

## CHAPTER 116

## (HB 67)

AN ACT relating to hospitalization of a disabled or incapacitated person.

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

Section 1. KRS 222.430 is amended to read as follows:

- (1) Involuntary *treatment ordered for a* ~~hospitalization of the~~ person *suffering from* ~~with both~~ alcohol and other drug abuse ~~disorders as defined in KRS 222.005 and mental health disturbances~~ shall *follow the procedures set forth in Sections 1 to 8 of this Act* ~~take place by the same procedures as hospitalization of the mentally ill as provided in KRS Chapters 202A and 210~~.
- (2) *Except as otherwise provided for in Sections 1 to 8 of this Act*, all rights guaranteed by KRS Chapters 202A ~~, 202B,~~ and 210 to *involuntarily hospitalized* mentally ill persons shall be guaranteed to *a* ~~the~~ person *ordered to undergo treatment for* ~~with~~ alcohol and other drug abuse ~~disorder~~.

SECTION 2. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

*No person suffering from alcohol and other drug abuse shall be ordered to undergo treatment unless that person:*

- (1) *Suffers from alcohol and other drug abuse;*
- (2) *Presents an imminent threat of danger to self, family, or others as a result of alcohol and other drug abuse, or there exists a substantial likelihood of such a threat in the near future; and*
- (3) *Can reasonably benefit from treatment.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

- (1) *Proceedings for sixty (60) days or three hundred sixty (360) days of treatment for an individual suffering from alcohol and other drug abuse shall be initiated by the filing of a verified petition in District Court.*
- (2) *The petition and all subsequent court documents shall be entitled: "In the interest of (name of respondent)."*
- (3) *The petition shall be filed by a spouse, relative, friend, or guardian of the individual concerning whom the petition is filed.*
- (4) *The petition shall set forth:*
  - (a) *Petitioner's relationship to the respondent;*
  - (b) *Respondent's name, residence, and current location, if known;*
  - (c) *The name and residence of respondent's parents, if living and if known, or respondent's legal guardian, if any and if known;*
  - (d) *The name and residence of respondent's husband or wife, if any and if known;*

- (e) *The name and residence of the person having custody of the respondent, if any, or if no such person is known, the name and residence of a near relative or that the person is unknown; and*
- (f) *Petitioner's belief, including the factual basis therefor, that the respondent is suffering from an alcohol and other drug abuse disorder and presents a danger or threat of danger to self, family, or others if not treated for alcohol or other drug abuse.*

*Any petition filed pursuant to this subsection shall be accompanied by a guarantee, signed by the petitioner or other person authorized under subsection (3) of this section, obligating that person to pay all costs for treatment of the respondent for alcohol and other drug abuse that is ordered by the court.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon receipt of the petition, the court shall examine the petitioner under oath as to the contents of the petition.*
- (2) *If, after reviewing the allegations contained in the petition and examining the petitioner under oath, it appears to the court that there is probable cause to believe the respondent should be ordered to undergo treatment, then the court shall:*
  - (a) *Set a date for a hearing within fourteen (14) days to determine if there is probable cause to believe the respondent should be ordered to undergo treatment for alcohol and other drug abuse;*
  - (b) *Notify the respondent, the legal guardian, if any and if known, and the spouse, parents, or nearest relative or friend of the respondent concerning the allegations and contents of the petition and the date and purpose of the hearing; and the name, address, and telephone number of the attorney appointed to represent the respondent; and*
  - (c) *Cause the respondent to be examined no later than twenty-four (24) hours before the hearing date by two (2) qualified health professionals, at least one (1) of whom is a physician. The qualified health professionals shall certify their findings to the court within twenty-four (24) hours of the examinations.*
- (3) *If, upon completion of the hearing, the court finds the respondent should be ordered to undergo treatment, then the court shall order such treatment for a period not to exceed sixty (60) consecutive days from the date of the court order or a period not to exceed three hundred sixty (360) consecutive days from the date of the court order, whatever was the period of time that was requested in the petition or otherwise agreed to at the hearing. Failure of a respondent to undergo treatment ordered pursuant to this subsection may place the respondent in contempt of court.*
- (4) *If, at any time after the petition is filed, the court finds that there is no probable cause to continue treatment or if the petitioner withdraws the petition, then the proceedings against the respondent shall be dismissed.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

- (1) *Following an examination by a qualified health professional and a certification by that professional that the person meets the criteria specified in Section 2 of this Act, the court*

*may order the person hospitalized for a period not to exceed seventy-two (72) hours if the court finds, by clear and convincing evidence, that the respondent presents an imminent threat of danger to self, family, or others as a result of alcohol and other drug abuse.*

- (2) *Any person who has been admitted to a hospital under subsection (1) of this section shall be released from the hospital within seventy-two (72) hours of admittance.*
- (3) *No respondent ordered hospitalized under this section shall be held in jail pending transportation to the hospital or evaluation unless the court has previously found the respondent to be in contempt of court for either failure to undergo treatment or failure to appear at the evaluation ordered pursuant to Section 4 of this Act.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

*When the court is authorized to issue an order that the respondent be transported to a hospital the court may, or if the respondent fails to attend an examination scheduled before the hearing provided for in Section 4 of this Act then the court shall, issue a summons. A summons so issued shall be directed to the respondent and shall command the respondent to appear at a time and place therein specified. If a respondent who has been summoned fails to appear at the hospital or the examination, then the court may order the sheriff or other peace officer to transport the respondent to a hospital or psychiatric facility designated by the cabinet for treatment under Section 9 of this Act. The sheriff or other peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the respondent to the hospital. The transportation costs of the sheriff, other peace officer, ambulance service, or other private agency on contract with the cabinet shall be included in the costs of treatment for alcohol and other drug abuse to be paid by the petitioner.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

*The definitions in KRS 202A.011 and the procedures in KRS Chapter 202A apply to Sections 1 to 8 of this Act except where terms or procedures used therein are defined in Section 11 of this Act or are otherwise provided for in Sections 1 to 8 of this Act, respectively.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO READ AS FOLLOWS:

*Sections 1 to 8 of this Act may be cited as the Matthew Casey Wethington Act for Substance Abuse Intervention.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 210 IS CREATED TO READ AS FOLLOWS:

*Regional community mental health-mental retardation boards shall, on at least an annual basis, submit the following lists to the circuit clerks in each board's region:*

- (1) *A list of hospitals and psychiatric facilities in the judicial districts within the board's region which are able and willing to take respondents ordered to undergo seventy-two (72) hours of treatment and observation pursuant to Section 5 of this Act; and*
- (2) *A list of hospitals and treatment providers in the judicial districts within the board's region who are able and willing to provide treatment for alcohol and other drug abuse ordered pursuant to Section 4 of this Act.*

Section 10. KRS 222.475 is amended to read as follows:

The cabinet ~~for Health Services~~ shall annually submit to the Governor *and the General Assembly* a treatment-center evaluation report. The report shall include, but not be limited to, the following information:

- (1) An inventory of all licensed chemical dependency treatment services in Kentucky;
- (2) The information submitted by each treatment center or program pursuant to KRS 222.460 and 222.465; and
- (3) The employment, educational, and criminal history of clients in each program that received state or federal funds.

Section 11. KRS 222.005 is amended to read as follows:

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

- (1) "Administrator" means the person or the designee of the person, in charge of the operation of an alcohol and other drug abuse prevention, intervention, or treatment program;
- (2) "Agency" means a legal entity operating hospital-based or nonhospital-based alcohol and other drug abuse prevention, intervention, or treatment programs;
- (3) *"Alcohol and other drug abuse" means a dysfunctional use of alcohol or other drugs or both, characterized by one (1) or more of the following patterns of use:*
  - (a) *The continued use despite knowledge of having a persistent or recurrent social, legal, occupational, psychological, or physical problem that is caused or exacerbated by use of alcohol or other drugs or both;*
  - (b) *Use in situations which are potentially physically hazardous;*
  - (c) *Loss of control over the use of alcohol or other drugs or both; and*
  - (d) *Use of alcohol or other drugs or both is accompanied by symptoms of physiological dependence, including pronounced withdrawal syndrome and tolerance of body tissues to alcohol or other drugs or both;*
- (4) "Cabinet" means the Cabinet for Health Services;
- (5)~~(4)~~ "Director" means the director of the Division of Substance Abuse of the Department for Mental Health and Mental Retardation Services;
- (6)~~(5)~~ "Hospital" means an establishment with organized medical staff and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical;
- (7)~~(6)~~ "Intoxication" means being under the influence of alcohol or other drugs, or both, which significantly impairs a person's ability to function;
- (8)~~(7)~~ "Juvenile" means any person who is under the age of eighteen (18);
- (9)~~(8)~~ *"Narcotic treatment program" means a substance abuse program using approved controlled substances and offering a range of treatment procedures and services for the rehabilitation of persons dependent on opium, morphine, heroin, or any derivative or synthetic drug of that group;*

- (10) "Other drugs" means controlled substances as defined in KRS Chapter 218A and volatile substances as defined in KRS 217.900;
- (11)~~(9)~~ "Patient" means any person admitted to a hospital or a licensed alcohol and other drug abuse treatment program;
- (12)~~(10)~~ "Program" means a set of services rendered directly to the public that is organized around a common goal of either preventing, intervening, or treating alcohol and other drug abuse problems;
- (13)~~(11)~~ "Secretary" means the secretary of the Cabinet for Health Services;
- ~~(12) "Alcohol and other drug abuse" means a dysfunctional use of alcohol or other drugs or both, characterized by one (1) or more of the following patterns of use:~~
- ~~(a) — The continued use despite knowledge of having a persistent or recurrent social, legal, occupational, psychological, or physical problem that is caused or exacerbated by use of alcohol or other drugs or both;~~
  - ~~(b) — Use in situations which are potentially physically hazardous;~~
  - ~~(c) — Loss of control over the use of alcohol or other drugs or both; and~~
  - ~~(d) — Use of alcohol or other drugs or both is accompanied by symptoms of physiological dependence, including pronounced withdrawal syndrome and tolerance of body tissues to alcohol or other drugs or both;~~
- (14)~~(13)~~ "Treatment" means services and programs for the care and rehabilitation of intoxicated persons and *persons suffering from* alcohol and other drug *abuse*. *"Treatment" includes those services provided by the cabinet in KRS 222.211 and, in Sections 1 to 8 of this Act, it specifically includes the services described in KRS 222.211(1)(c) and (d)*~~abusers~~; and
- (15) *"Qualified health professional" has the same meaning as qualified mental health professional in KRS 202A.011, except that it also includes an alcohol and drug counselor certified under KRS Chapter 309*~~(14) "Narcotic treatment program" means a substance abuse program using approved controlled substances and offering a range of treatment procedures and services for the rehabilitation of persons dependent on opium, morphine, heroin, or any derivative or synthetic drug of that group}.~~

Section 12. KRS 222.231 is amended to read as follows:

- (1) The cabinet shall issue for a term of one (1) year, and may renew for like terms, a license, subject to revocation by it for cause, to any persons, other than an alcohol and other drug abuse program that has been issued a license by the cabinet entitled "Chemical Dependency Treatment Services" pursuant to KRS 216B.105 or a department, agency, or institution of the federal government, deemed by it to be responsible and suitable to establish and maintain a program and to meet applicable licensure standards and requirements.
- (2) The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A establishing requirements and standards for licensing agencies and approving programs. The requirements and standards shall include~~[-, but be limited to-]~~:
  - (a) The health and safety standards to be met by a facility housing a program;
  - (b) Patient care standards and minimum operating, training, and maintenance of patient records standards;

- (c) Licensing fees, application, renewal and revocation procedures, and the procedures for evaluation of the alcohol and other drug abuse programs; and
  - (d) Classification of alcohol and other drug abuse programs according to type, range of services, and level of care provided.
- (3) The cabinet may establish different requirements and standards for different kinds of programs, and may impose stricter requirements and standards in contracts with agencies made pursuant to KRS 222.221.
  - (4) Each agency shall be individually licensed or approved.
  - (5) Each agency shall file with the cabinet from time to time, the data, statistics, schedules, or information the cabinet may reasonably require for the purposes of this section.
  - (6) The cabinet shall have authority to deny, revoke, modify, or suspend a license in any case in which it finds that there has been a substantial failure to comply with the provisions of this chapter or the administrative regulations promulgated thereunder. The denial, revocation, modification, or suspension shall be effected by mailing to the applicant or licensee, by certified mail, a notice setting forth the particular reasons for the action. The denial, revocation, modification, or suspension shall become final and conclusive thirty (30) days after notice is given, unless the applicant or licensee, within this thirty (30) day period, shall file a request in writing for a hearing before the cabinet.
  - (7) The cabinet, after holding a hearing conducted by a hearing officer appointed by the secretary and conducted in accordance with KRS Chapter 13B, may refuse to grant, suspend, revoke, limit, or restrict the applicability of or refuse to renew any agency license or approval of programs for any failure to meet the requirements of its administrative regulations or standards concerning a licensed agency and its program. A petition for judicial review shall be made to the Franklin Circuit Court in accordance with KRS Chapter 13B.
  - (8) No person, excepting an alcohol and other drug abuse program that has been issued a license by the cabinet entitled "Chemical Dependency Treatment Services" pursuant to KRS 216B.105 or a department, agency, or institution of the federal government, shall operate a program without a license pursuant to this section.
  - (9) Each program operated by a licensed agency shall be subject to visitation and inspection by the cabinet and the cabinet shall inspect each agency prior to granting or renewing a license. The cabinet may examine the books and accounts of any program if it deems the examination necessary for the purposes of this section.
  - (10) The director may require agencies which contract with the Commonwealth pursuant to KRS 222.221 to admit as an inpatient or outpatient any person to be afforded treatment pursuant to this chapter, subject to service and bed availability and medical necessity.
  - (11) The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A governing the extent to which programs may be required to treat any person on an inpatient or outpatient basis pursuant to this chapter, except that no licensed hospital with an emergency service shall refuse any person suffering from acute alcohol or other drug intoxication or severe withdrawal syndrome from emergency medical care.
  - (12) All narcotic treatment programs shall be licensed under this section prior to operation. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A to

establish additional standards of operation for narcotic treatment programs. The administrative regulations shall include minimum requirements in the following areas:

- (a) Compliance with relevant local ordinances and zoning requirements;
- (b) Submission of a plan of operation, including memoranda of agreement which reflect supportive services from local hospitals, law enforcement agencies, correctional facilities, community mental health and mental retardation agencies, and other alcohol and drug abuse services in the community;
- (c) Criminal records checks for employees of the narcotic treatment program. Narcotic treatment programs shall not employ any person convicted of a crime involving a controlled substance as defined in KRS Chapter 218A;
- (d) Conditions under which clients are permitted to take home doses of medications;
- (e) Urine screening requirements;
- (f) Quality assurance procedures;
- (g) Program sponsor requirements;
- (h) Qualifications for the medical director for a narcotic treatment program, who at a minimum shall:
  - 1. Be a licensed physician pursuant to KRS Chapter 311 and function autonomously within the narcotic treatment program; and
  - 2. Be a board eligible psychiatrist licensed to practice in Kentucky and have three (3) years' documented experience in the provision of services to persons who are addicted to alcohol or other drugs; or
  - 3. Be a physician licensed pursuant to KRS Chapter 311 and certified as an addictionologist by the American Society of Addiction Medicine.
- (i) Security and control of narcotics and medications;
- (j) Program admissions standards;
- (k) Treatment protocols;
- (l) Treatment compliance requirements for program clients;
- (m) Rights of clients; and
- (n) Monitoring of narcotic treatment programs by the cabinet.

Section 13. KRS 222.311 is amended to read as follows:

- (1) No hospital shall deny treatment to a person solely because of his alcohol ~~and/or~~ other drug abuse.
- (2) Any intoxicated person admitted to a licensed alcohol ~~and/or~~ other drug abuse program or a hospital licensed to provide chemical dependency treatment or detoxification services, shall receive treatment at the program or hospital for as long as the person wishes to remain, or until benefits expire, or the administrator determines that treatment will no longer benefit the person.

Section 14. KRS 222.421 is amended to read as follows:

- (1) Any person may request treatment from a physician or alcohol and other drug abuse program licensed or approved by the cabinet~~[for Health Services]~~ to provide alcohol and other drug abuse treatment services. Persons infected with HIV, hepatitis B, or hepatitis C shall have priority access to any licensed treatment services.
- (2) Every alcohol and other drug abuse program that provides intervention or treatment services to a person with an alcohol and other drug abuse problem or prevention programming to any persons in the community shall, upon request of the cabinet~~[for Health Services]~~, make a statistical report to the secretary, in a form and manner the secretary shall prescribe, of persons provided prevention, intervention, and treatment services during a specified period of time. The name or address of any person to whom prevention, intervention, or treatment services were provided shall not be reported. The secretary~~[of the Cabinet for Health Services]~~ shall provide compilations of the statistical information to other appropriate agencies upon request.

Section 15. KRS 222.460 is amended to read as follows:

- (1) As a requirement to receive state or federal funds, including Medicaid, a treatment center or program licensed as a chemical dependency treatment service pursuant to KRS 216B.105 or this chapter shall participate in an evaluation or client-outcome effectiveness study conducted by the cabinet~~[for Health Services]~~.
- (2) Information for the evaluation shall include, but is not limited to, the following:
  - (a) The total number of alcohol and drug abuse clients admitted to treatment;
  - (b) The total number of referrals from the District and Circuit Courts and the Department of Corrections;
  - (c) The client's change in alcohol and other drug use patterns from admission to discharge from treatment;
  - (d) The client's change in employment status from admission to discharge from treatment; and
  - (e) The client's change in involvement with the criminal justice system from admission to discharge from treatment.
- (3) All information collected pursuant to this chapter shall be held confidential with respect to the identity of individual clients. Access to information that identifies individual clients may be provided to qualified persons or organizations with a valid scientific interest, as determined by the secretary~~[of health services]~~, who are engaged in research related to patterns of drug and alcohol use, the effectiveness of treatment, or similar studies and who agree in writing to maintain confidentiality.

Section 16. KRS 600.020 is amended to read as follows:

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

- (1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:
  - (a) Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;

- (b) Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
  - (c) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005~~[(12)]~~;
  - (d) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
  - (e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
  - (f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
  - (g) Abandons or exploits the child; or
  - (h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child; or
  - (i) Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months;
- (2) "Aggravated circumstances" means the existence of one (1) or more of the following conditions:
- (a) The parent has not attempted or has not had contact with the child for a period of not less than ninety (90) days;
  - (b) The parent is incarcerated and will be unavailable to care for the child for a period of at least one (1) year from the date of the child's entry into foster care and there is no appropriate relative placement available during this period of time;
  - (c) The parent has sexually abused the child and has refused available treatment;
  - (d) The parent has been found by the cabinet to have engaged in abuse of the child that required removal from the parent's home two (2) or more times in the past two (2) years; or
  - (e) The parent has caused the child serious physical injury;
- (3) "***Beyond the control of parents***" means ***a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency, which behavior results in danger to the child or others, and which behavior does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645***~~["school" means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of~~

~~the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all intervention strategies attempted by the school];~~

- (4) ***"Beyond the control of school" means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all intervention strategies attempted by the school***~~parents" means a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency, which behavior results in danger to the child or others, and which behavior does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645];~~
- (5) "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;
- (6) "Cabinet" means the Cabinet for Families and Children;
- (7) "Certified juvenile facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training in juvenile detention developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;
- (8) "Child" means any person who has not reached his eighteenth birthday, unless otherwise provided;
- (9) "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;
- (10) "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;
- (11) "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;
- (12) "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;
- (13) "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;

- (14) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;
- (15) "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;
- (16) "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;
- (17) "Deadly weapon" has the same meaning as it does in KRS 500.080;
- (18) "Department" means the Department for Community Based Services;
- (19) "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;
- (20) "Detention" means the safe and temporary custody of a juvenile who is accused of conduct subject to the jurisdiction of the court who requires a restricted environment for his or her own or the community's protection;
- (21) "Detention hearing" means a hearing held by a judge or trial commissioner within twenty-four (24) hours, exclusive of weekends and holidays, of the start of any period of detention prior to adjudication;
- (22) "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;
- (23) "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;
- (24) "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;
- (25) "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- (26) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;
- (27) "Habitual runaway" means any child who has been found by the court to have been absent from his place of lawful residence without the permission of his custodian for at least three (3) days during a one (1) year period;
- (28) "Habitual truant" means any child who has been found by the court to have been reported as a truant as defined in KRS 159.150 three (3) or more times during a one (1) year period;

- (29) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;
- (30) "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;
- (31) "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;
- (32) "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;
- (33) "Intermittent holding facility" means a physically secure setting, which is entirely separated from sight and sound from all other portions of a jail containing adult prisoners, in which a child accused of a public offense may be detained for a period not to exceed twenty-four (24) hours, exclusive of weekends and holidays prior to a detention hearing as provided for in KRS 610.265, and in which children are supervised and observed on a regular basis by certified juvenile facility staff;
- (34) "Juvenile holding facility" means a physically secure facility, approved by the Department of Juvenile Justice, which is an entirely separate portion or wing of a building containing an adult jail, which provides total sight and sound separation between juvenile and adult facility spatial areas and which is staffed by sufficient certified juvenile facility staff to provide twenty-four (24) hours per day supervision;
- (35) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; or protection of the community, and is conducted at the suitable available facility closest to the child's place of residence;
- (36) "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189, or 189A, KRS 177.300, 304.39-110, or 304.39-117;
- (37) "Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;
- (38) "Needs of the child" means necessary food, clothing, health, shelter, and education;
- (39) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;
- (40) "Nonsecure setting" means a nonsecure facility or a residential home, including a child's own home, where a child may be temporarily placed pending further court action. Children before the court in a county that is served by a state operated secure detention facility, who are in the detention custody of the Department of Juvenile Justice, and who are placed in a nonsecure alternative by the Department of Juvenile Justice, shall be supervised by the Department of Juvenile Justice;

- (41) "Parent" means the biological or adoptive mother or father of a child;
- (42) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;
- (43) "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;
- (44) "Physical injury" means substantial physical pain or any impairment of physical condition;
- (45) "Physically secure facility" means a facility that relies primarily on the use of construction and hardware such as locks, bars, and fences to restrict freedom;
- (46) "Public offense action" means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;
- (47) "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 psychologist with the health service provider designation, a psychological practitioner, a certified psychologist, or a psychological associate licensed under the provisions of KRS Chapter 319;
  - (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;
  - (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;
  - (f) A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic

psychiatric facility licensed by the Commonwealth, a psychiatric unit of a general hospital, or a regional comprehensive care center; or

- (g) A professional counselor credentialed under the provisions of KRS 335.500 to 335.599 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, a psychiatric unit of a general hospital, or a regional comprehensive care center;
- (48) "Residential treatment facility" means a facility or group home with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;
- (49) "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;
- (50) "School personnel" means those certified persons under the supervision of the local public or private education agency;
- (51) "Secretary" means the secretary of the Cabinet for Families and Children;
- (52) "Secure juvenile detention facility" means any physically secure facility used for the secure detention of children other than any facility in which adult prisoners are confined;
- ~~(53) "Staff secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;~~
- ~~(54)~~ "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;
- ~~(54)~~~~(55)~~ "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;
- ~~(55)~~~~(56)~~ "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;
- ~~(56)~~~~(57)~~ "Social 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;
- (57) ***"Staff secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;***

- (58) "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;
- (59) "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;
- (60) "Valid court order" means a court order issued by a judge to a child alleged or found to be a status offender:
- (a) Who was brought before the court and made subject to the order;
  - (b) Whose future conduct was regulated by the order;
  - (c) Who was given written and verbal warning of the consequences of the violation of the order at the time the order was issued and whose attorney or parent or legal guardian was also provided with a written notice of the consequences of violation of the order, which notification is reflected in the record of the court proceedings; and
  - (d) Who received, before the issuance of the order, the full due process rights guaranteed by the Constitution of the United States.
- (61) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;
- (62) "Youth alternative center" means a nonsecure facility, approved by the Department of Juvenile Justice, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 15A.320; and
- (63) "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 17. KRS 610.127 is amended to read as follows:

Reasonable efforts as defined in KRS 620.020 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~~{(42)}~~ for a period of not less than ninety (90) days that has rendered the parent incapable of caring for the immediate and ongoing needs of the child, and the parent has refused or failed to complete available treatment for alcohol or other drug abuse;
- (6) Mental illness as defined in KRS 202A.011~~{(9)}~~ or mental retardation as defined in KRS 202B.010~~{(9)}~~ or other developmental disability as defined in KRS 387.510~~{(7)}~~ that places

the child at substantial risk of physical or emotional injury even if the most appropriate and available services were provided to the parent for twelve (12) months; or

- (7) Other circumstances in existence that make continuation or implementation of reasonable efforts to preserve or reunify the family inconsistent with the best interests of the child and with the permanency plan for the child.

Section 18. KRS 620.023 is amended to read as follows:

- (1) Evidence of the following circumstances if relevant shall be considered by the court in all proceedings conducted pursuant to KRS Chapter 620 in which the court is required to render decisions in the best interest of the child:
- (a) Mental illness as defined in KRS 202A.011~~{(9)}~~ or mental retardation as defined in KRS 202B.010~~{(9)}~~ of the parent, as attested to by a qualified mental health professional, which renders the parent unable to care for the immediate and ongoing needs of the child;
  - (b) Acts of abuse or neglect as defined in KRS 600.020~~{(1)}~~ toward any child;
  - (c) Alcohol and other drug abuse, as defined in KRS 222.005~~{(12)}~~, that results in an incapacity by the parent or caretaker to provide essential care and protection for the child;
  - (d) A finding of domestic violence and abuse as defined in KRS 403.720, whether or not committed in the presence of the child;
  - (e) Any other crime committed by a parent which results in the death or permanent physical or mental disability of a member of that parent's family or household; and
  - (f) The existence of any guardianship or conservatorship of the parent pursuant to a determination of disability or partial disability as made under KRS 387.500 to 387.770 and 387.990.
- (2) In determining the best interest of the child, the court may consider the effectiveness of rehabilitative efforts made by the parent or caretaker intended to address circumstances in this section.

Section 19. KRS 311.631 is amended to read as follows:

- (1) If an adult patient *whose physician has determined that he or she*~~{, who}~~ does not have decisional capacity~~{,}~~ has not executed an advance directive, or to the extent the advance directive does not address a decision that must be made, any one (1) of the following responsible parties, in the following order of priority if no individual in a prior class is reasonably available, willing, and competent to act, shall be authorized to make health care decisions on behalf of the patient:
- (a) The judicially-appointed guardian of the patient, if the guardian has been appointed and if medical decisions are within the scope of the guardianship;
  - (b) *The attorney-in-fact named in a durable power of attorney, if the durable power of attorney specifically includes authority for health care decisions;*
  - (c) The spouse of the patient;
  - ~~(d){(e)}~~ An adult child of the patient, or if the patient has more than one (1) child, the majority of the adult children who are reasonably available for consultation;

- (e)~~(d)~~ The parents of the patient;
- (f)~~(e)~~ The nearest living relative of the patient, or if more than one (1) relative of the same relation is reasonably available for consultation, a majority of the nearest living relatives.
- (2) In any case in which a health care decision is made under this section, the decision shall be noted in writing in the patient's medical records.
- (3) An individual authorized to consent for another under this section shall act in good faith, in accordance with any advance directive executed by the individual who lacks decisional capacity, and in the best interest of the individual who does not have decisional capacity.
- (4) *In any case in which a health care decision is made under this section, hospitalization for psychiatric treatment at a general hospital shall not exceed fourteen (14) consecutive days unless a court order is obtained under KRS Chapter 202A or 202B. For the purposes of this section, a general hospital is one that is not owned or operated by the Commonwealth of Kentucky.*
- (5) An individual authorized to make a health care decision under this section may authorize the withdrawal or withholding of artificially-provided nutrition and hydration only in the circumstances as set forth in KRS 311.629(3).

Section 20. The following KRS section is repealed:

222.021 Substance Abuse, Pregnancy, and Women of Childbearing Age Work Group -- Membership -- Duties -- Expiration of section.

**Became law April 10, 2004, without Governor's signature**