~~ been transferred to the Department of Corrections~~[pursuant to KRS 640.070]~~.

Approved April 9, 2002