

## CHAPTER 146

( HB 485 )

AN ACT relating to individuals with intellectual disabilities.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 446 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in this section, the Kentucky Revised Statutes shall no longer utilize the terms "mental retardation" or "mentally retarded" or abbreviations that use the letters "MR" to signify mental retardation or mentally retarded.*
- (2) *The terms "retarded" or "retardation" shall not be utilized in the Kentucky Revised Statutes to refer to an intellectual disability.*
- (3) *Except as provided in subsections (4), (5), and (6) of this section, the terms "mental retardation" or "mentally retarded" shall be replaced in the Kentucky Revised Statutes, as appropriate, by the terms:*
  - (a) *"Intellectual disability";*
  - (b) *"Intellectual disabilities";*
  - (c) *"Individual with an intellectual disability";*
  - (d) *"Individuals with an intellectual disability";*
  - (e) *"Individual with a serious intellectual disability"; or*
  - (f) *"Individuals with a serious intellectual disability."*

*These terms, when substituted for "mental retardation," "mentally retarded," or "MR" shall be understood to have the exact meaning as the terms that they replace.*

- (4) *The names of state and local governmental agencies shall no longer contain the terms "mental retardation," "mentally retarded," "retardation," "retarded," or abbreviations that use the letters "MR" to signify mental retardation or mentally retarded, and shall be changed to describe the function of that agency without use of these terms.*
- (5) *A nongovernmental entity named or seeking to be named in the Kentucky Revised Statutes that utilizes "mental retardation," "mentally retarded," "retarded," "retardation," or the letters "MR" to signify mental retardation or mentally retarded in the name it seeks to include in statute, shall be encouraged to modify its name so that these terms are not utilized in statute.*
- (6) *To the extent permitted by federal law, ICF/MRs shall now be referred to as ICF/IDs.*

➔Section 2. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

1. The Governor.
2. Lieutenant Governor.
3. Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.

- (c) Registry of Election Finance.
  - 4. Department of Law.
    - (a) Attorney General.
  - 5. Department of the Treasury.
    - (a) Treasurer.
  - 6. Department of Agriculture.
    - (a) Commissioner of Agriculture.
    - (b) Kentucky Council on Agriculture.
  - 7. Auditor of Public Accounts.
- II. Program cabinets headed by appointed officers:
- 1. Justice and Public Safety Cabinet:
    - (a) Department of Kentucky State Police.
    - (b) Department of Criminal Justice Training.
    - (c) Department of Corrections.
    - (d) Department of Juvenile Justice.
    - (e) Office of the Secretary.
    - (f) Office of Drug Control Policy.
    - (g) Office of Legal Services.
    - (h) Office of the Kentucky State Medical Examiner.
    - (i) Parole Board.
    - (j) Kentucky State Corrections Commission.
    - (k) Office of Legislative and Intergovernmental Services.
    - (l) Office of Management and Administrative Services.
    - (m) Office of Investigations.
    - (n) Department for Public Advocacy.
  - 2. Education and Workforce Development Cabinet:
    - (a) Office of the Secretary.
    - (b) Office of Legal and Legislative Services.
      - 1. Client Assistance Program.
    - (c) Office of Communication.
    - (d) Office of Budget and Administration.
      - 1. Division of Human Resources.
      - 2. Division of Administrative Services.
      - 3. Division of Technology Services.
    - (e) Office of Educational Programs.
    - (f) Board of Directors for the Center for School Safety.
    - (g) Council on Postsecondary Education.
      - 1. Foundation for Adult Education.
    - (h) Department of Education.

1. Kentucky Board of Education.
  - (i) Department for Libraries and Archives.
  - (j) Department of Workforce Investment.
    1. Office for the Blind.
    2. Office of Vocational Rehabilitation.
    3. Office of Career and Technical Education.
    4. Office of Employment and Training.
  - (k) Foundation for Workforce Development.
  - (l) Kentucky Office for the Blind State Rehabilitation Council.
  - (m) Kentucky Technical Education Personnel Board.
  - (n) Kentucky Workforce Investment Board.
  - (o) Statewide Council for Vocational Rehabilitation.
  - (p) Statewide Independent Living Council.
  - (q) Unemployment Insurance Commission.
  - (r) Education Professional Standards Board.
    1. Division of Educator Preparation.
    2. Division of Certification.
    3. Division of Professional Learning and Assessment.
    4. Division of Legal Services.
  - (s) Kentucky Commission on the Deaf and Hard of Hearing.
  - (t) Kentucky Educational Television.
  - (u) Kentucky Environmental Education Council.
3. Energy and Environment Cabinet:
- (a) Office of the Secretary.
    1. Office of Legislative and Intergovernmental Affairs.
    2. Office of General Counsel.
      - a. Environmental Protection Legal Division.
    3. Office of Administrative Hearings.
    4. Mine Safety Review Commission.
    5. Kentucky State Nature Preserves Commission.
    6. Kentucky Environmental Quality Commission.
    7. Kentucky Public Service Commission.
  - (b) Department for Environmental Protection.
    1. Office of the Commissioner.
    2. Division for Air Quality.
    3. Division of Water.
    4. Division of Environmental Program Support.
    5. Division of Waste Management.
    6. Division of Enforcement.

7. Division of Compliance Assistance.
- (c) Department for Natural Resources.
  1. Office of the Commissioner.
  2. Division of Technical and Administrative Support.
  3. Division of Mine Permits.
  4. Division of Mine Reclamation and Enforcement.
  5. Division of Abandoned Mine Lands.
  6. Division of Oil and Gas.
  7. Office of Mine Safety and Licensing.
  8. Division of Forestry.
  9. Division of Conservation.
- (d) Department for Energy Development and Independence.
  1. Division of Efficiency and Conservation.
  2. Division of Renewable Energy.
  3. Division of Biofuels.
  4. Division of Energy Generation Transmission and Distribution.
  5. Division of Carbon Management.
  6. Division of Fossil Energy Development.
4. Public Protection Cabinet.
  - (a) Office of the Secretary.
    1. Office of Communications and Public Outreach.
    2. Office of Legal Services.
      - a. Insurance Legal Division.
      - b. Charitable Gaming Legal Division.
      - c. Alcoholic Beverage Control Legal Division.
      - d. Housing, Buildings and Construction Legal Division.
      - e. Financial Institutions Legal Division.
  - (b) Crime Victims Compensation Board.
  - (c) Board of Claims.
  - (d) Kentucky Board of Tax Appeals.
  - (e) Kentucky Boxing and Wrestling Authority.
  - (f) Kentucky Horse Racing Commission.
    1. Division of Licensing.
    2. Division of Incentives and Development.
    3. Division of Veterinary Services.
    4. Division of Security and Enforcement.
  - (g) Department of Alcoholic Beverage Control.
    1. Division of Distilled Spirits.
    2. Division of Malt Beverages.

3. Division of Enforcement.
  - (h) Department of Charitable Gaming.
    1. Division of Licensing and Compliance.
    2. Division of Enforcement.
  - (i) Department of Financial Institutions.
    1. Division of Depository Institutions.
    2. Division of Non-Depository Institutions.
    3. Division of Securities.
  - (j) Department of Housing, Buildings and Construction.
    1. Division of Fire Prevention.
    2. Division of Plumbing.
    3. Division of Heating, Ventilation, and Air Conditioning.
    4. Division of Building Code Enforcement.
  - (k) Department of Insurance.
    1. Property and Casualty Division.
    2. Health and Life Division.
    3. Division of Financial Standards and Examination.
    4. Division of Agent Licensing.
    5. Division of Insurance Fraud Investigation.
    6. Consumer Protection Division.
    7. Division of Kentucky Access.
  - (l) Office of Occupations and Professions.
5. Labor Cabinet.
- (a) Office of the Secretary.
    1. Division of Management Services.
    2. Office of General Counsel.
  - (b) Office of General Administration and Program Support for Shared Services.
    1. Division of Human Resource Management.
    2. Division of Fiscal Management.
    3. Division of Budgets.
    4. Division of Information Services.
  - (c) Office of Inspector General for Shared Services.
  - (d) Department of Workplace Standards.
    1. Division of Employment Standards, Apprenticeship, and Mediation.
    2. Division of Occupational Safety and Health Compliance.
    3. Division of Occupational Safety and Health Education and Training.
    4. Division of Workers' Compensation Funds.
  - (e) Department of Workers' Claims.
    1. Office of General Counsel for Workers' Claims.

2. Office of Administrative Law Judges.
  3. Division of Claims Processing.
  4. Division of Security and Compliance.
  5. Division of Information and Research.
  6. Division of Ombudsman and Workers' Compensation Specialist Services.
  7. Workers' Compensation Board.
  8. Workers' Compensation Advisory Council.
  9. Workers' Compensation Nominating Commission.
  - (f) Workers' Compensation Funding Commission.
  - (g) Kentucky Labor-Management Advisory Council.
  - (h) Occupational Safety and Health Standards Board.
  - (i) Prevailing Wage Review Board.
  - (j) Apprenticeship and Training Council.
  - (k) State Labor Relations Board.
  - (l) Employers' Mutual Insurance Authority.
  - (m) Kentucky Occupational Safety and Health Review Commission.
6. Transportation Cabinet:
- (a) Department of Highways.
    1. Office of Project Development.
    2. Office of Project Delivery and Preservation.
    3. Office of Highway Safety.
    4. Highway District Offices One through Twelve.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Aviation.
  - (d) Department of Rural and Municipal Aid.
    1. Office of Local Programs.
    2. Office of Rural and Secondary Roads.
  - (e) Office of the Secretary.
    1. Office of Public Affairs.
    2. Office for Civil Rights and Small Business Development.
    3. Office of Budget and Fiscal Management.
    4. Office of Inspector General.
  - (f) Office of Support Services.
  - (g) Office of Transportation Delivery.
  - (h) Office of Audits.
  - (i) Office of Human Resource Management.
  - (j) Office of Information Technology.
  - (k) Office of Legal Services.
7. Cabinet for Economic Development:

- (a) Office of Administration and Support.
  - (b) Department for New Business Development.
  - (c) Department of Financial Incentives.
  - (d) Department for Existing Business Development.
  - (e) Tobacco Research Board.
  - (f) Kentucky Economic Development Finance Authority.
  - (g) Office of Research and Information Technology.
  - (h) Department of Commercialization and Innovation.
  - (i) Office of Legal Services.
  - (j) Commission on Small Business Advocacy.
8. Cabinet for Health and Family Services:
- (a) Department for Public Health.
  - (b) Department for Medicaid Services.
  - (c) Department for ***Behavioral Health, Developmental and Intellectual Disabilities*** [~~Mental Health and Mental Retardation Services~~].
  - (d) Kentucky Commission for Children with Special Health Care Needs.
  - (e) Office of Health Policy.
  - (f) Office of the Secretary.
  - (g) Office of Legal Services.
  - (h) Office of Inspector General.
  - (i) Office of Legislative and Public Affairs.
  - (j) Department for Community Based Services.
  - (k) Department for Disability Determination Services.
  - (l) Office of the Ombudsman.
  - (m) Department for Human Support Services.
  - (n) Kentucky Commission on Community Volunteerism and Service.
  - (o) Office of Fiscal Services.
  - (p) Office of Human Resource Management.
  - (q) Office of Technology.
  - (r) Office of Contract Oversight.
  - (s) Governor's Office of Wellness and Physical Activity.
  - (t) Department for Aging and Independent Living.
9. Finance and Administration Cabinet:
- (a) Office of General Counsel.
  - (b) Office of the Controller.
  - (c) Office of Administrative Services.
  - (d) Office of Public Information.
  - (e) Office of Policy and Audit.
  - (f) Department for Facilities and Support Services.

- (g) Department of Revenue.
  - (h) Commonwealth Office of Technology.
  - (i) State Property and Buildings Commission.
  - (j) Office of Equal Employment Opportunity and Contract Compliance.
  - (k) Kentucky Employees Retirement Systems.
  - (l) Commonwealth Credit Union.
  - (m) State Investment Commission.
  - (n) Kentucky Housing Corporation.
  - (o) Kentucky Local Correctional Facilities Construction Authority.
  - (p) Kentucky Turnpike Authority.
  - (q) Historic Properties Advisory Commission.
  - (r) Kentucky Tobacco Settlement Trust Corporation.
  - (s) Kentucky Higher Education Assistance Authority.
  - (t) Kentucky River Authority.
  - (u) Kentucky Teachers' Retirement System Board of Trustees.
  - (v) Executive Branch Ethics Commission.
10. Tourism, Arts and Heritage Cabinet:
- (a) Kentucky Department of Travel and Tourism.
    - (1) Division of Tourism Services.
    - (2) Division of Marketing and Administration.
    - (3) Division of Communications and Promotions.
  - (b) Kentucky Department of Parks.
    - (1) Division of Information Technology.
    - (2) Division of Human Resources.
    - (3) Division of Financial Operations.
    - (4) Division of Facilities Management.
    - (5) Division of Facilities Maintenance.
    - (6) Division of Customer Services.
    - (7) Division of Recreation.
    - (8) Division of Golf Courses.
    - (9) Division of Food Services.
    - (10) Division of Rangers.
    - (11) Division of Resort Parks.
    - (12) Division of Recreational Parks and Historic Sites.
  - (c) Department of Fish and Wildlife Resources.
    - (1) Division of Law Enforcement.
    - (2) Division of Administrative Services.
    - (3) Division of Engineering.
    - (4) Division of Fisheries.

- (5) Division of Information and Education.
- (6) Division of Wildlife.
- (7) Division of Public Affairs.
- (d) Kentucky Horse Park.
  - (1) Division of Support Services.
  - (2) Division of Buildings and Grounds.
  - (3) Division of Operational Services.
- (e) Kentucky State Fair Board.
  - (1) Office of Administrative and Information Technology Services.
  - (2) Office of Human Resources and Access Control.
  - (3) Division of Expositions.
  - (4) Division of Kentucky Exposition Center Operations.
  - (5) Division of Kentucky International Convention Center.
  - (6) Division of Public Relations and Media.
  - (7) Division of Venue Services.
  - (8) Division of Personnel Management and Staff Development.
  - (9) Division of Sales.
  - (10) Division of Security and Traffic Control.
  - (11) Division of Information Technology.
  - (12) Division of the Louisville Arena.
  - (13) Division of Fiscal and Contract Management.
  - (14) Division of Access Control.
- (f) Office of the Secretary.
  - (1) Office of Finance.
  - (2) Office of Research and Administration.
  - (3) Office of Governmental Relations and Tourism Development.
  - (4) Office of the Sports Authority.
  - (5) Kentucky Sports Authority.
- (g) Office of Legal Affairs.
- (h) Office of Human Resources.
- (i) Office of Public Affairs and Constituent Services.
- (j) Office of Creative Services.
- (k) Office of Capital Plaza Operations.
- (l) Office of Arts and Cultural Heritage.
- (m) Kentucky African-American Heritage Commission.
- (n) Kentucky Foundation for the Arts.
- (o) Kentucky Humanities Council.
- (p) Kentucky Heritage Council.
- (q) Kentucky Arts Council.

- (r) Kentucky Historical Society.
    - (1) Division of Museums.
    - (2) Division of Oral History and Educational Outreach.
    - (3) Division of Research and Publications.
    - (4) Division of Administration.
  - (s) Kentucky Center for the Arts.
    - (1) Division of Governor's School for the Arts.
  - (t) Kentucky Artisans Center at Berea.
  - (u) Northern Kentucky Convention Center.
  - (v) Eastern Kentucky Exposition Center.
11. Personnel Cabinet:
- (a) Office of the Secretary.
  - (b) Department for Personnel Administration.
  - (c) Office for Employee Relations.
  - (d) Kentucky Public Employees Deferred Compensation Authority.
  - (e) Office of Administrative Services.
  - (f) Office of Legal Services.
  - (g) Office of Government Training.
  - (h) Department for Employee Insurance.
- III. Other departments headed by appointed officers:
1. Department of Military Affairs.
  2. Department for Local Government.
  3. Kentucky Commission on Human Rights.
  4. Kentucky Commission on Women.
  5. Department of Veterans' Affairs.
  6. Kentucky Commission on Military Affairs.
  7. Office of Minority Empowerment.
  8. Governor's Council on Wellness and Physical Activity.
- ➔Section 3. KRS 15A.340 is amended to read as follows:
- (1) As used in this section and KRS 15A.342 and 15A.344, "KY-ASAP" means the Kentucky Agency for Substance Abuse Policy.
  - (2) The Office of Drug Control Policy shall administer an endowment from interest generated through funds appropriated or gifts, donations, or funds received from any source. The Office of Drug Control Policy may expend endowment principal, if necessary in its discretion, to carry out the purposes of this section and KRS 15A.342 and 15A.344. These expenditures from the endowment principal are hereby appropriated for this purpose.
  - (3) (a) The Office of Drug Control Policy shall oversee the activities specified in this section and KRS 15A.342 and 15A.344 and provide administrative support to the seventeen (17) member KY-ASAP Board, which is created to oversee the activities of KY-ASAP. Membership of the board shall be appointed by the Governor and shall consist of the following:
    1. One (1) member representing the Kentucky Family Resource Youth Services Coalition, or a designee;

2. One (1) member representing the Kentucky Health Department Association, or a designee;
  3. The secretary of the Cabinet for Health and Family Services, or designee;
  4. The secretary of the Justice and Public Safety Cabinet, or a designee;
  5. One (1) member representing the Division of Mental Health and Substance Abuse Services within the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~, Cabinet for Health and Family Services, or a designee;
  6. The commissioner of the Department for Public Health, Cabinet for Health and Family Services, or a designee;
  7. The commissioner of the Department of Alcoholic Beverage Control, or a designee;
  8. The commissioner of the Department of Education;
  9. The director of the Administrative Office of the Courts, or a designee;
  10. One (1) member representing the Kentucky Association of Regional Programs, or a designee;
  11. One (1) member representing the Kentucky Heart Association, or a designee;
  12. One (1) member representing the Kentucky Lung Association, or a designee;
  13. One (1) member representing the Kentucky Cancer Society, or a designee;
  14. Two (2) members representing local tobacco addiction and substance abuse advisory and coordination boards; and
  15. Two (2) members representing private community-based organizations, whether for-profit or nonprofit, with experience in programs involving smoking cessation or prevention or alcohol or substance abuse prevention and treatment.
- (b) Members shall serve for a term of four (4) years, may be reappointed, and may serve no more than two (2) consecutive terms. Members shall not be compensated but shall receive reimbursement for expenses incurred while performing board business.
- (c) The board shall meet at least quarterly. A quorum of nine (9) members shall be required for the transaction of business. Meetings shall be held at the call of the chair, or upon the written request of two (2) members to the chair.
- (d) The board shall:
1. Oversee deposits and expenditures from the endowment;
  2. Request, in its discretion, an audit relating to the expenditure of endowment funds;
  3. Receive quarterly reports from the commissioner of the Department of Alcoholic Beverage Control regarding KY-ASAP's activities;
  4. Progress toward development and implementation of the strategic plan;
  5. Recommend to KY-ASAP the most efficient means for using public funds to coordinate, supplement, and support high quality and ongoing programs of all public agencies and private service providers related to smoking cessation and prevention and alcohol and substance abuse prevention and treatment;
  6. Recommend matters for review and analysis by KY-ASAP; and
  7. Perform other duties as necessary for the oversight of KY-ASAP.
- (4) The Office of Drug Control Policy and KY-ASAP shall promote the implementation of research-based strategies that target Kentucky's youth and adult populations.
- (5) The Office of Drug Control Policy and KY-ASAP shall vigorously pursue the philosophy that tobacco in the hands of Kentucky's youth is a drug abuse problem because of the addictive qualities of nicotine, and because tobacco is the most prevalent gateway drug that leads to later and escalated drug and alcohol abuse.

➔Section 4. KRS 17.556 is amended to read as follows:

The board shall consist of the members named in subsections (1) and (2) of this section:

- (1)
  - (a) The commissioner of the Department of Corrections, or the commissioner's designee;
  - (b) The commissioner of the Department of Juvenile Justice, or the commissioner's designee;
  - (c) The program administrator of the Sex Offender Treatment Program created pursuant to KRS 197.400; and
  - (d) The commissioner of the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~(Mental Health and Mental Retardation Services)~~, or the commissioner's designee.
- (2) The following members, appointed by the Governor:
  - (a) One (1) probation and parole officer;
  - (b) Four (4) mental health professionals licensed or certified pursuant to KRS Chapter 309, 311, 314, 319, or 335 who demonstrated expertise in working with sex offenders;
  - (c) One (1) professional working in an agency which provides services to adult or child victims of sex offenses; and
  - (d) One (1) representative of an advocacy group with a demonstrated interest in the welfare of victims of sex offenses.
- (3) The Governor shall appoint the first chair of the board who shall serve for a term of two (2) years after which the chair shall be elected by the members of the board.
- (4) The probation and parole officer and the members identified in subsection (2) of this section shall serve for the remainder of the term of office of the Governor during whose incumbency they were appointed, unless removed sooner for cause, but they shall remain on the board until their successors are appointed or until they are reappointed.
- (5) No member appointed pursuant to subsection (4) of this section may be represented by a designee.
- (6) No member appointed pursuant to subsection (4) of this section shall serve more than four (4) years unless reappointed.
- (7) All members identified under subsection (1) of this section shall serve during their terms of office.
- (8) All members of the board shall be reimbursed for their necessary travel and other expenses actually incurred in the discharge of their duties on the board.
- (9) The board shall be empowered to create committees for the purpose of carrying out its statutory duties.
- (10) The board shall be attached to the Department of Corrections for administrative purposes.

➔Section 5. KRS 18A.115 is amended to read as follows:

- (1) The classified service to which KRS 18A.005 to 18A.200 shall apply shall comprise all positions in the state service now existing or hereafter established, except the following:
  - (a) The General Assembly and employees of the General Assembly, including the employees of the Legislative Research Commission;
  - (b) Officers elected by popular vote and persons appointed to fill vacancies in elective offices;
  - (c) Members of boards and commissions;
  - (d) Officers and employees on the staff of the Governor, the Lieutenant Governor, the Office of the Secretary of the Governor's Cabinet, and the Office of Program Administration;
  - (e) Cabinet secretaries, commissioners, office heads, and the administrative heads of all boards and commissions, including the executive director of Kentucky Educational Television and the executive director and deputy executive director of the Education Professional Standards Board;
  - (f) Employees of Kentucky Educational Television who have been determined to be exempt from classified service by the Kentucky Authority for Educational Television, which shall have sole authority over such exempt employees for employment, dismissal, and setting of compensation, up to the maximum established for the executive director and his principal assistants;
  - (g) One (1) principal assistant or deputy for each person exempted under subsection (1)(e) of this section;

- (h) One (1) additional principal assistant or deputy as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the secretary approves such an addition on petition of the relevant cabinet secretary or department head and such other principal assistants, deputies, or other major assistants as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the board may approve such an addition or additions on petition of the department head approved by the secretary. Effective August 1, 2010:
1. All positions approved under this paragraph prior to August 1, 2010, shall be abolished effective December 31, 2010, unless reapproved under subparagraph 2. of this paragraph; and
  2. A position approved under this paragraph on or after August 1, 2010, shall be approved for a period of five (5) years, after which time the position shall be abolished unless reapproved under this subparagraph for an additional five (5) year period;
- (i) Division directors subject to the provisions of KRS 18A.170. Division directors in the classified service as of January 1, 1980, shall remain in the classified service;
- (j) Physicians employed as such;
- (k) One (1) private secretary for each person exempted under subsection (1)(e), (g), and (h) of this section;
- (l) The judicial department, referees, receivers, jurors, and notaries public;
- (m) Officers and members of the staffs of state universities and colleges and student employees of such institutions; officers and employees of the Teachers' Retirement System; and officers, teachers, and employees of local boards of education;
- (n) Patients or inmates employed in state institutions;
- (o) Persons employed in a professional or scientific capacity to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the General Assembly, or a committee thereof, or by authority of the Governor, and persons employed by state agencies for a specified, limited period to provide professional, technical, scientific, or artistic services under the provisions of KRS 45A.690 to 45A.725;
- (p) Interim employees;
- (q) Officers and members of the state militia;
- (r) Department of Kentucky State Police troopers;
- (s) University or college engineering students or other students employed part-time or part-year by the state through special personnel recruitment programs; provided that while so employed such aides shall be under contract to work full-time for the state after graduation for a period of time approved by the commissioner or shall be participants in a cooperative education program approved by the commissioner;
- (t) Superintendents of state mental institutions, including heads of ~~mental retardation~~ centers **for individuals with an intellectual disability**, and penal and correctional institutions as referred to in KRS 196.180(2);
- (u) Staff members of the Kentucky Historical Society, if they are hired in accordance with KRS 171.311;
- (v) County and Commonwealth's attorneys and their respective appointees;
- (w) Chief district engineers and the state highway engineer;
- (x) Veterinarians employed as such by the Kentucky Horse Racing Commission;
- (y) Employees of the Kentucky Peace Corps;
- (z) Employees of the Council on Postsecondary Education;
- (aa) Executive director of the Commonwealth Office of Technology;
- (ab) Employees of the Kentucky Commission on Community Volunteerism and Service;

- (ac) Persons employed in certified teaching positions at the Kentucky School for the Blind and the Kentucky School for the Deaf; and
  - (ad) Federally funded time-limited employees as defined in KRS 18A.005.
- (2) Nothing in KRS 18A.005 to 18A.200 is intended, or shall be construed, to alter or amend the provisions of KRS 150.022 and 150.061.
  - (3) Nothing in KRS 18A.005 to 18A.200 is intended or shall be construed to affect any nonmanagement, nonpolicy-making position which must be included in the classified service as a prerequisite to the grant of federal funds to a state agency.
  - (4) Career employees within the classified service promoted to positions exempted from classified service shall, upon termination of their employment in the exempted service, revert to a position in that class in the agency from which they were terminated if a vacancy in that class exists. If no such vacancy exists, they shall be considered for employment in any vacant position for which they were qualified pursuant to KRS 18A.130 and 18A.135.
  - (5) Nothing in KRS 18A.005 to 18A.200 shall be construed as precluding appointing officers from filling unclassified positions in the manner in which positions in the classified service are filled except as otherwise provided in KRS 18A.005 to 18A.200.
  - (6) The positions of employees who are transferred, effective July 1, 1998, from the Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the employees' names removed from the roster of state employees. Employees that are transferred, effective July 1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS Chapter 151B or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted towards years of experience for calculating benefits and compensation.
  - (7) On August 15, 2000, all certified and equivalent personnel, all unclassified personnel, and all certified and equivalent and unclassified vacant positions in the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B personnel system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. The personnel officers who administer the personnel systems under KRS Chapter 151B and KRS Chapter 18A shall exercise the necessary administrative procedures to effect the change in personnel authority. No certified or equivalent employee in the Department for Adult Education and Literacy shall suffer any penalty in the transfer.
  - (8) On August 15, 2000, secretaries and assistants attached to policymaking positions in the Department for Technical Education and the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. No employee shall suffer any penalty in the transfer.

➔Section 6. KRS 36.255 is amended to read as follows:

- (1) The Kentucky Community Crisis Response Board is hereby created as a separate administrative body of state government within the meaning of KRS Chapter 12 and attached for administrative purposes to the Department of Military Affairs.
- (2) The membership of the board shall consist of the following:
  - (a) The commissioner of the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~, or the commissioner's designee;
  - (b) The commissioner of the Department for Public Health, or the commissioner's designee;
  - (c) The commissioner of the Department of Education, or the commissioner's designee;
  - (d) The commissioner of the Department of Kentucky State Police, or the commissioner's designee;
  - (e) The Kentucky state fire marshal, or the fire marshal's designee;

- (f) The executive director of the Division of Emergency Management, or the executive director's designee;
  - (g) The Attorney General, or the Attorney General's designee;
  - (h) One (1) representative of local community crisis response teams appointed by the Governor;
  - (i) Four (4) members appointed by the Governor to represent mental health disciplines;
  - (j) Two (2) members appointed by the Governor to represent emergency services disciplines;
  - (k) One (1) member who is a mental health professional licensed for independent clinical practice, to be appointed by the Governor. The licensed mental health professional member shall serve as clinical director for the board;
  - (l) One (1) member, appointed by the Governor, from a statewide chaplain's association involved in emergency services, who is trained in grief counseling and has experience in crisis response;
  - (m) One (1) member from the Kentucky Chapter of the American Red Cross; and
  - (n) The commissioner of the Department for Community Based Services or the commissioner's designee.
- (3) All board members appointed pursuant to subsection (2)(h) to (l) of this section shall be approved members of the existing community crisis response team.
  - (4) All board members appointed pursuant to subsection (2)(h) to (l) of this section shall have demonstrated a commitment to the provision of community crisis response services.
  - (5) The members of the board appointed by the Governor shall serve for two (2) years and may be reappointed for one (1) additional consecutive two (2) year term. All vacancies in appointed members' terms shall be filled by appointment of the Governor for the remainder of the unexpired term.
  - (6) The board shall elect annually from its membership a chairperson and shall establish other officers and committees as needed to execute the duties of the board.
  - (7) The board shall meet at least quarterly, and a majority of the members shall constitute a quorum for the transaction of the board's business.
  - (8) Except for hired and appointed staff, no board member or team member shall receive compensation. However, board members and crisis response team members may receive reimbursement for expenses incurred in the course of providing crisis response services or executing the duties of the board, consistent with state policy governing the reimbursement of state employees for food, travel, and lodging. Except as provided for in KRS 36.260, nothing in the provisions of KRS 36.250 to 36.270 shall be construed to create liability of a private party for expenses incurred or reimbursed under this subsection.

➔Section 7. KRS 61.520 is amended to read as follows:

- (1) Each department determined by the board to be eligible and qualified for participation shall participate in the system when the Governor by appropriate executive order, the authority to issue such executive order being granted, directs such department to participate in the system. The effective date of such participation shall be determined by the board and fixed by the Governor in his executive order.
- (2) (a) Notwithstanding the provisions of subsection (1) of this section the Governor is authorized to permit any state college or university, which he directs by appropriate executive order to participate in the system after January 1, 1972, to include its noninstructional employees in the membership of the system while excluding the instructional employees of the state college or university from membership.
- (b) All employees of an agency participating under authority of subsection (2)(a) of this section shall be considered noninstructional employees except the members of the instructional staff of the state college or university who are responsible for teaching and the administrative positions which are included in the Teachers' Insurance and Annuity Association (TIAA) or the Kentucky Teachers' Retirement System.
- (3) All executive orders issued under authority of this section since July 1, 1956, are hereby ratified by the General Assembly and each participating and contributing department, board, agency, corporation, ~~mental health mental retardation~~ board **for mental health or individuals with an intellectual disability**, or entity participating since that date under such executive order is hereby declared to be a participating department under the Kentucky Employees Retirement System.

- (4) Once a department participates it shall continue to participate as long as it remains qualified. Any position initially required to participate in the Kentucky Employees Retirement System shall continue to participate as long as the position exists.

➔Section 8. KRS 61.552 is amended to read as follows:

- (1) Any employee participating in one (1) of the state-administered retirement systems who has been refunded his accumulated contributions under the provisions of KRS 16.645(21), 61.625, or 78.545(15), thereby losing service credit, may regain the credit by paying to the system from which he received the refund or refunds the amount or amounts refunded with interest at a rate determined by the board of the respective retirement system. The payment, including interest as determined by the board, shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. The payments shall not be picked up, as described in KRS 61.560(4), by the employer.
- (2) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, and who did not elect membership in the County Employees Retirement System, as provided in KRS 78.540(2), may obtain credit in the County Employees Retirement System for prior service and for current service by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.
- (3) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, and who did not elect membership in the Kentucky Employees Retirement System, as provided in KRS 61.525(2), may obtain credit in the Kentucky Employees Retirement System for prior service and for current service by paying to the system a delayed contribution payment for the service he would have received had he elected membership. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.
- (4) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, may obtain credit in the Kentucky Employees Retirement System for current service between July 1, 1956, and the effective date of participation of his department by paying to the system a delayed contribution payment for the service he would have received had his department participated on July 1, 1956. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum or the employee may pay by increments.
- (5) (a) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, may obtain credit in the County Employees Retirement System for current service between July 1, 1958, and the effective date of participation of his county by paying to the County Employees Retirement System a delayed contribution payment for the service he would have received had his county participated on July 1, 1958. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer.
- (b) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may obtain credit for the period of his service with an area development district created pursuant to KRS 147A.050 or with a business development corporation created pursuant to KRS 155.001 to 155.230 if that service was not covered by a state-administered retirement system. The member shall pay to the retirement system in which he participates a delayed contribution payment, as determined by the board's actuary. The employee may obtain credit for employment with a business development corporation only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. Payment may be by lump sum or the employee may pay by increments.

- (6) After August 1, 2000, service credit obtained under the subsections of this section which do not require the employee to have a minimum number of years of service credit to be eligible to make a purchase shall be disallowed and the recontribution of refund, including interest as determined by the board or other payment, if any, shall be paid to the member if the member does not obtain for service performed six (6) months' additional current service credit in one (1) of the state-administered retirement systems. The service requirement shall be waived if the member dies or becomes disabled as provided for by KRS 16.582 or 61.600.
- (7) The members shall not receive benefit of service for the same period of time in another public defined benefit retirement fund.
- (8) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months' service if age sixty-five (65) or at least sixty (60) months' service if under age sixty-five (65) in the retirement systems administered by the Kentucky Retirement Systems, who formerly worked for a state university in a position which would have qualified as a regular full-time position had the university been a participating department, and who did not participate in a defined benefit retirement program at the university may obtain credit in the employee's account in the County Employees Retirement System, the Kentucky Employees Retirement System, or the State Police Retirement System for prior and current service by paying either retirement system a delayed contribution payment for the service he would have received had his period of university employment been covered by the County Employees, Kentucky Employees Retirement System, or State Police Retirement System. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer. Payment may be by lump sum, or the employee may pay by increments.
- (9)
  - (a) Effective August 1, 1980, any county participating in the County Employees Retirement System may purchase current service, between July 1, 1958, and participation date of the county, for present employees of the county who have obtained coverage under KRS 78.540(2);
  - (b) Effective July 1, 1973, any department participating in the Kentucky Employees Retirement System may purchase current service between July 1, 1956, and participation date of the department, for present employees of the department who were employees on the participation date of the department and elected coverage under KRS 61.525(2);
  - (c) Cost of the service credit purchased under this subsection shall be determined by computing the discounted value of the additional service credit based on an actuarial formula recommended by the board's consulting actuary and approved by the board. A department shall make payment for the service credit within the same fiscal year in which the option is elected. The county shall establish a payment schedule subject to approval by the board for payment of the service credit. The maximum period allowed in a payment schedule shall be ten (10) years with interest at the rate actuarially assumed by the board; however, a shorter period is desirable and the board may approve any schedule provided it is not longer than a ten (10) year period;
  - (d) If a county or department elects the provisions of this subsection, any present employee who would be eligible to receive service credit under the provisions of this subsection and has purchased service credit under subsection (4) or (5) of this section shall have his payment for the service credit refunded with interest at the rate paid under KRS 61.575 or 78.640;
  - (e) Any payments made by a county or department under this subsection shall be deposited to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated contributions of the individual members.
- (10) Interest paid by a member of the Kentucky Employees Retirement System, County Employees Retirement System, or State Police Retirement System under this section or other similar statutes under KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852 prior to June 19, 1976, shall be credited to the individual member's contribution account in the appropriate retirement system and considered as accumulated contributions of the member.
- (11) Employees who served as assistants to officers and employees of the General Assembly who have at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems and who were unable to acquire service under KRS 61.510(20) may purchase credit for the service performed after January 1, 1960. Service credit under this section shall be obtained by the payment of a delayed contribution which shall not be picked up by the employer as described in KRS 61.560(4).

- (12) (a) Effective August 1, 1988, any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may purchase service credit for interim, seasonal, emergency, or temporary employment or part-time employment averaging one hundred (100) or more hours of work per month on a calendar or fiscal year basis. If the average number of hours of work is less than one hundred (100) per month, the member shall be allowed credit only for those months he receives creditable compensation for one hundred hours of work. The cost will be determined as a delayed contribution payment for the period of time involved, which shall not be picked up by the employer as described in KRS 61.560(4).
- (b) Any noncertified employee of a school board who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may purchase service credit for part-time employment prior to the 1990-91 school year which averaged eighty (80) or more hours of work per month on a calendar or fiscal year basis by paying to the County Employees Retirement System a delayed contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 78.610(4), by the employer. Payment may be by lump sum or the employee may pay by increments. If the average number of hours of work is less than eighty (80) per month, the noncertified employee of a school board shall be allowed credit only for those months he receives creditable compensation for eighty (80) hours of work. The cost will be determined as a delayed contribution payment, which shall not be picked up by the employer as described in KRS 78.610(4).
- (13) A retired member, who is contributing to one (1) of the state-administered retirement programs under the provisions of KRS 61.637(1) to (4) and purchases service credit under this section in the system or systems from which he is retired, shall have his retirement allowance recomputed:
- (a) Upon termination from employment, if the member is contributing to the same system or systems from which he was retired; or
- (b) Upon completion of six (6) months' service credit as required under subsection (6) of this section, if the member is contributing to a system other than the system or systems from which he is retired.
- (14) Any employee participating in one (1) of the systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may obtain credit for prior or current service for any period of approved educational leave, or for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, by paying to the respective retirement system a delayed contribution payment. The employee may also obtain credit for agency-approved leave to work for a work-related labor organization if the agency subsequently participated in the County Employees Retirement System, but only if the Kentucky Retirement Systems receives a favorable private letter ruling from the United States Internal Revenue Service or a favorable opinion letter from the United States Department of Labor. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.
- (15) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems may obtain credit for prior or current service for any period of authorized maternity leave, unpaid leave authorized under the Federal Family and Medical Leave Act, or for any period of authorized sick leave without pay, by paying to the respective retirement system a delayed contribution payment. The delayed contribution payment shall not be picked up, as described in KRS 61.560(4), by the employer, and shall be deposited to the individual member's account.
- (16) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may purchase service credit under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852 by making installment payments in lieu of a lump-sum payment.
- (a) The cost of the service shall be computed in the same manner as for a lump-sum payment which shall be the principal; and interest, at the actuarial rate in effect at the time the member elects to make the purchase compounded annually, shall be added for the period that the installments are to be made. Multiple service purchases may be combined under a single installment purchase; however, no

employee may make more than one (1) installment purchase at the same time. The employee may elect to stop the installment payments by notifying the retirement system; may have the installment purchase recalculated to add one (1) or more additional service purchases; or may pay by lump sum the remaining principal or a portion of the remaining principal.

- (b) One (1) year of installment payments shall be made for each one thousand dollars (\$1,000) or any part thereof of the total cost, except that the total period allowed for installments shall not be less than one (1) year and shall not exceed five (5) years.
  - (c) The employee shall pay the installments by payroll deduction. Upon notification by the retirement system, the employer shall report the installment payments either monthly or semimonthly continuously over each twelve (12) month period at the same time as, but separate from, regular employee contributions on the forms or by the computer format specified by the board. The payments made under this subsection shall be considered accumulated contributions of the member and shall not be picked up by the employer pursuant to KRS 61.560(4) and no employer contributions shall be paid on the installments.
  - (d) The retirement system shall determine how much of the total cost represents payment for one (1) month of the service to be purchased and shall credit one (1) month of service to the member's account each time this amount has been paid. The first service credited shall represent the first calendar month of the service to be purchased and each succeeding month of service credit shall represent the succeeding months of that service.
  - (e) If the employee elects to stop the installment payments, dies, retires, or does not continue employment in a position required to participate in the retirement system, the member, or in the case of death, the beneficiary, shall have sixty (60) days to pay the remaining principal or a portion of the remaining principal of the purchase by lump sum, except that payment by the member shall be made prior to the effective retirement date. If the member or beneficiary does not pay the remaining cost, the retirement system shall refund to the member or the beneficiary the payment, payments, or portion of a payment that does not represent a full month of service purchased.
  - (f) If the employer does not report installment payments on an employee for sixty (60) days, except in the case of employees on military leave or sick leave without pay, the installment purchase shall cease and the retirement system shall refund to the employee the payment, payments, or portion of a payment that does not represent a full month of service purchased. Installment payments of employees on military leave or sick leave without pay shall be suspended during the period of leave and shall resume without recalculation upon the employee's return from leave.
  - (g) If payments have ceased under paragraph (e) or (f) of this subsection and the member later becomes a participating employee in one (1) of the three (3) systems administered by Kentucky Retirement Systems, the employee may complete the adjusted original installment purchase by lump sum or installment payments. If the employee elects to renew the installment purchase, the cost of the remaining service shall be recalculated in accordance with paragraph (a) of this subsection.
- (17) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems may purchase service credit under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, or 78.510 to 78.852 by transferring funds through a direct trustee-to-trustee transfer as permitted under the applicable sections of the Internal Revenue Code and any regulations or rulings issued thereunder, or through a direct rollover as contemplated by and permitted under 26 U.S.C. sec. 401(a)(31) and any regulations or rulings issued thereunder. Service credit may also be purchased by a rollover of funds pursuant to and permitted under the rules specified in 26 U.S.C. sec. 402(c) and 26 U.S.C. sec. 408(d)(3). The Kentucky Retirement Systems shall accept the transfer or rollover to the extent permitted under the rules specified in the applicable provisions of the Internal Revenue Code and any regulations and rulings issued thereunder. The amount shall be credited to the individual member's contribution account in the appropriate retirement system and shall be considered accumulated contributions of the member.
- (18) After August 1, 1998, any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who is age sixty-five (65) or older and has forty-eight (48) months of service credit or, if younger, who has sixty (60) months of service credit in systems administered by Kentucky Retirement Systems may purchase credit in the system in which the employee has the service credit for up to ten (10) years service in a regular full-time position that was credited to a state or local government-administered public defined benefit plan in another state other than a defined benefit plan for teachers. The employee shall pay a delayed contribution payment. Payment may be by lump sum, or the employee may pay

by increments. The employee may transfer funds directly from the other state's plan if eligible to the extent permitted under subsection (17) of this section and to the extent permitted by the other state's laws and shall provide proof that he is not eligible for a retirement benefit for the period of service from the other state's plan.

- (19) After August 1, 1998, any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has sixty (60) or more months of service in the State Police Retirement System or in a hazardous position in the Kentucky Employees Retirement System or the County Employees Retirement System, may purchase credit in the system in which the employee has the sixty (60) months of service credit for up to ten (10) years of service in a regular full-time position that was credited to a defined benefit retirement plan administered by a state or local government in another state, if the service could be certified as hazardous pursuant to KRS 61.592. The employee shall pay a delayed contribution payment. Payment may be by lump sum or by increments. The employee may transfer funds directly from the other unit of government's plan if eligible to the extent permitted under subsection (17) of this section and to the extent permitted by the other state's laws, and the employee shall provide proof that he is not eligible for a retirement benefit for the period of service from the other unit of government's plan.
- (20) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems and who has completed service as a volunteer in the Kentucky Peace Corps, created by KRS 154.01-720, may purchase service credit for the time served in the corps by making delayed contribution payments.
- (21) An employee participating in any retirement system administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65), or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by Kentucky Retirement Systems, and who was formerly employed in a regional community ~~mental health and mental retardation~~ services program **for mental health and individuals with an intellectual disability**, organized and operated under the provisions of KRS 210.370 to 210.480, which does not participate in a state-administered retirement system may obtain credit for the period of his service in the regional community ~~mental health and mental retardation~~ program **for mental health and individuals with an intellectual disability**, by paying to the state retirement system in which he participates a delayed contribution payment. Payment to one (1) of the retirement systems administered by the Kentucky Retirement Systems may be made by lump sum or in increments.
- (22) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, who was employed by a vocational technical school in a noncertified part-time position averaging eighty (80) or more hours per month, determined by using the number of months actually worked within a calendar or fiscal year, may purchase service credit in the Kentucky Employees Retirement System. The cost of the service shall be a delayed contribution payment, which shall not be picked up by the employer as described in KRS 61.560(4).
- (23) (a) Any person who is entitled to service credit for employment which was not reported in accordance with KRS 16.543, 61.543, or 78.615 may obtain credit for the service by paying the employee contributions due within six (6) months of notification by the system. No interest shall be added to the contributions. The service credit shall not be credited to the member's account until the employer contributions are received. If a retired member makes the payment within six (6) months, the retired member's retirement allowance shall be adjusted to reflect the added service after the employer contributions are received by the retirement system.
- (b) Any employee participating in one (1) of the state-administered retirement systems who is entitled to service credit under paragraph (a) of this subsection and who has not repaid the employee contributions due within six (6) months of notification by the system may regain the credit after the six (6) months by paying to the system the employee contributions plus interest at the actuarially assumed rate from the date of initial notification under paragraph (a) of this subsection. Service credit shall not be credited to the member's account until the employer contributions are received by the retirement system. The payments shall not be picked up, as described in KRS 61.560(4), by the employer.
- (c) Service purchased under this subsection by employees who begin participating on or after September 1, 2008, shall be considered service credited under KRS 16.543(1), 61.543(1), or 78.615(1) for purposes of determining eligibility for retirement benefits under KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852.

- (24) Any employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems may purchase service credit for employment with a public agency that would have been eligible to participate under KRS 61.520 but which did not participate in the Kentucky Employees Retirement System or a political subdivision that would have been eligible to participate under KRS 78.530 but which did not participate in the County Employees Retirement System if the former public agency or political subdivision has merged with or been taken over by a participating department or county. The cost of the service shall be determined as a delayed contribution payment for the respective retirement system. Payment may be made by lump sum or in increments. The payment shall not be picked up, as described in KRS 61.560(4) or 78.610(4), by the employer.
- (25) Any employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems prior to July 15, 2002, who has accrued at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems and who has total service in all state-administered retirement systems of at least one hundred eighty (180) months of service credit may purchase a combined maximum total of five (5) years of retirement service credit which is not otherwise purchasable under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. The purchase price for the retirement service credit shall be calculated and paid for as a delayed contribution payment. The payment shall not be picked up, as described in KRS 16.545(4), 61.560(4), or 78.610(4), by the employer, and the employee's payment shall be paid into the individual member's contribution account in the appropriate retirement system and shall be considered accumulated contributions of the member. Payment by the member may be by lump sum or by increments. The service purchased under this subsection shall not be used in determining a retirement allowance until the member has accrued at least two hundred forty (240) months of service, excluding service purchased under this subsection. If the member does not accrue at least two hundred forty (240) months of service, excluding service purchased under this subsection, upon retirement, death, or written request following termination, the payment, plus interest as provided in KRS 61.575, shall be refunded.
- (26) An employee participating in one (1) of the retirement systems administered by Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65), or at least sixty (60) months of service if under age sixty-five (65), in the systems administered by Kentucky Retirement Systems, may obtain credit in the County Employees Retirement System for the period of that employee's service with a community action agency created under KRS 273.405 to 273.453 if that service was not covered by a state-administered retirement system. The member shall pay to the retirement system a delayed contribution payment. Payment may be made by lump sum or in increments. The payment shall not be picked up, as described in KRS 61.560(4) or 78.610(4), by the employer.
- (27) The board of trustees is authorized to establish a program, subject to a favorable ruling from the Internal Revenue Service, to provide for the purchase of service credit under any of the provisions of KRS 16.505 to 16.552, 61.510 to 61.705, and 78.510 to 78.852, pursuant to the employer pick-up provisions in 26 U.S.C. sec. 414(h)(2).
- (28) An employee may obtain credit for regular full-time service with an agency prior to August 1, 1998, for which the employee did not receive credit due to KRS 61.637(1), by paying a delayed contribution. The payment shall not be picked up by the employer, except as provided in subsection (27) of this section, and shall be credited to the employee's second retirement account. Service credit obtained under this subsection shall not be used in determining benefits under KRS 61.702. The employee may purchase credit for service prior to August 1, 1998, if:
- (a) The employee retired from one (1) of the retirement systems administered by the Kentucky Retirement Systems and was reemployed prior to August 1, 1998, earning less than the maximum permissible earnings under the Federal Social Security Act;
  - (b) The employee elected to participate in a second retirement account effective August 1, 1998, in accordance with KRS 61.637(7); and
  - (c) The employee has at least forty-eight (48) months of service if age sixty-five (65), or at least sixty (60) months of service if under age sixty-five (65), in a second account in the systems administered by Kentucky Retirement Systems.
- (29) An employee participating in one (1) of the retirement systems administered by the Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, may

obtain credit for the service in a regular full-time position otherwise creditable under the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System for service in the United States government, other than service in the Armed Forces, for which service is not otherwise given, by paying to the system a delayed contribution payment. Payment may be made by lump sum or in increments. No payment made pursuant to this section shall be picked up by the employer, as described in KRS 61.560(4).

- (30) An employee participating in a hazardous position in one (1) of the retirement systems administered by the Kentucky Retirement Systems, who has at least forty-eight (48) months of service if age sixty-five (65) or at least sixty (60) months of service if under age sixty-five (65) in the systems administered by the Kentucky Retirement Systems, may obtain credit for service in a regular full-time position in an urban-county government that would qualify for hazardous duty coverage under KRS 61.592 by paying to the system a delayed contribution payment. Payment may be made by lump sum or in increments. No payment made pursuant to this section shall be picked up by the employer, as described in KRS 61.560(4).

➔Section 9. KRS 61.906 is amended to read as follows:

In order to qualify for a commission as a special law enforcement officer under KRS 61.900 to 61.930, an individual must present satisfactory evidence of compliance with the following conditions and requirements:

- (1) No person shall be eligible for a commission who:
- (a) Has been dishonorably discharged from the Armed Forces of the United States;
  - (b) Has been convicted in any jurisdiction of any felony or of any crime involving moral turpitude for which he has not received a full pardon;
  - (c) Has been convicted of any other offense or offenses more than five (5) times within the previous three (3) years;
  - (d) Has by any court of competent jurisdiction been declared mentally disabled by reason of *an intellectual disability*~~mental retardation~~ or disease and has not been restored; or
  - (e) Suffers from habitual drunkenness or from narcotics addiction or dependence, or from any physical defect or deficiency which the secretary determines to materially impair the applicant's ability to perform the duties of a special law enforcement officer.
- (2) Every person to be eligible for a commission shall:
- (a) Have reached his twenty-first birthday;
  - (b) Provide, on forms supplied by the secretary, such information pertaining to himself as may reasonably be requested thereon, including, but not limited to his: name; age; date of birth; current address and employment; prior addresses and employment for the past ten (10) years; aliases, if any; arrest and conviction record, if any; Social Security number; fingerprints; photographs; and general physical description. The accuracy of such information shall be attested by the applicant and his attestation shall be notarized by one authorized to administer oaths;
  - (c) Be of good moral character;
  - (d) Provide references from two (2) reputable residents of the Commonwealth who are not related to him and who have known him well for a period of not less than three (3) years, attesting to his good character;
  - (e) Pay the fees provided in KRS 61.908; and
  - (f) Provide evidence satisfactory to the secretary that he meets the following requirements:
    1. Is a graduate of an accredited high school or of an equivalent technical or vocational training or education program satisfactory to the secretary; or holds a G.E.D. certificate; provided, however, that all special local peace officers formally commissioned under KRS 61.360 and with unexpired commissions on December 31, 1976, shall be deemed to have met the requirements of this subsection;
    2. Has successfully completed not fewer than eighty (80) hours of training in a program approved by the council and dealing comprehensively with the subjects of criminal law and the law of arrest, search and seizure; or has been employed as a full-time sworn public peace officer for a period of not less than one (1) year within the past five (5) years, and has never been discharged

for cause from employment as a sworn public peace officer; or has been employed in a full-time capacity as a military policeman engaged in law enforcement for the United States Armed Forces for a period of not less than one (1) year within the past five (5) years; or has successfully completed a written, oral and practical examination approved by the council and dealing comprehensively with the subject matter of criminal law and the law of arrest, search and seizure; and

3. Demonstrates, in written and practical examinations approved by the council, knowledge of and proficiency in firearms safety, range firing, the moral and legal aspects of firearms use, and first aid. Provided, however, that all special local peace officers formally commissioned under KRS 61.360 and with unexpired commissions on December 31, 1976, shall be deemed to have met the requirements of these subsections.

➔Section 10. KRS 100.982 is amended to read as follows:

As used in KRS 100.982 to 100.984, unless the context otherwise requires:

- (1) "Person with a disability" means a person with a physical, emotional, or mental disability, including, but not limited to, *an intellectual disability* [~~mental retardation~~], cerebral palsy, epilepsy, autism, deafness or hard of hearing, sight impairments, and orthopedic impairments, but not including convicted felons or misdemeanants on probation or parole or receiving supervision or rehabilitation services as a result of their prior conviction, or mentally ill persons who have pled guilty but mentally ill to a crime or not guilty by reason of insanity to a crime. "Person with a disability" does not include persons with current, illegal use of or addiction to alcohol or any controlled substance as regulated under KRS Chapter 218A.
- (2) "Residential care facility" means a residence operated and maintained by a sponsoring private or governmental agency to provide services in a homelike setting for persons with disabilities.
- (3) "Services" means, but is not limited to, supervision, shelter, protection, rehabilitation, personal development, and attendant care.

➔Section 11. KRS 142.301 is amended to read as follows:

As used in KRS 142.301 to 142.363:

- (1) "Department" means the Department of Revenue;
- (2) "Charitable provider" means any provider which does not charge its patients for health-care items or services, and which does not seek or accept Medicare, Medicaid, or other financial support from the federal government or any state government. The collaboration with public hospitals, agencies, or other providers in the delivery of patient care; affiliation with public institutions to provide health-care education; or the pursuit of research in cooperation with public institutions or agencies shall not be considered as the receipt of government support by a charitable provider;
- (3) "Dispensing" means to deliver one (1) or more doses of a prescription drug in a suitable container, appropriately labeled for subsequent administration or use by a patient or other individual entitled to receive the prescription drug;
- (4) "Entity" means any firm, partnership, joint venture, association, corporation, company, joint stock association, trust, business trust, syndicate, cooperative, or other group or combination acting as a unit;
- (5) "Gross revenues" means the total amount received in money or otherwise by a provider for the provision of health-care items or services in Kentucky, less the following:
  - (a) Amounts received by any provider as an employee or independent contractor from another provider for the provision of health-care items or services if:
    1. The employing or contracting provider receives revenue attributable to health-care items or services provided by the employee or independent contractor receiving payment; and
    2. The employing or contracting provider is subject to the tax imposed by KRS 142.303, 142.307, 142.309, 142.311, 142.314, 142.315, 142.316, 142.361, or 142.363 on the receipt of that revenue;
  - (b) Amounts received as a grant or donation by any provider from federal, state, or local government or from an organization recognized as exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code for:

1. Research; or
2. Administrative or operating costs associated with the implementation and operation of an experimental program;
- (c) Salaries or wages received by an individual provider as an employee of a charitable provider, the federal government, or any state or local governmental entity;
- (d) Salaries or wages received by an individual provider as an employee of a public university for the provision of services at a student health facility; and
- (e) Amounts received by an HMO on a fixed, prepayment basis as premium payments.
- (6) "Health-care items or services" means:
  - (a) Inpatient hospital services;
  - (b) Outpatient hospital services;
  - (c) Nursing-facility services;
  - (d) Services of intermediate-care facilities for *individuals with intellectual disabilities*~~the mentally retarded~~;
  - (e) Physicians' services provided prior to July 1, 1999;
  - (f) Licensed home-health-care-agency services;
  - (g) Outpatient prescription drugs;
  - (h) HMO services;
  - (i) Regional community~~mental health and mental retardation~~ services *for mental health and individuals with intellectual disabilities*;
  - (j) Psychiatric residential treatment facility services;
  - (k) Medicaid managed care organization services; and
  - (l) Supports for community living waiver program services;
- (7) "Health-maintenance organization" or "HMO" means an organization established and operated pursuant to the provisions of Subtitle 38 of KRS Chapter 304;
- (8) "Hospital" means an acute-care, rehabilitation, or psychiatric hospital licensed under KRS Chapter 216B;
- (9) "Hospital services" means all inpatient and outpatient services provided by a hospital. "Hospital services" does not include services provided by a noncontracted, university-operated hospital, or any freestanding psychiatric hospital, if necessary waivers are obtained by the Cabinet for Human Resources, Cabinet for Health Services, or Cabinet for Health and Family Services from the Health Care Financing Administration or Centers for Medicare and Medicaid Services, or hospitals operated by the federal government;
- (10) "Health and family services secretary" means the secretary of the Cabinet for Health and Family Services or that person's authorized representative;
- (11) "Inpatient hospital services," "outpatient hospital services," "intermediate-care-facility services for *individuals with intellectual disabilities*~~the mentally retarded~~," "physician services," "licensed home-health-care-agency services," and "outpatient prescription drugs" have the same meaning as set forth in regulations promulgated by the Secretary of the Department of Health and Human Services and codified at 42 C.F.R. pt. 440, as in effect on December 31, 1993;
- (12) "Medicaid" means the state program of medical assistance as administered by the Cabinet for Health and Family Services in compliance with 42 U.S.C. sec. 1396;
- (13) "Nursing-facility services" means services provided by a licensed skilled-care facility, nursing facility, nursing home, or intermediate-care facility, excluding services provided by intermediate-care facilities for *individuals with intellectual disabilities*~~the mentally retarded~~ and services provided through licensed personal care beds;
- (14) "Person" means any individual, firm, partnership, joint venture, association, corporation, company, joint stock association, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit and the legal successor thereof;

- (15) "Provider" means any person receiving gross revenues for the provision of health-care items or services in Kentucky, excluding any facility operated by the federal government;
- (16) "Commissioner" means the commissioner of the Department of Revenue or that person's authorized representative;
- (17) "Total bed capacity" means the combination of licensed nursing home beds, licensed nursing facility beds, and licensed intermediate care facility beds;
- (18) "Regional community~~{ mental health and mental retardation }~~ services programs **for mental health and individuals with an intellectual disability**" means programs created under the provisions of KRS 210.370 to 210.480;
- (19) "Psychiatric residential treatment facility" has the same meaning as provided in KRS 216B.450; and
- (20) "Supports for Community Living Waiver Program" has the same meaning as provided in KRS 205.6317.

➔Section 12. KRS 142.314 is amended to read as follows:

- (1) A tax shall be imposed on regional community~~{ mental health and mental retardation }~~ services **for mental health and individuals with an intellectual disability** at a uniform rate of up to four percent (4%) on gross revenues received by each provider after July 1, 2005, for the provision of regional community~~{ mental health and mental retardation }~~ services **for mental health and individuals with an intellectual disability**.
- (2) The Department for Medicaid Services shall promulgate administrative regulations to ensure that a portion of the revenues generated from the assessment levied under this section and federal matching funds shall be used for rate increases for regional community~~{ mental health and mental retardation }~~ services **for mental health and individuals with an intellectual disability** to recognize cost increases, including current wage and benefit levels in the industry.
- (3) The remaining revenue generated from the assessment levied under this section and federal matching funds shall be used to supplement the medical-assistance-related general fund appropriations of the Department for Medicaid Services.
- (4) On or before July 1, 2005, the Cabinet for Health and Family Services, Department for Medicaid Services, shall submit an application to the Centers for Medicare and Medicaid Services to request any necessary waiver pursuant to 42 C.F.R. secs. 433.56 and 433.68.
- (5) If an application to the Centers for Medicare and Medicaid Services for a waiver is denied, the Department for Medicaid Services may resubmit the application with appropriate changes to receive an approved waiver.
- (6) The assessment imposed pursuant to this section shall begin on July 1, 2005, but is not due and payable until rates are increased pursuant to this provision.
- (7) The provisions of this section shall be null and void if the waiver or plan amendment to increase rates is not approved by the Centers for Medicare and Medicaid Services.
- (8) If the assessment provided for in this section is disallowed by the Centers for Medicare and Medicaid Services, all collections under this section shall cease.

➔Section 13. KRS 142.363 is amended to read as follows:

- (1) In addition to the tax imposed by KRS 142.307 on intermediate care facility services for **individuals with intellectual disabilities**~~{the mentally retarded}~~, an additional assessment is hereby imposed at a uniform rate of five and one-half percent (5.5%) on gross revenues received by each provider after July 1, 2004, for the provision of intermediate care facility services for **individuals with intellectual disabilities**~~{the mentally retarded}~~ and the provision of services through, or identical to those provided under, the Supports for Community Living Waiver Program.
- (2) All revenues collected pursuant to subsection (1) of this section shall be deposited in the Medical Assistance Revolving Trust Fund (MART) and transferred on a quarterly basis to the Department for Medicaid Services.
- (3) The Department for Medicaid Services shall promulgate regulations to ensure that a portion of the revenues generated from the assessment levied under this section and federal matching funds shall be used for rate increases for intermediate care facility services for **individuals with intellectual disabilities**~~{the mentally retarded}~~ and providers of services through, or identical to those provided under, the Supports for Community Living Waiver Program to recognize cost increases including current wage and benefit levels in the industry.

- (4) The remaining revenue generated from the assessment levied under this section and federal matching funds shall be used to supplement the medical assistance related General Fund appropriations of the Department for Medicaid Services. Notwithstanding KRS 48.500 and 48.600, the MART fund shall be exempt from any state budget reduction acts.
- (5) On or before the July 1, 2004, the Cabinet for Health and Family Services, Department for Medicaid Services shall submit an application to the Centers for Medicare and Medicaid Services to request a waiver of the uniformity requirement pursuant to 42 C.F.R. sec. 433.68(e)(2).
- (6) If an application to the Centers for Medicare and Medicaid Services for a waiver of the uniformity requirements is denied, the Department for Medicaid Services may resubmit the application with appropriate changes to receive an approved waiver.
- (7) The assessment imposed pursuant to this section shall begin on July 1, 2004, but is not due and payable until rates are increased pursuant to this provision.
- (8) The provisions of this section shall be considered null and void if the uniformity waiver or plan amendment to increase rates is not approved by the Centers for Medicare and Medicaid Services.

➔Section 14. KRS 158.442 is amended to read as follows:

- (1) The General Assembly hereby authorizes the establishment of the Center for School Safety. The center's mission shall be to serve as the central point for data analysis; research; dissemination of information about successful school safety programs, research results, and new programs; and, in collaboration with the Department of Education and others, to provide technical assistance for safe schools.
- (2) To fulfill its mission, the Center for School Safety shall:
  - (a) Establish a clearinghouse for information and materials concerning school violence prevention;
  - (b) Provide program development and implementation expertise and technical support to schools, law enforcement agencies, and communities, which may include coordinating training for administrators, teachers, students, parents, and other community representatives;
  - (c) Analyze the data collected in compliance with KRS 158.444;
  - (d) Research and evaluate school safety programs so schools and communities are better able to address their specific needs;
  - (e) Administer a school safety grant program for local districts as directed by the General Assembly;
  - (f) Promote the formation of interagency efforts to address discipline and safety issues within communities throughout the state in collaboration with other postsecondary education institutions and with local juvenile delinquency prevention councils;
  - (g) Prepare and disseminate information regarding best practices in creating safe and effective schools;
  - (h) Advise the Kentucky Board of Education on administrative policies and administrative regulations; and
  - (i) Provide an annual report by July 1 of each year to the Governor, the Kentucky Board of Education, and the Interim Joint Committee on Education regarding the status of school safety in Kentucky.
- (3) The Center for School Safety shall be governed by a board of directors appointed by the Governor. Members shall consist of:
  - (a) The commissioner or a designee of the Department of Education;
  - (b) The commissioner or a designee of the Department of Juvenile Justice;
  - (c) The commissioner or a designee of the Department for **Behavioral Health, Developmental and Intellectual Disabilities** [~~Mental Health and Mental Retardation Services~~];
  - (d) The commissioner or a designee of the Department for Community Based Services;
  - (e) The secretary or a designee of the Education and Workforce Development Cabinet;
  - (f) A juvenile court judge;
  - (g) A local school district board of education member;
  - (h) A local school administrator;

- (i) A school council parent representative;
- (j) A teacher;
- (k) A classified school employee; and
- (l) A superintendent of schools who is a member of the Kentucky Association of School Administrators.

In appointing the board of education member, the school administrator, the school superintendent, the school council parent member, the teacher, and the classified employee, the Governor shall solicit recommendations from the following groups respectively: the Kentucky School Boards Association, the Kentucky Association of School Administrators, the Kentucky Association of School Councils, the Kentucky Education Association, and the Kentucky Education Support Personnel Association. The initial board shall be appointed by July 15, 1998. The board shall hold its first meeting no later than thirty (30) days after the appointment of the members.

➔Section 15. KRS 161.548 is amended to read as follows:

A member of the Teachers' Retirement System who is in an active contributing status with the system, and who was formerly employed in a regional community~~[-mental health and mental retardation]~~ service program **for mental health and individuals with an intellectual disability**, organized and operated under the provisions of KRS 210.370 to 210.480, which does not participate in a state-administered retirement system, may obtain credit for the period of his service in the regional community~~[-mental health and mental retardation]~~ program **for mental health and individuals with an intellectual disability** by paying to the Teachers' Retirement System the full actuarial cost of the service credit purchased, as provided in KRS 161.220(22). The service credit purchased may not be used for meeting the service requirements set forth in KRS 161.600(1)(a) or 161.661(1). The payment shall not be picked up, as described in KRS 161.540(2), and the entire payment shall be placed in the teachers' savings fund.

➔Section 16. KRS 189A.050 is amended to read as follows:

- (1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), (d), or (e) shall be sentenced to pay a service fee of three hundred seventy-five dollars (\$375), which shall be in addition to all other penalties authorized by law.
- (2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 relating to the method of imposition and KRS 534.060 as to remedies for nonpayment of the fee.
- (3) The first fifty dollars (\$50) of each service fee imposed by this section shall be paid into the general fund, and the remainder of the revenue collected from the service fee imposed by this section shall be utilized as follows:
  - (a) Twelve percent (12%) of the amount collected shall be transferred to the Department of Kentucky State Police forensic laboratory for the acquisition, maintenance, testing, and calibration of alcohol concentration testing instruments and the training of laboratory personnel to perform these tasks;
  - (b) Twenty percent (20%) of the service fee collected pursuant to this section shall be allocated to the Department for Public Advocacy;
  - (c) One percent (1%) shall be transferred to the Prosecutor's Advisory Council for training of prosecutors for the prosecution of persons charged with violations of this chapter and for obtaining expert witnesses in cases involving the prosecution of persons charged with violations of this chapter or any other offense in which driving under the influence is a factor in the commission of the offense charged;
  - (d) Sixteen percent (16%) of the amount collected shall be transferred as follows:
    - 1. Fifty percent (50%) shall be credited to the traumatic brain injury trust fund established under KRS 211.476; and
    - 2. Fifty percent (50%) shall be credited to the Cabinet for Health and Family Services, Department for **Behavioral Health, Developmental and Intellectual Disabilities**~~[-Mental Health and Mental Retardation Services]~~, for the purposes of providing direct services to individuals with brain injuries that may include long-term supportive services and training and consultation to professionals working with individuals with brain injuries. As funding becomes available under this subparagraph, the cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the services permitted by this subparagraph;
  - (e) Any amount specified by a specific statute shall be transferred as provided in that statute;

- (f) Forty-six percent (46%) of the amount collected shall be transferred to be utilized to fund enforcement of this chapter and for the support of jails, recordkeeping, treatment, and educational programs authorized by this chapter and by the Department for Public Advocacy; and
  - (g) The remainder of the amount collected shall be transferred to the general fund.
- (4) The amounts specified in subsection (3)(a), (b), (c), and (d) of this section shall be placed in trust and agency accounts that shall not lapse.

➔Section 17. KRS 194.210 is amended to read as follows:

When the Kidney Disease Advisory Council, the Family Planning Committee, the Tuberculosis Commission, the Kentucky Advisory Committee on Day Care, the Kentucky Children's Advisory Council, the State Advisory Committee for Public Assistance, the Kentucky Commission on Employment of People with Disabilities, the Advisory Committee to the Kentucky Commission on Employment of People with Disabilities, the Advisory Council on ***Individuals with an Intellectual Disability***~~[Mental Retardation]~~, the Developmental Disabilities Services Act Advisory Council, the Kentucky Commission on Alcoholism and Drug Problems, the Commission on Aging, the Advisory Committee on Aging, the Commission for Children with Special Health Care Needs, the Commission on Children and Youth, the State Board of Health, the Radiation Operators' Advisory Committee, the Advisory Council for Medical Assistance, the Comprehensive Health Planning Council, and the Kentucky Certificate of Need and Licensure Board, as they relate to the functions transferred in whole or in part by 1974 Acts ch. 74, or members thereof are referred to or designated in any law, regulation, contract, or order pertaining to the functions, powers, obligations, and duties vested in the Citizens' Commission for Human Resources, the Institute for Aging, the Institute for Children, the Council for Health Services, the Council for Social Insurance, the Council for Social Services, the Advisory Council for Medical Assistance, the Comprehensive Health Planning Commission, and the Kentucky Certificate of Need and Licensure Board, in accordance with 1974 Acts ch. 74, the references or designations shall be deemed to refer to the Citizens' Commission for Human Resources, the Institute for Aging, the Institute for Children, the Council for Health Services, the Council for Social Insurance, the Council for Social Services, the Advisory Council on Medical Assistance, the Comprehensive Health Planning Council, and the Kentucky Certificate of Need and Licensure Board, or the Cabinet for Human Resources, or the secretary for human resources, as may be appropriate.

➔Section 18. KRS 194.245 is amended to read as follows:

- (1) No later than August 1, 1990, the Cabinet for Human Resources shall begin contracting to construct and operate, or lease and operate the following:
- (a) A one hundred (100) bed inpatient mental health facility in eastern Kentucky;
  - (b) Twelve (12) child-care centers with a minimum of one (1) center in each of the seven (7) Kentucky congressional districts;
  - (c) Four (4) ~~eight (8)~~ bed group homes for ***individuals***~~[persons]~~ with ***an intellectual disability***~~[mental retardation]~~;
  - (d) Two (2) one hundred (100) bed personal care homes; and
  - (e) Twelve (12) senior citizens centers with a minimum of one (1) center in each of the seven (7) Kentucky congressional districts.
- (2) Effective August 1, 2000, the Cabinet for Health and Family Services, as the successor agency to the Cabinet for Human Resources with the responsibility for the operation of child-care centers as identified in subsection (1)(b) of this section, may transfer the ownership of all real property relating to any child-care center, with the approval of the Finance and Administration Cabinet, and all operational and administrative responsibility over any child-care center, and any contract, agreement, or lease that the Cabinet for Health and Family Services has assumed or executed for the operation of any child-care center to the city, county, or urban-county government in which the center is located. Any transfer made under this section shall provide for the continued operation of a center in accordance with the public purpose set forth in subsection (1) of this section.
- (3) Effective August 1, 2000, the Cabinet for Health and Family Services, as the successor agency to the Cabinet for Human Resources with the responsibility for the operation of senior citizens centers as identified in subsection (1)(e) of this section, may transfer the ownership of all real property relating to any senior citizens center, with the approval of the Finance and Administration Cabinet, and all operational and administrative responsibility over any senior citizens center, and any contract, agreement, or lease that the Cabinet for Health and Family Services has assumed or executed for the operation of any senior citizens center, to the city,

county, or urban-county government in which the center is located. Any transfer made under this section shall provide for the continued operation of a center in accordance with the public purpose set forth in subsection (1) of this section.

→Section 19. KRS 194.260 is amended to read as follows:

Any business, litigation, or other matters undertaken or commenced by or against the Kidney Disease Advisory Council, the Family Planning Committee, the Tuberculosis Commission, the Kentucky Manpower Commission, the Kentucky Advisory Committee on Day Care, the Kentucky Children's Advisory Council, the State Advisory Committee for Public Assistance, the Kentucky Commission on Employment of the Handicapped, the Advisory Committee to the Kentucky Commission on Employment of the Handicapped, the Advisory Council on *Individuals with an Intellectual Disability* [~~Mental Retardation~~], the Developmental Disabilities Act Advisory Council, the Kentucky Commission on Alcoholism and Drug Problems, the Commission on Aging, the Advisory Committee on Aging, the Commission on Handicapped Children, the Commission on Children and Youth, the State Board of Health, the Radiation Operators' Advisory Committee, the Advisory Council for Medical Assistance, the Comprehensive Health Planning Council, and the Kentucky Certificate of Need and Licensure Board and still pending on June 21, 1974, shall be completed and conducted by the cabinet.

→Section 20. KRS 194.280 is amended to read as follows:

Except as otherwise provided in 1974 Acts ch. 74, the following departments, boards, commissions, committees, and other statutory bodies and their subcommittees, task forces, advisory committees, bureaus, divisions, offices and other suborganizational units are abolished and terminated in their entirety: the Department of Economic Security, the Department of Health, the Department of Mental Health, the Department of Child Welfare, the Office of Economic Opportunity, the Bureau of Veterans Affairs, the Commission on Aging, the Commission for Handicapped Children, the Commission on Children and Youth, the Office of Youth Affairs, the State Board of Health, the Family Planning Committee, the Kidney Disease Advisory Committee, the Tuberculosis Commission, the Kentucky Manpower Council, the Kentucky Advisory Committee on Day Care, the Kentucky Children's Advisory Council, the State Advisory Committee on Public Assistance, the Kentucky Commission on Employment of the Handicapped, the Advisory Council on *Individuals with an Intellectual Disability* [~~Mental Retardation~~], the Advisory Council on Mental Health, the Developmental Disabilities Services Act Advisory Council, the Kentucky Commission on Alcohol and Drug Problems, the Radiation Operators' Advisory Committee, the Advisory Council for Health Facilities, the Human Resources Coordinating Commission, the Human Resources Coordinating Council, the Health Planning Commission, the Citizens' Commission for Barkley State Boys' Camp, the Citizens' Commission for Woodsbend Boys' Camp, the Citizens' Commission for the State Reception Center at Lyndon.

→Section 21. KRS 194A.030 is amended to read as follows:

The cabinet consists of the following major organizational units, which are hereby created:

- (1) Office of the Secretary. Within the Office of the Secretary, there shall be an Office of Legislative and Public Affairs, an Office of Legal Services, and an Office of Inspector General.
  - (a) The Office of Legislative and Public Affairs shall be responsible for the development and implementation of the major legislative and policy initiatives of the cabinet, and shall include oversight of administrative hearings, legislative affairs, and communications with internal and external audiences of the cabinet. The Office of Legislative and Public Affairs shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.
  - (b) The Office of Legal Services shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of Legal Services shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney, giving legal advice and opinions concerning the operation of all programs in the cabinet. The Office of Legal Services shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor under KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be directly responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general under the provisions of KRS 15.105.
  - (c) The Office of Inspector General shall be responsible for:
    1. The conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted; and the conduct of special investigations requested by the secretary, commissioners, or office heads of the cabinet into matters related to the cabinet or its programs;

2. Licensing and regulatory functions as the secretary may delegate;
3. Review of health facilities participating in transplant programs, as determined by the secretary, for the purpose of determining any violations of KRS 311.1911 to 311.1959, 311.1961, and 311.1963; and
4. The notification and forwarding of any information relevant to possible criminal violations to the appropriate prosecuting authority.

The Office of Inspector General shall be headed by an inspector general who shall be appointed by the secretary with the approval of the Governor. The inspector general shall be directly responsible to the secretary;

- (2) Department for Medicaid Services. The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act. The Department for Medicaid Services shall be headed by a commissioner for Medicaid services, who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for Medicaid services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for Medicaid services shall exercise authority over the Department for Medicaid Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
- (3) Department for Public Health. The Department for Public Health shall develop and operate all programs of the cabinet that provide health services and all programs for assessing the health status of the population for the promotion of health and the prevention of disease, injury, disability, and premature death. This shall include but not be limited to oversight of the Division of Women's Physical and Mental Health. The Department for Public Health shall be headed by a commissioner for public health who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for public health shall be a duly licensed physician who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner shall advise the head of each major organizational unit enumerated in this section on policies, plans, and programs relating to all matters of public health, including any actions necessary to safeguard the health of the citizens of the Commonwealth. The commissioner shall serve as chief medical officer of the Commonwealth. The commissioner for public health shall exercise authority over the Department for Public Health under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
- (4) Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~. The Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~ shall develop and administer programs for the prevention of mental illness, ***intellectual disabilities***~~[mental retardation]~~, brain injury, developmental disabilities, and substance abuse disorders and shall develop and administer an array of services and support for the treatment, habilitation, and rehabilitation of persons who have a mental illness or emotional disability, or who have ***an intellectual disability***~~[mental retardation]~~, brain injury, developmental disability, or a substance abuse disorder. The Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~ shall be headed by a commissioner for ***behavioral health, developmental and intellectual disabilities***~~[mental health and mental retardation]~~ who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for ***behavioral health, developmental and intellectual disabilities***~~[mental health and mental retardation]~~ shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for ***behavioral health, developmental and intellectual disabilities***~~[mental health and mental retardation]~~ shall exercise authority over the department under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
- (5) Commission for Children with Special Health Care Needs. The duties, responsibilities, and authority set out in KRS 200.460 to 200.490 shall be performed by the commission. The commission shall advocate the rights of children with disabilities and, to the extent that funds are available, shall provide the services and facilities for children with disabilities as are deemed appropriate by the commission. The commission shall be composed of seven (7) members appointed by the Governor to serve a term of office of four (4) years. The commission may promulgate administrative regulations under KRS Chapter 13A as may be necessary to implement and administer its responsibilities. The duties, responsibilities, and authority of the Commission for Children with Special Health Care Needs shall be performed through the office of the executive director of the commission. The executive director shall be appointed by the Governor under KRS 12.040, and the commission may at any time recommend the removal of the executive director upon filing with the Governor a full written statement

of its reasons for removal. The executive director shall report directly to the Commission for Children with Special Health Care Needs and serve as the commission's secretary;

- (6) Office of Health Policy. The Office of Health Policy shall lead efforts to coordinate health care policy, including Medicaid, mental health ~~and mental retardation~~ services, *services for individuals with an intellectual disability*, public health, certificate of need, health insurance, and the state employee health insurance program. The duties, responsibilities, and authority pertaining to the certificate of need functions and the licensure appeal functions, as set out in KRS Chapter 216B, shall be performed by this office. The Office of Health Policy shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor pursuant to KRS 12.050;
- (7) Department for Human Support Services. The Department for Human Support Services shall streamline the various responsibilities associated with the human services programs for which the cabinet is responsible. This shall include, but not be limited to, oversight of the Division of Child Abuse and Domestic Violence Services, the Division of Family Resource and Youth Services Centers, and the Kentucky Commission on Community Volunteerism and Services. The Department for Human Support Services shall be headed by a commissioner for human support services who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for human support services shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for human support services shall exercise authority over the department under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
- (8) Office of the Ombudsman. The Office of the Ombudsman shall provide professional support in the evaluation of programs, including but not limited to quality improvement and information analysis and reporting, including contract monitoring, program monitoring, and the development of quality service delivery, and a review and resolution of citizen complaints about programs or services of the cabinet when those complaints are unable to be resolved through normal administrative remedies. The Office of the Ombudsman shall place an emphasis on research and best practice and program accountability and shall monitor federal compliance. The Office of the Ombudsman shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050;
- (9) Office of Technology. The Office of Technology shall develop and maintain technology, technology infrastructure, and information management systems in support of all units of the cabinet. The Office of Technology shall be headed by a chief information officer who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The chief information officer shall exercise authority over the Office of Technology under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
- (10) Office of Human Resource Management. The Office of Human Resource Management shall coordinate, oversee, and execute all personnel, training, and management functions of the cabinet. The office shall focus on the oversight, development, and implementation of quality personnel services; curriculum development and delivery of instruction to staff; the administration, management, and oversight of training operations; health, safety, and compliance training; and equal employment opportunity compliance functions. The office shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;
- (11) Office of Fiscal Services. The Office of Fiscal Services shall coordinate, oversee, and execute the accounting, treasury, and financial reporting functions of the cabinet. The office shall be headed by a chief financial officer appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;
- (12) Office of Contract Oversight. The Office of Contract Oversight shall coordinate, oversee, and execute the contracting and procurement processes of the cabinet and shall maintain these processes in compliance with all applicable laws, rules, regulations, and procedures. The office shall ensure that the cabinet executes its contracting and procurement processes within the highest ethical standards and with the utmost integrity. The office shall oversee existing contracts to assure that the cabinet receives those services for which it has contracted or receives funds in payment for services that it has provided by contract, and shall have responsibility for determining that the cabinet maximizes the value of dollars spent by the cabinet for commodities and services. The office shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;
- (13) Department for Community Based Services. The Department for Community Based Services shall administer and be responsible for child and adult protection, foster care and adoption, permanency, and services to enhance family self-sufficiency, including child care, social services, public assistance, and family and child

support. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;

- (14) Department for Disability Determination Services. The Department for Disability Determination Services shall serve as the state unit as required by Title II and Title XVI of the Social Security Act, and shall have responsibility for determining eligibility for disability for those citizens of the Commonwealth who file applications for disability with the Social Security Administration. The department shall also make determinations for citizens of the Commonwealth who make application for the Kentucky Transitional Assistance Program and determine medical exemptions for participants in the Kentucky Works Program. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;
- (15) Department for Aging and Independent Living. The Department for Aging and Independent Living shall serve as the state unit as designated by the Administration on Aging Services under the Older Americans Act and shall have responsibility for administration of the federal community support services, in-home services, meals, family and caregiver support services, elder rights and legal assistance, senior community services employment program, the state health insurance assistance program, state home and community based services including home care, Alzheimer's respite services and the personal care attendant program, certifications of adult day care and assisted living facilities, the state Council on Alzheimer's Disease and other related disorders, and the Institute on Aging. The department shall also administer the Long-Term Care Ombudsman Program and the Medicaid Home and Community Based Waivers Consumer Directed Option (CDO) Program. The department shall serve as the information and assistance center for aging and disability services and administer multiple federal grants and other state initiatives. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050; and
- (16) The Governor's Office of Wellness and Physical Activity shall be responsible for establishing and implementing a health, wellness, and fitness program for Kentucky and to promote a healthy lifestyle for all citizens of the Commonwealth as defined in KRS 194A.085.

➔Section 22. KRS 194A.135 is amended to read as follows:

- (1) The Kentucky Council on Developmental Disabilities is created within the cabinet.
- (2) The Kentucky Council on Developmental Disabilities is established to comply with the requirements of the Developmental Disabilities Act of 1984 and any subsequent amendment to that act.
- (3) The members of the Kentucky Council on Developmental Disabilities shall be appointed by the Governor to serve as advocates for persons with developmental disabilities. The council shall be composed of twenty-six (26) members.
- (a) Ten (10) members shall be representatives of: the principal state agencies administering funds provided under the Rehabilitation Act of 1973 as amended; the state agency that administers funds provided under the Individuals with Disabilities Education Act (IDEA); the state agency that administers funds provided under the Older Americans Act of 1965 as amended; the single state agency designated by the Governor for administration of Title XIX of the Social Security Act for persons with developmental disabilities; higher education training facilities, each university-affiliated program or satellite center in the Commonwealth; and the protection and advocacy system established under Public Law 101-496. These members shall represent the following:
1. Office of Vocational Rehabilitation;
  2. Office for the Blind;
  3. Division of Exceptional Children, within the Department of Education;
  4. Department for Aging and Independent Living;
  5. Department for Medicaid Services;
  6. Department of Public Advocacy, Protection and Advocacy Division;
  7. University-affiliated programs;
  8. Local and nongovernmental agencies and private nonprofit groups concerned with services for persons with developmental disabilities;

9. Department for ***Behavioral Health, Developmental and Intellectual Disabilities*** [~~Mental Health and Mental Retardation Services~~]; and
10. Department for Public Health, Division of Adult and Child Health Improvement.
- (b) At least sixty percent (60%) of the members of the council shall be composed of persons with developmental disabilities or the parents or guardians of persons, or immediate relatives or guardians of persons with mentally impairing developmental disabilities, who are not managing employees or persons with ownership or controlling interest in any other entity that receives funds or provides services under the Developmental Disabilities Act of 1984 as amended and who are not employees of a state agency that receives funds or provides services under this section. Of these members, five (5) members shall be persons with developmental disabilities, and five (5) members shall be parents or guardians of children with developmental disabilities or immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves. Six (6) members shall be a combination of individuals in these two (2) groups, and at least one (1) of these members shall be an immediate relative or guardian of an institutionalized or previously institutionalized person with a developmental disability or an individual with a developmental disability who resides in an institution or who previously resided in an institution.
- (c) Members not representing principal state agencies shall be appointed for a term of three (3) years. Members shall serve no more than two (2) consecutive three (3) year terms. Members shall serve until their successors are appointed or until they are removed for cause.
- (d) The council shall elect its own chair, adopt bylaws, and operate in accordance with its bylaws. Members of the council who are not state employees shall be reimbursed for necessary and actual expenses. The cabinet shall provide personnel adequate to insure that the council has the capacity to fulfill its responsibilities. The council shall be headed by an executive director. If the executive director position becomes vacant, the council shall be responsible for the recruitment and hiring of a new executive director.
- (4) The Kentucky Council on Developmental Disabilities shall:
- (a) Develop, in consultation with the cabinet, and implement the state plan as required by Part B of the Developmental Disabilities Act of 1984, as amended, with a goal of development of a coordinated consumer and family centered focus and direction, including the specification of priority services required by that plan;
- (b) Monitor, review, and evaluate, not less often than annually, the implementation and effectiveness of the state plan in meeting the plan's objectives;
- (c) To the maximum extent feasible, review and comment on all state plans that relate to persons with developmental disabilities;
- (d) Submit to the secretary of the cabinet, the commissioner of the Department for ***Behavioral Health, Developmental and Intellectual Disabilities*** [~~Mental Health and Mental Retardation Services~~], and the Secretary of the United States Department of Health and Human Services any periodic reports on its activities as required by the United States Department of Health and Human Services and keep records and afford access as the cabinet finds necessary to verify the reports;
- (e) Serve as an advocate for individuals with developmental disabilities and conduct programs, projects, and activities that promote systematic change and capacity building;
- (f) Examine, not less than once every five (5) years, the provision of and need for federal and state priority areas to address, on a statewide and comprehensive basis, urgent needs for services, supports, and other assistance for individuals with developmental disabilities and their families; and
- (g) Prepare, approve, and implement a budget that includes amounts paid to the state under the Developmental Disabilities Act of 1984, as amended, to fund all programs, projects, and activities under that Act.
- (5) The Kentucky Council on Developmental Disabilities shall appoint a subcommittee, which shall include members of the Kentucky Commission on Autism Spectrum Disorders, to monitor the implementation of the state plan as developed by the commission beginning October 1, 2006. The subcommittee shall prepare, and the council shall submit, the report as required under KRS 194A.622 (10).

➔Section 23. KRS 194A.146 is amended to read as follows:

- (1) There is hereby created the "Statewide Strategic Planning Committee for Children in Placement" which is administratively attached to the Department for Community Based Services. The committee shall be composed of the following:
  - (a) Members who shall serve by virtue of their positions: the secretary of the Cabinet for Health and Family Services or the secretary's designee, the commissioner of the Department for Public Health, the commissioner of the Department for ***Behavioral Health, Developmental and Intellectual Disabilities*** [~~Mental Health and Mental Retardation Services~~], the commissioner for the Department for Medicaid Services, the commissioner of the Department for Community Based Services, the commissioner of the Department of Juvenile Justice, the commissioner of the Department of Education, the executive director of the Administrative Office of the Courts, or their designees; and
  - (b) One (1) foster parent selected by the statewide organization for foster parents, one (1) District Judge selected by the Chief Justice of the Kentucky Supreme Court, one (1) parent of a child in placement at the time of appointment to be selected by the secretary of the Cabinet for Health and Family Services, one (1) youth in placement at the time of the appointment to be selected by the secretary of the Cabinet for Health and Family Services, and one (1) private child care provider selected by the statewide organization for private child care providers. These members shall serve a term of two (2) years, and may be reappointed.
- (2) The Statewide Strategic Planning Committee for Children in Placement shall, by July 1, 1999, develop a statewide strategic plan for the coordination and delivery of care and services to children in placement and their families. The plan shall be submitted to the Governor, the Chief Justice of the Supreme Court, and the Legislative Research Commission on or before July 1, 1999, and each July 1 thereafter.
- (3) The strategic plan shall, at a minimum, include:
  - (a) A mission statement;
  - (b) Measurable goals;
  - (c) Principles;
  - (d) Strategies and objectives; and
  - (e) Benchmarks.
- (4) The planning horizon shall be three (3) years. The plan shall be updated on an annual basis. Strategic plan updates shall include data and statistical information comparing plan benchmarks to actual services and care provided.
- (5) The Statewide Strategic Planning Committee for Children in Placement shall, in consultation with the commissioner and the statewide placement coordinator as provided for in KRS 199.801, establish a statewide facilities and services plan that identifies the location of existing facilities and services for children in placement, identifies unmet needs, and develops strategies to meet the needs. The planning horizon shall be five (5) years. The plan shall be updated on an annual basis. The plan shall be used to guide, direct, and, if necessary, restrict the development of new facilities and services, the expansion of existing facilities and services, and the geographic location of placement alternatives.
- (6) The Statewide Strategic Planning Committee for Children in Placement may, through the promulgation of administrative regulations, establish a process that results in the review and approval or denial of the development of new facilities and services, the expansion of existing facilities and services, and the geographic location of any facilities and services for children in placement in accordance with the statewide facilities and services plan. Any process established shall include adequate due process rights for individuals and entities seeking to develop new services, construct new facilities, or expand existing facilities, and shall require the involvement of local communities and other resource providers in those communities.
- (7) As a part of the statewide strategic plan, and in consultation with the Commonwealth Office of Technology, the Statewide Strategic Planning Committee for Children in Placement shall plan for the development or integration of information systems that will allow information to be shared across agencies and entities, so that relevant data will follow a child through the system regardless of the entity or agency that is responsible for the child. The data produced shall be used to establish and monitor the benchmarks required by subsection (3) of this section. The data system shall, at a minimum, produce the following information on a monthly basis:
  - (a) Number of placements per child;

- (b) Reasons for placement disruptions;
  - (c) Length of time between removal and establishment of permanency;
  - (d) Reabuse or reoffense rates;
  - (e) Fatality rates;
  - (f) Injury and hospitalization rates;
  - (g) Health care provision rates;
  - (h) Educational achievement rates;
  - (i) Multiple placement rates;
  - (j) Sibling placement rates;
  - (k) Ethnicity matching rates;
  - (l) Family maintenance and preservation rate; and
  - (m) Adoption disruption rates.
- (8) The Statewide Strategic Planning Committee for Children in Placement shall publish an annual report no later than December 1 of each year that includes, but is not limited to, the information outlined in subsection (7) of this section.

➔Section 24. KRS 194A.622 is amended to read as follows:

- (1) There is hereby created the Kentucky Commission on Autism Spectrum Disorders, which shall consist of the following twenty-two (22) members who shall be initially appointed by July 1, 2005:
- (a) The secretary of the Cabinet for Health and Family Services or his or her designee;
  - (b) The commissioner of the Department for Medicaid Services or his or her designee;
  - (c) The director of the Kentucky Early Intervention System, Department for Public Health, or his or her designee;
  - (d) The commissioner of the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~ or his or her designee;
  - (e) The commissioner of the Department for Aging and Independent Living or his or her designee;
  - (f) The chair of the Council on Postsecondary Education or his or her designee;
  - (g) The director of the Division of Exceptional Children Services or his or her designee;
  - (h) The commissioner of the Department of Vocational Rehabilitation or his or her designee;
  - (i) The commissioner of the Department of Insurance or his or her designee;
  - (j) Two (2) nonvoting ex officio members from the House of Representatives, one (1) representing the majority party and one (1) representing the minority party, who shall be appointed by and serve at the pleasure of the Speaker of the House;
  - (k) Two (2) nonvoting ex officio members from the Senate, one (1) representing the majority party and one (1) representing the minority party, who shall be appointed by and serve at the pleasure of the President of the Senate;
  - (l) Four (4) professional ASD treatment providers, including at least one (1) mental health provider, one (1) physical health provider, and one (1) complex needs consultant from a special education cooperative, to be appointed by the Governor; and
  - (m) Five (5) parents, including three (3) who, at the time of their appointment to the commission, have a child with an ASD who is under eighteen (18) years of age and two (2) who, at the time of their appointment to the commission, have a child with an ASD who is eighteen (18) years of age or older, to be appointed by the Governor.
- (2) In making appointments to the commission, the Governor shall ensure broad representation of Kentucky's citizens who are concerned with the health and quality of life of individuals with an ASD, may appoint

individuals who are also members of the Kentucky Council on Developmental Disabilities, and shall consider candidates recommended by the Autism Spectrum Disorders Advisory Consortium of Kentucky.

- (3) Members shall serve without compensation but shall be reimbursed for their actual expenses incurred in the performance of commission duties in accordance with KRS 45.101 and administrative regulations promulgated thereunder. Members of the commission shall serve until the commission ceases to exist, a successor has been appointed, or until removed for good cause.
- (4) The Cabinet for Health and Family Services shall provide staff and administrative support for the commission.
- (5) The chair of the commission shall be designated by the Governor and may be a member in addition to those listed in subsection (1) of this section. The chair of the commission shall establish procedures for the commission's internal procedures.
- (6) The commission shall meet at least three (3) times per year. The commission shall also meet as often as necessary to accomplish its purpose upon the call of the chair, the request of four (4) or more members, or the request of the Governor.
- (7) The commission shall develop a comprehensive state plan for creating an integrated system of training, treatments, and services for individuals of all ages with an ASD. The commission shall utilize relevant data and research and consult with appropriate professionals, agencies, institutions, and organizations representing the private and public sectors, including the Kentucky Autism Training Center, to develop the state plan. The state plan shall include the following:
  - (a) An assessment of the diverse needs for services and supports for individuals with an ASD;
  - (b) Identification of state, federal, private, and any other appropriate funding sources;
  - (c) Development of a comprehensive training plan, which shall include the Kentucky Autism Training Center, to meet training needs;
  - (d) An analysis of standards for provider training and qualifications, best practice standards for services, and the need for additional service providers;
  - (e) An evaluation of health benefit plans and insurance coverage for the treatment of ASD;
  - (f) A plan for the identification of individuals of all ages with an ASD and for the creation of a statewide ASD registry;
  - (g) An analysis of program and service eligibility criteria;
  - (h) An assessment of the need for coordinated, enhanced, and targeted special education and treatment programs for children with an ASD; and
  - (i) A timeline for implementing and monitoring the recommendations of the plan statewide. The timeline shall include input from the following:
    1. The Cabinet for Health and Family Services;
    2. The Department for Medicaid Services;
    3. The Department for Public Health;
    4. The Department for ***Behavioral Health, Developmental and Intellectual Disabilities*** [~~Mental Health and Mental Retardation Services~~];
    5. The Kentucky Early Intervention System;
    6. The Division of Exceptional Children Services;
    7. The Department of Vocational Rehabilitation;
    8. The Department of Insurance;
    9. The Department of Education;
    10. The Council on Postsecondary Education; and
    11. Other appropriate agencies, professionals, institutions, and organizations representing the public and private sectors, including the Kentucky Autism Training Center.

- (8) Based upon the comprehensive state plan for an integrated system of training, treatment, and services for individuals of all ages with an ASD, the commission shall make recommendations regarding legislation, administrative regulations, and policies to the Governor and the General Assembly on the following:
- (a) Needs for services and supports for individuals who have an ASD;
  - (b) Funding needs and sources, including state, federal, private, and any other appropriate funding sources;
  - (c) Training needs and a plan to implement a comprehensive training system, which shall include the Kentucky Autism Training Center;
  - (d) Standards for provider training and qualifications, best practice standards for services, and the need for additional providers;
  - (e) Goals for developing health benefit plans that provide insurance coverage for the treatment of ASD;
  - (f) A plan for the identification of individuals of all ages with an ASD and for the creation of a statewide ASD registry;
  - (g) Consistent program and service eligibility criteria;
  - (h) The need for coordinated, enhanced, and targeted special education and treatment programs for individuals with an ASD; and
  - (i) Strategies and timelines for establishing an accountable, cost-efficient, and cooperative system of services that integrates and builds upon existing public and private agencies, programs, and resources.
- (9) The commission shall submit the comprehensive state plan and recommendations to the Governor, the Kentucky Council on Developmental Disabilities, and the Legislative Research Commission by October 1, 2006, at which time the commission shall cease to exist unless reauthorized by the General Assembly.
- (10) The Kentucky Council on Developmental Disabilities shall appoint a subcommittee, which shall include members of the commission, to monitor the implementation of the state plan as developed by the commission beginning October 1, 2006. The subcommittee shall prepare, and the council shall submit, a report to the Governor and Legislative Research Commission that assesses progress in the implementation of the state plan and that makes recommendations on the need for modifications to the state plan as developed by the Kentucky Commission on Autism Spectrum Disorders. The subcommittee shall prepare, and the council shall submit, the report as it deems appropriate, but no less than biennially, until October 1, 2015.

➔Section 25. KRS 196.610 is amended to read as follows:

The Interstate Corrections Compact is hereby enacted into law and entered into by this state with any other states legally joining therein in the form substantially as follows:

## INTERSTATE CORRECTIONS COMPACT

### ARTICLE I

#### Purpose and Policy

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditure and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

### ARTICLE II

#### Definitions

As used in this compact, unless the context clearly requires otherwise:

- (a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.
- (b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or **individuals with an intellectual disability** ~~(mentally retarded)~~, in which inmates as defined in (d) above may lawfully be confined.

### ARTICLE III

#### Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.
2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.
3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.
4. Delivery and retaking of inmates.
5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

### ARTICLE IV

#### Procedures and Rights

(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any

inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

#### ARTICLE V

##### Acts Not Reviewable in Receiving State: Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

#### ARTICLE VI

##### Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provisions, provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

#### ARTICLE VII

##### Entry Into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into the law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

## ARTICLE VIII

## Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

## ARTICLE IX

## Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangements which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

## ARTICLE X

## Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

➔Section 26. KRS 197.010 is amended to read as follows:

Definitions as used in this chapter, unless the context otherwise requires:

- (1) "Cabinet" means the Justice and Public Safety Cabinet;
- (2) "Classification" means the systematic assignment of a prisoner to a custody level, program, and penitentiary;
- (3) "Department" means Department of Corrections;
- (4) "Eligible sexual offender" means a sexual offender for whom the sentencing court, department officials, or both have determined that he or she:
  - (a) Has demonstrated evidence of a mental, emotional, or behavioral disorder, but not active psychosis or *an intellectual disability*~~(mental retardation)~~; and
  - (b) Is likely to benefit from the program;
- (5) "Penitentiaries" includes the state penal institutions for males at Eddyville, LaGrange, the Green River Correctional Complex, the Luther Luckett Correctional Complex, the Kentucky Correctional Institute for Women, the Northpoint Training Center, the Roederer Correctional Complex, the Eastern Kentucky Correctional Complex, the Western Kentucky Correctional Complex, Frankfort Career Development Center, Blackburn Correctional Complex, and Bell County Forestry Camp, together with the branches thereof, any private prison as provided by KRS 197.500, and any other similar institutions hereafter established;
- (6) "Sexual offender" means any person convicted of, pleading guilty to, or entering an Alford plea to a sex crime as defined in KRS 17.500; and
- (7) "State agency" means any department, board, commission, or agency of the state government.

➔Section 27. KRS 197.045 is amended to read as follows:

- (1) Any person convicted and sentenced to a state penal institution:
  - (a) Shall receive a credit on his or her sentence for:
    1. Prior confinement as specified in KRS 532.120;

2. Successfully receiving a general equivalency diploma or a high school diploma, a two (2) or four (4) year college degree, a two (2) year or four (4) year certification in applied sciences, a technical education diploma as provided and defined by the department, or a civics education program that requires passing a final exam, in the amount of ninety (90) days per diploma, degree, or certification received; and
  3. Successfully completing a drug treatment program or other program as defined by the department that requires participation for a minimum of six (6) months, in the amount of ninety (90) days for each program completed; and
- (b) May receive a credit on his or her sentence for:
1. Good behavior in an amount not exceeding ten (10) days for each month served, to be determined by the department from the conduct of the prisoner;
  2. Performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs, awarded at the discretion of the commissioner in an amount not to exceed seven (7) days per month; and
  3. Acts of exceptional service during times of emergency, awarded at the discretion of the commissioner in an amount not to exceed seven (7) days per month.
- (2) Except for a sentencing credit awarded for prior confinement, the department may forfeit any sentencing credit awarded under subsection (1) of this section previously earned by the prisoner or deny the prisoner the right to earn future sentencing credit in any amount if during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.
- (3) When two (2) or more consecutive sentences are to be served, the several sentences shall be merged and served in the aggregate for the purposes of the sentencing credit computation or in computing dates of expiration of sentence.
- (4) Until successful completion of the sex offender treatment program, an eligible sexual offender may earn sentencing credit. However, the sentencing credit shall not be credited to the eligible sexual offender's sentence. Upon the successful completion of the sex offender treatment program, as determined by the program director, the offender shall be eligible for all sentencing credit earned but not otherwise forfeited under administrative regulations promulgated by the Department of Corrections. After successful completion of the sex offender treatment program, an eligible sexual offender may continue to earn sentencing credit in the manner provided by administrative regulations promulgated by the Department of Corrections. Any eligible sexual offender, as defined in KRS 197.410, who has not successfully completed the sex offender treatment program as determined by the program director shall not be entitled to the benefit of any credit on his or her sentence. A sexual offender who does not complete the sex offender treatment program for any reason shall serve his or her entire sentence without benefit of sentencing credit, parole, or other form of early release. The provisions of this section shall not apply to any sexual offender convicted before July 15, 1998, or to any ~~mentally retarded~~ sexual offender **with an intellectual disability**.
- (5) (a) The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of sentencing credit and the ability to earn sentencing credit in the future for those inmates who have civil actions dismissed because the court found the action to be malicious, harassing, or factually frivolous.
- (b) Penalties set by administrative regulation pursuant to this subsection shall be as uniform as practicable throughout all institutions operated by, under contract to, or under the control of the department and shall specify a specific number of days or months of sentencing credit forfeited as well as any prohibition imposed on the future earning of sentencing credit.

➔Section 28. KRS 197.410 is amended to read as follows:

- (1) A person is considered to be a "sexual offender" as used in this chapter when he or she has been adjudicated guilty of a sex crime, as defined in KRS 17.500, or any similar offense in another jurisdiction.
- (2) A sexual offender becomes an "eligible sexual offender" when the sentencing court or department officials, or both, determine that the offender:
  - (a) Has demonstrated evidence of a mental, emotional, or behavioral disorder, but not active psychosis or **an intellectual disability** ~~mental retardation~~; and
  - (b) Is likely to benefit from the program.

- (3) "Department" is the Department of Corrections.

➔Section 29. KRS 200.505 is amended to read as follows:

There is hereby created a State Interagency Council for Services to Children with an Emotional Disability. The chairman of the council shall be designated by the Governor and shall establish procedures for the council's internal procedures.

- (1) This council shall be composed of the following:
- (a) Members who shall serve by virtue of their positions: the commissioner of the Department of Education, the commissioner of the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~, the commissioner of the Department for Community Based Services, the commissioner of the Department for Public Health, the commissioner of the Department for Medicaid Services, the commissioner of the Department of Juvenile Justice, the director of the Division of Family Resource and Youth Services Centers, and the general manager of the Division of Juvenile Services of the Administrative Offices of the Courts, or their designees; and
  - (b) The Governor shall appoint one (1) parent of a child with an emotional disability, who is a consumer of state-funded services for children with an emotional disability to serve as a member of the council, and one (1) parent who meets the same criteria to serve as the parent member's alternate to serve in the absence of the parent member. For each appointment to be made, the State Family Advisory Council shall submit to the Governor a list of two (2) names of parents who are qualified for appointment from which list the Governor shall make the appointment. Appointees shall serve a term of four (4) years. If the child of the parent member or alternate parent member ceases to be a consumer of state-funded services for children with an emotional disability during the term of appointment, the member shall be eligible to serve out the remainder of the term of appointment. The alternate parent member may attend and participate in all council meetings but shall vote only in the absence of the parent member. The parent member and alternate parent member shall receive no compensation in addition to that which they may already receive as service providers or state employees, but the parent member and alternate parent member shall be reimbursed for expenses incurred through the performance of their duties as council members.
- (2) The State Interagency Council for Services to Children with an Emotional Disability shall:
- (a) Consider issues and make recommendations annually to the Governor and the Legislative Research Commission regarding the provision of services for children with an emotional disability;
  - (b) Direct each regional interagency council to coordinate services to children with an emotional disability and identify factors contributing to a lack of coordination;
  - (c) Develop a form to be signed by the parent or other legal guardian of a child referred for services to any interagency council for children with an emotional disability. The form shall enable the agencies involved with the child to share information about the child as necessary to identify and provide services for the child;
  - (d) Review service and treatment plans for children for whom reviews are requested, and provide any advice and assistance that the state council determines to be necessary to meet the needs of children with an emotional disability referred by regional councils;
  - (e) Assess the effectiveness of regional councils in meeting the service needs of children with an emotional disability;
  - (f) Establish a uniform grievance procedure for the state, to be implemented by each regional interagency council. Appeals may be initiated by the child, parent, guardian, person exercising custodial control or supervision, or other authorized representative about matters relating to the interagency service plan for the child or the denial of services by the regional interagency council. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B;
  - (g) Meet at least monthly and maintain records of meetings, except that records that identify individual children shall only be disclosed as provided by law;
  - (h) Adopt interagency agreements as necessary for coordinating services to children with an emotional disability by the agencies represented in the state council;

- (i) Develop services to meet the needs of children with an emotional disability; and
  - (j) Promote services to prevent the emotional disability of a child.
- (3) The State Interagency Council for Services to Children with an Emotional Disability may promulgate administrative regulations necessary to comply with the requirements of KRS 200.501 to 200.509.

➔Section 30. KRS 200.658 is amended to read as follows:

- (1) There is hereby created the Kentucky Early Intervention System Interagency Coordinating Council to be comprised of twenty-five (25) members to be appointed by the Governor to serve a term of three (3) years. The members of the council shall be geographically and culturally representative of the population of the Commonwealth and conform to the requirements of federal law and regulations. For administrative purposes, the council shall be attached to the Early Childhood Development Authority. Pursuant to federal law and regulations, the membership shall be as follows:
- (a) At least five (5) members shall be the parents, including minority parents, of a child with a disability who is twelve (12) years of age or less, with at least one (1) being the parent of a child six (6) years of age or less. Each parent shall have knowledge of or experience with programs for infants and toddlers with disabilities;
  - (b) At least five (5) members shall be public or private providers of early intervention services to infants and toddlers with disabilities;
  - (c) At least one (1) member shall be a member of the Kentucky General Assembly;
  - (d) At least one (1) member shall be representative of an entity responsible for personnel preparation and may include personnel from an institution of higher education or preservice training organization;
  - (e) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Public Health;
  - (f) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Medicaid Services;
  - (g) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for **Behavioral Health, Developmental and Intellectual Disabilities** [~~Mental Health and Mental Retardation Services~~];
  - (h) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Community Based Services;
  - (i) At least one (1) member shall be the commissioner or designee of the Department of Education;
  - (j) At least one (1) member shall be the commissioner or designee of the Department of Insurance;
  - (k) At least one (1) member shall be a representative of the Commission for Children with Special Health Care Needs;
  - (l) At least one (1) member shall be a representative for the Head Start program; and
  - (m) At least one (1) member shall be a representative of the Education of Homeless Children and Youth program.
- (2) In matters concerning the Kentucky Early Intervention System, the council shall advise and assist the cabinet in areas, including but not limited to the following:
- (a) Development and implementation of the statewide system and the administrative regulations promulgated pursuant to KRS 200.650 to 200.676;
  - (b) Achieving the full participation, coordination, and cooperation of all appropriate entities in the state, including, but not limited to, individuals, departments, and agencies, through the promotion of interagency agreements;
  - (c) Establishing a process to seek information from service providers, service coordinators, parents, and others concerning the identification of service delivery problems and the resolution of those problems;
  - (d) Resolution of disputes, to the extent deemed appropriate by the cabinet;
  - (e) Provision of appropriate services for children from birth to three (3) years of age;

- (f) Identifying sources of fiscal and other support services for early intervention programs;
  - (g) Preparing applications to Part C of the Federal Individuals with Disabilities Education Act (IDEA) and any amendments to the applications;
  - (h) Transitioning of infants and toddlers with disabilities and their families from the early intervention system to appropriate services provided under Part B of the Federal Individuals with Disabilities Education Act (IDEA) operated by the state Department of Education; and
  - (i) Developing performance measures to assess the outcomes for children receiving services.
- (3) The council shall prepare no later than December 30 of each year an annual report on the progress toward and any barriers to full implementation of the Kentucky Early Intervention System for infants and toddlers with disabilities and their families. The report shall include recommendations concerning the Kentucky Early Intervention System, including recommendations of ways to improve quality and cost effectiveness, and shall be submitted to the Governor, Legislative Research Commission, and the Secretary of the United States Department of Education.
- (4) No member of the council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of the existence of a conflict of interest.

➔Section 31. KRS 200.662 is amended to read as follows:

The cabinet shall establish one (1) district early intervention committee in each of the fifteen (15) area development districts. Each committee shall have from fifteen (15) to twenty-five (25) members of whom at least five (5) shall be parents, at least five (5) shall be early intervention service providers, and at least one (1) shall be a representative from each of the following: the local health department, the local office of the Department for Community Based Services, the local community ~~{mental health and mental retardation}~~ center **for mental health and individuals with an intellectual disability**, and the local Commission for Handicapped Children. Each committee may include representatives from one (1) or more of the following: a child day-care facility, a public school, a provider of medical services, a provider of therapy services, a home health agency if operated separately from the local health department, a university or college, a family resource center, a local business, a local charity, or others deemed appropriate. Each committee shall:

- (1) Advise and assist the cabinet and the council in the development, implementation, and monitoring of the Kentucky Early Intervention System;
- (2) Identify local resources available to infants and toddlers with disabilities and their families;
- (3) Assist in identifying the unmet needs of infants and toddlers with disabilities and their families;
- (4) Assist in establishing and maintaining a point of entry to the early intervention system; and
- (5) Assist in the establishment of local interagency agreements for early intervention services and provide a forum for coordinating district early intervention services.

➔Section 32. KRS 202A.011 is amended to read as follows:

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

- (1) "Authorized staff physician" means a physician who is a bona fide member of the hospital's medical staff;
- (2) "Danger" or "threat of danger to self, family, or others" means substantial physical harm or threat of substantial physical harm upon self, family, or others, including actions which deprive self, family, or others of the basic means of survival including provision for reasonable shelter, food, or clothing;
- (3) "Cabinet" means the Kentucky Cabinet for Health and Family Services;
- (4) "Psychiatric facility" means a crisis stabilization unit or any facility licensed by the cabinet and which provides inpatient, outpatient, psychosocial rehabilitation, emergency, and consultation and education services for the diagnosis and treatment of persons who have a mental illness;
- (5) "Forensic psychiatric facility" means a mental institution or facility, or part thereof, designated by the secretary for the purpose and function of providing inpatient evaluation, care, and treatment for mentally ill ~~{or mentally retarded}~~ persons **or individuals with an intellectual disability**, who have been charged with or convicted of a felony;
- (6) "Hospital" means:

- (a) A state mental hospital or institution or other licensed public or private hospital, institution, health-care facility, or part thereof, approved by the Kentucky Cabinet for Health and Family Services as equipped to provide full-time residential care and treatment for mentally ill ~~or mentally retarded persons~~ **or individuals with an intellectual disability**;
- (b) A hospital, institution, or health-care facility of the government of the United States equipped to provide residential care and treatment for mentally ill ~~or mentally retarded~~ persons **or individuals with an intellectual disability**;
- (7) "Judge" means any judge or justice of the Court of Justice or a trial commissioner of the District Court acting under authority of SCR 5.030;
- (8) "Least restrictive alternative mode of treatment" means that treatment which will give a mentally ill individual a realistic opportunity to improve the individual's level of functioning, consistent with accepted professional practice in the least confining setting available;
- (9) "Mentally ill person" means a person with substantially impaired capacity to use self-control, judgment, or discretion in the conduct of the person's affairs and social relations, associated with maladaptive behavior or recognized emotional symptoms where impaired capacity, maladaptive behavior, or emotional symptoms can be related to physiological, psychological, or social factors;
- (10) "Patient" means a person under observation, care, or treatment in a hospital pursuant to the provisions of this chapter;
- (11) "Petitioner" means a person who institutes a proceeding under this chapter;
- (12) "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, 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 is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community ~~mental health and mental retardation~~ program **for mental health and individuals with an intellectual disability**;
  - (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 private agency or company engaged in the provision of mental health services or a regional community ~~mental health and mental retardation~~ program **for mental health and individuals with an intellectual disability**;
  - (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 facility licensed by the Commonwealth, a psychiatric unit of a general hospital, a private agency or company engaged in providing mental health services, or a regional community ~~mental health and mental retardation~~ program **for mental health and individuals with an intellectual disability**; or
  - (g) A professional counselor credentialed under the provisions of KRS Chapter 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, a private agency or company engaged in providing mental health services, or a

regional community ~~mental health and mental retardation~~ program **for mental health and individuals with an intellectual disability**;

- (13) "Residence" means legal residence as determined by applicable principles governing conflicts of law;
- (14) "Respondent" means a person alleged in a hearing under this chapter to be a mentally ill ~~or mentally retarded~~ person **or an individual with an intellectual disability**;
- (15) "Secretary" means the secretary of the Cabinet for Health and Family Services.

➔Section 33. KRS 202A.028 is amended to read as follows:

- (1) Following an examination by a qualified mental health professional and a certification by that professional that the person meets the criteria for involuntary hospitalization, a judge may order the person hospitalized for a period not to exceed seventy-two (72) hours, excluding weekends and holidays. For the purposes of this section, the qualified mental health professional shall be a staff member of a regional community ~~mental health or mental retardation~~ program **for mental health or individuals with an intellectual disability**, unless the person to be examined is hospitalized and under the care of a licensed psychiatrist, in which case the qualified mental health professional shall be the psychiatrist if the psychiatrist is ordered, subject to the court's discretion, to perform the required examination.
- (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, excluding weekends and holidays, unless further held under the applicable provisions of this chapter.
- (3) Any person admitted to a hospital under subsection (1) of this section or transferred to a hospital while ordered hospitalized under subsection (1) of this section shall be transported from the person's home county by the sheriff of that county or other peace officer as ordered by the court. 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 person 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 paid by the cabinet in accordance with an administrative regulation promulgated by the cabinet, pursuant to KRS Chapter 13A.
- (4) Any person released from the hospital under subsection (2) of this section shall be transported to the person's county of discharge by a sheriff or other peace officer, by an ambulance service designated by the cabinet, or by other appropriate means of transportation which is consistent with the treatment plan of that person. The transportation cost of transporting the patient to the patient's county of discharge when performed by a peace officer, ambulance service, or other private agency on contract with the cabinet shall be paid by the cabinet in accordance with an administrative regulation issued by the cabinet pursuant to KRS Chapter 13A.
- (5) No person who has been held under subsection (1) of this section shall be held in jail pending evaluation and transportation to the hospital.

➔Section 34. KRS 202A.202 is amended to read as follows:

- (1) The cabinet may transfer mentally ill ~~or mentally retarded~~ patients **or patients with an intellectual disability** between hospitals, between hospitals and forensic psychiatric facilities, between hospitals and ~~mental retardation~~ residential treatment centers **for individuals with an intellectual disability**, between ~~mental retardation~~ residential treatment centers **for individuals with an intellectual disability**, and between ~~mental retardation~~ residential treatment centers **for individuals with an intellectual disability** and forensic psychiatric facilities. A transfer shall be made upon the mutual agreement of the administrative officer, the officer's designated representative or an authorized staff physician of each facility, if the agreement is based upon one (1) of the following findings by the officers, representatives or physicians:
- (a) That the transfer will improve the opportunities of the patient to receive care and treatment most likely to be of benefit to the patient;
- (b) That the transfer will permit the patient to receive care and treatment in the least restrictive alternative mode of treatment, considering the degree of danger or threat of danger to self or others which the patient presents; or
- (c) That the transfer is part of an individual treatment plan which has been reviewed and approved by a court.

- (2) The patient or his guardian or designated family member prior to transfer, shall receive notice of said proposed transfer and shall be allowed to challenge the transfer as part of his individual treatment plan under the provisions of KRS 202A.191, 202A.196, and KRS 210.270.
- (3) In an emergency situation where the patient presents a danger of serious injury or death to self or others within the institution so as to require immediate transfer to a more secure facility and which condition cannot be treated or resolved within a reasonable period of time in the present facility, the secretary may immediately transfer the patient to a more secure facility while the appeal provisions described in subsection (2) of this section are being carried out. In this event counsel shall be provided to the patient within three (3) days.

➔Section 35. KRS 202A.271 is amended to read as follows:

Each public or private hospital, other than a state-operated or contracted mental hospital or institution, which provides services under KRS 202A.008, 202A.011, 202A.028, 202A.041, 202A.051, 202A.071, 202A.081, 202A.101, 202A.141, 202A.241, 202A.251, 202A.261, 202A.271, 202B.170, 202B.200, 387.540, 504.085, 600.020, 645.020, 645.120, and 645.280 shall be paid for the services at the same rates the hospital negotiates with the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~ or the regional community~~[mental health and mental retardation]~~ program ***for mental health and for individuals with an intellectual disability***.

➔Section 36. KRS 202B.010 is amended to read as follows:

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

- (1) "Authorized staff physician" means a person who is employed as a physician of an ICF/~~ID~~~~MR~~;
- (2) "Interdisciplinary team" means the group of persons responsible for the diagnosis, evaluation, and individualized program planning and service implementation for the resident. The team is composed of a physician, a psychologist, a registered nurse, a social worker, and other professionals, at least one (1) of whom is a qualified~~[mental retardation]~~ professional ***in the area of intellectual disabilities***, and may include the resident, the resident's family, or the guardian;
- (3) "Cabinet" means the Kentucky Cabinet for Health and Family Services;
- (4) "Danger" or "threat of danger to self, family, or others" means substantial physical harm or threat of substantial physical harm upon self, family, or others, including actions which deprive self, family, or others of the basic means of survival including provision for reasonable shelter, food, or clothing;
- (5) "Forensic psychiatric facility" means a mental institution or facility, or part thereof, designated by the secretary for the purpose and function of providing inpatient evaluation, care, and treatment for mentally ill~~or mentally retarded~~ persons ***or individuals with an intellectual disability*** who have been charged with or convicted of a felony;
- (6) "Hospital" means:
  - (a) A state mental hospital or institution or other licensed public or private hospital, institution, health-care facility, or part thereof, approved by the Kentucky Cabinet for Health and Family Services as equipped to provide full-time residential care and treatment for mentally ill~~or mentally retarded~~ persons ***or individuals with an intellectual disability***;
  - (b) A hospital, institution, or health-care facility of the government of the United States equipped to provide residential care and treatment for mentally ill~~or mentally retarded~~ persons ***or individuals with an intellectual disability***;
- (7) "Judge" means any judge or justice of the Court of Justice or a trial commissioner of the District Court acting under authority of SCR 5.030;
- (8) "Least restrictive alternative mode of treatment" means that treatment given in the least confining setting which will provide ***an individual with an intellectual disability***~~[a mentally retarded person]~~ appropriate treatment or care consistent with accepted professional practice. For purposes of this section, least restrictive alternative mode of treatment may include an institutional placement;
- (9) "***Individual with an intellectual disability***~~[Mentally retarded person]~~" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period;

- (10) "ICF/~~ID[MR]~~" means an intermediate-care facility approved by the cabinet for the evaluation, care, and treatment of **individuals with an intellectual disability**~~[mentally-retarded persons]~~;
- (11) "Petitioner" means a person who institutes a proceeding under this chapter;
- (12) "Qualified~~[mental-retardation]~~ professional **in the area of intellectual disabilities**" 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 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;
  - (c) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience of which one (1) year is with **individuals with an intellectual disability**~~[mentally-retarded persons]~~; or a licensed registered nurse, with a bachelor's degree in nursing from an accredited institution, who has three (3) years of inpatient or outpatient clinical experience of which one (1) year is in the field of **individuals with an intellectual disability**~~[mental-retardation]~~ and is currently employed by an ICF/~~ID[MR]~~ licensed by the cabinet, a hospital, a regional community~~[mental health and mental-retardation]~~ program **for mental health or individuals with an intellectual disability**, or a private agency or company engaged in the provision of~~[mental-retardation]~~ services **to individuals with an intellectual disability**;
  - (d) 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 two (2) years of inpatient or outpatient clinical experience in social work of which one (1) year shall be in the field of **individuals with an intellectual disability**~~[mental-retardation]~~ and is currently employed by an ICF/~~ID[MR]~~ licensed by the cabinet, a hospital, a regional community~~[mental health and mental-retardation]~~ program **for mental health or individuals with an intellectual disability**, or a private agency or company engaged in the provision of~~[mental-retardation]~~ services **to individuals with an intellectual disability**;
  - (e) 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 facility licensed by the Commonwealth, a psychiatric unit of a general hospital, a private agency or company engaged in providing mental health services, or a regional community~~[mental health and mental-retardation]~~ program **for mental health or individuals with an intellectual disability**; or
  - (f) 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, a private agency or company engaged in providing mental health services, or a regional community~~[mental health and mental-retardation]~~ program **for mental health or individuals with an intellectual disability**;
- (13) "Residence" means legal residence as determined by applicable principles governing conflicts of law;
- (14) "Resident" means a person under care or treatment in an ICF/~~ID[MR]~~ pursuant to the provisions of this chapter;
- (15) "Respondent" means a person alleged in a hearing under this chapter to be **an individual with an intellectual disability**~~[a mentally-retarded person]~~; and
- (16) "Secretary" shall mean the secretary of the Cabinet for Health and Family Services.

➔Section 37. KRS 202B.018 is amended to read as follows:

All proceedings for the involuntary admission of **individuals with an intellectual disability**~~[mentally-retarded persons]~~ shall be initiated in the District Court of the county where the person to be treated resides or in which the person may be at the time of the filing of a petition.

➔Section 38. KRS 202B.021 is amended to read as follows:

- (1) **Minors**~~[Mentally-retarded minors]~~ and adult persons **with an intellectual disability** may be voluntarily admitted for care and treatment in an ICF/~~ID[MR]~~ under the applicable provisions of this section.

- (2) Upon the recommendation or approval of the interdisciplinary team of an ICF/~~ID[MR]~~, a physician may admit for care and treatment a ~~mentally retarded~~ minor **with an intellectual disability** upon application of a parent or guardian. Upon recommendation or approval of the interdisciplinary team of an ICF/~~ID[MR]~~, the physician may also admit an individual with **an intellectual disability**~~[mental retardation]~~ who applies voluntarily therefor and who, in the opinion of the physician, possesses the mental capacity to give informed consent for admission.
- (3) Upon recommendation or approval of the interdisciplinary team of an ICF/~~ID[MR]~~, the physician shall discharge any voluntarily admitted resident whose care and treatment in the ICF/~~ID[MR]~~ is determined to be no longer necessary or advisable.
- (4) If an adult resident who has been admitted voluntarily requests his or her release in writing, or if the release of a minor resident is requested in writing by the minor's parent or guardian, the resident shall be released unless further detained under the applicable provisions of this chapter.

➔Section 39. KRS 202B.025 is amended to read as follows:

- (1) An authorized staff physician may order the admission of any person who is present at, or is presented at, an ICF/~~ID[MR]~~. Within twenty-four (24) hours, excluding weekends and holidays, of the admission under this section, the authorized staff physician ordering the admission of the person shall certify in the record of the individual that in the opinion of the physician, the individual should be involuntarily admitted.
- (2) Any person who has been admitted to an ICF/~~ID[MR]~~ under subsection (1) of this section shall be released from the ICF/~~ID[MR]~~ within seventy-two (72) hours, excluding weekends and holidays, unless further detained under the applicable provisions of this chapter.

➔Section 40. KRS 202B.030 is amended to read as follows:

When ~~mentally retarded~~ individuals **with an intellectual disability** are involuntarily hospitalized under this chapter, the cabinet may place them in an ICF/~~ID[MR]~~. No **individual with an intellectual disability**~~[mentally retarded person]~~ may be involuntarily placed in a hospital without the consent of the secretary, except when the determination of concurrent mental illness is made under the provisions of KRS Chapter 202A. No **individual with an intellectual disability**~~[mentally retarded person]~~ may be involuntarily admitted to a hospital or ICF/~~ID[MR]~~ when the cabinet determines that appropriate programs and space are not available.

➔Section 41. KRS 202B.040 is amended to read as follows:

When a person who is alleged to be **an individual with an intellectual disability**~~[mentally retarded]~~ is involuntarily admitted, there shall be a determination that:

- (1) The person is **an individual with an intellectual disability**~~[a mentally retarded person]~~;
- (2) The person presents a danger or a threat of danger to self, family, or others;
- (3) The least restrictive alternative mode of treatment presently available requires placement in an ICF/~~ID[MR]~~; and
- (4) Treatment that can reasonably benefit the person is available in an ICF/~~ID[MR]~~.

➔Section 42. KRS 202B.050 is amended to read as follows:

All rights guaranteed by KRS Chapter 210 to mentally ill persons shall apply to **individuals with an intellectual disability**~~[mentally retarded persons]~~.

➔Section 43. KRS 202B.060 is amended to read as follows:

The secretary shall adopt administrative regulations for the proper administration and enforcement of this chapter. The regulations shall include, but shall not be limited to:

- (1) Rights of ~~mentally retarded~~ residents **with an intellectual disability** and their families to be adequately informed as to the individual treatment program of the resident;
- (2) Rights of residents and their families to assist in the planning of the treatment program of the resident;
- (3) Rights of residents and their families under certain conditions to refuse treatment offered to the resident by the hospital or ICF/~~ID[MR]~~;
- (4) Rights of residents to maintain, keep, and use personal possessions and money;
- (5) Rights of residents to meet with friends and relatives;

- (6) Rights of residents to receive payment for work performed on behalf of the hospital or ICF/~~ID~~~~MR~~;
- (7) Rights of residents to refuse intrusive treatments, including electroshock or psychosurgery;
- (8) Rights of residents to seek relief from participating in their treatment plans;
- (9) Rights of residents who are minors to seek relief from actions, approved by their parents or guardians, for or against admission and discharge;
- (10) The use of seclusion and other mechanical restraints in hospitals and ICF/~~ID~~~~MR~~'s;
- (11) The release of residents to less restrictive alternative modes of treatment on convalescent status; and
- (12) Provisions for alternative methods for involuntary admission.

➔Section 44. KRS 202B.070 is amended to read as follows:

- (1) Persons carrying out duties or rendering professional opinions as provided in this chapter shall be free of personal liability for such actions provided that such activities are performed in good faith within the scope of their official duties and in a manner consistent with accepted professional practices.
- (2)
  - (a) The person responsible for the implementation of the individual care plan shall ensure that each individual that has direct-care responsibility for a resident admitted to an ICF/~~ID~~~~MR~~ shall be informed of the specific care needs of the resident, including but not limited to the need for supervision.
  - (b) After admittance, the facility administrator shall ensure that each individual that has direct-care responsibility for a resident admitted to an ICF/~~ID~~~~MR~~ shall be informed of the specific care needs of the resident, including but not limited to the need for supervision upon any change in the resident's care plan.
- (3) Notwithstanding subsection (1) of this section, an individual who has direct-care responsibility for a resident of an ICF/~~ID~~~~MR~~ and who intentionally fails to provide supervision of the resident as specified in the resident's care plan and thereby creates a risk of imminent harm or death to the resident shall be subject to immediate dismissal from employment.

➔Section 45. KRS 202B.080 is amended to read as follows:

This chapter may be cited as the "Kentucky ~~Mental Retardation~~ Admission Act *for Individuals with an Intellectual Disability*".

➔Section 46. KRS 202B.100 is amended to read as follows:

- (1) Proceedings for involuntary admission of a person to an ICF/~~ID~~~~MR~~ 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 qualified ~~mental retardation~~ professional *in the area of intellectual disabilities*, peace officer, county attorney, Commonwealth's attorney, spouse, relative, friend, or guardian of the person 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 such person is unknown;
  - (f) Documentation by the petitioner that the respondent has *an intellectual disability*~~mental retardation~~ that shall include the findings of a psychological examination or assessment completed in a reasonable time prior to the filing of the petition that documents a Full Scale IQ in the moderate to severe range of *an intellectual disability*~~mental retardation~~. If the court finds that a more current psychological examination or assessment is necessary, the court shall order such examination; and

- (g) Petitioner's belief, including the factual basis therefor, that the respondent presents a danger or threat of danger to self, family, or others if not admitted to an ICF/~~ID~~[MR].
- (5) Upon receipt of the petition, the court shall examine the petitioner under oath as to the contents of the petition. If the petitioner is a qualified~~[-mental-retardation]~~ professional **in the area of intellectual disabilities**, the court may dispense with the examination.
- (6) 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 involuntarily admitted, the court shall:
- (a) Set a date for a preliminary hearing;
  - (b) Notify the respondent, the respondent's legal guardian, if any, and if known, and the respondent's spouse, parents, or nearest relative or friend concerning the allegations and contents of the petition and the date and purpose of the preliminary hearing; and the name, address, and telephone number of the attorney appointed to represent the respondent; and
  - (c) Cause the respondent to be examined without unnecessary delay by two (2) professionals, one (1) of whom is a qualified~~[-mental-retardation]~~ professional **in the area of intellectual disabilities** and one (1) of whom is a licensed psychiatrist, psychologist, or physician with special training and experience in serving individuals with **an intellectual disability**~~[-mental-retardation]~~. One (1) of the professionals shall be from the community, and one (1) shall be an employee of a state operated ICF/~~ID~~[MR] facility. The qualified~~[-mental-retardation]~~ professional **in the area of intellectual disabilities** shall certify his or her findings within twenty-four (24) hours, excluding weekends and holidays.
- (7) (a) If the respondent is presently residing in an ICF/~~ID~~[MR] under the provisions of this chapter, the court may allow continued further residence therein for the respondent to accomplish the examination ordered by the court.
- (b) If the respondent is not currently residing in an ICF/~~ID~~[MR] under the provisions of this chapter, the court may order the respondent, the respondent's guardian, or any person or entity exercising custodial control of the respondent to submit the respondent to an examination, without unnecessary delay, by two (2) professionals, one (1) of whom is a qualified~~[-mental-retardation]~~ professional **in the area of intellectual disabilities** and one (1) of whom is a licensed psychiatrist, psychologist, or physician with special training and experience in serving individuals with **an intellectual disability**~~[-mental-retardation]~~. One (1) of the professionals shall be from the community, and one (1) shall be an employee of a state-operated ICF/~~ID~~[MR] facility.
- (8) If, upon completion of the preliminary hearing, the court finds there is probable cause to believe the respondent should be involuntarily admitted, the court shall order a final hearing to determine if the respondent should be involuntarily admitted.
- (9) If the court finds there is no probable cause, the proceedings against the respondent shall be dismissed, and the respondent shall be released from the ICF/~~ID~~[MR].
- (10) If, upon completion of the final hearing, the court finds the respondent should be involuntarily admitted, the court shall order the respondent admitted in an ICF/~~ID~~[MR] for an indeterminate period. The order shall also specify the period within which the initial review pursuant to KRS 202B.250.

➔Section 47. KRS 202B.120 is amended to read as follows:

- (1) The certificate referred to in this chapter shall be in the form prescribed by the cabinet. The certificate shall state that the respondent has been examined by each of the qualified~~[-mental-retardation]~~ professionals **in the area of intellectual disabilities** making the certificate within twenty-four (24) hours, excluding weekends and holidays, prior to the date of the certificate. It shall state the facts and circumstances upon which the judgment of the examining physician is based and shall be sworn to before a notary or the clerk or judge of the court.
- (2) The examiner shall be entitled to a fee for the examination and certification, to be paid by the county in which the petition is filed, upon a certified copy of an order of allowance made by the court holding the hearing.

➔Section 48. KRS 202B.130 is amended to read as follows:

In any proceeding for involuntary admission under the applicable provisions of this chapter, if the criteria for involuntary admission are not certified by at least two (2) professionals as specified in KRS 202B.100(6)(c), the court shall, without taking any further action, terminate the proceedings and order the release of the person. The qualified{

~~mental retardation~~ professional *in the area of intellectual disabilities* shall certify to the court, within twenty-four (24) hours of the examination, excluding weekends and holidays, his or her findings and opinions as to whether the person shall be involuntarily admitted.

➔Section 49. KRS 202B.140 is amended to read as follows:

A qualified ~~mental retardation~~ professional *in the area of intellectual disabilities* retained by the respondent, or the respondent's parent or guardian, at the expense of the parent or guardian, shall be permitted to witness and participate in any examination of the respondent and may submit findings, if any, to the court.

➔Section 50. KRS 202B.160 is amended to read as follows:

- (1) The preliminary hearing need not be formal and shall include the receiving of *reports of the qualified professional in the area of intellectual disabilities* ~~mental retardation professionals' reports~~ as evidence. The hearing may be held by the court in chambers, at an ICF/~~ID~~~~MR~~, or other suitable place. The respondent shall be afforded an opportunity to testify, to present witnesses, and to cross-examine any witnesses. The respondent and the attorney for the respondent may waive respondent's right to a preliminary hearing.
- (2) The final hearing may be conducted in an informal manner, consistent with orderly procedures, and in a physical setting not likely to have a harmful effect on the mental or physical health of the respondent. The hearing may be held by the court in chambers, at an ICF/~~ID~~~~MR~~, or other suitable place. The respondent shall be afforded an opportunity to testify, to present, and cross-examine any witnesses. The manner of proceeding and the rules of evidence shall be the same as those in any criminal proceeding, except that the standard of proof shall be by clear and convincing evidence. Proceedings shall be heard by a judge unless a party requests a jury trial. Neither the respondent nor the respondent's attorney may waive the respondent's right to a final hearing.
- (3) Guardians and immediate family members of the respondent shall be allowed to attend all hearings, conferences or similar proceedings; may be represented by private counsel, if desired; may participate in the hearings or conferences as if a party to the proceedings; may cross-examine witnesses if desired; and shall have standing to appeal any adverse decision.

➔Section 51. KRS 202B.170 is amended to read as follows:

- (1) Following the preliminary hearing but prior to the completion of the final hearing, the court may order the respondent to reside in his or her current residence, an emergency placement designated by the regional ~~mental health and mental retardation~~ program *for mental health and individuals with an intellectual disability*, or an ICF/~~ID~~~~MR~~ approved by the secretary for that purpose for the committing judicial district in a community program approved by the secretary or in a hospital. The respondent may be released, upon application and agreement of the parties, for the purpose of community-based outpatient treatment.
- (2) A physician of an ICF/~~ID~~~~MR~~ or a hospital shall discharge a respondent residing therein and notify the court and attorneys of record, if the interdisciplinary team of the ICF/~~ID~~~~MR~~ or an authorized staff physician of the hospital determines that the respondent no longer meets the criteria for involuntary admission.
- (3) If a respondent is discharged by the ICF/~~ID~~~~MR~~ or hospital pursuant to subsection (2) of this section, the proceedings against the respondent shall be dismissed.

➔Section 52. KRS 202B.180 is amended to read as follows:

- (1) The court records of a respondent made in all proceedings pursuant to this chapter shall be confidential and shall not be open to the general public for inspection except when the disclosure is provided in KRS 202B.190.
- (2) Following the discharge of a respondent from an ICF/~~ID~~~~MR~~ or hospital or the issuance of a court order denying a petition for admission, a respondent may at any time move to have all court records pertaining to the proceedings expunged from the files of the court. The county attorney shall be given notice of any motion and shall have five (5) days in which to respond to same or request a hearing thereon.
- (3) Any person seeking information contained in the court files or the court records of proceedings involving persons under this chapter may file a written motion in the appropriate court setting out why the information is needed. A District Judge may issue an order to disclose the information sought if the judge finds the order is appropriate under the circumstances and if the judge finds it is in the best interest of the person or of the public to have the information disclosed.

➔Section 53. KRS 202B.190 is amended to read as follows:

In proceedings under this chapter, there shall be no privilege as to any relevant communications between qualified ~~mental-retardation~~ professionals *in the area of intellectual disabilities* and patients. Qualified ~~mental-retardation~~ professionals *in the area of intellectual disabilities* may disclose communications relating to diagnosis and treatment of the patient's mental condition.

➔Section 54. KRS 202B.200 is amended to read as follows:

- (1) The court which orders any person to an ICF/~~ID~~~~MR~~ under the provisions of this chapter, shall at once notify the cabinet that the order has been made, advising of the sex and condition of the person.
- (2) The ICF/~~ID~~~~MR~~ may refuse to receive any person who has been ordered to be involuntarily admitted by a court order if appropriate programs and space are not available or the papers presented with the person at the ICF/~~ID~~~~MR~~ do not comply with the provisions of this chapter or if it does not receive notification of the order of involuntary admission as required by this chapter.
- (3) After the cabinet has been so notified, the court may order the sheriff of the county to transport the person from the county in which the person is located to the ICF/~~ID~~~~MR~~ designated by the cabinet. The actual traveling expenses of persons transporting the person to the institution shall be paid by the cabinet. Each female admitted to an ICF/~~ID~~~~MR~~ shall be accompanied by a female attendant, unless accompanied by her mother, father, sister, brother, husband, daughter, or son.
- (4) In returning any person to the county from which that person is sent, the cost of returning the person shall be paid in the same manner, when necessary.
- (5) If a person is involuntarily admitted by a court order, the person shall be transported to the ICF/~~ID~~~~MR~~ designated by the cabinet and accompanied by the following documents:
  - (a) A copy of the petition for involuntary admission;
  - (b) The certificate of qualified ~~mental-retardation~~ professionals *in the area of intellectual disabilities*;
  - (c) A current physical examination that documents no serious medical issues;
  - (d) The psychological examination or assessment that documents a Full Scale IQ in the moderate to severe range of *intellectual disability*~~mental-retardation~~; and
  - (e) The order of involuntary admission.

➔Section 55. KRS 202B.240 is amended to read as follows:

- (1) Every resident admitted under the provisions of this chapter shall have an annual review conducted by an interdisciplinary team of the ICF/~~ID~~~~MR~~ to determine the appropriateness of and the necessity for care and treatment provided the resident in the ICF/~~ID~~~~MR~~. On or before the anniversary date of an involuntary admission order entered for a resident pursuant to KRS 202B.190, and every year thereafter for as long as the resident resides in the ICF/~~ID~~~~MR~~, the ICF/~~ID~~~~MR~~ shall file with the admitting court an interdisciplinary evaluation report on behalf of the resident whose continued placement in the ICF/~~ID~~~~MR~~ is required. The report shall detail the social, psychological, medical, and other considerations requiring continued placement of the resident in the ICF/~~ID~~~~MR~~, a description of the treatment or habilitation programs which will benefit the resident as a result of such placement, and a statement that the criteria for involuntary admission set forth in KRS 202B.040 are satisfied. The interdisciplinary report shall list the name and address of the guardian or limited guardian or, if none, an immediate family member of the resident.
- (2) The physician shall discharge a resident whose admission is pursuant to court order when it is determined by the interdisciplinary team that the resident no longer meets the criteria for involuntary admission as provided in KRS 202B.040. When a resident is discharged, the ICF/~~ID~~~~MR~~ shall send notice of the discharge to the court.

➔Section 56. KRS 202B.245 is amended to read as follows:

- (1) Every ICF/~~ID~~~~MR~~ approved under the provisions of this chapter shall have a review committee of three (3) qualified ~~mental-retardation~~ professionals *in the area of intellectual disabilities* appointed by the facility director. This review committee shall have the authority to review the appropriateness of a resident's individual treatment plan.
- (2) Upon the refusal of an involuntary resident to participate in any aspect of the resident's treatment plan, the review committee shall examine the appropriateness of the resident's individual treatment plan. Within three

(3) days of the refusal, the review committee shall meet with the resident and the resident's counsel or other representative to discuss their recommendations.

- (3) If the resident still refuses to participate in any aspect of the resident's individual treatment plan, the ICF/~~ID[MR]~~ may petition the District Court for a de novo determination of the appropriateness of the proposed treatment. Within seven (7) days, the court shall conduct a hearing, consistent with the resident's rights to due process of law, and shall utilize the following factors in reaching its determination:
- (a) Whether the treatment is necessary to protect other residents or the resident himself from harm;
  - (b) Whether the resident is incapable of giving informed consent to the proposed treatment;
  - (c) Whether any less restrictive alternative treatment exists; and
  - (d) Whether the proposed treatment carries any significant risk of permanent side effects.
- (4) Upon completion of the hearing, the court shall enter an appropriate judgment. The proposed treatment shall be authorized if supported by clear and convincing evidence. If the court denies the ICF/~~ID[MR]~~ the right to administer the treatment in question, the ICF/~~ID[MR]~~ may discharge the resident, unless an interdisciplinary team of the ICF/~~ID[MR]~~ determines that an alternative treatment is available and acceptable to both the interdisciplinary team and the resident and would benefit the resident.

➔Section 57. KRS 202B.250 is amended to read as follows:

- (1) No less than once in every five (5) years following the initial order for involuntary admission of a resident to an ICF/~~ID[MR]~~, or an order authorizing continued care and treatment following review pursuant to this section, the court shall hold a hearing to review the status of the resident and necessity for continued care and treatment in the ICF/~~ID[MR]~~. Notice at least twenty (20) days in advance of the hearing shall be provided by the court to the ICF/~~ID[MR]~~, county attorney, guardian or limited guardian of the resident, if any, or, if none, an immediate family member as listed on the last interdisciplinary report filed by the ICF/~~ID[MR]~~. The court shall appoint an attorney to represent the resident at the review hearing.
- (2) The review hearing may be informal and held in open court, in chambers, or at the ICF/~~ID[MR]~~. The hearing shall be held without a jury and the resident shall be entitled to present documentary evidence and witnesses and cross-examine witnesses against the resident.
- (3) At the conclusion of the review hearing, the court shall make written findings of fact concerning whether the criteria for involuntary admission set forth in KRS 202B.040 continue to be satisfied based upon clear and convincing evidence. If the court finds that the involuntary admission criteria continue to be satisfied, the court shall enter an order authorizing the continued care and treatment of the resident at the ICF/~~ID[MR]~~ and shall establish the period within which the next review shall be held. Otherwise, the court shall enter an order requiring the resident to be discharged from the ICF/~~ID[MR]~~.
- (4) If at any point during the resident's placement at an ICF/~~ID[MR]~~ it appears that the resident no longer meets the criteria for involuntary admission set forth in KRS 202B.040, the resident, the resident's parent, guardian or limited guardian, immediate family member, or attorney may request a review pursuant to this section.

➔Section 58. KRS 202B.270 is amended to read as follows:

- (1) A physician may release a resident on convalescent leave status when the interdisciplinary team concludes that the resident would not present a danger or a threat of danger to self, family, or others if provided with continued medical supervision in a less restrictive alternative mode of treatment. Release on convalescent leave status does not terminate a court admission order and shall include provisions for the development of a treatment plan jointly by the ICF/~~ID[MR]~~ and by a provider of outpatient care for follow-up care by the provider and for the continual monitoring of that resident's condition by the provider.
- (2) The ICF/~~ID[MR]~~ from which the resident is given convalescent leave status may at any time readmit the resident without additional court proceedings. If there is reason to believe that it is in the best interest of the resident to be readmitted, the secretary or an authorized staff physician of the ICF/~~ID[MR]~~ may issue an order for the immediate readmission of the resident. The order, if not voluntarily complied with, shall, upon the endorsement by a judge of any court of the county in which the resident resides or is present, authorize any peace officer to take the resident into custody and transport the person to the responsible ICF/~~ID[MR]~~. Notice of readmission under this section shall be given to the originating court as soon as practicable and simultaneously with the order directing the readmission if possible.

- (3) Release on convalescent leave status shall not apply to persons held under admission orders arising out of KRS Chapter 504 unless consent of the appropriate court is obtained.

➔Section 59. KRS 202B.280 is amended to read as follows:

If a resident undergoing involuntary treatment on an inpatient basis is absent from the ICF/~~ID[MR]~~ without or in excess of authorization from the ICF/~~ID[MR]~~ staff, the person in charge or that person's designee may notify the appropriate sheriff or other peace officers who shall take the resident into custody and return the resident to the ICF/~~ID[MR]~~.

➔Section 60. KRS 202B.290 is amended to read as follows:

Upon recommendation or approval of the interdisciplinary team of an ICF/~~ID[MR]~~, a physician may admit for respite care *an individual with an intellectual disability*~~[a mentally retarded person]~~. Respite care provided to any *individual with an intellectual disability*~~[mentally retarded person]~~ under this section shall not exceed a total of thirty (30) days in any calendar year.

➔Section 61. KRS 202B.300 is amended to read as follows:

- (1) Legal residents of the state who have become public charges in other states and have been returned to Kentucky because they have been involuntarily admitted may be immediately admitted to an ICF/~~ID[MR]~~ at the request of the secretary or the secretary's designated representative.
- (2) Within seventy-two (72) hours, excluding weekends and holidays, of the admission date, the staff of the ICF/~~ID[MR]~~ shall determine the need of the person for further admission. If two (2) qualified~~[mental retardation]~~ professionals *in the area of intellectual disabilities*, at least one (1) of whom is a physician, conclude that the person shall be involuntarily admitted, they shall file in the appropriate court a certification requesting involuntary admission procedures be initiated under the provisions of this chapter, unless the person has agreed to remain voluntarily and possesses the mental capacity to give informed consent for voluntary admission.

➔Section 62. KRS 205.470 is amended to read as follows:

- (1) As used in this section, "aging caregiver" means an individual age sixty (60) or older who provides care for an individual with an intellectual disability or other developmental disability.
- (2) If state, federal, or other funds are available, the Kentucky Department for *Behavioral Health, Developmental and Intellectual Disabilities*~~[Mental Health and Mental Retardation Services]~~ shall, in cooperation with the Department for Aging and Independent Living and the Department for Medicaid Services, establish a centralized resource and referral center designed as a one-stop, seamless system to provide aging caregivers with information and assistance with choices and planning for long-term supports for individuals with an intellectual disability or developmental disability.
- (3) The center created in subsection (2) of this section shall provide but not be limited to the following services:
  - (a) Comprehensive information on available programs and services, including but not limited to:
    1. Residential services;
    2. Employment training;
    3. Supported employment;
    4. Behavioral support;
    5. Respite services;
    6. Adult day health or adult day social services;
    7. Support coordination;
    8. Home or environmental modifications;
    9. Community living services, including an attendant, and assistance with homemaking, shopping, and personal care;
    10. Support groups in the community;
    11. Psychiatric services;
    12. Consumer-directed options;

13. Attorneys or legal services to assist with will preparation; and
  14. The impact of inheritance on government benefits and options, including establishing a special needs trust;
- (b) Printed material and Internet-based information related to:
1. Options for future planning;
  2. Financial and estate planning;
  3. Wills and trusts; and
  4. Advance directives and funeral and burial arrangements; and
- (c) Referral to community resources.
- (4) The center created in subsection (2) of this section shall operate a toll-free number at least during regular business hours and shall publish information required in paragraph (a) of subsection (3) of this section and a description of services provided by the center on a cabinet Web site.
  - (5) The center created in subsection (2) of this section shall make the information listed in subsection (3) of this section available to the support broker and any representative of an individual who is participating in a Medicaid consumer-directed option.
  - (6) The center shall use electronic information technology to track services provided and to follow-up with individuals served and provide additional information or referrals as needed.
  - (7) The department may contract with a private entity to provide the services required under subsections (2) and (3) of this section.
  - (8) The cabinet may provide services identified in subsection (3) of this section to individuals of any age who are caregivers of individuals with *an intellectual*~~[mental retardation]~~ or developmental disability.
  - (9) Prior to January 1, 2008, the department shall submit a report to the Interim Joint Committee on Health and Welfare that includes but is not limited to the following information:
    - (a) The number of individuals who contacted the center;
    - (b) A description of the categories of questions asked by individuals calling the center; and
    - (c) A summary of the services provided, including the community resources to which individuals were referred.

➔Section 63. KRS 205.590 is amended to read as follows:

- (1) The following technical advisory committees shall be established for the purpose of acting in an advisory capacity to the council with respect to the administration of the medical assistance program and in performing the function of peer review:
  - (a) A Technical Advisory Committee on Physician Services consisting of five (5) physicians appointed by the council of the Kentucky State Medical Association;
  - (b) A Technical Advisory Committee on Hospital Care consisting of five (5) hospital administrators appointed by the board of trustees of the Kentucky Hospital Association;
  - (c) A Technical Advisory Committee on Dental Care consisting of five (5) dentists appointed by the Kentucky Dental Association;
  - (d) A Technical Advisory Committee on Nursing Service consisting of five (5) nurses appointed by the board of directors of the Kentucky State Association of Registered Nurses;
  - (e) A Technical Advisory Committee on Drugs consisting of five (5) pharmacists appointed by the Kentucky Pharmacists Association;
  - (f) A Technical Advisory Committee on Nursing Home Care consisting of six (6) members of which five (5) members shall be appointed by the Kentucky Association of Health Care Facilities, and one (1) member shall be appointed by the Kentucky Association of Nonprofit Homes and Services for the Aging, Inc.;

- (g) A Technical Advisory Committee on Optometric Care consisting of five (5) members appointed by the Kentucky Optometric Association;
  - (h) A Technical Advisory Committee on Podiatric Care consisting of five (5) podiatrists appointed by the Kentucky Podiatry Association;
  - (i) A Technical Advisory Committee on Primary Care consisting of five (5) primary care providers, two (2) of whom shall represent licensed health maintenance organizations, appointed by the Governor, until such time as an association of primary care providers is established, whereafter the association shall appoint the members;
  - (j) A Technical Advisory Committee on Home Health Care consisting of five (5) members appointed by the board of directors of the Kentucky Home Health Association;
  - (k) A Technical Advisory Committee on Consumer Rights and Client Needs consisting of five (5) members, with one (1) member to be appointed by each of the following organizations: the Kentucky Combined Committee on Aging, the Kentucky Legal Services Corporation, the *Arc of Kentucky* ~~Association for Retarded Citizens~~, the Department of Public Advocacy, and the National Association of Social Workers-Kentucky Chapter;
  - (l) A Technical Advisory Committee on Behavioral Health consisting of six (6) members, with one (1) member to be appointed by each of the following organizations: the Kentucky Mental Health Coalition, the Kentucky Association of Regional ~~Mental Health and Mental Retardation~~ Programs, the National Alliance on Mental Illness (NAMI) Kentucky, a statewide mental health consumer organization, the People Advocating Recovery (PAR), and the Kentucky Brain Injury Alliance;
  - (m) A Technical Advisory Committee on Children's Health consisting of ten (10) members, with one (1) member to be appointed by each of the following organizations: the Kentucky Chapter of the American Academy of Pediatrics, the Kentucky PTA, the Kentucky Psychological Association, the Kentucky School Nurses Association, the Kentucky Association for Early Childhood Education, the Family Resource and Youth Services Coalition of Kentucky, the Kentucky Youth Advocates, the Kentucky Association of Hospice and Palliative Care, a parent of a child enrolled in Medicaid or the Kentucky Children's Health Insurance Program appointed by the Kentucky Head Start Association, and a pediatric dentist appointed by the Kentucky Dental Association;
  - (n) A Technical Advisory Committee on Intellectual and Developmental Disabilities consisting of nine (9) members, one (1) of whom shall be a consumer who participates in a nonresidential community Medicaid waiver program, one (1) of whom shall be a consumer who participates in a residential community Medicaid waiver program, one (1) of whom shall be a consumer representative of a family member who participates in a community Medicaid waiver program, and one (1) of whom shall be a consumer representative of a family member who resides in an ICF/~~ID~~~~MR~~ facility that accepts Medicaid payments, all of whom shall be appointed by the Governor; one (1) member shall be appointed by the Arc of Kentucky; one (1) member shall be appointed by the Kentucky Council on Developmental Disabilities; one (1) member shall be appointed by the Kentucky Association of Homes and Services for the Aging; and two (2) members shall be appointed by the Kentucky Association of Private Providers, one (1) of whom shall be a nonprofit provider and one (1) of whom shall be a for-profit provider; and
  - (o) A Technical Advisory Committee on Therapy Services consisting of six (6) members, two (2) of whom shall be occupational therapists and shall be appointed by the Kentucky Occupational Therapists Association, two (2) of whom shall be physical therapists and shall be appointed by the Kentucky Physical Therapy Association, and two (2) of whom shall be speech therapists and shall be appointed by the Kentucky Speech-Language-Hearing Association.
- (2) The members of the technical advisory committees shall serve until their successors are appointed and qualified.
  - (3) Each appointive member of a committee shall serve without compensation but shall be entitled to reimbursement for actual and necessary expenses in carrying out his duties with reimbursement for expenses being made in accordance with state regulations relating to travel reimbursement.
- ➔Section 64. KRS 205.6317 is amended to read as follows:
- (1) As used in this section:

- (a) "Supports for Community Living Waiver Program" means funding from the Department for Medicaid Services to serve individuals with an intellectual disability or other developmental disabilities who qualify for intermediate care and choose to live in a community-based setting and includes funding for a self-determination model, as recommended by the Commission on Services and Supports for Individuals with an Intellectual Disability and Other Developmental Disabilities under KRS 210.577(2), that provides the ability for the individual receiving services and supports to personally control, with appropriate assistance, a targeted amount of dollars; and
  - (b) "Slots" means the dedication of provider or financial resources for services to persons with *an intellectual disability*~~{mental retardation}~~ or other developmental disabilities.
- (2) The Department for Medicaid Services shall develop and implement flexible reimbursement and payment strategies that reflect the individually determined needs for services and supports by persons with an intellectual disability and other developmental disabilities participating in the Supports for Community Living Waiver Program.
  - (3) The Department for Medicaid Services shall allocate slots to the fourteen (14) community mental health regions based on percentage of total population.
  - (4) The Department for Medicaid Services shall reallocate underutilized slots to address statewide needs and shall reallocate slots in emergency situations to address unmet needs for services and supports.
  - (5) The Department for Medicaid Services shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the requirements of this section.
  - (6) Funds for the Supports for Community Living Waiver Program shall be appropriated only for direct services to qualified individuals and any unexpended funds shall not lapse but shall be carried forward to the next fiscal year and shall be used for the same purpose.

➔Section 65. KRS 205.6336 is amended to read as follows:

- (1) The secretary of the Finance and Administration Cabinet, after consultation with the secretary for the Cabinet for Health and Family Services, shall on a quarterly basis, certify to the Interim Committee on Appropriations and Revenue the general fund savings realized from the procedures required by KRS 205.6310 to 205.6332 and any other procedures adopted by the Cabinet for Health and Family Services to control the cost of health care.
- (2) The certification shall indicate the following:
  - (a) The means by which savings were achieved, including a description of the discrete procedure used to achieve the savings; and
  - (b) The amount saved as a result of the specific procedure, including an explanation as to the calculations and assumptions used in determining the amount.
- (3) The amount certified by the secretary under this section shall be transferred to a trust account to be utilized by the secretary of the Cabinet for Health and Family Services to provide health-care coverage for additional categories of citizens, but the funds in the trust account shall not be spent until appropriated by the General Assembly. The funds in the trust account shall not lapse. The secretary shall give priority in utilizing any appropriated trust account funds to matching available federal funds in the Medicaid program.
- (4) Savings in the general fund appropriation for the Medicaid program shall be determined as follows:
  - (a) To the extent that the average cost per month per eligible actually experienced by the Medicaid program is less than the average cost per month per eligible reflected in the enacted budget, the savings attributable to that difference shall be deemed to be eligible for certification under this section.
  - (b) To the extent that the number of eligibles actually participating in the Medicaid program is less than the number reflected in the enacted budget, the savings attributable to that difference shall be deemed not eligible for certification under this section.
- (5) Savings in the general fund appropriation to the Department for *Behavioral Health, Developmental and Intellectual Disabilities*~~{Mental Health and Mental Retardation Services}~~ shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.

- (6) Savings in the general fund appropriation to the Department for Public Health shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.
- (7) Savings in the general fund appropriation to the Department for Community Based Services shall be determined by certifying the amount of Medicaid payments received by the department and the entities it funds that would not have been received under the eligibility requirements for the Medicaid program in effect for the 1993-1994 fiscal year.
- (8) Only those savings that can be certified as being recurring shall be transferred to the trust fund.
- ➔Section 66. KRS 209.005 is amended to read as follows:
- (1) The Cabinet for Health and Family Services shall create an Elder Abuse Committee to develop a model protocol on elder abuse and neglect in the Commonwealth, that shall be comprised of various agency representatives that include but are not limited to:
- (a) The Department for Community Based Services;
  - (b) The Department for Public Health;
  - (c) The Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~(Mental Health and Mental Retardation)~~;
  - (d) The Department for Aging and Independent Living;
  - (e) The Division of Health Care Facilities and Services;
  - (f) The Office of the Ombudsman;
  - (g) Area Agencies on Aging;
  - (h) Local and state law enforcement official; and
  - (i) Prosecutors.
- (2) The committee shall address issues of prevention, intervention, investigation, and agency coordination of services on a state and local level through interaction with local groups or entities that either directly or indirectly provide services to the elder population, including but not limited to:
- (a) Senior citizen centers;
  - (b) Local governmental human service groups;
  - (c) The Sanders-Brown Center on Aging at the University of Kentucky;
  - (d) Long-Term Care Ombudsmen; and
  - (e) Other organizations or associations dedicated to serving elder citizens and their families in the Commonwealth.
- (3) The committee shall:
- (a) Recommend a model protocol for the joint multidisciplinary investigation of reports of suspected abuse, neglect, or exploitation of the elderly;
  - (b) Recommend practices to assure timely reporting of referrals of abuse, neglect, or exploitation required under KRS 209.030(12);
  - (c) Explore the need for a comprehensive statewide resource directory of services for the elderly;
  - (d) Enhance existing public awareness campaigns for elder abuse and neglect; and
  - (e) Provide forums for the exchange of information to educate the elder population and their families on the rights of elders.
- (4) The committee shall produce an annual report of their activities, products, and recommendations for public policy to the Governor and the Legislative Research Commission.

➔Section 67. KRS 210.005 is amended to read as follows:

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

- (1) "**Individual with an intellectual disability**~~[Mentally-retarded person]~~" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.
- (2) "Mental illness" means a diagnostic term that covers many clinical categories, typically including behavioral or psychological symptoms, or both, along with impairment of personal and social function, and specifically defined and clinically interpreted through reference to criteria contained in the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) and any subsequent revision thereto, of the American Psychiatric Association.
- (3) "Chronic" means that clinically significant symptoms of mental illness have persisted in the individual for a continuous period of at least two (2) years, or that the individual has been hospitalized for mental illness more than once in the last two (2) years, and that the individual is presently significantly impaired in his ability to function socially or occupationally, or both.
- (4) "Cabinet" means the Cabinet for Health and Family Services.
- (5) "Deaf or hard-of-hearing" means having a hearing impairment so that a person cannot hear and understand speech clearly through the ear alone, irrespective of the use of any hearing aid device.
- (6) "Secretary" means the secretary of the Cabinet for Health and Family Services.

➔Section 68. KRS 210.031 is amended to read as follows:

- (1) The cabinet shall establish an advisory committee of sixteen (16) members to advise the Department for **Behavioral Health, Developmental and Intellectual Disabilities**~~[Mental Health and Mental Retardation Services]~~ of the need for particular services for persons who are deaf or hard-of-hearing.
  - (a) At least eight (8) members shall be deaf or hard-of-hearing and shall be appointed by the secretary. Four (4) deaf or hard-of-hearing members, representing one (1) of each of the following organizations, shall be appointed from a list of at least two (2) nominees submitted from each of the following organizations:
    1. The Kentucky Association of the Deaf;
    2. The A.G. Bell Association;
    3. The Kentucky School for the Deaf Alumni Association; and
    4. Self Help for the Hard of Hearing.

The remaining four (4) deaf or hard-of-hearing members shall be appointed by the secretary from a list of at least eight (8) nominees submitted by the Kentucky Commission on the Deaf and Hard of Hearing.
  - (b) One (1) member shall be a family member of a deaf or hard-of-hearing consumer of mental health services and shall be appointed by the secretary from a list of nominees accepted from any source.
  - (c) The head of each of the following entities shall appoint one (1) member to the advisory committee:
    1. The Cabinet for Health and Family Services, Department for **Behavioral Health, Developmental and Intellectual Disabilities**~~[Mental Health and Mental Retardation Services]~~;
    2. The Education and Workforce Development Cabinet, Office of Vocational Rehabilitation;
    3. The Cabinet for Health and Family Services, Department for Aging and Independent Living;
    4. The Education and Workforce Development Cabinet, Commission on the Deaf and Hard of Hearing;
    5. The Kentucky Registry of Interpreters for the Deaf; and
    6. A Kentucky School for the Deaf staff person involved in education.
  - (d) The remaining member shall be a representative of a regional~~[mental health/mental retardation]~~ board **for mental health or individuals with an intellectual disability**, appointed by the commissioner of the Department for **Behavioral Health, Developmental and Intellectual Disabilities**~~[Mental Health and Mental Retardation Services]~~ from a list composed of two (2) names submitted by each regional~~[mental health/mental retardation]~~ board **for mental health or individuals with an intellectual disability**.

- (2) Of the members defined in subsection (1)(a) and (b) of this section, three (3) shall be appointed for a one (1) year term, three (3) shall be appointed for a two (2) year term, and three (3) shall be appointed for a three (3) year term; thereafter, they shall be appointed for three (3) year terms. The members defined under subsection (1)(c) and (d) of this section shall serve with no fixed term of office.
- (3) The members defined under subsection (1)(a) and (b) of this section shall serve without compensation but shall be reimbursed for actual and necessary expenses; the members defined under subsection (1)(c) and (d) of this section shall serve without compensation or reimbursement of any kind.
- (4) The Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~ shall make available personnel to serve as staff to the advisory committee.
- (5) The advisory committee shall meet quarterly at a location determined by the committee chair.
- (6) (a) The advisory committee shall prepare a biennial report which:
  1. Describes the accommodations and the mental health, ***intellectual disability***~~[mental retardation]~~, development disability, and substance abuse services made accessible to deaf and hard-of-hearing persons;
  2. Reports the number of deaf or hard-of-hearing persons served;
  3. Identifies additional service needs for the deaf and hard-of-hearing; and
  4. Identifies a plan to address unmet service needs.
- (b) The report shall be submitted to the secretary, the commissioner of the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~, and the Interim Joint Committee on Health and Welfare by July 1 of every odd-numbered year.

➔Section 69. KRS 210.055 is amended to read as follows:

The Cabinet for Health and Family Services may:

- (1) Promulgate reasonable rules and regulations for the purposes of carrying out the provisions of KRS 210.045, including regulations establishing the minimum and maximum ages within which individuals with an intellectual disability are eligible:
  - (a) To participate in programs operated by the cabinet;
  - (b) To become patients in institutions operated by the cabinet;
- (2) Participate in the education and training of professional and other persons in the ***area of intellectual disabilities***~~[field of mental retardation]~~, and may encourage and assist private and public agencies and institutions to participate in similar education and training;
- (3) Do all other things reasonably necessary to carry out the provisions of KRS 210.045.

➔Section 70. KRS 210.090 is amended to read as follows:

Neither the commissioner of the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation]~~ of the Cabinet for Health and Family Services nor his deputy nor any superintendent or director of an institution of the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation]~~ shall be permitted to engage in any partisan political activity.

➔Section 71. KRS 210.110 is amended to read as follows:

- (1) No officer, employee, or agent of the Cabinet for Health and Family Services, a regional community~~[mental health mental retardation]~~ board ***for mental health or individuals with an intellectual disability*** or a nonprofit corporation administering a regional community~~[mental health mental retardation]~~ program ***for mental health or individuals with an intellectual disability*** shall sell anything to any institution, facility, or organization under the control of the cabinet nor participate in selection, or in the award or administration of a contract supported by state or federal funds if a conflict of interest, real or apparent, would be involved.
- (2) Such a conflict of interest would arise when:
  - (a) The employee, officer, or agent;
  - (b) Any member of his immediate family;

- (c) His or her partner; or
- (d) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

➔Section 72. KRS 210.140 is amended to read as follows:

- (1) Pursuant to agreement entered into by the heads of the cabinets concerned, a patient or inmate of a state institution operated by one (1) state cabinet may be transferred to a state institution operated by another state cabinet, except that:
  - (a) An inmate may be transferred from a penal or correctional institution as provided in KRS Chapter 202A or in any regulation promulgated under such chapter, provided that no transfer shall be made to a correctional facility located on the grounds of a state mental hospital;
  - (b) No patient or inmate may be transferred to a penal or correctional institution unless he has been committed to such institution by judgment of a court; and
  - (c) No patient or inmate may be transferred to an institution for the mentally ill or **individuals with an intellectual disability**, ~~mentally retarded~~ except for a period of observation not to exceed sixty (60) days, unless he has been hospitalized in accordance with KRS 202A.051.
- (2) When a patient or inmate hospitalized by court order to one (1) institution is transferred to another institution pursuant to this section, the order of hospitalization shall be deemed to apply to the institution to which transferred.

➔Section 73. KRS 210.230 is amended to read as follows:

The secretary of the Cabinet for Health and Family Services may prescribe appropriate records to be maintained covering the operations of the cabinet and of the institutions operated by it, and covering involuntary hospitalization procedures. Any record forms applicable to involuntary hospitalization procedures shall be furnished to each court having jurisdiction to order hospitalization of mentally ill ~~or retarded~~ persons **or individuals with an intellectual disability**, and the records contemplated by such forms shall thereafter be made by the hospitalizing courts.

➔Section 74. KRS 210.271 is amended to read as follows:

- (1) No patient in an institution for the mentally ill or the intellectually disabled operated by the Cabinet for Health and Family Services shall be discharged to a boarding home as defined in KRS 216B.300 unless the boarding home is registered pursuant to KRS 216B.305.
- (2) The cabinet shall conduct a quarterly follow-up visit, using cabinet personnel or through contract with the Regional Community Mental Health Centers, of all patients of state ~~mental health or mental retardation~~ facilities **for mental health or individuals with an intellectual disability** that are discharged to boarding homes. Any resident found to have needs that cannot be met by the boarding home shall be referred to the Department for Community Based Services for appropriate placement. Any boarding home suspected of operating as an unlicensed personal care facility or housing residents with needs that cannot be met by the boarding home shall be reported to the Division of Community Health Services for investigation.

➔Section 75. KRS 210.365 is amended to read as follows:

- (1) As used in this section:
  - (a) "Crisis intervention team (CIT) training" means a forty (40) hour training curriculum based on the Memphis Police Department Crisis Intervention Team model of best practices for law enforcement intervention with persons who may have a mental illness, substance abuse disorder, **an intellectual disability**, ~~mental retardation~~, developmental disability, or dual diagnosis that meets the requirements of subsections (2) to (5) of this section and is approved by the Kentucky Law Enforcement Council;
  - (b) "Department" means the Department for **Behavioral Health, Developmental and Intellectual Disabilities**, ~~Mental Health and Mental Retardation Services~~;
  - (c) "Prisoner" has the same meaning as set out in KRS 441.005; and
  - (d) "Qualified mental health professional" has the same meaning as set out in KRS 202A.011.
- (2) The department shall, in collaboration with the Justice and Public Safety Cabinet, the regional community ~~mental health mental retardation~~ boards **for mental health or individuals with an intellectual disability**, and

representatives of the Kentucky statewide affiliate of the National Alliance on Mental Illness, coordinate the development of CIT training designed to train law enforcement officers to:

- (a) Effectively respond to persons who may have a mental illness, substance abuse disorder, **intellectual disability**~~mental retardation~~, developmental disability, or dual diagnosis;
  - (b) Reduce injuries to officers and citizens;
  - (c) Reduce inappropriate incarceration;
  - (d) Reduce liability; and
  - (e) Improve risk management practices for law enforcement agencies.
- (3) The CIT training shall include but not be limited to:
- (a) An introduction to crisis intervention teams;
  - (b) Identification and recognition of the different types of mental illnesses, substance abuse disorders, **intellectual disabilities**~~mental retardation~~, developmental disabilities, and dual diagnoses;
  - (c) Interviewing and assessing a person who may have a mental illness, substance abuse disorder, **intellectual disability**~~mental retardation~~, a developmental disability, or dual diagnosis;
  - (d) Identification and common effects of psychotropic medications;
  - (e) Suicide prevention techniques;
  - (f) Community resources and options for treatment;
  - (g) Voluntary and involuntary processes for hospitalization of a person with a mental illness, substance abuse disorder, **intellectual disability**~~mental retardation~~, developmental disability, or dual diagnosis; and
  - (h) Hostage or other negotiations with a person with a mental illness, **intellectual disability**~~mental retardation~~, substance abuse disorder, developmental disability, or dual diagnosis.
- (4) The curriculum shall be presented by a team composed of, at a minimum:
- (a) A law enforcement training instructor who has completed a forty (40) hour CIT training course and a CIT training instructor's course which has been approved by the Kentucky Law Enforcement Council, and at least forty (40) hours of direct experience working with a CIT;
  - (b) A representative from the local community~~mental health mental retardation~~ board **for mental health or individuals with an intellectual disability** serving the region where CIT training is conducted;
  - (c) A consumer of mental health services; and
  - (d) A representative of the Kentucky statewide affiliate of the National Alliance on Mental Illness.
- (5)
- (a) The department shall submit the CIT training curriculum and the names of available instructors approved by the department to conduct or assist in the delivery of CIT training to the Kentucky Law Enforcement Council no later than July 1, 2007.
  - (b) The Kentucky Law Enforcement Council shall notify the department of approval or disapproval of the CIT training curriculum and trainers within thirty (30) days of submission of the curriculum and the names of instructors.
  - (c) The Kentucky Law Enforcement Council may waive instructor requirements for non-law enforcement trainers whose names are submitted by the department.
  - (d) If the curriculum or trainers are not approved, the department shall have an opportunity to revise and resubmit the curriculum and to submit additional names of instructors if necessary.
- (6) If the curriculum is approved, the Kentucky Law Enforcement Council shall:
- (a) Notify the Department of Kentucky State Police and all law enforcement agencies employing peace officers certified under KRS 15.380 to 15.404 of the availability of the CIT training; and
  - (b) Notify all instructors and entities approved for law enforcement training under KRS 15.330 of the availability of the CIT training.

- (7) Any law enforcement training entity approved by the Kentucky Law Enforcement Council may use the CIT training model and curriculum in law enforcement in-service training as specified by subsection (1) of this section that is consistent with the Memphis CIT national model for best practices.
- (8) No later than one (1) year after June 26, 2007, the department shall submit to the Kentucky Law Enforcement Council a CIT training instructors' curriculum and the names of available instructors approved by the department to conduct or assist in the delivery of CIT training instructors' training. Additional instructors may be submitted on a schedule determined by the Kentucky Law Enforcement Council.
- (9) All CIT-trained law enforcement officers shall report to his or her agency on forms provided with the CIT curriculum on encounters with persons with mental illness, substance abuse disorders, **intellectual disabilities**~~mental retardation~~, developmental disabilities, and dual diagnoses. The law enforcement agency shall aggregate reports received and submit nonidentifying information to the department on a monthly basis. Except for information pertaining to the number of law enforcement agencies participating in CIT training, the reports to the department shall include the information specified in subsection (10) of this section.
- (10) The department shall aggregate all reports from law enforcement agencies under subsection (9) of this section and submit nonidentifying statewide information to the Justice and Public Safety Cabinet, the Criminal Justice Council, the Cabinet for Health and Family Services, and the Interim Joint Committee on Health and Welfare by December 1, 2008, and annually thereafter. The report shall include but not be limited to:
- The number of law enforcement officers trained per agency;
  - Law enforcement responses to persons with mental illness, substance abuse disorders, **intellectual disabilities**~~mental retardation~~, developmental disabilities, and dual diagnoses;
  - Incidents of harm to the law enforcement officer or to the citizen;
  - The number of times physical force was required and the type of physical force used; and
  - The outcome of the encounters that may include but not be limited to incarceration or hospitalization.
- (11) To implement the requirements of subsections (2) to (5) and (8) to (10) of this section, the department may use public or private funds as available and may develop a contract with a nonprofit entity that is a Kentucky statewide mental health advocacy organization that has a minimum of five (5) years of experience in implementation of the CIT training program in Kentucky.
- (12) The Cabinet for Health and Family Services shall create a telephonic behavioral health jail triage system to screen prisoners for mental health risk issues, including suicide risk. The triage system shall be designed to give the facility receiving and housing the prisoner an assessment of his or her mental health risk, with the assessment corresponding to recommended protocols for housing, supervision, and care which are designed to mitigate the mental health risks identified by the system. The triage system shall consist of:
- A screening instrument which the personnel of a facility receiving a prisoner shall utilize to assess inmates for mental health, suicide, **intellectual disabilities**~~mental retardation~~, and acquired brain injury risk factors; and
  - A continuously available toll-free telephonic triage hotline staffed by a qualified mental health professional which the screening personnel may utilize if the screening instrument indicates an increased mental health risk for the assessed prisoner.
- (13) In creating and maintaining the telephonic behavioral health jail triage system, the cabinet shall consult with:
- The Department of Corrections;
  - The Kentucky Jailers Association;
  - The Kentucky Commission on Services and Supports for Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses; and
  - The regional community~~mental health and mental retardation~~ services programs **for mental health or individuals with an intellectual disability** created under KRS 210.370 to 210.460.
- (14) The cabinet may delegate all or a portion of the operational responsibility for the triage system to the regional community~~mental health and mental retardation~~ services programs **for mental health or individuals with an intellectual disability** created under KRS 210.370 to 210.460 if the regional program agrees and the cabinet remains responsible for the costs of delegated functions.

- (15) The cabinet shall design into the implemented triage system the ability to screen and assess prisoners who communicate other than in English or who communicate other than through voice.
- (16) The cost of operating the telephonic behavioral health jail triage system shall be borne by the cabinet.
- (17) Records generated under this section shall be treated in the same manner and with the same degree of confidentiality as other medical records of the prisoner.
- (18) Unless the prisoner is provided with an attorney during the screening and assessment, any statement made by the prisoner in the course of the screening or assessment shall not be admissible in a criminal trial of the prisoner, unless the trial is for a crime committed during the screening and assessment.
- (19) The cabinet may, after consultation with those entities set out in subsection (13) of this section, promulgate administrative regulations for the operation of the telephonic behavioral health jail triage system and the establishment of its recommended protocols for prisoner housing, supervision, and care.

➔Section 76. KRS 210.370 is amended to read as follows:

Any combination of cities or counties of over fifty thousand (50,000) population, and upon the consent of the secretary of the Cabinet for Health and Family Services, any combination of cities or counties with less than fifty thousand (50,000) population, may establish a regional community~~[-mental health and mental retardation]~~ services program **for mental health or individuals with an intellectual disability** and staff same with persons specially trained in psychiatry and related fields. Such programs and clinics may be administered by a community~~[-mental health-mental retardation]~~ board **for mental health or individuals with an intellectual disability** established pursuant to KRS 210.370 to 210.460, or by a nonprofit corporation.

➔Section 77. KRS 210.380 is amended to read as follows:

Every combination of cities and counties establishing a regional community~~[-mental health and mental retardation]~~ services program **for mental health or individuals with an intellectual disability** shall, before it comes within the provisions of KRS 210.370 to 210.460, establish a community~~[-mental health-mental retardation]~~ board **for mental health or individuals with an intellectual disability** consisting of at least nine (9) members. When a nonprofit corporation is the administrator of such a program not established by a combination of either cities or counties, such corporation shall select a community~~[-mental health-mental retardation]~~ board **for mental health or individuals with an intellectual disability** which shall be representative of the groups herein enumerated, but the number of members need not be nine (9). When any combination of cities and counties establishes a regional community~~[-mental health and mental retardation]~~ services program **for mental health or individuals with an intellectual disability**, the chief executive officer of each participating city or county shall appoint two (2) members to a selecting committee which shall select the members of the board. Membership of the community~~[-mental health-mental retardation]~~ boards **for mental health or individuals with an intellectual disability** shall be representative of the elected chief executives of county governments, local health departments, medical societies, county welfare boards, hospital boards, lay associations concerned with mental health and **intellectual disabilities**~~[-mental retardation]~~ as well as labor, business and civic groups, and the general public.

➔Section 78. KRS 210.390 is amended to read as follows:

The term of office of each member of the community~~[-mental health-mental retardation]~~ board **for mental health or individuals with an intellectual disability** shall be for four (4) years measured from the first day of the year of appointment except that of the members first appointed, three (3) shall be appointed for a term of two (2) years, three (3) for a term of three (3) years, and three (3) for a term of four (4) years. Vacancies shall be filled for the unexpired term in the same manner as original appointments. Any member of a board may be removed by the appointing authority for neglect of duty, misconduct or malfeasance in office, after being given a written statement of charges and an opportunity to be heard thereon.

➔Section 79. KRS 210.400 is amended to read as follows:

Subject to the provisions of this section and the policies and regulations of the secretary of the Cabinet for Health and Family Services, each community~~[-mental health-mental retardation]~~ board **for mental health or individuals with an intellectual disability** shall:

- (1) Review and evaluate~~[-mental health and mental retardation]~~ services **for mental health or individuals with an intellectual disability** provided pursuant to KRS 210.370 to 210.460, and report thereon to the secretary of the Cabinet for Health and Family Services, the administrator of the program, and, when indicated, the public, together with recommendations for additional services and facilities;

- (2) Recruit and promote local financial support for the program from private sources such as community chests, business, industrial and private foundations, voluntary agencies, and other lawful sources, and promote public support for municipal and county appropriations;
- (3) Promote, arrange, and implement working agreements with other social service agencies, both public and private, and with other educational and judicial agencies;
- (4) Adopt and implement policies to stimulate effective community relations;
- (5) Be responsible for the development and approval of an annual plan and budget;
- (6) Act as the administrative authority of the community~~[-mental health and mental retardation]~~ program **for mental health or individuals with an intellectual disability**; and
- (7) Oversee and be responsible for the management of the community~~[-mental health and mental retardation]~~ program **for mental health or individuals with an intellectual disability** in accordance with the plan and budget adopted by the board and the policies and regulations issued under KRS 210.370 to 210.480 by the secretary of the Cabinet for Health and Family Services.

➔Section 80. KRS 210.405 is amended to read as follows:

- (1) Any regional community~~[-mental health-mental retardation]~~ board **for mental health or individuals with an intellectual disability** established pursuant to KRS 210.380 and recognized by the secretary of the Cabinet for Health and Family Services may be appointed and act as executor, administrator, guardian, limited guardian, conservator, or limited conservator, as provided in this section. In this capacity, the board may transact business in the same manner as any individual and for this purpose may sue and be sued in any of the courts of the state. Bond shall not be required of the board.
- (2) Whenever a person who has been adjudged mentally disabled and requires mental health services has no guardian or conservator, the board, acting through its designated officer, may apply to the District Court of the county in which the adjudication was made for its appointment as guardian or conservator for such mentally disabled person. The board may also apply to be substituted as guardian or conservator for a mentally disabled person whose guardian or conservator is the Cabinet for Health and Family Services and who has been discharged or whose discharge is imminent from a Cabinet for Health and Family Services facility.
- (3) Upon the death of a person for whom the board has been appointed guardian or conservator leaving an estate and having no relatives at the time residing within the state, the board may apply for appointment as administrator and upon appointment shall close the administration of the estate.
- (4) The board may invest funds held as fiduciary in bonds or other securities guaranteed by the United States, and may sell or exchange such securities in its discretion.
- (5) The board shall receive such fees for its fiduciary services as provided by law. These fees shall be placed in a trust and agency account, from which may be drawn expenses for filing fees, court costs, and other expenses incurred in the administration of estates. Claims of the board against the estates shall be considered in the same manner as any other claim.

➔Section 81. KRS 210.420 is amended to read as follows:

- (1) Except as hereinafter provided, grants from state general funds for any program shall not exceed fifty percent (50%) of the total expenditures for:
  - (a) Salaries;
  - (b) Contract facilities and services;
  - (c) Operation, maintenance, and service costs;
  - (d) Per diem and travel expenses for members of the community~~[-mental health-mental retardation]~~ boards **for mental health or individuals with an intellectual disability**; and
  - (e) Other expenditures specifically approved by the secretary for health and family services.

No grants from state general funds shall be made for capital expenditures. Grants from state general funds may be made for expenditures for~~[-mental health and mental retardation]~~ services **for mental health or individuals with an intellectual disability**, whether provided by operation of a local facility or through contract with other public or private agencies.

- (2) The secretary of the Cabinet for Health and Family Services shall distribute to community ~~mental health mental retardation~~ boards **for mental health or individuals with an intellectual disability** those general funds appropriated to the cabinet for the operation of regional community ~~mental health mental retardation~~ programs **for mental health or individuals with an intellectual disability**. This distribution shall be by a formula which includes provisions for:
- (a) Per capita allocations;
  - (b) Incentive allocations which require local matching funds based on the per capita wealth of the area served; and
  - (c) Discretionary allocations to be available to the secretary to maintain essential services pursuant to KRS 210.410.

The formula for allocation of community ~~mental health mental retardation~~ program general funds **for mental health or individuals with an intellectual disability** shall be prescribed by administrative regulations.

➔Section 82. KRS 210.430 is amended to read as follows:

Any community ~~mental health mental retardation~~ board **for mental health or individuals with an intellectual disability** or nonprofit corporation administering a ~~mental health and mental retardation~~ services program **for mental health or individuals with an intellectual disability** may apply for the assistance provided by KRS 210.370 to 210.460 by submitting annually to the secretary of the Cabinet for Health and Family Services its plan, budget, and membership of the board for the next fiscal year. No program shall be eligible for a state grant and other fund allocations from the Cabinet for Health and Family Services hereunder unless its plan and budget have been approved by the secretary of the Cabinet for Health and Family Services, and no program shall be eligible for a state grant and other fund allocations from the Cabinet for Health and Family Services hereunder unless the board composition is reasonably representative of those groups enumerated in KRS 210.380.

➔Section 83. KRS 210.440 is amended to read as follows:

- (1) At the beginning of each fiscal year, the secretary of the Cabinet for Health and Family Services shall allocate available funds to the ~~mental health mental retardation~~ boards **for mental health or individuals with an intellectual disability** or nonprofit organizations for disbursement during the fiscal year in accordance with approved plans and budgets. The secretary shall, from time to time during the fiscal year, review the operations, budgets, and expenditures of the various programs; and if funds are not needed for a program to which they were allocated, he may, after reasonable notice and opportunity for hearing, withdraw any funds that are unencumbered and reallocate them to other programs. He may withdraw funds from any program, or component part thereof, which is not being operated and administered in accordance with its approved plan and budget, and the policies and administrative regulations of the cabinet promulgated pursuant to KRS 210.370 to 210.480.
- (2) If the secretary finds at any time that a ~~mental health mental retardation~~ board **for mental health or individuals with an intellectual disability** or nonprofit organization to which funds have been allocated for the operation of a regional community ~~mental health and mental retardation~~ program **for mental health or individuals with an intellectual disability** is not operating and administering its program in compliance and accordance with the approved plan and budget and the policies and administrative regulations of the cabinet, he may withdraw his recognition of that board or organization as the local authority for the receipt of funds and the operation and administration of regional community ~~mental health and mental retardation~~ programs **for mental health or individuals with an intellectual disability**.
- (3) If the secretary finds at any time that an emergency situation exists with regard to the financial stability of any regional ~~mental health mental retardation~~ board **for mental health or individuals with an intellectual disability** or nonprofit organization, which jeopardizes the continuation of programs and provision of services in the area served by that board or nonprofit organization, he may, other statutes to the contrary notwithstanding:
  - (a) Appoint a caretaker administrator who shall be authorized to direct the operation and administration of the board or nonprofit organization's community ~~mental health and mental retardation~~ programs **for mental health or individuals with an intellectual disability** including, but not limited to, their financial record keeping, their personnel management operations, and their financial and program reporting; and
  - (b) Make personnel changes deemed necessary to insure the continued operation of the board or nonprofit organization in compliance with its plan and budget and the policies and regulations of the cabinet.

- (4) Any community~~[- mental health mental retardation]~~ board **for mental health or individuals with an intellectual disability** to be affected by the provisions of subsections (2) and (3) of this section shall be notified by the secretary of the Cabinet for Health and Family Services thirty (30) days prior to the anticipated action by the secretary. The notification shall be by means of a letter from the secretary to the chairman of the ~~mental health mental retardation]~~ board **for mental health or individuals with an intellectual disability** in question and shall state the reasons for the anticipated action. Following the notification, the ~~mental health mental retardation]~~ board **for mental health or individuals with an intellectual disability** may:
- (a) Comply with the secretary's action without contesting it; or
  - (b) Request an administrative hearing before a hearing officer appointed by the secretary to show cause why the action should not stand. The application shall be made within seven (7) days of the receipt of the letter from the secretary, and the hearing shall be conducted in accordance with KRS Chapter 13B.

➔Section 84. KRS 210.450 is amended to read as follows:

In addition to the powers and duties already conferred upon him by the law, the secretary of the Cabinet for Health and Family Services shall:

- (1) Promulgate policies and regulations governing eligibility of community~~[- mental health and mental retardation]~~ programs **for mental health or individuals with an intellectual disability** to receive state grants and other fund allocations from the Cabinet for Health and Family Services, prescribing standards for qualification of personnel and quality of professional service and for in-service training and educational leave programs for personnel, governing eligibility for service so that no person will be denied service on the basis of race, color or creed, or inability to pay, providing for establishment of fee schedules which shall be based upon ability to pay, regulating fees for diagnostic services, which services may be provided for anyone without regard to his financial status, when referred by the courts, schools, or health and welfare agencies whether public or private, governing financial record keeping, prescribing standards for personnel management operations, providing for financial and program reporting requirements, and such other policies and regulations as he deems necessary to carry out the purposes of KRS 210.370 to 210.460;
- (2) Review and evaluate local programs and the performance of administrative and psychiatric personnel and make recommendations thereon to community~~[- mental health mental retardation]~~ boards **for mental health or individuals with an intellectual disability** and program administrators;
- (3) Provide consultative service, by~~[- mental health and mental retardation]~~ professionals qualified **in the areas of mental health and intellectual disabilities** by education and training, to communities to assist in ascertaining local needs and in planning and establishing community~~[- mental health and mental retardation]~~ programs **for mental health or individuals with an intellectual disability**;
- (4) Employ necessary and qualified personnel to implement KRS 210.370 to 210.460; and
- (5) Review annually the~~[- community mental health mental retardation boards]~~ personnel policies, procedures, and personnel compensation plans **of community boards for mental health or individuals with an intellectual disability** and disapprove if not consistent with accepted standards of personnel and salary administration prescribed by the cabinet.

➔Section 85. KRS 210.460 is amended to read as follows:

In order to provide the necessary funds to establish and operate a~~[- mental health and mental retardation]~~ services program **for mental health or individuals with an intellectual disability** and to establish and maintain a clinic, any city or county coming under the provisions of KRS 210.370 to 210.460 may contribute its proportionate share of the cost of the program, to be apportioned on a population basis, by direct appropriation from its general tax fund or by allocating therefor the proceeds of a special tax for the support of the program. The cost shall be deemed for all purposes a proper county expense.

➔Section 86. KRS 210.470 is amended to read as follows:

- (1) It is the intent of this section to create a~~[- mental health and mental retardation]~~ taxing district **for mental health or individuals with an intellectual disability** by operation of law in each county coming under the provisions of KRS 210.370 to 210.460, in order to implement KRS 210.460.
- (2) In all counties which have participated in the establishment of a regional community~~[- mental health and mental retardation]~~ services program **for mental health or individuals with an intellectual disability** under KRS 210.380, a~~[- mental health and mental retardation]~~ taxing district **for mental health or individuals with an intellectual disability** is hereby declared to be created.

- (3) The members of the community ~~mental health mental retardation~~ board **for mental health or individuals with an intellectual disability** recognized by the secretary for health and family services pursuant to KRS 210.380 shall, by virtue of their office, constitute and be the governing board of the ~~mental health and mental retardation~~ taxing district **for mental health or individuals with an intellectual disability** and shall perform the duties attendant thereto in addition to their duties as members of the community ~~mental health mental retardation~~ board **for mental health or individuals with an intellectual disability**. Officers of the community ~~mental health mental retardation~~ board **for mental health or individuals with an intellectual disability** shall be the officers of the ~~mental health and mental retardation~~ taxing district **for mental health or individuals with an intellectual disability**.

➔Section 87. KRS 210.480 is amended to read as follows:

- (1) If, after the establishment of the ~~mental health and mental retardation~~ taxing district **for mental health or individuals with an intellectual disability** as provided for in this section, KRS 210.460, and KRS 210.470, the tax levying authorities in member areas of the district, in the opinion of the community ~~mental health mental retardation~~ board **for mental health or individuals with an intellectual disability**, do not appropriate an amount sufficient to meet the needs of the ~~mental health and mental retardation~~ services program **for mental health or individuals with an intellectual disability** and clinic, as established pursuant to KRS 210.370, the community ~~mental health mental retardation~~ board **for mental health or individuals with an intellectual disability**, acting as the governing body of the taxing district shall, with the approval of the Cabinet for Health and Family Services, request the fiscal courts in each of the member areas which have not contributed a sufficient proportionate share of the cost of the program, to impose a special ad valorem ~~mental health and mental retardation~~ tax **for mental health or individuals with an intellectual disability** in such amount that it deems sufficient, but not in excess of four cents (\$0.04) per one hundred dollars (\$100) of full assessed valuation. The fiscal court may, upon receipt of a duly certified copy of said request, include in the next ad valorem tax levy said special ~~mental health and mental retardation~~ tax **for mental health or individuals with an intellectual disability** imposed by the ~~mental health mental retardation~~ board **for mental health or individuals with an intellectual disability**, which shall be in addition to all other county ad valorem taxes. If levied by the fiscal court, said special ~~mental health and mental retardation~~ tax **for mental health or individuals with an intellectual disability** shall be collected in the same manner as are other county ad valorem taxes and turned over to the community ~~mental health mental retardation~~ board **for mental health or individuals with an intellectual disability** to be used for the maintenance and operation of the ~~mental health and mental retardation~~ services program **for mental health or individuals with an intellectual disability** and clinic as provided in KRS 210.460. No appropriation for a ~~mental health and mental retardation~~ services program **for mental health or individuals with an intellectual disability** and clinic established under KRS 210.370 shall be reduced or eliminated on the grounds that a special tax has been levied where the community ~~mental health mental retardation~~ board **for mental health or individuals with an intellectual disability** requested the amount levied as a necessary supplement to that appropriation. Taxing districts organized pursuant to KRS 210.470 shall not be subject to the provisions of the compensating tax rate as defined by KRS 132.010 nor to Acts 1965 (1st Ex. Sess.), ch. 2.
- (2) Nothing contained in this section shall be construed as precluding any city or county from appropriating or allocating funds in any other manner for the support of the regional ~~mental health and mental retardation~~ services program **for mental health or individuals with an intellectual disability** and clinic, pursuant to KRS 210.460, or any other statutory provision.

➔Section 88. KRS 210.485 is amended to read as follows:

Regional community ~~mental health mental retardation~~ boards **for mental health or individuals with an intellectual disability** 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 KRS 222.434; 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 KRS 222.433.

➔Section 89. KRS 210.502 is amended to read as follows:

- (1) There is created the Kentucky Commission on Services and Supports for Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses. The commission shall consist of:
- (a) The secretary of the Cabinet for Health and Family Services;

- (b) The secretary of the Justice and Public Safety Cabinet;
  - (c) The commissioner of the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~;
  - (d) The commissioner of the Department for Medicaid Services;
  - (e) The commissioner of the Department of Corrections;
  - (f) The commissioner of the Department of Juvenile Justice;
  - (g) The commissioner of the Department of Education;
  - (h) The executive director of the Office of Vocational Rehabilitation;
  - (i) The director of the Protection and Advocacy Division of the Department for Public Advocacy;
  - (j) The director of the Division of Family Resource and Youth Services Centers;
  - (k) The commissioner of the Department for Aging and Independent Living of the Cabinet for Health and Family Services;
  - (l) The executive director of the Office of Drug Control Policy;
  - (m) The director of the Administrative Office of the Courts;
  - (n) The chief executive officer of the Kentucky Housing Corporation;
  - (o) The executive director of the Office of Transportation Delivery of the Transportation Cabinet;
  - (p) The commissioner of the Department of Public Health;
  - (q) Three (3) members of the House of Representatives who are members of the Health and Welfare Committee or the Appropriations and Revenue Committee, appointed by the Speaker of the House;
  - (r) Three (3) members of the Senate who are members of the Health and Welfare Committee or the Appropriations and Revenue Committee, appointed by the Senate President;
  - (s) A chairperson and one (1) alternate who is a chairperson of a regional planning council appointed by the secretary of the Cabinet for Health and Family Services from a list of five (5) chairpersons submitted by the Kentucky Association of Regional~~[Mental Health/Mental Retardation]~~ Programs;
  - (t) A consumer and one (1) alternate who is a consumer of mental health or substance abuse services, who is over age eighteen (18), appointed by the secretary of the Cabinet for Health and Family Services from a list of up to three (3) consumers submitted by any consumer advocacy organization operating within Kentucky or submitted by any regional planning council established under KRS 210.506; and
  - (u) An adult family member and one (1) alternate who is an adult family member of a consumer of mental health or substance abuse services appointed by the secretary of the Cabinet for Health and Family Services from a list of up to three (3) persons submitted by any family advocacy organization operating within Kentucky or submitted by any regional planning council established under KRS 210.506.
- (2) The secretary of the Cabinet for Health and Family Services and one (1) member of the General Assembly appointed to the commission shall serve as co-chairs of the commission.
  - (3) Members designated in subsection (1)(a) to (r) of this section shall serve during their terms of office.
  - (4) Members and alternates designated in subsection (1)(s) to (u) of this section shall serve a term of two (2) years and may be reappointed for one (1) additional term. These members may be reimbursed for travel expenses in accordance with administrative regulations governing reimbursement for travel for state employees.

➔Section 90. KRS 210.504 is amended to read as follows:

- (1) The commission created in KRS 210.502 shall meet as often as necessary to accomplish its purpose but shall meet at least quarterly or upon the call of either co-chair, the request of four (4) or more members, or the request of the Governor.
- (2) The commission shall receive, integrate, and report the findings and recommendations of the regional planning councils established under KRS 210.506. The regional planning councils shall provide additional information or study particular issues upon request of the commission.
- (3) The commission:

- (a) May establish work groups to develop statewide recommendations from information and recommendations received from the regional planning councils;
  - (b) May establish work groups to address issues referred to the commission; and
  - (c) Shall ensure that the regional planning councils have an opportunity to receive, review, and comment on any recommendation or product issued by a work group established under this subsection before the commission takes any formal action on a recommendation or product of a work group.
- (4) The commission shall serve in an advisory capacity to accomplish the following:
- (a) Based on information provided under subsection (2) of this section:
    - 1. Assess the needs statewide of individuals with mental illness, alcohol and other drug abuse disorders, and dual diagnoses;
    - 2. Assess the capabilities of the existing statewide treatment delivery system including gaps in services and the adequacy of a safety net system; and
    - 3. Assess the coordination and collaboration of efforts between public and private facilities and entities, including but not limited to the Council on Postsecondary Education when assessing workforce issues, and the roles of the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~(Mental Health and Mental Retardation)~~ and the regional community mental health centers, state hospitals, and other providers;
  - (b) Identify funding needs and related fiscal impact, including Medicaid reimbursement, limitations under government programs and private insurance, and adequacy of indigent care;
  - (c) Recommend comprehensive and integrated programs for providing mental health and substance abuse services and preventive education to children and youth, utilizing schools and community resources;
  - (d) Develop recommendations to decrease the incidence of repeated arrests, incarceration, and multiple hospitalizations of individuals with mental illness, alcohol and other drug abuse disorders, and dual diagnoses; and
  - (e) Recommend an effective quality assurance and consumer satisfaction monitoring program that includes recommendations as to the appropriate role of persons with mental illness, alcohol and other drug abuse disorders, and dual diagnoses, family members, providers, and advocates in quality assurance efforts.
- (5) The commission shall develop a comprehensive state plan that provides a template for decision-making regarding program development, funding, and the use of state resources for delivery of the most effective continuum of services in integrated statewide settings appropriate to the needs of the individual with mental illness, alcohol and other drug abuse disorders, and dual diagnoses. The state plan shall also include strategies for increasing public awareness and reducing the stigma associated with mental illness and substance abuse disorders.
- (6) The state plan shall advise the Governor and the General Assembly concerning the needs statewide of individuals with mental illness, alcohol and other drug disorders, and dual diagnoses and whether the recommendations should be implemented by administrative regulations or proposed legislation for the General Assembly.
- (7) The commission shall develop a two (2) year work plan, beginning in 2003, that specifies goals and strategies relating to services and supports for individuals with mental illness and alcohol and other drug disorders and dual diagnoses and efforts to reduce the stigma associated with mental illness and substance abuse disorders.
- (8) The commission shall review the plan and shall submit annual updates no later than October 1 to the Governor and the Legislative Research Commission.

➔Section 91. KRS 210.506 is amended to read as follows:

- (1) The regional community~~{ mental health mental retardation }~~ boards ***for mental health or individuals with an intellectual disability*** established under KRS 210.370 shall institute regional planning councils for the purpose of conducting assessment and strategic planning. The councils shall be attached to the community~~{ mental health mental retardation }~~ boards ***for mental health or individuals with an intellectual disability*** for administrative purposes.
- (2) A member of the regional community~~{ mental health mental retardation }~~ board ***for mental health or individuals with an intellectual disability*** shall serve as chair of the regional planning council.

- (3) The board shall issue invitations to join the council to no less than two (2) representatives of each of the following groups:
- (a) Family members of individuals with mental illness, alcohol and other drug abuse disorders, and dual diagnoses;
  - (b) Consumers of mental health and substance abuse services;
  - (c) County officials and business leaders;
  - (d) Health departments and primary care physicians;
  - (e) Advocates and community organizations;
  - (f) Educators and school personnel;
  - (g) Regional interagency councils established under KRS Chapter 200;
  - (h) Law enforcement and court personnel;
  - (i) Public and private organizations, agencies, or facilities that provide services for mental health and substance abuse in the region that represent inpatient services, outpatient services, residential services, and community-based supportive housing programs;
  - (j) Individuals who provide mental health and substance abuse services in the region; and
  - (k) Public and private hospitals that provide mental health and substance abuse services.
- (4) The regional planning councils may establish bylaws and procedures to assist in the operation of the councils.

➔Section 92. KRS 210.570 is amended to read as follows:

The General Assembly of the Commonwealth of Kentucky hereby finds and declares that:

- (1) Assistance and support to citizens of the Commonwealth with an intellectual disability and other developmental disabilities are necessary and appropriate roles of state government;
- (2) The current system of services and supports to persons with an intellectual disability and other developmental disabilities suffers from a lack of program coordination, funding, controls on quality of care, and review and evaluation;
- (3) As part of the review and evaluation, it is necessary to require:
  - (a) Identification, development, and provision of services and supports for persons with an intellectual disability and other developmental disabilities using available institutional care as appropriate and integrated with community-based services designed to be inclusive, responsive to individual needs, and protective of the individual's legal rights to equal opportunity;
  - (b) Review of current funding mechanisms to determine the best method to establish an array of community-based comprehensive services using facility-based outpatient services and supports that are available through public and private sectors, including nonprofit and for-profit service providers, that will allow persons with an intellectual disability and other developmental disabilities the opportunity to participate in community life. The review shall include consideration of the availability of residential alternatives, employment opportunities, and opportunities for participation in community-based social and recreational activities; and
  - (c) Development of funding strategies to promote appropriate use of community-based services and supports that provide:
    1. Flexibility for persons with an intellectual disability and other developmental disabilities;
    2. Distribution of available funds among all interested service providers, including nonprofit and for-profit service providers, based on the needs of the person with *an intellectual disability* ~~mental retardation~~ and other developmental disabilities; and
    3. Efficiency and accountability to the general public;
- (4) KRS 210.570 to 210.577 shall be construed to protect and to promote the continuing development and maintenance of the physical, mental, and social skills of persons with *an intellectual disability* ~~mental retardation~~ and other developmental disabilities; and

- (5) KRS 210.570 to 210.577 shall not be construed:
- (a) To alter any requirements or responsibilities that are mandated by any state or federal law;
  - (b) To relieve any organizational unit or administrative body of its duties under state or federal law; or
  - (c) To transfer among state organizations or administrative bodies any responsibilities, powers, or duties that are mandated by state or federal law.

➔Section 93. KRS 210.575 is amended to read as follows:

- (1) There is created the Kentucky Commission on Services and Supports for Individuals with an Intellectual Disability and Other Developmental Disabilities. The commission shall consist of:
- (a) The secretary of the Cabinet for Health and Family Services;
  - (b) The commissioner of the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~;
  - (c) The commissioner of the Department for Medicaid Services;
  - (d) The executive director of the Office of Vocational Rehabilitation;
  - (e) The director of the University Affiliated Program at the Interdisciplinary Human Development Institute of the University of Kentucky;
  - (f) The director of the Kentucky Council on Developmental Disabilities;
  - (g) Two (2) members of the House of Representatives, appointed by the Speaker of the House;
  - (h) Two (2) members of the Senate, appointed by the Senate President; and
  - (i) Public members, appointed by the Governor as follows:
    1. Five (5) family members, at least one (1) of whom shall be a member of a family with a child with an intellectual disability or other developmental disabilities, and one (1) of whom shall be a member of a family with an adult with an intellectual disability or other developmental disabilities. Of these five (5) family members, at least two (2) shall be members of a family with an individual with an intellectual disability or other developmental disabilities residing in the home of the family member or in a community-based setting, and at least two (2) shall be members of a family with an individual with an intellectual disability or other mental disabilities residing in an institutional residential facility that provides service to individuals with an intellectual disability or other developmental disabilities;
    2. Three (3) persons with an intellectual disability or other developmental disabilities;
    3. Two (2) business leaders;
    4. Three (3) direct service providers representing the Kentucky Association of Regional Programs and the Kentucky Association of Residential Resources; and
    5. One (1) representative of a statewide advocacy group.

The six (6) appointments made under subparagraphs 1. and 2. of this paragraph shall be chosen to reflect representation from each of Kentucky's six (6) congressional districts.

- (2) The secretary of the Cabinet for Health and Family Services shall serve as chair of the commission.
- (3) Members defined in subsection (1)(a) to (h) of this section shall serve during their terms of office. All public members appointed by the Governor shall serve a four (4) year term and may be reappointed for one (1) additional four (4) year term.
- (4) All public members of the commission shall receive twenty-five dollars (\$25) per day for attending each meeting. All commission members shall be reimbursed for necessary travel and other expenses actually incurred in the discharge of duties of the commission.

➔Section 94. KRS 210.710 is amended to read as follows:

- (1) "Cabinet" means the Cabinet for Health and Family Services.
- (2) "Facility" means a hospital or other institution operated or utilized by the cabinet for the mentally ill, ***individuals with an intellectual disability***,~~[mentally retarded]~~ or respiratory disease patients.

- (3) "Homestead" means a place where a family makes its home including the land, house and furnishings, outbuildings, vehicles, and tools of the trade formerly occupied by the patient which is exempted by KRS 210.710 to 210.760 from liability to meet patient charges for services rendered in a facility.
- (4) "Means test" means a uniform method adopted by the secretary for determining the ability to pay of the patient or person responsible for the patient for board, maintenance and treatment at a facility operated or utilized by the cabinet.
- (5) "Person responsible for the patient" includes parents, spouses, guardians, and committees within the scope of their fiduciary duties.
- (6) "Secretary" means the secretary of the Cabinet for Health and Family Services.

➔Section 95. KRS 210.770 is amended to read as follows:

As used in KRS 210.770 to 210.795, unless the context otherwise requires:

- (1) "Mental impairment" includes *an intellectual disability*~~[mental retardation]~~, organic brain syndrome, emotional or mental illness, and specific learning disabilities;
- (2) "Person with a disability" means someone with a physical or mental impairment and includes individuals who have a record or history of an impairment, or are regarded as having a physical or mental impairment that substantially limits one (1) or more major life activities;
- (3) "Physical impairment" means any physiological disorder or corrective, cosmetic disfigurement, or an anatomical loss affecting one (1) or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine;
- (4) "Substantial limitation of a major life activity" includes limiting such things as walking, talking, seeing, hearing, caring for oneself, or working;
- (5) "Hart-Supported Living Program" means grants which provide a broad category of highly flexible, individualized services which, when combined with natural unpaid or other eligible paid supports, provide the necessary assistance to do the following:
  - (a) Provide the support necessary to enable a person who is disabled to live in a home of the person's choice which is typical of those living arrangements in which persons without disabilities reside;
  - (b) Encourage the individual's integrated participation in the community with persons who are members of the general citizenry;
  - (c) Promote the individual's rights and autonomy;
  - (d) Enhance the individual's skills and competences in living in the community; and
  - (e) Enable the individual's acceptance in the community by promoting home ownership or leasing arrangements in the name of the individual or the individual's family or guardian;
- (6) "Hart-Supported Living Program" does not include any services that support the following arrangements:
  - (a) Segregated living models such as any housing situation which physically or socially isolates people with disabilities from general citizens of the community;
  - (b) Segregated programs or activities which physically or socially isolate people with disabilities from general citizens of the community;
  - (c) Congregate living models such as any housing situation which groups individuals with disabilities as an enclave within an integrated setting;
  - (d) Any model where the individual, as an adult, does not have maximum control of the home environment commensurate with the individual's disabilities; and
  - (e) Any single living unit where more than three (3) people with disabilities live;
- (7) "Supported living council" means a supported living council appointed by the Governor and recognized by the commissioner of the Department for *Behavioral Health, Developmental and Intellectual Disabilities*~~[Mental Health and Mental Retardation Services]~~; and
- (8) "Supported living services" include but are not limited to:

- (a) Supported living community resource developers;
- (b) Homemaker services;
- (c) Personal care services;
- (d) In-home training and home management assistance;
- (e) Start-up grants;
- (f) Transportation;
- (g) Home modifications;
- (h) Adaptive and therapeutic equipment; and
- (i) Facilitation by an independent and trained facilitator to develop and implement individualized life planning.

➔Section 96. KRS 210.775 is amended to read as follows:

- (1) There is hereby created the State Supported Living Council for services to persons with a disability and their families.
- (2) (a) The State Supported Living Council shall be composed of eleven (11) members. The commissioner of the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~{Mental Health and Mental Retardation Services}~~ and the executive director of the Kentucky Housing Corporation or their designees shall be ex officio members.
- (b) Nine (9) of the members shall be volunteers and shall be appointed by the Governor from a list of nominees in the following manner:
  - 1. Three (3) of the appointed members shall represent family members of persons with a disability;
  - 2. Two (2) of the appointed members shall be persons with a disability;
  - 3. One (1) of the appointed members shall represent professionals and providers of services to persons with a disability;
  - 4. One (1) of the appointed members shall represent advocates for persons with a disability; and
  - 5. Two (2) of the appointed members shall represent the community at large.
- (3) The appointed members may serve on the council for three (3) years from the date of appointment. Members may be reappointed for one (1) additional consecutive three (3) year term. The Governor shall fill any vacancy occurring in the council in the manner prescribed in subsection (2) of this section.
- (4) The Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~{Mental Health and Mental Retardation Services}~~ shall provide staff assistance to the State Supported Living Council.
- (5) The chairman of the State Supported Living Council shall be elected from among the members. A majority of the members shall constitute a quorum.
- (6) The State Supported Living Council shall meet as often as necessary but no less frequently than every other month.

➔Section 97. KRS 210.780 is amended to read as follows:

- (1) The State Supported Living Council shall be responsible for making recommendations to the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~{Mental Health and Mental Retardation Services}~~ for:
  - (a) A budget and priorities for fund allocations for supported living services for persons with disabilities within the Commonwealth;
  - (b) Standards for quality assurance for persons with a disability who receive supported living services in accordance with KRS 210.770 to 210.795; and
  - (c) The procedure for annual review and approval of and funding recommendations for individual plans for Hart-Supported Living Program grants submitted by any person with a disability, and for the amendment of individual plans during a fiscal year.

- (2) The State Supported Living Council shall be responsible for:
- (a) Disseminating information about Hart-Supported Living Program grants available under KRS 210.770 to 210.795;
  - (b) Hearing grievances and providing due process for consumers and providers of supported living services;
  - (c) Monitoring the overall effectiveness and quality of the program; and
  - (d) Developing recommendations for improvements.
- (3) The State Supported Living Council may recommend necessary administrative regulations under KRS Chapter 13A to carry out the purposes of KRS 210.770 to 210.795.

➔Section 98. KRS 210.795 is amended to read as follows:

- (1) The Department for ***Behavioral Health, Developmental and Intellectual Disabilities***, ~~the Department for *Mental Health and Mental Retardation Services*~~ in cooperation with the State Supported Living Council, shall establish standards for the administration of the Hart-Supported Living Program. The purpose of these standards is to ensure that a person with a disability receives supported living services in a manner that empowers the person to exercise choice and enhances the quality of that person's life. These standards shall promote the following:
- (a) Choice over how, when, and by whom supports are provided and over where and with whom a person with a disability lives;
  - (b) Responsibility of the person with a disability and his or her representative for managing grants and the provision of supports under the grant;
  - (c) Freedom to live a meaningful life and to participate in activities in the community with members of the general citizenry;
  - (d) Enhancement of health and safety;
  - (e) Flexibility of services that change as the person's needs change without the individual having to move elsewhere for services;
  - (f) Use of generic options and natural supports;
  - (g) Well-planned and proactive opportunities to determine the kinds and amounts of support desired, with the meaningful participation of the individual, the individual's family or guardian where appropriate, friends, and professionals; and
  - (h) Home ownership or leasing with the home belonging to the person with a disability, that person's family, or to a landlord to whom rent is paid.
- (2) The individual supported living plan shall be developed by the person with a disability and that person's family or guardian where appropriate, and, as appropriate, the proposed or current provider.
- (3) The Department for ***Behavioral Health, Developmental and Intellectual Disabilities***, ~~the Department for *Mental Health and Mental Retardation Services*~~ in concert with the State Supported Living Council, shall promulgate administrative regulations under KRS Chapter 13A, if necessary, to establish the methods of awarding Hart-Supported Living Program grants for individual supported living plans and monitoring the quality of service delivery, and to provide for administrative appeal of decisions. Administrative hearings conducted on appeals shall be conducted in accordance with KRS Chapter 13B.

➔Section 99. KRS 211.470 is amended to read as follows:

As used in KRS 211.470 to 211.478:

- (1) "Board" means the Traumatic Brain Injury Trust Fund Board created pursuant to KRS 211.472;
- (2) "Cabinet" means the Cabinet for Health and Family Services;
- (3) "Traumatic brain injury" means a partial or total disability caused by injury to the central nervous system from physical trauma, damage to the central nervous system from anoxia, hypoxic episodes, allergic conditions, toxic substances, or other acute medical clinical incidents resulting in impaired cognitive abilities or impaired physical functioning. "Traumatic brain injury" does not include:
  - (a) Strokes that can be treated in nursing facilities providing routine rehabilitation services;

- (b) Spinal cord injuries for which there are no known or obvious injuries to the intracranial central nervous system;
  - (c) Progressive dementias and other mentally impairing conditions;
  - (d) Depression and psychiatric disorders in which there is no known or obvious central nervous system damage;
  - (e) **An intellectual disability**~~[Mental retardation]~~ and birth defect related disorders of long standing nature; or
  - (f) Neurological degenerative, metabolic, and other medical conditions of a chronic, degenerative nature.
- (4) "Trust fund" means the traumatic brain injury trust fund created pursuant to KRS 211.476.

➔Section 100. KRS 211.651 is amended to read as follows:

As used in KRS 211.651 to 211.670, unless the context otherwise requires:

- (1) "Cabinet" means the Cabinet for Health and Family Services;
- (2) "Secretary" means the secretary of the Cabinet for Health and Family Services;
- (3) "Department" means the Department for Public Health; and
- (4) "Designee" means a local health department,~~[mental health/mental retardation]~~ board **for mental health or individuals with an intellectual disability**, or other governmental or private agency designated by the Department for Public Health.

➔Section 101. KRS 216.2923 is amended to read as follows:

- (1) For the purposes of carrying out the provisions of KRS 216.2920 to 216.2929, the secretary may:
  - (a) Appoint temporary volunteer advisory committees, which may include individuals and representatives of interested public or private entities or organizations;
  - (b) Apply for and accept any funds, property, or services from any person or government agency;
  - (c) Make agreements with a grantor of funds or services, including an agreement to make any study allowed or required under KRS 216.2920 to 216.2929; and
  - (d) Contract with a qualified, independent third party for any service necessary to carry out the provisions of KRS 216.2920 to 216.2929; however, unless permission is granted specifically by the secretary a third party hired by the secretary shall not release, publish, or otherwise use any information to which the third party has access under its contract.
- (2) For the purposes of carrying out the provisions of KRS 216.2920 to 216.2929, the secretary shall:
  - (a) Publish and make available information that relates to the health-care financing and delivery system, information on charges for health-care services and the quality and outcomes of health-care services, the cost of workers' compensation health benefits, motor vehicle health insurance benefits, and health insurance premiums and benefits that is in the public interest;
  - (b) Periodically participate in or conduct analyses and studies that relate to:
    - 1. Health-care costs;
    - 2. Health-care quality and outcomes;
    - 3. Health-care providers and health services; and
    - 4. Health insurance costs;
  - (c) Promulgate administrative regulations pursuant to KRS Chapter 13A that relate to its meetings, minutes, and transactions related to KRS 216.2920 to 216.2929;
  - (d) Prepare annually a budget proposal that includes the estimated income and proposed expenditures for the administration and operation of KRS 216.2920 to 216.2929; and
  - (e) No later than thirty (30) days after July 15, 2005, appoint and convene a permanent cabinet advisory committee. The committee shall advise the secretary on the collection, analysis, and distribution of consumer-oriented information related to the health-care system, the cost of treatment and procedures,

outcomes and quality indicators, and policies and regulations to implement the electronic collection and transmission of patient information (e-health) and other cost-saving patient record systems. At a minimum, the committee shall be composed of the following:

1. Commissioner of the Department for Public Health;
  2. Commissioner of the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~;
  3. Commissioner of the Department for Medicaid Services;
  4. Commissioner of the Department of Insurance;
  5. Physician representatives;
  6. Hospital representatives;
  7. Health insurer representatives;
  8. Consumers; and
  9. Nonphysician health-care providers.
- (f) The cabinet advisory committee shall utilize the Health Services Data Advisory Committee as a subcommittee, which shall include a member of the Division of Women's Physical and Mental Health, to define quality outcome measurements and to advise the cabinet on technical matters, including a review of administrative regulations promulgated pursuant to KRS Chapter 13A, proper interpretation of the data, and the most cost-efficient manner in which it should be published and disseminated to the public, state and local leaders in health policy, health facilities, and health-care providers. The Health Services Data Advisory Committee shall review and make recommendations to the cabinet advisory committee regarding exploration of technical matters related to data from other health-care providers and shall make recommendations on methods for risk-adjusting any data prepared and published by the cabinet.
- (3) The cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A that impose civil fines not to exceed five hundred dollars (\$500) for each violation for knowingly failing to file a report as required under KRS 216.2920 to 216.2929. The amount of any fine imposed shall not be included in the allowed costs of a facility for Medicare or Medicaid reimbursement.

➔Section 102. KRS 216.533 is amended to read as follows:

- (1) A long-term care facility owned, managed, or operated by the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~ shall request an in-state criminal background information check from the Justice and Public Safety Cabinet or Administrative Office of the Courts for each applicant recommended for employment. Out-of-state criminal background information checks shall be obtained for any applicant recommended for employment who has resided or been employed outside of the Commonwealth.
- (2) No facility specified in subsection (1) of this section shall knowingly employ any person who has been convicted of a felony offense under:
  - (a) KRS Chapter 209;
  - (b) KRS Chapter 218A;
  - (c) KRS 507.020, 507.030, and 507.040;
  - (d) KRS Chapter 509;
  - (e) KRS Chapter 510;
  - (f) KRS Chapter 511;
  - (g) KRS Chapter 513;
  - (h) KRS 514.030;
  - (i) KRS Chapter 530;
  - (j) KRS Chapter 531;

- (k) KRS 508.010, 508.020, 508.030, and 508.032;
  - (l) A criminal statute of the United States or another state similar to paragraphs (a) to (k) of this subsection; or
  - (m) A violation of the uniform code of military justice or military regulation similar to paragraphs (a) to (k) of this subsection which has caused the person to be discharged from the Armed Forces of the United States.
- (3) A person who has received a pardon for an offense specified in subsection (2) or has had the record of such an offense expunged may be employed.
  - (4) Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation]~~ facilities specified in subsection (1) of this section shall be exempt from the provisions of KRS 216.789(1).

➔Section 103. KRS 216.583 is amended to read as follows:

The Long-Term Care Coordinating Council shall be composed of the following members from within the cabinet: the commissioner of the Department for Public Health; the commissioner of the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~; the inspector general; the director of the Division of Health Care Facilities and Services; the commissioner of the Department for Aging and Independent Living; the commissioner of the Department for Medicaid Services; the general counsel; and the long-term care ombudsman.

➔Section 104. KRS 216.793 is amended to read as follows:

- (1) Each application form provided by the employer, or each application form provided by a facility either contracted or operated by the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~ of the Cabinet for Health and Family Services, to the applicant for initial employment in an assisted-living community nursing facility, or nursing pool providing staff to a nursing facility, or in a position funded by the Department for Community Based Services of the Cabinet for Health and Family Services or the Department for Aging and Independent Living of the Cabinet for Health and Family Services and which involves providing direct services to senior citizens shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."
- (2) Any request for criminal records of an applicant as provided under subsection (1) of this section shall be on a form or through a process approved by the Justice and Public Safety Cabinet or the Administrative Office of the Courts. The Justice and Public Safety Cabinet or the Administrative Office of the Courts may charge a fee to be paid by the applicant or state agency in an amount no greater than the actual cost of processing the request.

➔Section 105. KRS 216.925 is amended to read as follows:

- (1) A midlevel health care practitioner may be qualified by:
  - (a) Being a health professional licensed or certified by a body granted such authority by the Kentucky Revised Statutes and passing the qualifying examination; or
  - (b) Working under the supervision of a family physician in a network for a minimum of five (5) years and passing the qualifying examination.
- (2) To maintain a certification in good standing, a midlevel health care practitioner shall:
  - (a) Complete annually a minimum of ten (10) medical education hours recognized by the board; and
  - (b) Retake and pass the qualifying examination at least once every five (5) years.
- (3) Midlevel health care practitioners may assist physicians in networks as follows:
  - (a) Provide management of a limited number of chronic conditions for which protocols have been approved by the board and treatment plans prescribed by a network physician. Each patient for whom services are provided by a midlevel health care practitioner shall be examined at least twice a year by a network physician. During such examinations, the health care needs of the patient and the management regimen maintained by the midlevel health care practitioner shall be evaluated and documented in the patient's medical chart. No midlevel health care practitioner shall see a patient for initial consideration of a patient's medical problem nor shall a midlevel health care practitioner attempt to manage or treat a

patient for an acute condition. Every encounter between a midlevel health care practitioner and a patient shall be reviewed by a medical chart auditor on the day of the encounter and any deviation from the treatment plan or protocol shall be immediately reported to the supervising network physician;

- (b) Cause maintenance medications used in the treatment of chronic conditions to be dispensed to network patients solely within the confines of the network in accord with the protocols and formulary approved by the board and the treatment plan prescribed by a network physician at a charge not to exceed the cost of the medication plus a one dollar (\$1) dispensing fee;
  - (c) Make referrals in accordance with the linkage agreements and follow-up on referrals to assure they did occur;
  - (d) Provide patient education in accordance with the treatment plan; and
  - (e) Provide treatment as defined herein in either the primary facility of the network or in network extension clinics, if physician consultation is immediately available in person or by telephone. Midlevel health care practitioners shall not provide treatment in hospitals, skilled nursing homes, nursing homes, intermediate care facilities, personal care homes, family care homes, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers, ambulances, hospices, community ~~mental health and mental retardation~~ facilities **for mental health or individuals with an intellectual disability**, home health agencies, and kidney disease treatment centers. A midlevel health care practitioner shall not replace existing licensed, registered, or certified health care personnel.
- (4) Midlevel health care practitioners shall be utilized to expand the availability of health services. They shall not be used to expand the economic base of any network.

➔Section 106. KRS 216B.015 is amended to read as follows:

Except as otherwise provided, for purposes of this chapter, the following definitions shall apply:

- (1) "Abortion facility" means any place in which an abortion is performed;
- (2) "Administrative regulation" means a regulation adopted and promulgated pursuant to the procedures in KRS Chapter 13A;
- (3) "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health facilities which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; and the cabinet and third-party payors who reimburse health facilities for services in the health service area in which the project is proposed to be located;
- (4) "Applicant" means any physician's office requesting a major medical equipment expenditure of one million five hundred thousand dollars (\$1,500,000) or more after July 15, 1996, adjusted annually, or any person, health facility, or health service requesting a certificate of need or license;
- (5) "Cabinet" means the Cabinet for Health and Family Services;
- (6) "Capital expenditure" means an expenditure made by or on behalf of a health facility which:
  - (a) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance or is not for investment purposes only; or
  - (b) Is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part thereof;
- (7) "Capital expenditure minimum" means one million five hundred thousand dollars (\$1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether an expenditure exceeds the expenditure minimum, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the improvement, expansion, or replacement of any plant or any equipment with respect to which the expenditure is made shall be included. Donations of equipment or facilities to a health facility which if acquired directly by the facility would be subject to review under this chapter shall be considered a capital expenditure, and a transfer of the equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review;

- (8) "Certificate of need" means an authorization by the cabinet to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service as covered by this chapter;
- (9) "Certified surgical assistant" means a certified surgical assistant or certified first assistant who is certified by the National Surgical Assistant Association on the Certification of Surgical Assistants, the Liaison Council on Certification of Surgical Technologists, or the American Board of Surgical Assistants. The certified surgical assistant is an unlicensed health-care provider who is directly accountable to a physician licensed under KRS Chapter 311 or, in the absence of a physician, to a registered nurse licensed under KRS Chapter 314;
- (10) "Continuing care retirement community" means a community that provides, on the same campus, a continuum of residential living options and support services to persons sixty (60) years of age or older under a written agreement. The residential living options shall include independent living units, nursing home beds, and either assisted living units or personal care beds;
- (11) "Formal review process" means the ninety (90) day certificate-of-need review conducted by the cabinet;
- (12) "Health facility" means any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and includes alcohol abuse, drug abuse, and mental health services. This shall include, but shall not be limited to, health facilities and health services commonly referred to as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical dependency programs, tuberculosis hospitals, skilled nursing facilities, nursing facilities, nursing homes, personal care homes, intermediate care facilities, family care homes, primary care centers, rural health clinics, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers and services, ambulance providers, hospices, community-~~mental health and mental retardation~~ centers *for mental health or individuals with an intellectual disability*, home health agencies, kidney disease treatment centers and freestanding hemodialysis units, facilities and services owned and operated by health maintenance organizations directly providing health services subject to certificate of need, and others providing similarly organized services regardless of nomenclature;
- (13) "Health services" means clinically related services provided within the Commonwealth to two (2) or more persons, including, but not limited to, diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services;
- (14) "Independent living" means the provision of living units and supportive services including, but not limited to, laundry, housekeeping, maintenance, activity direction, security, dining options, and transportation;
- (15) "Intraoperative surgical care" includes the practice of surgical assisting in which the certified surgical assistant or physician assistant is working under the direction of the operating physician as a first or second assist, and which may include the following procedures:
  - (a) Positioning the patient;
  - (b) Preparing and draping the patient for the operative procedure;
  - (c) Observing the operative site during the operative procedure;
  - (d) Providing the best possible exposure of the anatomy incident to the operative procedure;
  - (e) Assisting in closure of incisions and wound dressings; and
  - (f) Performing any task, within the role of an unlicensed assistive person, or if the assistant is a physician assistant, performing any task within the role of a physician assistant, as required by the operating physician incident to the particular procedure being performed;
- (16) "Major medical equipment" means equipment which is used for the provision of medical and other health services and which costs in excess of the medical equipment expenditure minimum. For purposes of this subsection, "medical equipment expenditure minimum" means one million five hundred thousand dollars (\$1,500,000) beginning with July 15, 1994, and as adjusted annually thereafter. In determining whether medical equipment has a value in excess of the medical equipment expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included;
- (17) "Nonsubstantive review" means an expedited review conducted by the cabinet of an application for a certificate of need as authorized under KRS 216B.095;
- (18) "Nonclinically-related expenditures" means expenditures for:

- (a) Repairs, renovations, alterations, and improvements to the physical plant of a health facility which do not result in a substantial change in beds, a substantial change in a health service, or the addition of major medical equipment, and do not constitute the replacement or relocation of a health facility; or
  - (b) Projects which do not involve the provision of direct clinical patient care including, but not limited to, the following:
    - 1. Parking facilities;
    - 2. Telecommunications or telephone systems;
    - 3. Management information systems;
    - 4. Ventilation systems;
    - 5. Heating or air conditioning, or both;
    - 6. Energy conservation; or
    - 7. Administrative offices;
- (19) "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record;
- (20) "Perioperative nursing" means a practice of nursing in which the nurse provides preoperative, intraoperative, and postoperative nursing care to surgical patients;
- (21) "Person" means an individual, a trust or estate, a partnership, a corporation, an association, a group, state, or political subdivision or instrumentality including a municipal corporation of a state;
- (22) "Physician assistant" means the same as the definition provided in KRS 311.550;
- (23) "Record" means, as applicable in a particular proceeding:
- (a) The application and any information provided by the applicant at the request of the cabinet;
  - (b) Any information provided by a holder of a certificate of need or license in response to a notice of revocation of a certificate of need or license;
  - (c) Any memoranda or documents prepared by or for the cabinet regarding the matter under review which were introduced at any hearing;
  - (d) Any staff reports or recommendations prepared by or for the cabinet;
  - (e) Any recommendation or decision of the cabinet;
  - (f) Any testimony or documentary evidence adduced at a hearing;
  - (g) The findings of fact and opinions of the cabinet or the findings of fact and recommendation of the hearing officer; and
  - (h) Any other items required by administrative regulations promulgated by the cabinet;
- (24) "Registered nurse first assistant" means one who:
- (a) Holds a current active registered nurse licensure;
  - (b) Is certified in perioperative nursing; and
  - (c) Has successfully completed and holds a degree or certificate from a recognized program, which shall consist of:
    - 1. The Association of Operating Room Nurses, Inc., Core Curriculum for the registered nurse first assistant; and
    - 2. One (1) year of postbasic nursing study, which shall include at least forty-five (45) hours of didactic instruction and one hundred twenty (120) hours of clinical internship or its equivalent of two (2) college semesters.

A registered nurse who was certified prior to 1995 by the Certification Board of Perioperative Nursing shall not be required to fulfill the requirements of paragraph (c) of this subsection;

- (25) "Secretary" means the secretary of the Cabinet for Health and Family Services;

- (26) "Sexual assault examination facility" means a licensed health facility, emergency medical facility, primary care center, or a children's advocacy center or rape crisis center that is regulated by the Cabinet for Health and Family Services, and that provides sexual assault examinations under KRS 216B.400;
- (27) "State health plan" means the document prepared triennially, updated annually, and approved by the Governor;
- (28) "Substantial change in a health service" means:
- The addition of a health service for which there are review criteria and standards in the state health plan;
  - The addition of a health service subject to licensure under this chapter; or
  - The reduction or termination of a health service which had previously been provided in the health facility;
- (29) "Substantial change in bed capacity" means the addition, reduction, relocation, or redistribution of beds by licensure classification within a health facility;
- (30) "Substantial change in a project" means a change made to a pending or approved project which results in:
- A substantial change in a health service, except a reduction or termination of a health service;
  - A substantial change in bed capacity, except for reductions;
  - A change of location; or
  - An increase in costs greater than the allowable amount as prescribed by regulation;
- (31) "To acquire" means to obtain from another by purchase, transfer, lease, or other comparable arrangement of the controlling interest of a capital asset or capital stock, or voting rights of a corporation. An acquisition shall be deemed to occur when more than fifty percent (50%) of an existing capital asset or capital stock or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one (1) person from another person;
- (32) "To batch" means to review in the same review cycle and, if applicable, give comparative consideration to all filed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area;
- (33) "To establish" means to construct, develop, or initiate a health facility;
- (34) "To obligate" means to enter any enforceable contract for the construction, acquisition, lease, or financing of a capital asset. A contract shall be considered enforceable when all contingencies and conditions in the contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract; and
- (35) "To offer" means, when used in connection with health services, to hold a health facility out as capable of providing, or as having the means of providing, specified health services.

➔Section 107. KRS 216B.180 is amended to read as follows:

Notwithstanding any other provisions contained in this chapter, a certificate of need shall not be required for an existing intermediate care facility for **individuals with an intellectual disability**~~[the mentally retarded]~~ (ICF/**ID**~~[MR]~~) to add beds which shall be dedicated to providing respite services to individuals with an ICF/**ID**~~[MR]~~ level of care for no more than thirty (30) days. The establishment of ICF/**ID**~~[MR]~~ respite beds shall be limited to three (3) beds per fifty (50) ICF/**ID**~~[MR]~~ beds in a facility and shall not be eligible for Medicaid certification. Beds designated for respite services under this section shall comply with all applicable federal and state licensure requirements for intermediate care facilities for **individuals with an intellectual disability**~~[the mentally retarded]~~.

➔Section 108. KRS 216B.457 is amended to read as follows:

- A certificate of need shall be required for all Level II psychiatric residential treatment facilities. The need criteria for the establishment of Level II psychiatric residential treatment facilities shall be in the state health plan.
- An application for a certificate of need for Level II psychiatric residential treatment facilities shall not exceed fifty (50) beds. Level II facility beds may be located in a separate part of a psychiatric hospital, a separate part of an acute care hospital, or a Level I psychiatric residential treatment facility if the Level II beds are located on a separate floor, in a separate wing, or in a separate building. A Level II facility shall not refuse to admit a

patient who meets the medical necessity criteria and facility criteria for Level II facility services. Nothing in this section and KRS 216B.450 and 216B.455 shall be interpreted to prevent a psychiatric residential treatment facility from operating both a Level I psychiatric residential treatment facility and a Level II psychiatric residential treatment facility.

- (3) The application for a Level II psychiatric residential treatment facility certificate of need shall include formal written agreements of cooperation that identify the nature and extent of the proposed working relationship between the proposed Level II psychiatric residential treatment facility and each of the following agencies, organizations, or entities located in the service area of the proposed facility:
  - (a) Regional interagency council for children with emotional disability or severe emotional disability created under KRS 200.509;
  - (b) Community ~~mental health mental retardation~~ board **for mental health or individuals with an intellectual disability** established under KRS 210.380;
  - (c) Department for Community Based Services;
  - (d) Local school districts;
  - (e) At least one (1) psychiatric hospital; and
  - (f) Any other agency, organization, or entity deemed appropriate by the cabinet.
- (4) The application for a certificate of need shall include:
  - (a) The specific number of beds proposed for each age group and the specific, specialized program to be offered;
  - (b) An inventory of current services in the proposed service area; and
  - (c) Clear admission and discharge criteria, including age, sex, and other limitations.
- (5) All Level II psychiatric residential treatment facilities shall comply with the licensure requirements as set forth in KRS 216B.105.
- (6) All Level II psychiatric residential treatment facilities shall be certified by the Joint Commission on Accreditation of Healthcare Organizations, or the Council on Accreditation of Services for Families and Children, or any other accrediting body with comparable standards that are recognized by the Centers for Medicare and Medicaid Services.
- (7) A Level II psychiatric residential treatment facility shall be under the clinical supervision of a qualified mental health professional with training or experience in mental health treatment of children and youth.
- (8) Treatment services shall be provided by qualified mental health professionals or qualified mental health personnel. Individual staff who will provide educational programs shall meet the employment standards outlined by the Kentucky Board of Education and the Education Professional Standards Board.
- (9) A Level II psychiatric residential treatment facility shall meet the following requirements with regard to professional staff:
  - (a) A licensed psychiatrist, who is board-eligible or board-certified as a child or adult psychiatrist, shall be employed or contracted to meet the treatment needs of the residents and the functions that shall be performed by a psychiatrist;
  - (b) If a Level II psychiatric residential treatment facility has residents ages twelve (12) and under, the licensed psychiatrist shall be a board-eligible or board-certified child psychiatrist; and
  - (c) The licensed psychiatrist shall be present in the facility to provide professional services to the facility's residents at least weekly.
- (10) A Level II psychiatric residential treatment facility shall:
  - (a) Prepare a written staffing plan that is tailored to meet the needs of the specific population of children and youth that will be admitted to the facility based on the facility's admission criteria. The written staffing plan shall include but not be limited to the following:
    1. Specification of the direct care per-patient staffing ratio that the facility shall adhere to during waking hours and during sleeping hours;

2. Delineation of the number of direct care staff per patient, including the types of staff and the mix and qualifications of qualified mental health professionals and qualified mental health personnel, that shall provide direct care and will comprise the facility's per-patient staffing ratio;
3. Specification of appropriate qualifications for individuals included in the per-patient staffing ratio by job description, education, training, and experience;
4. Provision for ensuring compliance with its written staffing plan, and specification of the circumstances under which the facility may deviate from the per-patient staffing ratio due to patient emergencies, changes in patient acuity, or changes in patient census; and
5. Provision for submission of the written staffing plan to the cabinet for approval as part of the facility's application for initial licensure.

No initial license to operate as a Level II psychiatric residential treatment facility shall be granted until the cabinet has approved the facility's written staffing plan. Once a facility is licensed, it shall comply with its approved written staffing plan and, if the facility desires to change its approved per-patient staffing ratio, it shall submit a revised plan and have the plan approved by the cabinet prior to implementation of the change;

- (b) Require full-time professional and direct care staff to meet the continuing education requirements of their profession or be provided with forty (40) hours per year of in-service training; and
  - (c) Develop and implement a training plan for all staff that includes but is not limited to the following:
    1. Behavior-management procedures and techniques;
    2. Physical-management procedures and techniques;
    3. First aid;
    4. Cardiopulmonary resuscitation;
    5. Infection-control procedures;
    6. Child and adolescent growth and development;
    7. Training specific to the specialized nature of the facility;
    8. Emergency and safety procedures; and
    9. Detection and reporting of child abuse and neglect.
- (11) A Level II psychiatric residential treatment facility shall require a criminal records check to be completed on all employees and volunteers. The employment or volunteer services of an individual shall be governed by KRS 17.165, with regard to a criminal records check. A new criminal records check shall be completed at least every two (2) years on each employee or volunteer.
- (12) (a) Any employee or volunteer who has committed or is charged with the commission of a violent offense as specified in KRS 439.3401, a sex crime specified in KRS 17.500, or a criminal offense against a victim who is a minor as specified in KRS 17.500 shall be immediately removed from contact with a child within the residential treatment center until the employee or volunteer is cleared of the charge.
- (b) An employee or volunteer under indictment, legally charged with felonious conduct, or subject to a cabinet investigation shall be immediately removed from contact with a child.
- (c) The employee or volunteer shall not be allowed to work with the child until a prevention plan has been written and approved by the cabinet, the person is cleared of the charge, or a cabinet investigation reveals an unsubstantiated finding, if the charge resulted from an allegation of child abuse, neglect, or exploitation.
- (d) Each employee or volunteer shall submit to a check of the central registry. An individual listed on the central registry shall not be a volunteer at or be employed by a Level II psychiatric residential treatment facility.
- (e) Any employee or volunteer removed from contact with a child pursuant to this subsection may, at the discretion of the employer, be terminated, reassigned to a position involving no contact with a child, or placed on administrative leave with pay during the pendency of the investigation or proceeding.

- (13) An initial treatment plan of care shall be developed and implemented for each resident, and the plan of care shall be based on initial history and ongoing assessment of the resident's needs and strengths, with an emphasis on active treatment, transition planning, and after-care services, and shall be completed within seventy-two (72) hours of admission.
- (14) A comprehensive treatment plan of care shall be developed and implemented for each resident, and the plan of care shall be based on initial history and ongoing assessment of the resident's needs and strengths, with an emphasis on active treatment, transition planning, and after-care services, and shall be completed within ten (10) calendar days of admission.
- (15) A review of the treatment plan of care shall occur at least every thirty (30) days following the first ten (10) days of treatment and shall include the following documentation:
  - (a) Dated signatures of appropriate staff, parent, guardian, legal custodian, or conservator;
  - (b) An assessment of progress toward each treatment goal and objective with revisions as indicated; and
  - (c) A statement of justification for the level of services needed, including suitability for treatment in a less-restrictive environment and continued services.
- (16) A Level II psychiatric residential treatment facility shall provide or arrange for the provision of qualified dental, medical, nursing, and pharmaceutical care for residents. The resident's parent, guardian, legal custodian, or conservator may choose a professional for nonemergency services.
- (17) A Level II psychiatric residential treatment facility shall ensure that opportunities are provided for recreational activities that are appropriate and adapted to the needs, interests, and ages of the residents.
- (18) A Level II psychiatric residential treatment facility shall assist residents in the independent exercise of health, hygiene, and grooming practices.
- (19) A Level II psychiatric residential treatment facility shall assist each resident in securing an adequate allowance of personally owned, individualized, clean, and seasonal clothes that are the correct size.
- (20) A Level II psychiatric residential treatment facility shall assist, educate, and encourage each resident in the use of dental, physical, or prosthetic appliances or devices and visual or hearing aids.
- (21) The cabinet shall promulgate administrative regulations that include but are not limited to the following:
  - (a) Establishing requirements for tuberculosis skin testing for staff of a Level II psychiatric residential treatment facility;
  - (b) Ensuring that accurate, timely, and complete resident assessments are conducted for each resident of a Level II psychiatric residential treatment facility;
  - (c) Ensuring that accurate, timely, and complete documentation of the implementation of a resident's treatment plan of care occurs for each resident of a Level II psychiatric residential treatment facility;
  - (d) Ensuring that an accurate, timely, and complete individual record is maintained for each resident of a Level II psychiatric residential treatment facility;
  - (e) Ensuring that an accurate, timely, and complete physical examination is conducted for each resident of a Level II psychiatric residential treatment facility;
  - (f) Ensuring accurate, timely, and complete access to emergency services is available for each resident of a Level II psychiatric residential treatment facility; and
  - (g) Ensuring that there is accurate, timely, and complete administration of medications for each resident of a Level II psychiatric residential treatment facility.
- (22) The cabinet shall, within ninety (90) days of July 15, 2010, promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and KRS 216B.450 and 216B.455. When promulgating the administrative regulations, the cabinet shall not consider only staffing ratios when evaluating the written staffing plan of an applicant, but shall consider the applicant's overall ability to provide for the needs of patients.
- (23) The cabinet shall report, no later than August 1 of each year, to the Interim Joint Committee on Health and Welfare regarding the implementation of this section and KRS 216B.450 and 216B.455. The report shall include but not be limited to information relating to resident outcomes, such as lengths of stay in the facility,

locations residents were discharged to, and whether residents were readmitted to a Level II psychiatric residential treatment facility within a twelve (12) month period.

➔Section 109. 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 and Family Services;
- (5) "Director" means the director of the Division of Mental Health and Substance Abuse Services of the Department for *Behavioral Health, Developmental and Intellectual Disabilities* ~~Mental Health and Mental Retardation Services~~;
- (6) "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) "Intoxication" means being under the influence of alcohol or other drugs, or both, which significantly impairs a person's ability to function;
- (8) "Juvenile" means any person who is under the age of eighteen (18);
- (9) "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) "Patient" means any person admitted to a hospital or a licensed alcohol and other drug abuse treatment program;
- (12) "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) "Secretary" means the secretary of the Cabinet for Health and Family Services;
- (14) "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 KRS 222.430 to 222.437, it specifically includes the services described in KRS 222.211(1)(c) and (d); 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.

➔Section 110. 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:
  - (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 *for mental health or individuals with an intellectual disability*, 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 111. KRS 281.014 is amended to read as follows:

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

- (1) (a) The term "city taxicab certificate" or "city limousine certificate" means a certificate granting authority only for the operation of a given number of motor vehicles transporting passengers for hire, the principal operation of which is confined to the corporate limits of a city of the first or second class or an urban-county area and the city's suburban area, or the corporate limits of any city and its suburban area located in a county which contains a city of the first or second class or an urban-county area, and not operating over any regular route, and the destination of which motor vehicles are designated by the passengers at the time of such transportation;
- (b) The term "county taxicab certificate" or "county limousine certificate" means a certificate granting authority only for the operation of a given number of motor vehicles transporting passengers for hire, the principal operation of which is confined to a specific county which does not contain a city of the first or second class and is not an urban-county area, and not operating over any regular route, and the destination of which motor vehicles are designated by the passengers at the time of the transportation;
- (c) A "taxicab" means a motor vehicle operated under one (1) or more taxicab certificates, and is a vehicle designed or constructed to transport not more than fifteen (15) passengers exclusive of the driver;
- (d) A "limousine" means a luxury motor vehicle passenger car which has either a standard or an extended wheelbase. The vehicle may have additional rear seating capacity, area, and comforts, but shall be designed or constructed to transport not more than fifteen (15) passengers plus the driver;
- (e) The term "taxicab license" means a license plate issued to a taxicab authorized to operate under a taxicab certificate;
- (f) The term "limousine license" means a license plate issued to a limousine authorized to operate under a limousine certificate;

- (2) (a) An "airport shuttle certificate" means a certificate granting authority only for the operation of motor vehicles exclusively transporting passengers or baggage for hire over regular routes between points within a city or its suburban area and an airport;
- (b) An "airport shuttle vehicle" means a motor vehicle operated under one (1) or more airport shuttle certificates and which is designed or constructed to transport not more than fifteen (15) passengers plus the driver;
- (c) The term "airport shuttle vehicle license" means a license plate issued for a motor vehicle authorizing its operation under one (1) or more airport shuttle certificates;
- (3) The term "U-Drive-It" means any person who leases or rents a motor vehicle for a consideration to be used for the transportation of persons or property, but for which no driver is furnished, and the use of which motor vehicle is not for the transportation of persons or property for hire by the lessee or rentee;
- (4) The term "driveaway" means the transporting and delivering of motor vehicles, except semitrailers, and trailers, whether destined to be used in either a private or for-hire capacity, under their own power or by means of a full mount method, saddle mount method, the tow bar method, or any combination of them over the highways of this state from any point of origin to any point of destination for-hire. The transportation of such vehicles by the full mount method on trailers or semitrailers shall not be included in the term;
- (5) (a) "Disabled persons vehicle" means a motor vehicle especially equipped and used for the transportation of persons with disabilities and which is in compliance with the accessibility specifications of 49 C.F.R. Part 38, but it shall be designed and constructed to transport not more than fifteen (15) passengers plus the driver. It shall not mean an ambulance as defined in KRS 311A.010. It shall not mean a motor vehicle equipped with a stretcher;
- (b) "Disabled persons carrier" means an irregular route common carrier for hire, transporting the general public who require transportation in disabled persons vehicles;
- (c) "Disabled persons certificate" means a certificate that grants authority only for the operation of a given number of disabled persons vehicles for hire, the principal operation of which is confined to a specific county;
- (6) "Human service transportation delivery" means the provision of transportation services to any person that is an eligible recipient in one (1) of the following state programs:
- (a) Nonemergency medical transportation under KRS Chapter 205;
- (b) Mental health, *intellectual disabilities* [~~mental retardation~~], or comprehensive care under KRS Chapter 202A, 202B, 210, or 645;
- (c) Kentucky Works Program under KRS Chapter 194 or 205;
- (d) Aging services under KRS Chapter 205, 209, 216, or 273;
- (e) Vocational rehabilitation under KRS 151B or 157; or
- (f) Blind industries or rehabilitation under KRS Chapter 151B or 163;
- (7) "Delivery area" means one (1) or more regions established by the cabinet in administrative regulations promulgated under KRS Chapter 13A for the purpose of providing human service transportation delivery in that region;
- (8) "Broker" means a person selected by the cabinet through a request for proposal process to coordinate human service transportation delivery within a specific delivery area. A broker may also provide transportation services within the specific delivery area for which the broker is under contract with the cabinet;
- (9) "Subcontractor" means a person who has signed a contract with a broker to provide human service transportation delivery within a specific delivery area and who meets human service transportation delivery requirements, including proper operating authority; and
- (10) "CTAC" means the Coordinated Transportation Advisory Committee created under KRS 281.870.

➔Section 112. KRS 314.011 is amended to read as follows:

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

- (1) "Board" means Kentucky Board of Nursing;

- (2) "Delegation" means directing a competent person to perform a selected nursing activity or task in a selected situation under the nurse's supervision and pursuant to administrative regulations promulgated by the board in accordance with the provisions of KRS Chapter 13A;
- (3) "Nurse" means a person who is licensed or holds the privilege to practice under the provisions of this chapter as a registered nurse or as a licensed practical nurse;
- (4) "Nursing process" means the investigative approach to nursing practice utilizing a method of problem-solving by means of:
  - (a) Nursing diagnosis, a systematic investigation of a health concern, and an analysis of the data collected in order to arrive at an identifiable problem; and
  - (b) Planning, implementation, and evaluation based on nationally accepted standards of nursing practice;
- (5) "Registered nurse" means one who is licensed or holds the privilege under the provisions of this chapter to engage in registered nursing practice;
- (6) "Registered nursing practice" means the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:
  - (a) The care, counsel, and health teaching of the ill, injured, or infirm;
  - (b) The maintenance of health or prevention of illness of others;
  - (c) The administration of medication and treatment as prescribed by a physician, physician assistant, dentist, or advanced practice registered nurse and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses. Components of medication administration include but are not limited to:
    1. Preparing and giving medications in the prescribed dosage, route, and frequency, including dispensing medications only as defined in subsection (17)(b) of this section;
    2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
    3. Intervening when emergency care is required as a result of drug therapy;
    4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
    5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
    6. Instructing an individual regarding medications;
  - (d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care; and
  - (e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses;
- (7) "Advanced practice registered nurse" means a certified nurse practitioner, certified nurse anesthetist, certified nurse midwife, or clinical nurse specialist, who is licensed to engage in advance practice registered nursing pursuant to KRS 314.042 and certified in at least one (1) population focus;
- (8) "Advanced practice registered nursing" means the performance of additional acts by registered nurses who have gained added knowledge and skills through an approved organized postbasic program of study and clinical experience; who are certified by the American Nurses' Association or other nationally established organizations or agencies recognized by the board to certify registered nurses for advanced practice registered nursing as a certified nurse practitioner, certified nurse anesthetist, certified nurse midwife, or clinical nurse specialist; and who certified in at least one (1) population focus. The additional acts shall, subject to approval of the board, include but not be limited to prescribing treatment, drugs, devices, and ordering diagnostic tests. Advanced practice registered nurses who engage in these additional acts shall be authorized to issue prescriptions for and dispense nonscheduled legend drugs as defined in KRS 217.905 and to issue prescriptions for but not to dispense Schedules II through V controlled substances as classified in KRS

218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, and 218A.130, under the conditions set forth in KRS 314.042 and regulations promulgated by the Kentucky Board of Nursing on or before August 15, 2006.

- (a) Prescriptions issued by advanced practice registered nurses for Schedule II controlled substances classified under KRS 218A.060 shall be limited to a seventy-two (72) hour supply without any refill. Prescriptions issued under this subsection for psychostimulants may be written for a thirty (30) day supply only by an advanced practice registered nurse certified in psychiatric-mental health nursing who is providing services in a health facility as defined in KRS Chapter 216B or in a regional ~~mental health mental retardation~~ services program *for mental health or individuals with an intellectual disability* as defined in KRS Chapter 210.
- (b) Prescriptions issued by advanced practice registered nurses for Schedule III controlled substances classified under KRS 218A.080 shall be limited to a thirty (30) day supply without any refill. Prescriptions issued by advanced practice registered nurses for Schedules IV and V controlled substances classified under KRS 218A.100 and 218A.120 shall be limited to the original prescription and refills not to exceed a six (6) month supply.
- (c) Limitations for specific controlled substances which are identified as having the greatest potential for abuse or diversion, based on the best available scientific and law enforcement evidence, shall be established in an administrative regulation promulgated by the Kentucky Board of Nursing. The regulation shall be based on recommendations from the Controlled Substances Formulary Development Committee, which is hereby created. The committee shall be composed of two (2) advanced practice registered nurses appointed by the Kentucky Board of Nursing, one (1) of whom shall be designated as a committee co-chair; two (2) physicians appointed by the Kentucky Board of Medical Licensure, one (1) of whom shall be designated as a committee co-chair; and one (1) pharmacist appointed by the Kentucky Board of Pharmacy. The initial regulation shall be promulgated on or before August 15, 2006, and shall be reviewed at least annually thereafter by the committee.

Nothing in this chapter shall be construed as requiring an advanced practice registered nurse designated by the board as a certified nurse anesthetist to obtain prescriptive authority pursuant to this chapter or any other provision of law in order to deliver anesthesia care. The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by administrative regulation;

- (9) "Licensed practical nurse" means one who is licensed or holds the privilege under the provisions of this chapter to engage in licensed practical nursing practice;
- (10) "Licensed practical nursing practice" means the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:
  - (a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, a licensed physician, or dentist;
  - (b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board;
  - (c) The administration of medication or treatment as authorized by a physician, physician assistant, dentist, or advanced practice registered nurse and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally accepted organizations of licensed practical nurses;
  - (d) Teaching, supervising, and delegating except as limited by the board; and
  - (e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Practical Nurses' Standards of Practice or with Standards of Practice established by nationally accepted organizations of licensed practical nurses;
- (11) "School of nursing" means a nursing education program preparing persons for licensure as a registered nurse or a practical nurse;
- (12) "Continuing education" means offerings beyond the basic nursing program that present specific content planned and evaluated to meet competency based behavioral objectives which develop new skills and upgrade knowledge;

- (13) "Nursing assistance" means the performance of delegated nursing acts by unlicensed nursing personnel for compensation under supervision of a nurse;
- (14) "Sexual assault nurse examiner" means a registered nurse who has completed the required education and clinical experience and maintains a current credential from the board as provided under KRS 314.142 to conduct forensic examinations of victims of sexual offenses under the medical protocol issued by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee pursuant to KRS 216B.400(4);
- (15) "Competency" means the application of knowledge and skills in the utilization of critical thinking, effective communication, interventions, and caring behaviors consistent with the nurse's practice role within the context of the public's health, safety, and welfare;
- (16) "Credential" means a current license, registration, certificate, or other similar authorization that is issued by the board;
- (17) "Dispense" means:
- (a) To receive and distribute noncontrolled legend drug samples from pharmaceutical manufacturers to patients at no charge to the patient or any other party; or
  - (b) To distribute noncontrolled legend drugs from a local, district, and independent health department, subject to the direction of the appropriate governing board of the individual health department;
- (18) "Dialysis care" means a process by which dissolved substances are removed from a patient's body by diffusion, osmosis, and convection from one (1) fluid compartment to another across a semipermeable membrane;
- (19) "Dialysis technician" means a person who is not a nurse, a physician assistant, or a physician and who provides dialysis care in a licensed renal dialysis facility under the direct, on-site supervision of a registered nurse or a physician;
- (20) "Population focus" means the section of the population within which the advanced practice registered nurse has targeted to practice. The categories of population foci are:
- (a) Family or individual across the lifespan;
  - (b) Adult health and gerontology;
  - (c) Neonatology;
  - (d) Pediatrics;
  - (e) Women's health and gender-related health; and
  - (f) Psychiatric mental health; and
- (21) "Conviction" means but is not limited to:
- (a) An unvacated adjudication of guilt;
  - (b) Pleading no contest or nolo contendere or entering an Alford plea; or
  - (c) Entering a guilty plea pursuant to a pretrial diversion order;

Regardless of whether the penalty is rebated, suspended, or probated.

➔Section 113. KRS 337.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
- (a) "Commissioner" means the commissioner of the Department of Workplace Standards under the direction and supervision of the secretary of the Labor Cabinet;
  - (b) "Department" means the Department of Workplace Standards in the Labor Cabinet;
  - (c) 1. "Wages" includes any compensation due to an employee by reason of his or her employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy. The wages shall be payable in legal tender of

- the United States or checks on banks convertible into cash on demand at full face value, subject to the allowances made in this chapter;
2. For the purposes of calculating hourly wage rates for scheduled overtime for professional firefighters, as defined in KRS 95A.210(5), "wages" shall not include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund. For the purposes of calculating hourly wage rates for unscheduled overtime for professional firefighters, as defined in KRS 95A.210(6), "wages" shall include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund;
- (d) "Employer" is any person, either individual, corporation, partnership, agency, or firm who employs an employee and includes any person, either individual, corporation, partnership, agency, or firm acting directly or indirectly in the interest of an employer in relation to an employee; and
  - (e) "Employee" is any person employed by or suffered or permitted to work for an employer.
- (2) As used in KRS 337.275 to 337.325, 337.345, and KRS 337.385 to 337.405, unless the context requires otherwise:
- (a) "Employee" is any person employed by or suffered or permitted to work for an employer, but shall not include:
    1. Any individual employed in agriculture;
    2. Any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as the terms are defined by administrative regulations of the commissioner;
    3. Any individual employed by the United States;
    4. Any individual employed in domestic service in or about a private home. The provisions of this section shall include individuals employed in domestic service in or about the home of an employer where there is more than one (1) domestic servant regularly employed;
    5. Any individual classified and given a certificate by the commissioner showing a status of learner, apprentice, worker with a disability, sheltered workshop employee, and student under administrative procedures and administrative regulations prescribed and promulgated by the commissioner. This certificate shall authorize employment at the wages, less than the established fixed minimum fair wage rates, and for the period of time fixed by the commissioner and stated in the certificate issued to the person;
    6. Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than ninety-five thousand dollars (\$95,000) for the five (5) preceding years exclusive of excise taxes at the retail level or if the employee is the parent, spouse, child, or other member of his or her employer's immediate family;
    7. Any individual employed as a baby-sitter in an employer's home, or an individual employed as a companion by a sick, convalescing, or elderly person or by the person's immediate family, to care for that sick, convalescing, or elderly person and whose principal duties do not include housekeeping;
    8. Any individual engaged in the delivery of newspapers to the consumer;
    9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A, 30A, and 18A provided that the secretary of the Personnel Cabinet shall have the authority to prescribe by administrative regulation those emergency employees, or others, who shall receive overtime pay rates necessary for the efficient operation of government and the protection of affected employees;
    10. Any employee employed by an establishment which is an organized nonprofit camp, religious, or nonprofit educational conference center, if it does not operate for more than seven (7) months in any calendar year;
    11. Any employee whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and

abused and who are in the care of private, nonprofit childcaring facilities licensed by the Cabinet for Health and Family Services under KRS 199.640 to 199.670; or

12. Any individual whose function is to provide twenty-four (24) hour residential care in his or her own home as a family caregiver and who is approved to provide family caregiver services to an adult with a disability through a contractual relationship with a community~~[-mental health-mental retardation]~~ board **for mental health or individuals with an intellectual disability** established under KRS 210.370 to 210.460, or is certified or licensed by the Cabinet for Health and Family Services to provide adult foster care;
  - (b) "Agriculture" means farming in all its branches, including cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural or horticultural commodity; raising of livestock, bees, furbearing animals, or poultry; and any practice, including any forestry or lumbering operations, performed on a farm in conjunction with farming operations, including preparation and delivery of produce to storage, to market, or to carriers for transportation to market;
  - (c) "Gratuity" means voluntary monetary contribution received by an employee from a guest, patron, or customer for services rendered;
  - (d) "Tipped employee" means any employee engaged in an occupation in which he or she customarily and regularly receives more than thirty dollars (\$30) per month in tips; and
  - (e) "U.S.C." means the United States Code.
- (3) As used in KRS 337.505 to 337.550, unless the context requires otherwise:
  - (a) "Construction" includes construction, reconstruction, improvement, enlargement, alteration, or repair of any public works project by contract fairly estimated to cost more than two hundred fifty thousand dollars (\$250,000). No public works project, if procured under a single contract and subject to the requirements of this section, may be divided into multiple contracts of lesser value to avoid compliance with the provisions of this section;
  - (b) "Contractor" and "subcontractor" include any superintendent, foreman, or other authorized agent of any contractor or subcontractor who is in charge of the construction of the public works or who is in charge of the employment or payment of the employees of the contractor or subcontractor who are employed in performing the work to be done or being done by the contractor or subcontractor under the particular contract with any public authority;
  - (c)
    1. "Locality" shall be determined by the commissioner. The commissioner may designate more than one (1) county as a single locality, but if more than one (1) county is designated, the multicounty locality shall not extend beyond the boundaries of a state Senatorial district. The commissioner shall not designate less than an entire county as a locality. If there is not available in the locality a sufficient number of competent, skilled laborers, workmen, and mechanics to efficiently and properly construct the public works, "locality" shall include any other locality nearest the one in which the work of construction is to be performed and from which such available skilled laborers, workmen, and mechanics may be obtained in sufficient number to perform the work; and
    2. "Locality" with respect to contracts advertised or awarded by the Transportation Cabinet of this state shall be determined by the secretary of the Transportation Cabinet. The secretary may designate any number of counties as constituting a single locality. The secretary may also designate all counties of the Commonwealth as a single locality, but he or she shall not designate less than an entire county as a locality;
  - (d) "Public authority" means any officer, board, or commission of this state, or any political subdivision or department thereof in the state, or any institution supported in whole or in part by public funds, including publicly owned or controlled corporations, authorized by law to enter into any contract for the construction of public works and any nonprofit corporation funded to act as an agency and instrumentality of the government agency in connection with the construction of public works, and any "private provider", as defined in KRS 197.500, which enters into any contract for the construction of an "adult correctional facility", as defined in KRS 197.500; and
  - (e) "Public works" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, and all other structures or work, including "adult correctional facilities", as defined in KRS 197.500, constructed under contract with any public authority.

- (4) If the federal government or any of its agencies furnishes by loans or grants any part of the funds used in constructing public works, and if the federal government or its agencies prescribe predetermined prevailing minimum wages to be paid to mechanics, workmen, and laborers employed in the construction of the public works, and if KRS 337.505 to 337.550 is also applicable, those wages in each classification which are higher shall prevail.

➔Section 114. KRS 387.540 is amended to read as follows:

- (1) Prior to a hearing on a petition for a determination of partial disability or disability and the appointment of a limited guardian, guardian, limited conservator, or conservator, an interdisciplinary evaluation report shall be filed with the court. The report may be filed as a single and joint report of the interdisciplinary evaluation team, or it may otherwise be constituted by the separate reports filed by each individual of the team. If the court and all parties to the proceeding and their attorneys agree to the admissibility of the report or reports, the report or reports shall be admitted into evidence and shall be considered by the jury. The report shall be compiled by at least three (3) individuals, including a physician, a psychologist licensed or certified under the provisions of KRS Chapter 319, and a person licensed or certified as a social worker or an employee of the Cabinet for Health and Family Services who meets the qualifications of KRS 335.080(1)(a), (b), and (c) or 335.090(1)(a), (b), and (c). The social worker shall, when possible, be chosen from among employees of the Cabinet for Health and Family Services residing or working in the area, and there shall be no additional compensation for their service on the interdisciplinary evaluation team.
- (2) At least one (1) person participating in the compilation of the report shall have knowledge of the particular disability which the respondent is alleged to have or knowledge of the skills required of the respondent to care for himself and his estate.
- (3) If the respondent is alleged to be partially disabled or disabled due to mental illness, at least one (1) person participating in the compilation of the interdisciplinary evaluation report shall be a qualified mental health professional as defined in KRS 202A.011(12). If the respondent is alleged to be partially disabled or disabled due to an intellectual disability, at least one (1) person participating in the compilation of the evaluation report shall be a qualified ~~mental-retardation~~ professional *in the area of intellectual disabilities* as defined in KRS 202B.010(12).
- (4) The interdisciplinary evaluation report shall contain:
- (a) A description of the nature and extent of the respondent's disabilities, if any;
  - (b) Current evaluations of the respondent's social, intellectual, physical, and educational condition, adaptive behavior, and social skills. Such evaluations may be based on prior evaluations not more than three (3) months old, except that evaluations of the respondent's intellectual condition may be based on individual intelligence test scores not more than one (1) year old;
  - (c) An opinion as to whether guardianship or conservatorship is needed, the type of guardianship or conservatorship needed, if any, and the reasons therefor;
  - (d) An opinion as to the length of time guardianship or conservatorship will be needed by the respondent, if at all, and the reasons therefor;
  - (e) If limited guardianship or conservatorship is recommended, a further recommendation as to the scope of the guardianship or conservatorship, specifying particularly the rights to be limited and the corresponding powers and duties of the limited guardian or limited conservator;
  - (f) A description of the social, educational, medical, and rehabilitative services currently being utilized by the respondent, if any;
  - (g) A determination whether alternatives to guardianship or conservatorship are available;
  - (h) A recommendation as to the most appropriate treatment or rehabilitation plan and living arrangement for the respondent and the reasons therefor;
  - (i) A listing of all medications the respondent is receiving, the dosage, and a description of the impact of the medication upon the respondent's mental and physical condition and behavior;
  - (j) An opinion whether attending a hearing on a petition filed under KRS 387.530 would subject the respondent to serious risk of harm;
  - (k) The names and addresses of all individuals who examined or interviewed the respondent or otherwise participated in the evaluation; and

- (1) Any dissenting opinions or other comments by the evaluators.
- (5) The evaluation report may be compiled by a community~~[-mental health-mental retardation]~~ center **for mental health or individuals with an intellectual disability**, a licensed facility for mentally ill or developmentally disabled persons, if the respondent is a resident of such facility, or a similar agency.
- (6) In all cases where the respondent is a resident of a licensed facility for mentally ill or developmentally disabled persons and the petition is filed by an employee of that facility, the petition shall be accompanied by an interdisciplinary evaluation report prepared by the facility.
- (7) Except as provided in subsection (6) of this section, the court shall order appropriate evaluations to be performed by qualified persons or a qualified agency. The report shall be prepared and filed with the court and copies mailed to the attorneys for both parties at least ten (10) days prior to the hearing. All items specified in subsection (4) of this section shall be included in the report.
- (8) If the person evaluated is a poor person as defined in KRS 453.190, the examiners shall be paid by the county in which the petition is filed upon an order of allowance entered by the court. Payment shall be in an amount which is reasonable as determined by the court, except no payment shall be required of the county for an evaluation performed by a salaried employee of a state agency for an evaluation performed within the course of his employment. Additionally, no payment shall be required of the county for an evaluation performed by a salaried employee of a community~~[-mental health-mental retardation]~~ center **for mental health or individuals with an intellectual disability** or private facility or agency where the costs incurred by the center, facility, or agency are reimbursable through third-party payors. Affidavits or other competent evidence shall be admissible to prove the services rendered but not to prove their value.
- (9) The respondent may file a response to the evaluation report no later than five (5) days prior to the hearing.
- (10) The respondent may secure an independent evaluation. If the respondent is unable to pay for the evaluation, compensation for the independent evaluation may be paid by the county in an amount which is reasonable as determined by the court.

➔Section 115. KRS 388.350 is amended to read as follows:

- (1) Whenever in a proceeding for the trial and commitment of any person who appears to be mentally disabled it is determined that such person is either **an individual with an intellectual disability**~~[-mentally retarded]~~, an epileptic, or a mentally ill person and ought to be committed for safekeeping or treatment and it appears that such person is eligible for care or treatment by the Veterans Administration or other agency of the United States government, the court of the county in which such person is found, having jurisdiction in such matters, upon receipt of a certificate from the Veterans Administration or such other agency showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to the Veterans Administration or other agency of the United States government for care or treatment. Thereafter, such person, upon admission to any such facility, shall be subject to the rules and regulations of the Veterans Administration or other agency of the United States government. The chief officer of any such facility or institution to which such person is committed under the provisions of this section shall be vested with the same powers as are exercised by superintendents of state hospitals for mental diseases within this state with respect to the retention, transfer, parole or discharge of the person so committed. Notice of such pending commitment proceedings shall be furnished the person whose commitment is sought and his right to appear and defend shall not be denied. The judgment or order of commitment by a court of competent jurisdiction of another state committing a person to the Veterans Administration or other agency of the United States government, for care or treatment, shall have the same force and effect as to such person while in this state as in the state in which is situated the court entering such judgment or making such order.
- (2) Upon receipt of a certificate of the Veterans Administration or such other agency of the United States government that facilities are available for the care or treatment of any person heretofore committed to any hospital for the mentally ill or other institution in this state for the care of persons similarly disabled and that such person is eligible for such care or treatment, the superintendent of any such hospital or institution in this state is hereby authorized to cause the transfer of any such person to the Veterans Administration or other agency of the United States government for care or treatment. Upon effecting any such transfer, the committing court shall be notified thereof by the transferring agency; provided, however, that no person shall be transferred if he be confined pursuant to conviction of any crime or misdemeanor, or if he shall have been acquitted of any such charge solely on the ground of insanity, unless prior to such transfer the court originally committing such person shall enter an order for such transfer after appropriate motion and hearing.

- (3) Any person transferred as provided in this section shall be deemed to be committed to the Veterans Administration or other agency of the United States government pursuant to the original commitment the same as if he had been originally so committed.

➔Section 116. KRS 431.650 is amended to read as follows:

- (1) The Kentucky Multidisciplinary Commission on Child Sexual Abuse is hereby created.
- (2) The commission shall be composed of the following members:
  - (a) The commissioner of the Department for Community Based Services or a designee;
  - (b) The commissioner of the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~(Mental Health and Mental Retardation Services)~~ or a designee;
  - (c) One (1) social service worker who is employed by the Department for Community Based Services to provide child protective services, who shall be appointed by the secretary of the Cabinet for Health and Family Services;
  - (d) One (1) therapist who provides services to sexually abused children, who shall be appointed by the secretary of the Cabinet for Health and Family Services;
  - (e) The commissioner of the Department of Kentucky State Police or a designee;
  - (f) One (1) law enforcement officer who is a detective with specialized training in conducting child sexual abuse investigations, who shall be appointed by the secretary of the Justice and Public Safety Cabinet;
  - (g) One (1) employee of the Administrative Office of the Courts appointed by the Chief Justice of the Supreme Court of Kentucky;
  - (h) Two (2) employees of the Attorney General's Office who shall be appointed by the Attorney General;
  - (i) One (1) Commonwealth's attorney who shall be appointed by the Attorney General;
  - (j) The commissioner of the Department of Education or a designee;
  - (k) One (1) school counselor, school psychologist, or school social worker who shall be appointed by the commissioner of the Department of Education;
  - (l) The executive director of the Division of Child Abuse and Domestic Violence Services or a designee;
  - (m) One (1) representative of a children's advocacy center who shall be appointed by the Governor;
  - (n) One (1) physician appointed by the Governor; and
  - (o) One (1) former victim of a sexual offense or one (1) parent of a child sexual abuse victim who shall be appointed by the Attorney General.

- (3) Appointees shall serve at the pleasure of the appointing authority but shall not serve longer than four (4) years without reappointment.

- (4) The commission shall elect a chairperson annually from its membership.

➔Section 117. KRS 439.267 is amended to read as follows:

- (1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any District Court, or any Circuit Court with respect to a defendant convicted in Circuit Court of a misdemeanor, may, upon motion of the defendant made not earlier than thirty (30) days after the defendant has been delivered to the keeper of the institution to which he has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon terms as the court determines.
- (2) The court shall consider any motion filed in accordance with subsection (1) of this section within sixty (60) days of the filing date of that motion, and shall enter its ruling within ten (10) days after considering the motion. The defendant may, in the discretion of the trial court, have the right to a hearing on any motion he may file, or have filed for him, that would suspend further execution of sentence. Any court order granting or denying a motion to suspend further execution of sentence is not reviewable.
- (3) The authority granted in this section shall be exercised by the judge who imposed sentence on the defendant, unless he is unable to act and it appears that his inability to act should continue beyond the expiration of the term of the court. In this case, the judge who imposed sentence shall assign a judge to dispose of a motion filed

under this section, or as prescribed by the rules and practices concerning the responsibility for disposition of criminal matters.

- (4) If the defendant has been convicted of a misdemeanor offense under KRS Chapter 510, or criminal attempt to commit any of these offenses under KRS 506.010, prior to considering the motion to suspend the sentence, the court may, for a misdemeanor offense specified herein, and shall, for any felony offense specified in this subsection order an evaluation of the defendant to be conducted by the sex offender treatment program operated or approved by the Department of Corrections or the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~. The evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining whether to suspend the sentence. If the court suspends the sentence and places the defendant on probation, the provisions of KRS 532.045(3) to (7) shall apply.

➔Section 118. KRS 439.510 is amended to read as follows:

All information obtained in the discharge of official duty by any probation or parole officer shall be privileged and shall not be received as evidence in any court. Such information shall not be disclosed directly or indirectly to any person other than the court, board, cabinet, or others entitled under KRS 439.250 to 439.560 to receive such information, unless otherwise ordered by such court, board or cabinet. Information shall be made available to sex offender treatment programs operated or approved by the Department of Corrections or the Department for ***Behavioral Health, Developmental and Intellectual Disabilities***~~[Mental Health and Mental Retardation Services]~~ who request the information in the course of conducting an evaluation or treatment pursuant to KRS 439.265(6), 532.045(3), or 532.050(4).

➔Section 119. KRS 441.048 is amended to read as follows:

Every prisoner, upon admittance to detention, shall be screened for mental health risk issues, including mental illness, suicide, ***intellectual disabilities***~~[mental retardation]~~, and acquired brain injury, by the personnel of the facility in which facility the prisoner is detained. Facilities have the discretion of using the telephonic behavioral health jail triage system created in KRS 210.365. Where the triage system indicates levels of behavioral health risk, the facility holding the prisoner may consider implementing the recommended protocols for housing, supervision, and care delivery that match the level of risk.

➔Section 120. KRS 504.020 is amended to read as follows:

- (1) A person is not responsible for criminal conduct if at the time of such conduct, as a result of mental illness or ***intellectual disability***~~[retardation]~~, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.
- (2) As used in this chapter, the term "mental illness or ***intellectual disability***~~[retardation]~~" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.
- (3) A defendant may prove mental illness or ***intellectual disability***~~[retardation]~~, as used in this section, in exculpation of criminal conduct.

➔Section 121. KRS 504.060 is amended to read as follows:

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

- (1) "Department" means the Department of Corrections;
- (2) "Forensic psychiatric facility" means a mental institution or facility, or part thereof, designated by the secretary of the Cabinet for Health and Family Services for the purpose and function of providing inpatient evaluation, care, and treatment for mentally ill ~~or mentally retarded~~ persons ***or individuals with an intellectual disability*** who have been charged with or convicted of a felony;
- (3) "Foreseeable future" means not more than three hundred sixty (360) days;
- (4) "Incompetency to stand trial" means, as a result of mental condition, lack of capacity to appreciate the nature and consequences of the proceedings against one or to participate rationally in one's own defense;
- (5) "Insanity" means, as a result of mental condition, lack of substantial capacity either to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law;
- (6) "Mental illness" means substantially impaired capacity to use self-control, judgment, or discretion in the conduct of one's affairs and social relations, associated with maladaptive behavior or recognized emotional

symptoms where impaired capacity, maladaptive behavior, or emotional symptoms can be related to physiological, psychological, or social factors;

- (7) "**Individual with an intellectual disability**~~[Mental retardation]~~" means **an individual with** significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period and is a condition which may exist concurrently with mental illness or insanity;
- (8) "Psychiatrist" means a physician licensed pursuant to KRS Chapter 311 who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
- (9) "Psychologist" means a person licensed at the doctoral level pursuant to KRS Chapter 319 who has been designated by the Kentucky Board of Examiners of Psychology as competent to perform examinations;
- (10) "Treatment" means medication or counseling, therapy, psychotherapy, and other professional services provided by or at the direction of psychologists or psychiatrists. "Treatment" shall not include electroshock therapy or psychosurgery; and
- (11) "Treatment facility" means an institution or part thereof, approved by the Cabinet for Health and Family Services, which provides evaluation, care, and treatment for insane ~~or~~ mentally ill~~, or mentally retarded~~ persons **or individuals with an intellectual disability** on an inpatient or outpatient basis, or both.

➔Section 122. KRS 504.085 is amended to read as follows:

A forensic psychiatric facility or psychiatric facility as those terms are defined in KRS 202A.011 shall have standing to petition the court for any necessary clarification or modification of orders or judgments entered in proceedings under this chapter and to appeal from final orders or judgments entered in proceedings which have not complied with the provisions of this chapter. A copy shall be sent to the mentally ~~ill~~ or ~~mentally retarded~~ person **or individual with an intellectual disability** who has been charged with or convicted of a felony and to the person's attorney of record, if any, of whatever pleadings are filed by the forensic psychiatric facility or psychiatric facility.

➔Section 123. KRS 510.010 is amended to read as follows:

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "Deviate sexual intercourse" means any act of sexual gratification involving the sex organs of one person and the mouth or anus of another; or penetration of the anus of one person by a foreign object manipulated by another person. "Deviate sexual intercourse" does not include penetration of the anus by a foreign object in the course of the performance of generally recognized health-care practices;
- (2) "Forcible compulsion" means physical force or threat of physical force, express or implied, which places a person in fear of immediate death, physical injury to self or another person, fear of the immediate kidnap of self or another person, or fear of any offense under this chapter. Physical resistance on the part of the victim shall not be necessary to meet this definition;
- (3) "Mental illness" means a diagnostic term that covers many clinical categories, typically including behavioral or psychological symptoms, or both, along with impairment of personal and social function, and specifically defined and clinically interpreted through reference to criteria contained in the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) and any subsequent revision thereto, of the American Psychiatric Association;
- (4) "**Individual with an intellectual disability**~~[Mentally retarded person]~~" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, as defined in KRS Chapter 202B;
- (5) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct as a result of the influence of an intoxicating substance administered to him without his consent or as a result of any other act committed upon him without his consent;
- (6) "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. "Physically helpless" also includes a person who has been rendered unconscious or for any other reason is physically unable to communicate an unwillingness to an act as a result of the influence of a controlled substance or legend drug;
- (7) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party;

- (8) "Sexual intercourse" means sexual intercourse in its ordinary sense and includes penetration of the sex organs of one person by a foreign object manipulated by another person. Sexual intercourse occurs upon any penetration, however slight; emission is not required. "Sexual intercourse" does not include penetration of the sex organ by a foreign object in the course of the performance of generally recognized health-care practices; and
- (9) "Foreign object" means anything used in commission of a sexual act other than the person of the actor.

➔Section 124. KRS 510.020 is amended to read as follows:

- (1) Whether or not specifically stated, it is an element of every offense defined in this chapter that the sexual act was committed without consent of the victim.
- (2) Lack of consent results from:
- (a) Forcible compulsion;
  - (b) Incapacity to consent; or
  - (c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.
- (3) A person is deemed incapable of consent when he or she is:
- (a) Less than sixteen (16) years old;
  - (b) **An individual with an intellectual disability or an individual that**~~[Mentally retarded or]~~ suffers from a mental illness;
  - (c) Mentally incapacitated;
  - (d) Physically helpless; or
  - (e) Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.
- (4) The provisions of subsection (3)(e) of this section shall not apply to persons who are lawfully married to each other and no court order is in effect prohibiting contact between the parties.

➔Section 125. KRS 510.030 is amended to read as follows:

In any prosecution under this chapter in which the victim's lack of consent is based solely on his incapacity to consent because he was less than sixteen (16) years old, **an individual an intellectual disability**~~[mentally retarded]~~, mentally incapacitated, or physically helpless, the defendant may prove in exculpation that at the time he engaged in the conduct constituting the offense he did not know of the facts or conditions responsible for such incapacity to consent.

➔Section 126. KRS 510.035 is amended to read as follows:

A person who engages in sexual intercourse or deviate sexual intercourse with another person to whom the person is married, or subjects another person to whom the person is married to sexual contact, does not commit an offense under this chapter regardless of the person's age solely because the other person is less than sixteen (16) years old or **an individual with an intellectual disability**~~[mentally retarded]~~.

➔Section 127. KRS 510.060 is amended to read as follows:

- (1) A person is guilty of rape in the third degree when:
- (a) He engages in sexual intercourse with another person who is incapable of consent because he or she is **an individual with an intellectual disability**~~[mentally retarded]~~;
  - (b) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than sixteen (16) years old;
  - (c) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020;
  - (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in sexual intercourse with a minor under sixteen (16) years old with whom he or she comes into contact as a result of that position; or

- (e) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual intercourse.
- (2) Rape in the third degree is a Class D felony.
- ➔Section 128. KRS 510.090 is amended to read as follows:
- (1) A person is guilty of sodomy in the third degree when:
- He engages in deviate sexual intercourse with another person who is incapable of consent because he or she is ***an individual with an intellectual disability***~~mentally retarded~~;
  - Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than sixteen (16) years old; or
  - Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020;
  - Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in deviate sexual intercourse with a minor less than sixteen (16) years old with whom he or she comes into contact as a result of that position; or
  - Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to deviate sexual intercourse.
- (2) Sodomy in the third degree is a Class D felony.
- ➔Section 129. KRS 510.120 is amended to read as follows:
- (1) A person is guilty of sexual abuse in the second degree when:
- He or she subjects another person to sexual contact who is incapable of consent because he or she is ***an individual with an intellectual disability***~~mentally retarded~~;
  - He or she is at least eighteen (18) years old but less than twenty-one (21) years old and subjects another person who is less than sixteen (16) years old to sexual contact; or
  - Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who is at least eighteen (18) years old and who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual contact.
- (2) In any prosecution under subsection (1)(b) of this section, it is a defense that:
- The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and
  - The other person was at least fourteen (14) years old; and
  - The actor was less than five (5) years older than the other person.
- (3) Sexual abuse in the second degree is a Class A misdemeanor.
- ➔Section 130. KRS 510.320 is amended to read as follows:
- (1) For purposes of this section, "human immunodeficiency virus test" means a test of an individual for presence of human immunodeficiency virus, or for antibodies or antigens that result from human immunodeficiency virus infection, or for any other substance specifically indicating human immunodeficiency virus infection.

- (2) A defendant charged with an offense pursuant to this chapter which has sexual intercourse or deviate sexual intercourse as an element, or has sexual contact as an element when the circumstances of the case demonstrate a possibility of transmission of human immunodeficiency virus, shall upon initial court appearance on the charge, be informed by the judge of the availability of human immunodeficiency virus testing. The judge shall also notify the victim of the offense, or parent or guardian of the victim, that the defendant has been so notified.
- (3) When a defendant has been convicted of any offense in subsection (2) of this section, other provisions of law to the contrary notwithstanding, the sentencing court, regardless of any prior human immunodeficiency virus test, shall order the defendant to undergo a human immunodeficiency virus test, under the direction of the Cabinet for Health and Family Services.
- (4)
  - (a) The result of any human immunodeficiency virus test conducted pursuant to this section shall not be a public record for purposes of KRS Chapter 61.
  - (b) The result of any human immunodeficiency virus test conducted pursuant to this section shall only be made available by the Cabinet for Health and Family Services to the victim, or the parent or guardian of a victim who is a minor, ***an individual with an intellectual disability***, ~~or is mentally retarded~~ or mentally incapacitated, the defendant, the court issuing the order for testing, and to any other agency as directed pursuant to KRS Chapter 214.
  - (c) The Cabinet for Health and Family Services shall immediately provide to the victim the results of any human immunodeficiency virus test conducted under this section.
  - (d) In addition, the Cabinet for Health and Family Services shall provide to the Department of Corrections the result of any human immunodeficiency virus test conducted pursuant to this section which indicates that the defendant is infected with the human immunodeficiency virus. The Department of Corrections shall use this information solely for the purpose of providing medical treatment to the defendant while incarcerated in a state penitentiary or correctional institution or county jail.
- (5) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Cabinet for Health and Family Services shall provide counseling to the victim and the defendant regarding human immunodeficiency virus disease, and referral for appropriate health-care and support services.
- (6) The cost of testing under this section shall be paid by the defendant tested, unless the court has determined the defendant to be indigent.
- (7) Filing of a notice of appeal shall not automatically stay an order that the defendant submit to a human immunodeficiency virus test.

➔Section 131. KRS 530.080 is amended to read as follows:

- (1) A person is guilty of endangering the welfare of an incompetent person when he knowingly acts in a manner which results in an injury to the physical or mental welfare of a person who is unable to care for himself because of mental illness or ***intellectual disability***~~[retardation]~~.
- (2) Endangering the welfare of an incompetent person is a Class A misdemeanor.

➔Section 132. KRS 532.025 is amended to read as follows:

- (1)
  - (a) Upon conviction of a defendant in cases where the death penalty may be imposed, a hearing shall be conducted. In such hearing, the judge shall hear additional evidence in extenuation, mitigation, and aggravation of punishment, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant, or the absence of any prior conviction and pleas; provided, however, that only such evidence in aggravation as the state has made known to the defendant prior to his trial shall be admissible. Subject to the Kentucky Rules of Evidence, juvenile court records of adjudications of guilt of a child for an offense that would be a felony if committed by an adult shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial and may be used during the sentencing phase of a criminal trial; however, the fact that a juvenile has been adjudicated delinquent of an offense that would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or IV-B of the Federal

Social Security Act is also prohibited. The judge shall also hear argument by the defendant or his counsel and the prosecuting attorney, as provided by law, regarding the punishment to be imposed. The prosecuting attorney shall open and the defendant shall conclude the argument. In cases in which the death penalty may be imposed, the judge when sitting without a jury shall follow the additional procedure provided in subsection (2) of this section. Upon the conclusion of the evidence and arguments, the judge shall impose the sentence or shall recess the trial for the purpose of taking the sentence within the limits prescribed by law. If the trial court is reversed on appeal because of error only in the presentence hearing, the new trial which may be ordered shall apply only to the issue of punishment;

- (b) In all cases in which the death penalty may be imposed and which are tried by a jury, upon a return of a verdict of guilty by the jury, the court shall resume the trial and conduct a presentence hearing before the jury. Such hearing shall be conducted in the same manner as presentence hearings conducted before the judge as provided in paragraph (a) of this subsection, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant. Upon the conclusion of the evidence and arguments, the judge shall give the jury appropriate instructions, and the jury shall retire to determine whether any mitigating or aggravating circumstances, as defined in subsection (2) of this section, exist and to recommend a sentence for the defendant. Upon the findings of the jury, the judge shall fix a sentence within the limits prescribed by law.
- (2) In all cases of offenses for which the death penalty may be authorized, the judge shall consider, or he shall include in his instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by law and any of the following statutory aggravating or mitigating circumstances which may be supported by the evidence:
- (a) Aggravating circumstances:
    1. The offense of murder or kidnapping was committed by a person with a prior record of conviction for a capital offense, or the offense of murder was committed by a person who has a substantial history of serious assaultive criminal convictions;
    2. The offense of murder or kidnapping was committed while the offender was engaged in the commission of arson in the first degree, robbery in the first degree, burglary in the first degree, rape in the first degree, or sodomy in the first degree;
    3. The offender by his act of murder, armed robbery, or kidnapping knowingly created a great risk of death to more than one (1) person in a public place by means of a weapon of mass destruction, weapon, or other device which would normally be hazardous to the lives of more than one (1) person;
    4. The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value, or for other profit;
    5. The offense of murder was committed by a person who was a prisoner and the victim was a prison employee engaged at the time of the act in the performance of his duties;
    6. The offender's act or acts of killing were intentional and resulted in multiple deaths;
    7. The offender's act of killing was intentional and the victim was a state or local public official or police officer, sheriff, or deputy sheriff engaged at the time of the act in the lawful performance of his duties; and
    8. The offender murdered the victim when an emergency protective order or a domestic violence order was in effect, or when any other order designed to protect the victim from the offender, such as an order issued as a condition of a bond, conditional release, probation, parole, or pretrial diversion, was in effect.
  - (b) Mitigating circumstances:
    1. The defendant has no significant history of prior criminal activity;
    2. The capital offense was committed while the defendant was under the influence of extreme mental or emotional disturbance even though the influence of extreme mental or emotional disturbance is not sufficient to constitute a defense to the crime;
    3. The victim was a participant in the defendant's criminal conduct or consented to the criminal act;

4. The capital offense was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct even though the circumstances which the defendant believed to provide a moral justification or extenuation for his conduct are not sufficient to constitute a defense to the crime;
  5. The defendant was an accomplice in a capital offense committed by another person and his participation in the capital offense was relatively minor;
  6. The defendant acted under duress or under the domination of another person even though the duress or the domination of another person is not sufficient to constitute a defense to the crime;
  7. At the time of the capital offense, the capacity of the defendant to appreciate the criminality of his conduct to the requirements of law was impaired as a result of mental illness or ***an intellectual disability***~~retardation~~ or intoxication even though the impairment of the capacity of the defendant to appreciate the criminality of his conduct or to conform the conduct to the requirements of law is insufficient to constitute a defense to the crime; and
  8. The youth of the defendant at the time of the crime.
- (3) The instructions as determined by the trial judge to be warranted by the evidence or as required by KRS 532.030(4) shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict be a recommendation of death, or imprisonment for life without benefit of probation or parole, or imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall designate in writing, signed by the foreman of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In nonjury cases, the judge shall make such designation. In all cases unless at least one (1) of the statutory aggravating circumstances enumerated in subsection (2) of this section is so found, the death penalty, or imprisonment for life without benefit of probation or parole, or the sentence to imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall not be imposed.

➔Section 133. KRS 532.130 is amended to read as follows:

- (1) An adult, or a minor under eighteen (18) years of age who may be tried as an adult, convicted of a crime and subject to sentencing, is referred to in KRS 532.135 and 532.140 as a defendant.
- (2) A defendant with significant subaverage intellectual functioning existing concurrently with substantial deficits in adaptive behavior and manifested during the developmental period is referred to in KRS 532.135 and 532.140 as a ~~seriously mentally retarded~~ defendant ***with a serious intellectual disability***. "Significantly subaverage general intellectual functioning" is defined as an intelligence quotient (I.Q.) of seventy (70) or below.

➔Section 134. KRS 532.135 is amended to read as follows:

- (1) At least thirty (30) days before trial, the defendant shall file a motion with the trial court wherein the defendant may allege that he is a ~~seriously mentally retarded~~ defendant ***with a serious intellectual disability*** and present evidence with regard thereto. The Commonwealth may offer evidence in rebuttal.
- (2) At least ten (10) days before the beginning of the trial, the court shall determine whether or not the defendant is a ~~seriously mentally retarded~~ defendant ***with a serious intellectual disability*** in accordance with the definition in KRS 532.130.
- (3) The decision of the court shall be placed in the record.
- (4) The pretrial determination of the trial court shall not preclude the defendant from raising any legal defense during the trial. If it is determined the defendant is ~~an~~~~a seriously mentally retarded~~ offender ***with a serious intellectual disability***, he shall be sentenced as provided in KRS 532.140.

➔Section 135. KRS 532.140 is amended to read as follows:

- (1) KRS 532.010, 532.025, and 532.030 to the contrary notwithstanding, no offender who has been determined to be ~~an~~~~a seriously mentally retarded~~ offender ***with a serious intellectual disability*** under the provisions of KRS 532.135, shall be subject to execution. The same procedure as required in KRS 532.025 and 532.030 shall be utilized in determining the sentence of the ~~seriously mentally retarded~~ offender ***with a serious intellectual disability*** under the provisions of KRS 532.135 and 532.140.

(2) The provisions of KRS 532.135 and 532.140 do not preclude the sentencing of ~~an~~ ~~a seriously mentally retarded~~ offender **with a serious intellectual disability** to any other sentence authorized by KRS 532.010, 532.025, or 532.030 for a crime which is a capital offense.

(3) The provisions of KRS 532.135 and 532.140 shall apply only to trials commenced after July 13, 1990.

➔Section 136. KRS 533.200 is amended to read as follows:

(1) A person convicted of a misdemeanor or violation who has not received a graduation certificate from high school or has not passed the general educational development test (GED) or has not obtained a high school diploma through participation in the external diploma program may, in addition to or in lieu of any other penalty provided by law, be sentenced to attend and successfully complete a program designed to improve his reading, living, and employment skills. Attendance at such program shall be deemed a form of probation and all provisions of the law with respect to probation, including restitution to victims, shall apply.

(2) A person convicted of a felony who has not received a graduation certificate from high school or has not passed the general educational development test (GED) or has not obtained a high school diploma through participation in the external diploma program may, in addition to any other penalty provided by law, be sentenced to attend and successfully complete a program designed to improve his reading, living, and employment skills. Attendance at such program shall be deemed a form of probation and all provisions of the law with respect to probation, including restitution to victims, shall apply.

(3) The provisions of this section shall not apply to **an individual with an intellectual or other disability that is so severe**~~[a person who is so severely retarded mentally or otherwise]~~ that he would not reasonably be expected to benefit from or complete the program.

➔Section 137. KRS 533.220 is amended to read as follows:

Any person sentenced to the reading skills improvement program specified in KRS 533.200 who fails to successfully complete the program within the time specified, who fails to attend as required, or fails to make progress toward successful completion, shall be reported to the sentencing court, and the court shall ascertain whether or not the failures are willful or the person is actually incapable of successfully completing the program due to **an intellectual or other disability**~~[mental or other retardation]~~, or other reasons beyond his control. In the event the failure is willful, the court may proceed as in cases of probation violation and may apply such remedy as is authorized.

➔Section 138. 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 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 or **an individual with an intellectual disability**~~[mental retardation]~~ as defined in KRS 202B.010 or other developmental disability as defined in KRS 387.510 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 139. KRS 615.030 is amended to read as follows:

The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joined therein in form substantially as follows:

## ARTICLE I

## Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

## ARTICLE II

## Definitions

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, **individuals with an intellectual disability**, ~~mentally retarded~~ or epileptic or any institution primarily educational in character, or any hospital or other medical facility.

## ARTICLE III

## Conditions for Placement

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

#### ARTICLE IV

##### Penalty for Illegal Placement

This sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

#### ARTICLE V

##### Retention of Jurisdiction

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one (1) or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

#### ARTICLE VI

##### Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

- (1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
- (2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

#### ARTICLE VII

##### Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

#### ARTICLE VIII

##### Limitations

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

#### ARTICLE IX

##### Enactment and Withdrawal

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, The Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two (2) years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

#### ARTICLE X

##### Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the states affected as to all severable matters.

➔Section 140. 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 or ***an intellectual disability*** ~~[mental retardation]~~ as defined in KRS 202B.010 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 toward any child;
  - (c) Alcohol and other drug abuse, as defined in KRS 222.005, 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 141. KRS 625.090 is amended to read as follows:

- (1) The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that:
  - (a) 1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction;

2. The child is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding; or
  3. The parent has been convicted of a criminal charge relating to the physical or sexual abuse or neglect of any child and that physical or sexual abuse, neglect, or emotional injury to the child named in the present termination action is likely to occur if the parental rights are not terminated; and
- (b) Termination would be in the best interest of the child.
- (2) No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:
- (a) That the parent has abandoned the child for a period of not less than ninety (90) days;
  - (b) That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;
  - (c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;
  - (d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to any child;
  - (e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;
  - (f) That the parent has caused or allowed the child to be sexually abused or exploited;
  - (g) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;
  - (h) That:
    1. The parent's parental rights to another child have been involuntarily terminated;
    2. The child named in the present termination action was born subsequent to or during the pendency of the previous termination; and
    3. The conditions or factors which were the basis for the previous termination finding have not been corrected;
  - (i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect; or
  - (j) That the child has been in foster care under the responsibility of the cabinet for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights.
- (3) In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:
- (a) Mental illness as defined by KRS 202A.011(9), or ***an intellectual disability***~~[mental retardation]~~ as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;
  - (b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;
  - (c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents unless one or more of the circumstances enumerated in KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court;

- (d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;
  - (e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and
  - (f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.
- (4) If the child has been placed with the cabinet, the parent may present testimony concerning the reunification services offered by the cabinet and whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent.
  - (5) If the parent proves by a preponderance of the evidence that the child will not continue to be an abused or neglected child as defined in KRS 600.020(1) if returned to the parent the court in its discretion may determine not to terminate parental rights.
  - (6) Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter findings of fact, conclusions of law, and a decision as to each parent-respondent within thirty (30) days either:
    - (a) Terminating the right of the parent; or
    - (b) Dismissing the petition and stating whether the child shall be returned to the parent or shall remain in the custody of the state.

➔Section 142. KRS 635.110 is amended to read as follows:

- (1) A juvenile session of a District Court shall comply with the provisions of KRS 510.320 when a child is accused of commission of a public offense as described therein.
- (2) A juvenile session of a District Court shall order a child who is adjudicated a public offender to submit to a human immunodeficiency virus test pursuant to KRS 510.320 if the offense is one described therein.
- (3)
  - (a) The result of any human immunodeficiency virus test conducted pursuant to this section shall not be a public record for purposes of KRS Chapter 61.
  - (b) The result of any human immunodeficiency virus test conducted pursuant to this section shall only be made available by the Department of Juvenile Justice to the victim, the parent or guardian of a victim who is a minor or is ***an individual with an intellectual disability***~~(mentally retarded)~~ or mentally incapacitated, the child adjudicated as a public offender and his parents or guardian, the court issuing the order for testing, and as otherwise directed pursuant to KRS Chapter 214.
- (4) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Department of Juvenile Justice shall provide counseling to the victim and the juvenile offender regarding human immunodeficiency virus disease and referral for appropriate health care and support services.

➔Section 143. KRS 635.505 is amended to read as follows:

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

- (1) The "treatment program" means a continuum of services provided in community and institutional settings designed to provide early intervention and treatment services for juvenile sexual offenders.
- (2) A "juvenile sexual offender" as used in this chapter means an individual who was at the time of the commission of the offense under the age of eighteen (18) years who is not actively psychotic or ***an individual with an intellectual disability***~~(mentally retarded)~~ and who has been adjudicated guilty of or has been convicted of or pled guilty to:
  - (a) A felony under KRS Chapter 510;
  - (b) Any other felony committed in conjunction with a misdemeanor described in KRS Chapter 510;
  - (c) Any felony under KRS 506.010 when the crime attempted is a felony or misdemeanor described in KRS Chapter 510;
  - (d) An offense under KRS 530.020;
  - (e) An offense under KRS 530.064(1)(a);

- (f) An offense under KRS 531.310; or
  - (g) A misdemeanor offense under KRS Chapter 510.
- (3) A "juvenile sexual offender assessment" means an assessment of the child's adolescent social development, medical history, educational history, legal history, family history, substance abuse history, sexual history, treatment history, and recent behaviors, which shall be prepared in order to assist the courts in determining whether the child should be declared a juvenile sexual offender, and to provide information regarding the risk for reoffending and recommendations for treatment.
- (4) "**Individual with an intellectual disability**~~Mentally retarded~~," as used in this section means a juvenile with a full scale intelligent quotient of seventy (70) or below.

➔Section 144. In order to reflect the change in terminology effectuated by this Act, the Reviser of Statutes shall:

(1) Replace references in the Kentucky Revised Statutes to "mental retardation," "mentally retarded," or "MR" to signify mental retardation or mentally retarded with "intellectual disability," "intellectual disabilities," "individual with an intellectual disability," "individuals with an intellectual disability," "individual with a serious intellectual disability," or "individuals with a serious intellectual disability," as appropriate; and

(2) Replace the names of agencies, subagencies, boards, and officers with the appropriate successor agencies, subagencies, boards, and officers as set forth in this Act. The reviser of statutes shall base these actions on the changes made within this Act and may consult with officers of the affected agencies, or their designees, to receive suggestions.

**Signed by Governor April 18, 2012.**