

**CHAPTER 87****(HB 384)**

AN ACT relating to the Kentucky Unified Juvenile Code.

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

➔Section 1. KRS 600.020 is amended to read as follows:

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

- (1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:
  - (a) Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
  - (b) Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
  - (c) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005;
  - (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;
  - (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;

- (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;
- (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 Health and Family Services;
- (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 Health and Family Services, 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(1) two (2) 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) ***"Nonoffender" means a child alleged to be dependent, neglected, or abused and who has not been otherwise charged with a status or public offense;***

- (40) "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;
- ~~(41)~~~~(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;
- ~~(42)~~~~(41)~~ "Parent" means the biological or adoptive mother or father of a child;
- ~~(43)~~~~(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;
- ~~(44)~~~~(43)~~ "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;
- ~~(45)~~~~(44)~~ "Physical injury" means substantial physical pain or any impairment of physical condition;
- ~~(46)~~~~(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;
- ~~(47)~~~~(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;
- ~~(48)~~~~(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;

- (49)~~(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;
- (50)~~(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;
- (51)~~(50)~~ "School personnel" means those certified persons under the supervision of the local public or private education agency;
- (52)~~(51)~~ "Secretary" means the secretary of the Cabinet for Health and Family Services;
- (53)~~(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;
- (54)~~(53)~~ "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;
- (55)~~(54)~~ "Sexual abuse" includes, but is not necessarily limited to, any contacts or interactions in which the parent, guardian, or other person having custodial control or supervision of the child or responsibility for his welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;
- (56)~~(55)~~ "Sexual exploitation" includes, but is not limited to, a situation in which a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, or other person having custodial control or supervision of a child or responsible for his welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;
- (57)~~(56)~~ "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;
- (58)~~(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;
- (59) (a)~~(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:
1. *Beyond the control of school or beyond the control of parents;*
  2. *Habitual runaway;*
  3. *Habitual truant;*
  4. *Tobacco offenses as provided in KRS 438.305 to 438.340; and*
  5. *Alcohol offenses as provided in KRS 244.085.*
- (b) *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~~;
- (60)~~(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;
- (61)~~(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.

~~(62)(61)~~ "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;

~~(63)(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

~~(64)(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 2. A NEW SECTION OF KRS CHAPTER 610 IS CREATED TO READ AS FOLLOWS:

*The following persons shall not be detained in a secure juvenile detention facility or a juvenile holding facility:*

- (1) *A nonoffender; or*
- (2) *Any child charged with a violation of a statute or local ordinance pertaining to curfew.*

➔Section 3. KRS 610.010 is amended to read as follows:

- (1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his or her eighteenth birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years, who allegedly~~[(a)]~~ has committed a public offense prior to his or her eighteenth birthday, except a motor vehicle offense involving a child sixteen (16) years of age or older. A child sixteen (16) years of age or older taken into custody upon the allegation that the child has committed a motor vehicle offense shall be treated as an adult and shall have the same conditions of release applied to him or her as an adult. A child taken into custody upon the allegation that he or she has committed a motor vehicle offense who is not released under conditions of release applicable to adults shall be held, pending his or her appearance before the District Court, in a facility as defined in KRS 15A.067. Children sixteen (16) years of age or older who are convicted of, or plead guilty to, a motor vehicle offense shall, if sentenced to a term of confinement, be placed in a facility for that period of confinement preceding their eighteenth birthday and an adult detention facility for that period of confinement subsequent to their eighteenth birthday. The term "motor vehicle offense" shall not be deemed to include the offense of stealing or converting a motor vehicle nor operating the same without the owner's consent nor any offense which constitutes a felony;

- (2) *Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county or the family division of the Circuit Court shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his or her eighteenth birthday and who allegedly:*

~~(a)(b)~~ Is beyond the control of the school or beyond the control of parents as defined in KRS 600.020;

~~(b)(c)~~ Is an habitual truant from school;

~~(c)(d)~~ Is an habitual runaway from his or her parent or other person exercising custodial control or supervision of the child;

~~(d)(e)~~ Is dependent, neglected, or abused;

*(e) Has committed an alcohol offense in violation of KRS 244.085;*

*(f) Has committed a tobacco offense as provided in KRS 438.305 to 438.340; or*

~~(g)(f)~~ Is mentally ill.

- ~~(3)(2)~~ Actions brought under subsection (1)~~(a)~~ of this section shall be considered to be public offense actions.

- (4)(3) Actions brought under subsection (2)(a), (b), (c), (e) and (f)(1)(b), (c), and (d) of this section shall be considered to be status offense actions.
- (5)(4) Actions brought under subsection (2)(d)(1)(e) of this section shall be considered to be **nonoffender** dependency actions.
- (6)(5) Actions brought under subsection (2)(g)(1)(f) of this section shall be considered to be mental health actions.
- (7)(6) Nothing in this chapter shall deprive other courts of the jurisdiction to determine the custody or guardianship of children upon writs of habeas corpus or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of other causes pending in such other courts; nor shall anything in this chapter affect the jurisdiction of Circuit Courts over adoptions and proceedings for termination of parental rights.
- (8)(7) The court shall have no jurisdiction to make permanent awards of custody of a child except as provided by KRS 620.027.
- (9)(8) If the court finds an emergency to exist affecting the welfare of a child, or if the child is eligible for kinship care as established in KRS 605.120, it may make temporary orders for the child's custody; however, if the case involves allegations of dependency, neglect, or abuse, no emergency removal or temporary custody orders shall be effective unless the provisions of KRS Chapter 620 are followed. Such orders shall be entirely without prejudice to the proceedings for permanent custody of the child and shall remain in effect until modified or set aside by the court. Upon the entry of a temporary or final judgment in the Circuit Court awarding custody of such child, all prior orders of the juvenile session of the District Court in conflict therewith shall be deemed canceled. This section shall not work to deprive the Circuit Court of jurisdiction over cases filed in Circuit Court.
- (10)(9) The court of each county wherein a public offense, as defined in paragraph (a) of subsection (1) of this section, is committed by a child who is a resident of another county of this state shall have concurrent jurisdiction over such child with the court of the county wherein the child resides or the court of the county where the child is found. Whichever court first acquires jurisdiction of such child may proceed to final disposition of the case, or in its discretion may make an order transferring the case to the court of the county of the child's residence or the county wherein the offense was committed, as the case may be.
- (11)(10) Nothing in this chapter shall prevent the District court from holding a child in contempt of court to enforce valid court orders previously issued by the court, **subject to the requirements contained in Sections 5 and 10 of this Act.**
- (12)(11) Except as provided in KRS 630.120(5), 635.060(3), or 635.090, nothing in this chapter shall confer upon the District Court **or the family division of the Circuit Court, as appropriate**, jurisdiction over the actions of the Department of Juvenile Justice or the cabinet in the placement, care, or treatment of a child committed to the Department of Juvenile Justice or **committed to or in the custody of** the cabinet; or to require the department or the cabinet to perform, or to refrain from performing, any specific act in the placement, care, or treatment of any child committed to the department or **committed to or in the custody of** the cabinet.
- (13)(12) Unless precluded by KRS Chapter 635 or 640, in addition to informal adjustment, the court shall have the discretion to amend the petition to reflect jurisdiction pursuant to the proper chapter of the Kentucky Unified Juvenile Code.
- (14)(13) The court shall have continuing jurisdiction over a child pursuant to subsection (1) of this section, to review dispositional orders, and to conduct permanency hearings under 42 U.S.C. sec. 675(5)(c) until the child is placed for adoption, returned home to his or her parents with all the court imposed conditions terminated, or reaches the age of eighteen (18) years.

➔Section 4. KRS 610.060 is amended to read as follows:

- (1) If the Circuit or District Court determines that a formal proceeding is required in the interest of the child or to determine the truth or falsity of the allegations against the child, a petition shall be required pursuant to KRS 610.020, and the court shall, when the child is brought before the court:
- (a) Explain to the child and his parents, guardian, or person exercising custodial control their respective rights to counsel and, if the child and his parents, guardian, or person exercising custodial control are

unable to obtain counsel, shall appoint counsel for the child, as provided in subsection (2) of this section, and, unless specified to the contrary by other provisions of KRS Chapters 600 to 645, may appoint counsel for the parents, guardian, or person exercising custodial control;

- (b) Explain the right against self-incrimination by saying that the child, parents, relative, guardian, or custodian may remain silent concerning the charges against the child, and that anything said may be used against the child;
  - (c) Unless limited by statute, explain the right to confront anyone who has accused the child and to cross-examine that person on the allegations made against the child;
  - (d) Advise the child and his parents, guardian, or person exercising custodial control of the right to appeal from a determination of the court; and
  - (e) Advise the child that these rights belong to him and may not be waived by his parents, guardian, or person exercising custodial control.
- (2) (a) No court shall accept a plea or admission or conduct an adjudication hearing involving a child accused of committing any felony offense, any offense under KRS Chapter 510, or any offense, ***including the violation of a valid court order***, for which the court intends to impose detention or commitment as a disposition unless that child is represented by counsel.
- (b) For a child accused of committing any other offense, before a court permits the child to proceed beyond notification of the right to counsel required by paragraph (a) of subsection (1) of this subsection without representation, the court shall:
- 1. Conduct a hearing about the child's waiver of counsel; and
  - 2. Make specific findings of fact that the child knowingly, intelligently and voluntarily waived his right to counsel.
- (3) Unless otherwise exempted in KRS Chapters 600 to 645, a child and his parents or person exercising custodial control shall have a right to attend the hearing if such attendance will not unnecessarily delay the hearing.
- (4) Subject to the provisions of KRS 31.125, the court may order a parent to pay for counsel for the child if the court determines that the parent has the ability to pay for such counsel. The fact that a child is committed to a state agency shall not be cause for the court to order that agency to pay for counsel.
- (5) Subject to Rule 43.09 of the Rules of Civil Procedure, the court shall permit the victim, the victim's parents or legal guardian, or, if emancipated, the victim's spouse, or the legal representative of any of these, to attend all proceedings under this section.
- (6) An attempt shall be made to notify the persons specified in subsection (5) of this section of the time, date, and place of all proceedings under this section. Each District Court shall, by rule, establish the means of notification and the person or agency responsible for making the notifications. The failure of a victim or other person specified in subsection (5) of this section to receive notice shall not delay the proceedings in the case.

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

- (1) Any child who is alleged to be a status offender or who is accused of being in contempt of court on an underlying finding that the child is a status offender may be detained in a nonsecure facility, a secure juvenile detention facility, or a juvenile holding facility for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays, pending a detention hearing. Any child who is accused of committing a public offense or of being in contempt of court on an underlying public offense may be detained in a secure juvenile detention facility or juvenile holding facility for a period of time not to exceed forty-eight (48) hours, exclusive of weekends and holidays or, if neither is reasonably available, an intermittent holding facility, for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays, pending a detention hearing.
- (2) ~~(a)~~ Within the period of detention described in subsection (1) of this section, exclusive of weekends and holidays, a detention hearing shall be held by the judge or trial commissioner of the court for the purpose of determining whether the child shall be further detained. At the hearing held pursuant to this subsection, the court shall consider the nature of the offense, the child's background and history, and other information relevant to the child's conduct or condition.



- (3)~~(b)~~ If the court orders a child detained~~[further after the detention hearing]~~, that detention shall be served as follows:
- (a)~~1.~~ If the child is charged with a capital offense, Class A felony, or Class B felony, detention shall occur in either a secure juvenile detention facility or a juvenile holding facility pending the child's next court appearance subject to the court's review of the detention order prior to that court appearance.
- (b)~~2.~~ *Except as provided in subsection (2) of Section 10 of this Act*, if it is alleged that the child is a status offender, *the child may be detained in a secure juvenile detention facility for a period not to exceed twenty-four (24) hours after which* detention shall occur in a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance subject to the court's review of the detention order prior to the next court appearance.
- (c)~~3.~~ If a status offender *or a child alleged to be a status offender* is charged with violating a valid court order, *the child may be detained in a secure juvenile detention facility, a juvenile holding facility, or in a nonsecure setting approved by the Department of Juvenile Justice, for a period not to exceed forty-eight (48) hours, exclusive of weekends and holidays, pending the child's next court appearance*~~[and the court orders the child to serve detention, that detention shall be served in a nonsecure setting approved by the Department of Juvenile Justice unless the court issues an order in accordance with the requirements of subparagraph 4. of this paragraph]~~.
- (d)~~4.~~ Prior to ordering a status offender *or alleged status offender* who is subject to a valid court order securely detained because the child violated the valid court order, the court shall:
- 1.~~a.~~ Affirm that the requirements for a valid court order were met at the time the original order~~[finding the child to be a status offender]~~ was issued;
  - 2.~~b.~~ Make a determination during the *adjudicatory*~~[detention]~~ hearing that~~[there is probable cause to believe that]~~ the child violated the valid court order; and
  - 3.~~c.~~ Within *forty-eight (48)*~~[seventy two (72)]~~ hours *after the adjudicatory hearing on the violation of a valid court order by*~~[of the initial detention of]~~ the child, exclusive of weekends and holidays, receive~~[an oral report in court and on the record delivered by an appropriate public agency other than the court or a law enforcement agency, or receive]~~ and review a written report prepared by an appropriate public agency~~[other than the court or a law enforcement agency]~~ that reviews the behavior of the child and the circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate. If a~~[sufficient]~~ prior written report is included in the child's file, that report *shall not*~~[may]~~ be used to satisfy this requirement. The child may be securely detained for a period not to exceed *forty-eight (48)*~~[seventy two (72)]~~ hours, *exclusive of weekends and holidays*, pending receipt and review of the report by the court.~~[The court shall conduct a violation hearing within twenty four (24) hours of the receipt of the report. If the report is available at the time of the detention hearing, the violation hearing may be conducted at the same time as the detention hearing.]~~ The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure *or nonsecure* detention of a status offender.
- (e)~~5.~~ If the child is charged with a public offense, or contempt of court on an underlying public offense, and the county in which the case is before the court is not served by a state operated secure detention facility under the statewide detention plan, detention may occur in a secure juvenile detention facility, juvenile holding facility, or a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance, subject to the court's review of the detention order prior to that court appearance.
- (f)~~6.~~ If the child is charged with a public offense, or contempt on a public offense, and the county in which the case is before the court is served by a state operated secure detention facility under the statewide detention plan, the child shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance.

(4) *If, at the hearing conducted under subsection (3), paragraph (c), of this section, the court conducts an adjudicatory hearing on the merits of a violation of a valid court order, that hearing shall conform to the requirements of Section 10 of this Act.*

(5)~~(e)~~ If the detention hearing is not held as provided in subsection (1) of this section, the child shall be released as provided in KRS 610.290.

(6)~~(d)~~ If the child is not released, the court-designated worker shall notify the parent, person exercising custodial control or supervision, a relative, guardian, or other responsible adult, *and the Department of Juvenile Justice or the cabinet, as appropriate.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 620 IS CREATED TO READ AS FOLLOWS:

*A nonoffender, as defined in Section 1 of this Act, shall not be placed in secure or nonsecure detention.*

➔Section 7. KRS 630.010 is amended to read as follows:

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

- (1) The Commonwealth's courts shall utilize a separate and distinct set of guidelines for status offenders which reflect their individual needs;
- (2) It shall be declared to be the policy of this Commonwealth that all its efforts and resources be directed at involving the child and the family in remedying the problem for which they have been referred;
- (3) Status offenders shall not be detained in secure juvenile detention facilities or juvenile holding facilities after the initial detention hearing unless the child is accused of, or has an adjudication that the child has violated a valid court order, in which case the child may be securely detained for up to *forty-eight (48)*~~seventy-two (72)~~ hours, exclusive of weekends and holidays, pending receipt of the *written* report required under KRS 630.080~~(4)(3)~~. Any period of secure detention prior to the detention hearing shall not exceed twenty-four (24) hours, exclusive of weekends and holidays;
- (4) Status offenders accused of violating a valid court order shall not be securely detained in intermittent holding facilities; and
- (5) Status offenders accused of or found guilty of violating a valid court order shall not be converted into public offenders by virtue of this conduct.

➔Section 8. KRS 630.020 is amended to read as follows:

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

- (1) Has been an habitual runaway from his parent or person exercising custodial control or supervision of the child;
- (2) Is beyond the control of the school or beyond the control of parents as defined in KRS 600.020;~~or~~
- (3) Has been an habitual truant from school;
- (4) *Has committed a tobacco offense under KRS 438.305 to 438.340; or*
- (5) *Has committed an alcohol offense under KRS 244.085.*

➔Section 9. KRS 630.070 is amended to read as follows:

No status offender shall be placed in a secure juvenile detention facility or juvenile holding facility as a means or form of punishment except following a finding that the *status offender*~~child~~ has violated a valid court order.

➔Section 10. KRS 630.080 is amended to read as follows:

- (1) In order for the court to detain a child after the detention hearing, the Commonwealth shall establish probable cause at the detention hearing that the child is a status offender and that further detention of the child is necessary for the protection of the child or the community. If the Commonwealth fails to establish probable cause that the child is a status offender, the complaint shall be dismissed and the child shall be released. If the Commonwealth establishes probable cause that the child is a status offender, but that further detention of the

child is not necessary for the protection of the child or the community, the child shall be released to the parent or person exercising custodial control or supervision of the child. If grounds are established that the child is a status offender, and that further detention is necessary, the child may be placed in a nonsecure setting approved by the Department of Juvenile Justice;

- (2) A status offender may be securely detained if the cabinet has initiated or intends to initiate transfer of the youth by competent document under the provisions of the interstate compact pursuant to KRS Chapter 615;
- (3) ***The appropriate public agency shall:***
  - (a) ***Within twenty-four (24) hours, exclusive of weekends and holidays, of receiving notification, as provided in subsection (3) of Section 13 of this Act, that a status offender or alleged status offender has been detained on the allegation that the child has violated a valid court order, meet with and interview the child; and***
  - (b) ***Within forty-eight (48) hours, exclusive of weekend and holidays, of the detention hearing required under Section 5 of this Act, prepare and deliver to the court the completed written report required by subsection (4) of this section and Section 5 of this Act if the child remains in detention after the detention hearing, and prior to the disposition hearing if the child has not been detained; and***
- (4) A status offender ***or alleged status offender*** who is subject to a valid court order may be securely detained upon a finding that the child violated the valid court order if the court does the following prior to ordering that detention:
  - (a) Affirms that the requirements for a valid court order were met at the time the original order ~~finding the child to be a status offender~~ was issued;
  - (b) Makes a determination during the ***adjudicatory*** ~~detention~~ hearing that ~~there is probable cause that~~ the child violated the valid court order; and
  - (c) Within ***forty-eight (48)*** ~~seventy-two (72)~~ hours ***after the adjudicatory hearing on the violation of a valid court order by*** ~~of the initial detention of~~ the child, exclusive of weekends and holidays, ***the court receives*** ~~an oral report in court and on the record delivered by an appropriate public agency other than the court or a law enforcement agency, or receives~~ and reviews a written report prepared by an appropriate public agency ~~other than the court or a law enforcement agency~~ that reviews the behavior of the child and the circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate. If a ~~sufficient~~ prior written report is included in the child's file, that report ***shall not*** ~~may~~ be used to satisfy this requirement. The child may be securely detained for a period not to exceed ***forty-eight (48)*** ~~seventy-two (72)~~ hours, ***exclusive of weekends and holidays***, pending receipt and review of the report by the court. ~~The court shall conduct a violation hearing within twenty-four (24) hours of the receipt of the report, exclusive of weekends and holidays. If the report is available at the time of the detention hearing, the violation hearing may be conducted at the same time as the detention hearing.~~ The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure ***or nonsecure*** detention of a status offender.

➔Section 11. KRS 630.100 is amended to read as follows:

Except as otherwise provided in this chapter ***and KRS Chapter 610***, no ***child alleged to be or*** adjudicated ***as a*** status offender shall be securely detained.

➔Section 12. KRS 630.120 is amended to read as follows:

- (1) All dispositional hearings conducted under this chapter shall be conducted in accordance with the provisions of KRS 610.060 and 610.070. In addition, the court shall, at the time the dispositional order is issued:
  - (a) Give the child adequate and fair ***written*** warning of the consequences of the violation of the order; and
  - (b) Provide the child and the child's attorney, ***and*** parent, or legal guardian a written statement setting forth the conditions of the order and the consequences for violating the order.

An order issued pursuant to this section is a valid court order and any child violating that order may be subject to the provisions of KRS 630.080~~(4)~~~~(3)~~.

- (2) The court shall consider all appropriate local remedies to aid the child and the child's family subject to the following conditions:
- (a) Residential and nonresidential treatment programs for status offenders shall be community-based and nonsecure; and
  - (b) With the approval of the education agency, the court may place the child in a nonsecure public or private education agency accredited by the Department of Education.
- (3) At the disposition of a child adjudicated on a petition brought pursuant to this chapter, all information helpful in making a proper disposition, including oral and written reports, ~~shall~~~~may~~ be received by the court provided that the child, the child's parents, their counsel, the prosecuting attorney, the child's counsel, or other interested parties as determined by the judge shall be afforded an opportunity to examine and controvert the reports. For good cause, the court may allow the admission of hearsay evidence.
- (4) The court shall affirmatively determine that all appropriate remedies have been considered and exhausted to assure that the least restrictive alternative method of treatment is utilized.
- (5) The court may order the child and the child's family to participate in any programs which are necessary to effectuate a change in the child and the family.
- (6) When all appropriate resources have been reviewed and considered insufficient to adequately address the needs of the child and the child's family, the court may, *except as provided in subsection (7) of this section*, commit the child to the cabinet for such services as may be necessary. The cabinet shall consider all appropriate local remedies to aid the child and the child's family subject to the following conditions:
- (a) Treatment programs for status offenders shall be, unless excepted by federal law, community-based and nonsecure;
  - (b) The cabinet may place the child in a nonsecure public or private education agency accredited by the department of education;
  - (c) The cabinet may initiate proceedings pursuant to KRS 610.160 when the parents fail to participate in the cabinet's treatment programs; and
  - (d) The cabinet may discharge the child from commitment after providing ten (10) days' prior written notice to the committing court which may object to such discharge by holding court review of the commitment under KRS 610.120.
- (7) *No child adjudicated guilty of an alcohol offense under KRS 244.085 or a tobacco offense under KRS 438.305 to 438.340 shall be committed as a result of that adjudication.*

➔Section 13. KRS 15A.305 is amended to read as follows:

- (1) The Department of Juvenile Justice shall, with available funds, develop and administer a statewide detention program and, as each regional facility is constructed and ready for occupancy, shall, within appropriation limitations, provide for:
- (a) The operation of preadjudication detention facilities for children charged with public offenses; and
  - (b) The operation of postadjudication detention facilities for children adjudicated delinquent or found guilty of public offenses.
- (2) In each region in which the Department of Juvenile Justice operates or contracts for the operation of a detention facility, the department shall, within appropriation limitations, develop and administer a program for alternatives to secure detention that shall provide for:
- (a) The operation of or contracting for the operation of preadjudication alternatives to secure detention and follow-up programs for juveniles who are before the court and who enter pretrial diversion or informal adjustment programs; and
  - (b) The operation of or contracting for the operation of postadjudication alternatives to secure detention and follow-up programs, including but not limited to community-based programs, mentoring, counseling, and other programs designed to limit the unnecessary use of secure detention and ensure public safety.

- (3) *The department shall develop and implement a system to immediately notify the Cabinet for Health and Family Services when a status offender or child alleged to be a status offender has been detained for the alleged violation of a valid court order.*
- (4) The department may, except as provided in KRS 635.060, charge counties, consolidated local governments, and urban-county governments a per diem not to exceed ninety-four dollars (\$94) for lodging juveniles in state-owned or contracted facilities.
- (5)~~(4)~~ Detention rates charged by contracting detention facilities shall not exceed the rate in effect on July 1, 1997, subject to increases approved by the department.
- (6)~~(5)~~ No juvenile detention facility, as defined in KRS 15A.200, shall be taken over, purchased, or leased by the Commonwealth without prior approval of the fiscal court upon consultation with the jailer in the county where the facility is located. The county, upon consultation with the jailer, may enter into contracts with the Commonwealth for the holding, detention, and transportation of juveniles.

➔Section 14. KRS 31.100 is amended to read as follows:

The following terms and standards shall apply, subject to further definition and regulation by the Department of Public Advocacy.

- (1) "Detain" means to have in custody or otherwise deprive of freedom of action;
- (2) "Expenses," when used with reference to representation under this chapter, includes the expenses of investigation, other preparation, and trial, together with the expenses of any appeal;
- (3) "Needy person" or "indigent person" means:
- A person eighteen (18) years of age or older or emancipated minor under the age of eighteen (18) who, at the time his *or her* need is determined, is unable to provide for the payment of an attorney and all other necessary expenses of representation;
  - A minor, under the age of eighteen (18), who is party defendant in an action of being an habitual runaway from his or her parent or person exercising control or supervision of the child brought under KRS 630.020(1) or of being beyond the control of parents brought under KRS 630.020(2), and at the time his *or her* need is determined is unable to provide for the payment of an attorney and all other necessary expenses of representation;
  - An unemancipated minor, under the age of eighteen (18), who allegedly has committed an offense as described in KRS 610.010(1)~~(a)~~, or who allegedly is beyond the control of the school as described in KRS 610.010(2)(a)~~(1)(b)~~, or who allegedly is an habitual truant from school as described in KRS 610.010(2)(b)~~(1)(c)~~, or who allegedly is an habitual runaway as described in KRS 610.010(2)(c)~~(1)(d)~~, whose custodial parent or guardian at the time the need of the minor is determined is unable to provide for the payment of an attorney and all other necessary expenses of representation, and who cannot personally so provide; or
  - An unemancipated minor, under the age of eighteen (18), alleged to have committed an offense as described in KRS 610.010(1) *or* (2)(a),~~(a)~~ (b), *or* (c)~~(1)(d)~~, whose custodial parent or guardian at the time the need of the minor is determined has interests adverse to the child relevant to the charged offenses and who is able to provide for the payment of an attorney and all other necessary expenses of representation, when such representation is not provided or is not consented to by the unemancipated minor;
- (4) "Serious crime" includes:
- A felony;
  - A misdemeanor or offense any penalty for which includes the possibility of confinement;
  - Any legal action which could result in the detainment of a defendant; and
  - An act that, but for the age of the person involved, would otherwise be a serious crime.

➔Section 15. KRS 31.110 is amended to read as follows:

- (1) A needy person who is being detained by a law enforcement officer, on suspicion of having committed, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, or who is accused of having committed a public or status offense or who has been committed to the Department of Juvenile Justice or Cabinet for Health and Family Services for having committed a public or status offense as those are defined by KRS 610.010(1), **610.010(2)**(a), (b), (c), ~~(d)~~ or 630.020(2) is entitled:
  - (a) To be represented by an attorney to the same extent as a person having his *or her* own counsel is so entitled; and
  - (b) To be provided with the necessary services and facilities of representation including investigation and other preparation. The courts in which the defendant is tried shall waive all costs.
- (2) A needy person who is entitled to be represented by an attorney under subsection (1) of this section is entitled:
  - (a) To be counseled and defended at all stages of the matter beginning with the earliest time when a person providing his own counsel would be entitled to be represented by an attorney and including revocation of probation or parole;
  - (b) To be represented in any appeal; and
  - (c) To be represented in any other post-conviction, or, if a minor under the age of eighteen (18), post-disposition proceeding that the attorney and the needy person considers appropriate. However, if the counsel appointed in such post-conviction, or, if a minor under the age of eighteen (18), post-disposition remedy, with the court involved, determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his *or her* own expense, there shall be no further right to be represented by counsel under the provisions of this chapter.
- (3) A needy person's right to a benefit under subsection (1) or (2) of this section is not affected by his *or her* having provided a similar benefit at his *or her* own expense, or by *he or she*~~[his]~~ having waived it, at an earlier stage.
- (4) A person, whether a needy person or not, who is a minor under the age of eighteen (18) and who is in the custody of the Department of Juvenile Justice and is residing in a residential treatment center or detention center is entitled to be represented on a legal claim related to his or her confinement involving violations of federal or state statutory rights or constitutional rights.

➔Section 16. KRS 164.2847 is amended to read as follows:

- (1) Tuition and mandatory student fees for any undergraduate program of any Kentucky public postsecondary institution, including all four (4) year universities and colleges and institutions of the Kentucky Community and Technical College System, shall be waived for a Kentucky foster or adopted child who is a full-time or part-time student if the student meets all entrance requirements and maintains academic eligibility while enrolled at the postsecondary institution, and if:
  - (a) The student's family receives state-funded adoption assistance under KRS 199.555;
  - (b) The student is currently committed to the Cabinet for Health and Family Services under KRS 610.010~~(5)~~~~(4)~~ and placed in a family foster home or is placed in accordance with KRS 605.090(3);
  - (c) The student is in an independent living program and the placement is funded by the Cabinet for Health and Family Services;
  - (d) The student who is an adopted child was in the permanent legal custody of and placed for adoption by the Cabinet for Health and Family Services. A student who meets the eligibility criteria of this paragraph and lives outside of Kentucky at the time of application to a Kentucky postsecondary institution may apply for the waiver up to the amount of tuition for a Kentucky resident; or
  - (e) The Cabinet for Health and Family Services was the student's legal custodian on his or her eighteenth birthday.
- (2) Tuition and mandatory student fees for any undergraduate program of any Kentucky public postsecondary institution, including all four (4) year universities and colleges and institutions of the Kentucky Community and Technical College System, shall be waived for a Department of Juvenile Justice foster child who is a full-time or part-time student if the student meets all entrance requirements and maintains academic eligibility while

enrolled at the postsecondary institution and obtains a recommendation for participation from an official from the Department of Juvenile Justice, and if:

- (a) The student has not been sentenced to the Department of Juvenile Justice under KRS Chapter 640;
  - (b) The student has been committed to the Department of Juvenile Justice for a period of at least two (2) years;
  - (c) The student is in an independent living program and placement is funded by the Department of Juvenile Justice;
  - (d) The parental rights of the student's biological parents have been terminated; or
  - (e) The student was committed to the Cabinet for Health and Family Services prior to a commitment to the Department of Juvenile Justice.
- (3) Upon request of the postsecondary institution, the Cabinet for Health and Family Services shall confirm the eligibility status under subsection (1) of this section and the Department of Juvenile Justice shall confirm the eligibility status and recommendations under subsection (2) of this section of the student seeking to participate in the waiver program. Release of this information shall not constitute a breach of confidentiality required by KRS 199.570, 610.320, or 620.050.
- (4) The student shall complete the Free Application for Federal Student Aid to determine the level of need and eligibility for state and federal financial aid programs. If the sum of the tuition waiver plus other student financial assistance, except loans and the work study program under 42 U.S.C. secs. 2751-2756b, from all sources exceeds the student's total cost of attendance, as defined in 20 U.S.C. sec. 10871l, the tuition waiver shall be reduced by the amount exceeding the total cost of attendance.
- (5) The student shall be eligible for the tuition waiver:
- (a) For entrance to the institution for a period of no more than four (4) years after the date of graduation from high school; and
  - (b) For a period of five (5) years after first admittance to any Kentucky institution if satisfactory progress is achieved or maintained.
- (6) The Cabinet for Health and Family Services shall report the number of students participating in the tuition waiver program under subsection (1) of this section and the Department of Juvenile Justice shall report the number of students participating in the tuition waiver program under subsection (2) of this section on October 1 each year to the Council on Postsecondary Education and the Legislative Research Commission.
- (7) The Council on Postsecondary Education shall report nonidentifying data on graduation rates of students participating in the tuition waiver program by November 30 each year to the Legislative Research Commission.
- (8) Nothing in this section shall be construed to:
- (a) Guarantee acceptance of or entrance into any postsecondary institution for a foster or adopted child;
  - (b) Limit the participation of a foster or adopted student in any other program of financial assistance for postsecondary education;
  - (c) Require any postsecondary institution to waive costs or fees relating to room and board; or
  - (d) Restrict any postsecondary institution, the Department of Juvenile Justice, or the Cabinet for Health and Family Services from accessing other sources of financial assistance, except loans, that may be available to a foster or adopted student.

➔Section 17. 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 *or her* 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.
1. At the time a committed child is placed in the home of his *or her* 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.
  2. At the time a committed child is placed anywhere other than the home of the child's parents, the cabinet or the Department of Juvenile Justice shall inform the foster home, the relative, or the governing authority of any private facility or agency in which the child has been placed whether the minor placed is a juvenile sexual offender as defined in KRS 635.505(2) or of any inappropriate sexual acts or sexual behavior by the child specifically known to the cabinet or Department of Juvenile Justice, and any behaviors of the child specifically known to the cabinet or Department of Juvenile Justice that indicate a safety risk for the placement. Information received by any private facility or agency under this paragraph shall be disclosed immediately and directly to the individual or individuals who have physical custody of the child.
  3. If, after a placement is made, additional information is obtained by the cabinet or the Department of Juvenile Justice about inappropriate sexual behavior or other behavior of the committed child that may indicate a safety risk for the placement, the cabinet or the Department of Juvenile Justice shall as soon as practicable, but no later than seventy-two (72) hours after the additional information is received, inform the foster parent, relative, or private facility or agency. Additional information received by any private facility or agency shall be disclosed immediately and directly to the individual or individuals who have physical custody of the child.
  4. Information disclosed under this paragraph shall be limited to the acts or behaviors of the committed child and shall not constitute a violation of confidentiality under KRS Chapter 610 or 620. No foster parent, relative, or other person caring for a committed child shall divulge the information received under this paragraph to persons who do not have a legitimate interest or responsibility relating to the case. Nothing in this subparagraph shall prohibit the disclosure or sharing of information between a foster parent, custodian, private facility, or governmental entity for the protection of any child. A violation of this subparagraph is a Class B misdemeanor;
- (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(2)(a),~~{(1)}~~ (b), *or* (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) However, under no circumstances shall a child committed under KRS Chapter 620 be placed in a home, facility, or other shelter with a child who has been committed to the Department of Juvenile Justice for commission of a sex crime, as that term is defined in KRS 17.500, unless the child committed for the commission of a sex crime is kept segregated from other children in the home, facility, or other shelter that have not been committed for the commission of a sex crime;
- (f) Treated as provided in KRS Chapter 645;
- (g) Following the transfer or placement of a child pursuant to paragraphs (b), (c), (d), (e), or (f) 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 state whether the child placed is a juvenile sexual offender as defined in KRS 635.505(2), and include information required under subsection (1) of this section. 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 18. KRS 610.080 is amended to read as follows:

Juvenile proceedings shall consist of two (2) distinct hearings, an adjudication and a disposition, which shall be held on separate days unless the child, after consultation with an attorney, waives the right to a formal predisposition investigation report and moves that the hearings be held the same day. However, if the disposition is to be commitment, the child's waiver shall not be valid without the consent of the Department of Juvenile Justice or the cabinet.

- (1) The adjudication shall determine the truth or falsity of the allegations in the petition and shall be made on the basis of an admission or confession of the child to the court or by the taking of evidence.
- (2) Unless otherwise exempted, upon motion by any child brought before the court on a petition under KRS 610.010(1), **or 610.010(2)(a), (b), or (c)** ~~or (d)~~, the Rules of Criminal Procedure shall apply. All adjudications shall be supported by evidence beyond a reasonable doubt, unless specified to the contrary by other provisions of KRS Chapters 600 to 645. For actions under KRS 610.010(2)~~(d)~~~~(4)~~~~(e)~~ the Kentucky Rules of Civil Procedure shall apply.

➔Section 19. KRS 610.255 is amended to read as follows:

The peace officer may divert the child from the formal court process and take the child to a court-approved center offering voluntary services to children and release the child without formal charges being filed, if:

- (1) The offense the child has allegedly committed under the provisions of KRS 610.010(1)~~(a)~~ is not a felony offense;
- (2) The peace officer has received the permission of the parent or other responsible adult; and
- (3) The peace officer has followed guidelines which the court has established for such release.

➔Section 20. KRS 610.330 is amended to read as follows:

- (1) Any child who has been adjudicated as coming within the purview of KRS Chapters 630, 635 (with regard to status offenses, misdemeanors, or violations only), or 645, but not KRS Chapters 620 or 640, may petition the court for the expungement of his **or her** juvenile court record, except for adjudications involving guilt of an offense which would have been a felony if the offense was committed by an adult. He **or she** shall be informed of such right at the time of adjudication. The court on its own motion, or on the motion of a probation officer of the court, a representative of the Department of Juvenile Justice or the cabinet, or any other interested person may initiate expungement proceedings concerning the record of any child who has been under the jurisdiction of the court. The petition shall be filed or the court order entered no sooner than two (2) years after the date of termination of the court's jurisdiction over the person, or two (2) years after his **or her** unconditional release from commitment to the Department of Juvenile Justice or the Cabinet for Health and Family Services or a public or private agency, except that the two (2) year period may be waived if the court finds that such extraordinary circumstances exist with regard to the petitioner as to make the waiver advisable.
- (2) Upon the filing of a petition or entering of a court order, the court shall set a date for a hearing and shall notify the county attorney and anyone else whom the court or the child, his **or her** parents, relatives, guardian, or custodian has reason to believe may have relevant information related to the expungement of the record.
- (3) The court shall order sealed all records in the petitioner's case in the custody of the court and any of these records in the custody of any other agency or official, including law enforcement and public or private elementary and secondary school records, if at the hearing the court finds that:

- (a) Since the termination of the court's jurisdiction or his unconditional release from commitment to the Department of Juvenile Justice, the cabinet, or a public or private agency, the person whose record is in question has not been convicted of a felony, and has not been adjudicated under KRS 610.010(1)~~(a)~~; and
  - (b) No proceeding concerning a felony and no petition under KRS 610.010(1)~~(a)~~ is pending or being instituted against him.
- (4) Upon the entry of an order to seal the records, the proceedings in the case shall be deemed never to have occurred and all index references shall be deleted and the person and court may properly reply that no record exists with respect to such person upon any inquiry in the matter.
  - (5) Copies of the order shall be sent to each agency or official named therein.
  - (6) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of such records, and only to those persons named in such petition.

→Section 21. KRS 620.155 is amended to read as follows:

Any interested party aggrieved by a proceeding under KRS 610.010(2)~~(d)(1)(e)~~ including the parent, child, guardian ad litem, the cabinet, and the county attorney may appeal from the juvenile court to the Circuit Court as a matter of right in the manner provided in the Kentucky Rules of Civil Procedure. The Circuit Court may order that the child may be removed to a suitable place, pending the appeal, if it appears by affidavit or sworn testimony that the child would be in imminent danger if left with or returned to his *or her* parents, guardian, or other person party to the appeal.

→Section 22. KRS 244.085 is amended to read as follows:

- (1) As used in KRS 244.083 and this section: "Premises" has the meaning it is given in KRS 241.010 and also means the place of business of a person licensed to sell alcoholic beverages including, in the case of drive-in establishments, the entire lot upon which the business establishment is situated.
- (2) A person under 21 years of age shall not enter any premises licensed for the sale of alcoholic beverages for the purpose of purchasing or receiving any alcoholic beverages.
- (3) A person under 21 years of age shall not possess for his or her own use or purchase or attempt to purchase or have another purchase for him or her any alcoholic beverages. No person shall aid or assist any person under 21 years of age in purchasing or having delivered or served to him or her any alcoholic beverages.
- (4) A person under 21 years of age shall not misrepresent his or her age for the purpose of inducing any licensee, or the licensee's agent, servant, or employee, to sell or serve any alcoholic beverages to the underage person.
- (5) A person under 21 years of age shall not use, or attempt to use any false, fraudulent, or altered identification card, paper, or any other document to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.
- (6) Except as provided in KRS 244.087 and 244.090, a licensee, or his or her agents, servants, or employees shall not permit any person under twenty-one (21) years of age to remain on any premises where alcoholic beverages are sold by the drink or consumed on the premises, unless:
  - (a) The usual and customary business of the establishment is a hotel, motel, restaurant, convention center, convention hotel complex, racetrack, simulcast facility, golf course, private club, park, fair, church, school, athletic complex, athletic arena, theater, distillery or brewery or winery tour, establishment where prebooked concerts with advance ticket sales are held, convenience store, grocery store, drug store, or similar establishment. For purposes of this paragraph, house bands, disc jockeys, and karaoke are not considered concerts;
  - (b) All alcoholic beverage inventory is kept in a separate, locked department at all times when minors are on the premises; or
  - (c) Written approval has been granted by the office to allow minors on the premises until 10 p.m. where the sale of alcohol is incidental to a specific family or community event including, but not limited to, weddings, reunions, or festivals. The licensee's request shall be in writing and shall specifically describe the event for which approval is requested. The state director shall approve or deny the request in writing.

- (7) Except as provided in subsection (6) of this section, a licensee or his or her agent, servant, or employee shall not allow any person under the age of twenty-one (21) to remain on any premises that sells alcoholic beverages by the package unless the underage person is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.
- (8) Except as provided in subsection (6) of this section, a person under the age of twenty-one (21) shall not remain on any premises that sells alcoholic beverages by the package unless he or she is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.
- (9) ***A violation of subsections (2), (3), (4), (5), or (8) of this section shall be deemed a status offense if committed by a person under the age of eighteen (18) years and shall be under the jurisdiction of the juvenile session of the District Court or the family division of the Circuit Court, as appropriate.***

→Section 23. KRS 244.990 is amended to read as follows:

- (1) Any person who, by himself ***or herself*** or acting through another, directly or indirectly, violates any of the provisions of this chapter for which no other penalty is provided shall, for the first offense, be guilty of a Class B misdemeanor; and for the second and each subsequent violation, he ***or she*** shall be guilty of a Class A misdemeanor. The penalties provided for in this subsection shall be in addition to the revocation of the offender's license. If the offender is a corporation, joint stock company, association, or fiduciary, the principal officer or officers responsible for the violation may be imprisoned.
- (2) Any person who violates KRS 244.170 shall, upon the first conviction, be guilty of a Class A misdemeanor. Upon a second conviction he ***or she*** shall be guilty of a Class D felony. Upon the third and each subsequent conviction, he ***or she*** shall be guilty of a Class C felony.
- (3) Any person who violates any of the provisions of KRS 244.480 to 244.600 shall be guilty of a violation.
- (4) ***Except as provided in subsection (7) of this section,*** any person, firm, or corporation violating any provision of KRS 244.083 and 244.085 shall be guilty of a violation and each violation shall constitute a separate offense.
- (5) ***Except as provided in subsection (7) of this section,*** any person who violates the provisions of subsection (5) of KRS 244.085 shall, for the first offense, be guilty of a violation, and for each subsequent offense shall be guilty of a Class A misdemeanor.
- (6) Any person who violates KRS 244.125 shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.
- (7) ***For any person under the age of eighteen (18) years, a violation of subsections (2), (3), (4), (5), or (8) of Section 22 of this Act shall be deemed a status offense and shall be under the jurisdiction of the juvenile session of the District Court or the family division of the Circuit Court, as appropriate.***

**Signed by Governor April 11, 2008.**