CHAPTER 69

(SB 78)

AN ACT relating to the criminal justice system.

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

➔Section 1. KRS 216B.400 is amended to read as follows:

(1) Where a person has been determined to be in need of emergency care by any person with admitting authority, no such person shall be denied admission by reason only of his or her inability to pay for services to be rendered by the hospital.

(2) Every hospital of this state which offers emergency services shall provide that a physician, a sexual assault nurse examiner, who shall be a registered nurse licensed in the Commonwealth and credentialed by the Kentucky Board of Nursing as provided under KRS 314.142, or another qualified medical professional, as defined by administrative regulation promulgated by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707, is available on call twenty-four (24) hours each day for the examinations of persons seeking treatment as victims of sexual offenses as defined by KRS 510.010 to 510.140, 530.020, 530.064(1)(a), and 531.310.

(3) An examination provided in accordance with this section of a victim of a sexual offense may be performed in a sexual assault examination facility as defined in KRS 216B.015. An examination under this section shall apply only to an examination of a victim.

(4) The physician, sexual assault nurse examiner, or other qualified medical professional, acting under a statewide medical forensic protocol which shall be developed by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707, and promulgated by the secretary of justice and public safety pursuant to KRS Chapter 13A shall, upon the request of any peace officer or prosecuting attorney, and with the consent of the victim, or upon the request of the victim, examine such person for the purposes of providing basic medical care relating to the incident and gathering samples that may be used as physical evidence. This examination shall include but not be limited to:

   (a) Basic treatment and sample gathering services; and

   (b) Laboratory tests, as appropriate.

(5) Each victim shall be informed of available services for treatment of sexually transmitted infections, pregnancy, and other medical and psychiatric problems. Pregnancy counseling shall not include abortion counseling or referral information.

(6) Each victim shall be informed of available crisis intervention or other mental health services provided by regional rape crisis centers providing services to victims of sexual assault.

(7) Notwithstanding any other provision of law, a minor may consent to examination under this section. This consent is not subject to disaffirmance because of minority, and consent of the parents or guardians of the minor is not required for the examination.

(8) (a) The examinations provided in accordance with this section shall be paid for by the Crime Victims' Compensation Board at a rate to be determined by the administrative regulation promulgated by the board after consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.

   (b) Upon receipt of a completed claim form supplied by the board and ***an*** itemized billing for a forensic sexual assault examination or related services ***that are*** within the scope of practice of the respective provider ***and were performed no more than twelve (12) months prior to submission of the form***, the board shall reimburse the hospital or sexual assault examination facility, pharmacist, health department, physician, sexual assault nurse examiner, or other qualified medical professional as provided in administrative regulations promulgated by the board pursuant to KRS Chapter 13A. Reimbursement shall be made to an out-of-state nurse who is credentialed in the other state to provide sexual assault examinations, an out-of-state hospital, or an out-of-state physician if the sexual assault occurred in Kentucky.

(c) Independent investigation by the Crime Victims' Compensation Board shall not be required for payment of claims under this section; however, the board may require additional documentation or proof that the forensic medical examination was performed.

(9) No charge shall be made to the victim for sexual assault examinations by the hospital, the sexual assault examination facility, the physician, the pharmacist, the health department, the sexual assault nurse examiner, other qualified medical professional, the victim's insurance carrier, or the Commonwealth.

(10) (a) Each victim shall have the right to determine whether a report or other notification shall be made to law enforcement, except where reporting of abuse and neglect of a child, spouse, and other vulnerable adult is required, as set forth in KRS 209.030, 209A.030, and 620.030. No victim shall be denied an examination because the victim chooses not to file a police report, cooperate with law enforcement, or otherwise participate in the criminal justice system.

(b) 1. All samples collected during an exam where the victim has chosen not to immediately report to law enforcement shall be stored, released, and destroyed, if appropriate, in accordance with an administrative regulation promulgated by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.

2. Facilities collecting samples pursuant to this section may provide the required secure storage, sample destruction, and related activities, or may enter into agreements with other agencies qualified to do so, pursuant to administrative regulation.

3. All samples collected pursuant to this section shall be stored for at least ninety (90) days from the date of collection in accordance with the administrative regulation promulgated pursuant to this subsection.

4. Notwithstanding KRS 524.140, samples collected during exams where the victim chose not to report immediately or file a report within ninety (90) days after collection may be destroyed as set forth in accordance with the administrative regulation promulgated pursuant to this subsection. No hospital, sexual assault examination facility, or designated storage facility shall be liable for destruction of samples after the required storage period has expired.

➔Section 2. KRS 346.040 is amended to read as follows:

The board shall have the following powers and duties:

(1) To establish and maintain necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation***;*** ~~[.]~~

(2) To promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of this chapter, including administrative regulations for the approval of attorney's fees for representation before the board or upon judicial review as provided for in KRS 346.110***;*** ~~[.]~~

(3) To hear and determine all matters relating to claims for compensation, and the power to reinvestigate or reopen claims without regard to statutes of limitations***;*** ~~[.]~~

(4) To request from prosecuting attorneys and law enforcement officers investigations and data to enable the board to determine whether, and the extent to which, a claimant qualifies for compensation. The statute providing confidentiality for juvenile session of District Court records does not apply to proceedings under this chapter***;*** ~~[.]~~

(5) To hold hearings in accordance with the provisions of KRS Chapter 13B. The powers provided in this subsection may be delegated by the board to any member or employee thereof. If necessary to carry out any of its powers and duties, the board may petition any Circuit Court for an order***;*** ~~[.]~~

(6) To take or cause to be taken affidavits or depositions within or without the state***;*** ~~[.]~~

(7) ***Upon the filing of an application by a claimant, to negotiate binding fee settlements with the providers of services to claimants that may be eligible for an award under subsection (3) of Section 4 of this Act;***

(8) To make available for public inspection all board decisions and opinions, administrative regulations, written statements of policy, and interpretations formulated, promulgated, or used by it in discharging its functions***;*** ~~[.]~~

(9) ~~[(8)]~~ To publicize widely the availability of reparations and information regarding the claims therefor***; and*** ~~[.]~~

(10)~~[(9)]~~ To make an annual report, by January 1 of each year, of its activities for the preceding fiscal year to the Office of the State Budget Director and to the Interim Joint Committee on Appropriations and Revenue. Each such report shall set forth a complete operating and financial statement covering its operations during the year.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 346 IS CREATED TO READ AS FOLLOWS:

(1) Upon the filing of an application for a claim with the board, all debt collection actions by a creditor or the creditor's agent, against the claimant for a debt or expense covered under subsection (3) of Section 4 of this Act and related to the substance of the claim shall cease pending a resolution of the claim by the board, if the claimant:

(a) Provides written notice to the creditor or creditor's agent that a claim has been submitted to the board; and

(b) Authorizes the creditor or creditor's agent to confirm with the board the claimant's application with the board and that the debt or expense upon which the collection action is based may be covered under subsection (3) of Section 4 of this Act.

(2) The board shall, upon the written request of a creditor or creditor's agent, notify the creditor or creditor's agent when a claim has been resolved.

➔Section 4. KRS 346.130 is amended to read as follows:

(1) No award shall be made unless the board or board member, as the case may be, finds that:

(a) Criminally injurious conduct occurred;

(b) Such criminally injurious conduct resulted in personal physical or psychological injury to, or death of, the victim; and

(c) Police ***or court*** records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the police ***or court*** records show that such report was made more than forty-eight (48) hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified.

(2) ***Except for claims related to sexual assault and domestic violence,*** the board upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies shall deny, reconsider, or reduce an award.

(3) Any award made pursuant to this chapter shall be in an amount not exceeding out-of-pocket expenses, including indebtedness reasonably incurred for medical or other services, including mental health counseling, necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from such injury. Mental health counseling shall be paid for a maximum of two (2) years, but only after proper documentation is submitted to the board stating what treatment is planned and for what period of time. The board shall have the power to discontinue ***payment of*** mental health counseling at any time within the two (2) year period. Replacement of eyeglasses and other corrective lenses shall be included in an award, provided they were ***stolen, destroyed,***~~[broken]~~ or damaged during the crime.

(4) Any award made for loss of earnings or ***financial*** support ***may be considered for a claimant who has loss of support or wages due to the crime for which the claim is filed.***~~[shall,]~~ Unless reduced pursuant to other provisions of this chapter***, the award shall be equal to net earnings at the time of the criminally injurious conduct***~~[be in an amount equal to the actual loss sustained; provided,]~~ however,~~[that]~~ no such award shall exceed one hundred fifty dollars ($150) for each week of lost earnings or ***financial*** support. The ***wage earner or source of support***~~[claimant or victim]~~ must have been employed ***or paying support*** at the time the crime occurred. Said employment ***or support*** shall be verified by the staff of the board after information is provided by the claimant or victim. Should the claimant or victim fail to supply the board with the information requested, the portion of the claim for lost wages or support shall be denied. If there are two (2) or more persons entitled to an award as a result of the injury or death of a person which is the direct result of criminally injurious conduct, the award shall be apportioned by the board among the claimants.

(5) The board is authorized to set a reasonable limit for the payment of funeral and burial expenses which shall include funeral costs, a monument, and grave plot. In no event shall an award for funeral expenses exceed five thousand dollars ($5,000).

(6) Any award made under this chapter shall not exceed twenty-five thousand dollars ($25,000) ***in total compensation to be received by or paid on behalf of a claimant from the fund***.

(7) No award shall be made for any type of property loss or damage***, except as otherwise permitted in this chapter***.

➔Section 5. KRS 346.140 is amended to read as follows:

(1) Any award made pursuant to this chapter shall be reduced by the amount of any payments received or to be received by the claimant as a result of the injury from the following sources:

(a) From or on behalf of the person who committed the crime;

(b) Under insurance programs mandated by law;

(c) From public funds;

(d) Under any contract of insurance wherein the claimant is the insured or beneficiary;~~[and]~~

(e) As an emergency award pursuant to KRS 346.120***; and***

(f) From donations made on behalf of the victim or claimant toward expenses incurred as a result of the crime.

(2) In determining the amount of an award, the board or board member~~[, as the case may be]~~ shall determine whether, because of his ***or her*** conduct, ***the claimant or*** the victim of such crime contributed to the infliction of ***the victim's***~~[his]~~ injury, and ~~[the board or board member]~~shall reduce the amount of the award or reject the claim altogether, in accordance with such determination;~~[provided,]~~ however,~~[that]~~ the board or board member~~[, as the case may be,]~~ may disregard for this purpose the responsibility of the ***claimant or the*** victim for ***the victim's***~~[his own]~~ injury where the record shows that such responsibility was attributable to efforts by the ***claimant or*** victim to prevent a crime or an attempted crime from occurrence in his ***or her*** presence or to apprehend a person who had committed a crime in his ***or her*** presence or had in fact committed a felony. The board or board members may request that either the county attorney or Commonwealth's attorney or both state whether in their opinion, the victim suffered injuries as the result of a crime and has cooperated with the prosecution and law enforcement authorities. The board or board member shall not be bound by such opinions and recommendations and if needed may order a further investigation of the claim.

(3) The board or board member may consider whether the ***victim's***~~[claimant's]~~ injuries were the ordinary and foreseeable result of unlawful and criminal activities in determining the claimant's eligibility for an award. If the board or board member~~[, as the case may be,]~~ finds that the claimant will not suffer serious financial ***hardship***~~[hardships, as a result of the loss of earnings or support and the out-of-pocket expenses incurred as a result of the injury,]~~ if not granted financial assistance pursuant to this chapter~~[to meet such loss of earnings, support or out of pocket expenses]~~, the board or board member shall deny an award. In determining such serious financial hardship, the board or board member shall consider all of the financial resources of the claimant. The board shall establish specific standards by rule for determining such serious financial hardships.

➔Section 6. KRS 532.162 is amended to read as follows:

(1) If the criminal garnishment is made upon the convicted person's earnings, the order of garnishment shall be a lien upon the earnings from the date of service on the garnishee until an order discontinuing the lien is entered. A convicted person may challenge the garnishment by filing a challenge to the garnishment with the sentencing court. The challenge shall be heard within ten (10) days of its filing or the nearest court date thereafter. Before the hearing, garnishment shall continue. Any moneys which the court determines were improperly garnished shall be repaid to the garnishee not later than thirty (30) days after the determination.

(2) The circuit clerk's office shall disburse all collected reimbursement, restitution, and fees to the victim***, the Crime Victims Compensation Board,*** or the local government, whichever is appropriate. The clerk shall be entitled to collect a fee of two dollars and fifty cents ($2.50) from each account for which a disbursement is made at the time of disbursement. In the event of challenge to a garnishment, the appropriate clerk's office shall not disburse those sums associated with the challenged garnishment until determination by the sentencing court regarding the propriety of the garnishment.

➔Section 7. KRS 6.949 is amended to read as follows:

(1) Any bill, amendment, or committee substitute that creates a new crime, increases the penalty for an existing crime, decreases the penalty for an existing crime, changes the elements of the offense for an existing crime, repeals an existing crime, or proposes to increase, decrease, or otherwise impact incarceration shall be identified by the staff of the Legislative Research Commission as having a corrections impact on a "Corrections Impact Statement" form specified by the Legislative Research Commission.

(2) If a bill, amendment, or committee substitute is identified as having a corrections impact under subsection (1) of this section, the staff of the Legislative Research Commission shall notify the sponsor of the bill, amendment, or committee substitute that a corrections impact is required.

(3) If a bill, amendment, or committee substitute is identified as having a corrections impact, a "Corrections Impact Statement" shall be prepared by the staff of the Department of Corrections with the assistance of the Department of Kentucky State Police, Administrative Office of the Courts, Parole Board, and other persons, agencies, or organizations deemed necessary by the Department of Corrections staff assigned to prepare the corrections impact statement. The Department of Kentucky State Police, Administrative Office of the Courts, Parole Board, and other persons, agencies, and organizations that have been requested to provide information for the corrections impact statement shall do so within the period of time specified by the Department of Corrections staff person requesting the information, which in no case shall exceed two (2) business days unless an extension is granted by the requesting staff person.

(4) The corrections impact statement shall contain the estimated costs, estimated savings, and necessary appropriations based upon:

(a) Incarceration in jail prior to trial and during trial based on the available information about persons granted bail or other form of pretrial release and the length of time spent in jail prior to release;

(b) Supervision of a person who has been granted bail or pretrial release based on the average time spent between the time of release until the time of trial for the offense;

(c) Incarceration in jail for a misdemeanor following conviction based on the maximum time of incarceration authorized for the offense;

(d) Incarceration in a state correctional facility for a capital offense, or felony offense based on the maximum and minimum length of incarceration authorized for the offense, except for offenses in which incarceration in a county jail for a Class D felony is required;

(e) Incarceration in a county jail for a Class D felony for which incarceration in a county jail is authorized based on the maximum and minimum sentence of incarceration authorized for a Class D felony;

(f) Probation or conditional discharge supervision based on the maximum time of probation or conditional discharge authorized for the offense;

(g) Parole supervision based on the ***minimum expiration of sentence*** ~~[average length of parole supervision authorized for the offense assuming full parole supervision]~~; and

(h) ~~[Mandated]~~Treatment, education, and other programs which are to be paid by the state~~[, unit of local government, or public agency]~~ based on the ***average costs actually paid by the Department of Corrections during the previous fiscal year*** ~~[number of persons anticipated to be required to complete the program if the education, treatment, or other program is not normally offered as a part of a defendant's incarceration and is required to be completed outside of a correctional facility]~~.

(5) Insofar as possible, costs and savings for a change to an existing crime shall be calculated using:

(a) Arrest data for the crime from the Department of Kentucky State Police;

(b) Pretrial incarceration data from the Administrative Office of the Courts;

(c) Preconviction jail data from the Administrative Office of the Courts;

(d) Conviction data from the Administrative Office of the Courts;

(e) Postconviction jail and imprisonment data from the Department of Corrections;

(f) Probation and parole data from the Department of Corrections; and

(g) Data from applicable agencies or organizations providing treatment, education, or other mandated programs.

(6) Insofar as possible, costs or savings for a new crime shall be calculated in the same manner as specified in subsection (5) of this section using data for similar crimes unless that is determined by the Department of Corrections staff person to be impractical or impossible in which case the estimate for a new crime may be prepared using:

(a) The maximum and minimum length of incarceration for the offense;

(b) An estimate of cost based on ten (10) persons being charged with the offense, and based on one hundred (100) persons being charged with the offense;

(c) An estimate of cost based on ten (10) persons and one hundred (100) persons being convicted of the offense and sent to jail if the offense is a misdemeanor using the criteria specified in subsection (7) of this section; and

(d) An estimate of cost based on ten (10) persons and one hundred (100) persons being convicted of a felony offense requiring imprisonment in a state-operated correctional facility unless the offense is a Class D felony for which imprisonment in a county jail is required in which case the cost shall be based on the amount paid by the Department of Corrections for a person incarcerated in a county jail for a Class D felony.

(7) Costs or savings shall be based on the average costs actually paid by the Department of Corrections during the previous fiscal year for incarceration of a person in a state correctional facility, the average cost for supervision of a person placed on probation without electronic monitoring, the average cost of a person placed on probation with electronic monitoring, the average cost of parole supervision without electronic monitoring, and the average cost of parole supervision with electronic monitoring.

(8) If an amendment to a bill is combined into a committee substitute or a GA version of the bill is created incorporating a floor amendment, a new corrections impact statement shall be prepared combining the information in the original bill as modified by the amendment.

➔Section 8. KRS 27A.097 is amended to read as follows:

(1) As used in this section, "evidence-based practices" means intervention programs and supervision policies, procedures, programs, and practices that scientific research demonstrates reduce instances of a defendant's failure to appear in court and criminal activity among defendants when implemented competently.

(2) In order to increase the effectiveness of supervision and intervention programs funded by the state and provided to defendants, the Supreme Court shall require that a vendor or contractor providing supervision and intervention programs for adult criminal defendants use evidence-based practices.

(3) The Supreme Court shall measure the effectiveness of supervision and intervention programs provided by vendors or contractors and demonstrate that the programs have a documented evidence base and have been evaluated for effectiveness in reducing a defendant's failure to appear in court and criminal activity.

(4) The Supreme Court shall require, at a minimum, the following:

(a) A process for reviewing the objective criteria for evidence-based practices established by the vendor or contractor providing the program;

(b) A process for auditing the effectiveness of the program;

(c) An opportunity for programs that do not meet the criteria based on the audit results to improve performance; and

(d) A mechanism to defund any program provided by a vendor or contractor that does not meet the criteria upon a second audit.

(5) Beginning July 1, 2012, twenty-five percent (25%) of state moneys expended on supervision and intervention programs for pretrial defendants shall be for programs that are in accordance with evidence-based practices. Beginning July 1, ***2014***~~[2016]~~, fifty percent (50%) of state moneys expended on supervision and intervention programs shall be for programs that are in accordance with evidence-based practices. Beginning July 1, 2016, and thereafter, seventy-five percent (75%) of state moneys expended on supervision and intervention programs shall be for programs that are in accordance with evidence-based practices.

➔Section 9. 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 ***degree***~~[certification]~~ in applied sciences, a ***completed*** technical education ***program, or an online or correspondence education program,***

each~~[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 ***technical education program completed***~~[certification received]~~; and

3. Successfully completing a drug treatment program or other ***evidence-based*** program ***approved***~~[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 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.

(6) The provisions in subparagraph 2. of paragraph (a) of subsection (1) of this section shall apply retroactively to July 15, 2011.

➔Section 10. KRS 439.3406 is amended to read as follows:

(1) The board shall order mandatory reentry supervision ***six (6) months prior to the projected completion date of an inmate's sentence*** for an inmate who has not been granted discretionary parole~~[six (6) months prior to the inmate's minimum expiration of sentence]~~.

(2) The provisions of subsection (1) of this section shall not apply to an inmate who:

(a) Is not eligible for parole by statute;

(b) Has been convicted of a capital offense or a Class A felony;

(c) Has a maximum or close security classification as defined by administrative regulations promulgated by the department;

(d) Has been sentenced to two (2) years or less of incarceration;

(e) Is subject to the provisions of KRS 532.043; or

(f) Has six (6) months or less to be served after his or her sentencing by a court or recommitment to prison for a violation of probation, shock probation, parole, or conditional discharge.

(3) An inmate granted mandatory reentry supervision pursuant to this section may be returned by the board to prison for violation of the conditions of supervision and shall not again be eligible for mandatory reentry supervision during the same period of incarceration.

(4) An inmate released to mandatory reentry supervision shall be considered to be released on parole.

(5) Mandatory reentry supervision is not a commutation of sentence or any other form of clemency.

(6) No hearing shall be required for the board to order an inmate to mandatory reentry supervision pursuant to subsection (1) of this section. Terms of supervision for inmates released on mandatory reentry supervision shall be established as follows:

(a) The board shall adopt administrative regulations establishing general conditions applicable to each inmate ordered to mandatory reentry supervision pursuant to subsection (1) of this section. If an inmate is ordered to mandatory reentry supervision, the board's order shall set forth the general conditions and shall require the inmate to comply with the general conditions and any requirements imposed by the department in accordance with this section;

(b) Upon intake of an inmate ordered to mandatory reentry supervision by the board, the department shall use the results of the risk and needs assessment administered pursuant to KRS 439.3104(1) to establish appropriate terms and conditions of supervision, taking into consideration the level of risk to public safety, criminal risk factors, and the need for treatment and other interventions. The terms and conditions imposed by the department under this paragraph shall not conflict with the general conditions adopted by the board pursuant to paragraph (a) of this subsection; and

(c) The powers and duties assigned to the commissioner in relation to probation or parole under KRS 439.470 shall be assigned to the commissioner in relation to mandatory reentry supervision.

(7) Subject to subsection (3) of this section, the period of mandatory reentry supervision shall conclude upon completion of the individual's minimum expiration of sentence.

(8) If the board issues a warrant for the arrest of an inmate for absconding from supervision during the mandatory reentry supervision period, and the inmate is subsequently returned to prison as a violator of conditions of supervision for absconding, the inmate shall not receive credit toward the remainder of his or her sentence for the time spent absconding.

(9) The department shall report the results of the mandatory reentry supervision program to the Interim Joint Committee on Judiciary by February 1, 2015.

➔Section 11. KRS 441.045 is amended to read as follows:

(1) The county governing body shall prescribe rules for the government, security, safety, and cleanliness of the jail and the comfort and treatment of prisoners, provided such rules are consistent with state law. The county judge/executive may inspect the jail at any reasonable time.

(2) Willful violation of the rules promulgated pursuant to subsection (1) of this section shall be deemed a violation.

(3) Except as provided in subsections (4) and (5) of this section, the cost of providing necessary medical, dental, and psychological care for indigent prisoners in the jail shall be paid from the jail budget.

(4) The cost of providing necessary medical, dental, or psychological care for prisoners of the United States government shall be paid as provided by contract between the United States government and the county or as may otherwise be provided by federal law.

(5) ***(a)*** The cost of providing necessary medical, dental, or psychological care, beyond routine care and diagnostic services, for prisoners held pursuant to a contractual agreement with the state shall be paid as provided by contract between the state and county. The costs of necessary medical, dental, or

psychological care, beyond routine care and diagnostic services, of prisoners held in the jail for which the county receives a per diem payment shall be paid by the state.

(b) To the extent that federal law allows and federal financial participation is available, for the limited purpose of implementing this section, the jail, the department, or the department's designee is authorized to act on behalf of an inmate for purposes of applying for Medicaid eligibility.

(6) The cost of providing necessary medical, dental, or psychological care for prisoners held pursuant to a contractual agreement with another county or a city shall be paid as provided by contract between the county or city and county.

(7) (a) When the cost of necessary medical, dental, or psychological care for a prisoner exceeds one thousand dollars ($1,000), as calculated by using the maximum allowable costs to similar persons or facilities for the same or similar services under the Kentucky Medical Assistance Program, the state shall reimburse the county for that portion of the costs that exceeds one thousand dollars ($1,000). The reimbursement shall be subject to the following terms and conditions:

1. The care is necessary as defined in subsection (10) of this section;

2. The prisoner is indigent as defined in subsection (8) of this section, or is uninsured; and

3. No state reimbursement to the county for care provided by physicians, hospitals, laboratories, or other health care providers shall exceed the maximum payments allowed to similar persons or facilities for the same or similar services under the Kentucky Medical Assistance Program, except as provided in subsection (11) of this section.

(b) A county may assign its ability to receive payment from the state under this subsection to the person providing the medical, dental, or psychological care to the prisoner, which assignment shall be accepted by the provider for the purposes of submitting billing directly to the state. The state shall pay or deny a claim submitted to it within ninety (90) days of receiving the claim. The county shall include with the assignment the information required by subsection (8) of this section necessary to qualify the prisoner as indigent. The provider shall bill for any other public or private health benefit plan or health insurance benefits available to the prisoner prior to billing the state under this subsection, and shall bill the state prior to billing the county. The county shall retain ultimate payment responsibility as established under subsection (3) of this section, and the provider may bill the county for payment after the expiration of ninety (90) days from the date the provider submitted the claim to the state for payment if the claim remains unpaid at that time.

(8) (a) The determination of whether a prisoner is indigent shall be made pursuant to KRS 31.120, and may be evidenced by the affidavit of indigency required by that statute or the appointment of a public defender under that statute. The prisoner shall not be considered indigent, in the case of prisoner medical care, if:

1. The prisoner has funds on his inmate account to cover all or a portion of his medical expenses;

2. The prisoner's medical expenses are covered on a medical insurance policy; or

3. The prisoner has the private resources to pay for the use of the medical facilities.

(b) Prisoners who are later determined not to have been indigent, or who at a time following treatment are no longer indigent, shall be required to repay the costs of payments made pursuant to this section to the unit of government which made the payment.

(9) The terms and conditions relating to any determination of nonindigency and demands for repayment shall be under the same terms and conditions as are provided under KRS Chapters 31 and 431 relating to similar circumstances in the program for defense of indigents by the public advocate.

(10) For the purposes of this section, "necessary care" means care of a nonelective nature that cannot be postponed until after the period of confinement without hazard to the life or health of the prisoner.

(11) Any money appropriated for a given fiscal year to fund the state's obligation under subsection (7) of this section which remains unspent at the end of the year shall not lapse but shall be made available to satisfy, to the maximum extent possible, that portion of each catastrophic claim made during said year above the threshold amount for which the county did not receive state assistance pursuant to subsection (7) of this section. In the event there is an insufficient surplus to satisfy said balance of all such catastrophic claims which are made during that year, the state shall pay to those qualified counties, on a per claim basis, an amount equal to each claim's percentage of the total surplus. Should the surplus be sufficient to satisfy all such catastrophic

claims, the amount remaining, if any, shall not lapse but shall be carried forward to the next fiscal year to be made available for future catastrophic claims.

(12) Notwithstanding other provisions of this section to the contrary, a jail may impose a reasonable fee for the use of jail medical facilities by a prisoner who has the ability to pay for the medical care. These funds may be deducted from the prisoner's inmate account. A prisoner shall not be denied medical treatment because he has insufficient funds on his inmate account. This subsection shall not preclude other recovery of funds as provided in this section.

(13) (a) Notwithstanding any other provision of this section to the contrary, a jail may impose a reasonable fee for the use of jail medical facilities by a state prisoner who has been placed in a local jail pursuant to a contract with the Department of Corrections under KRS 532.100 or other statute, and who has the ability to pay for medical care.

(b) Funds may be deducted from the state prisoner's inmate account at the jail.

(c) A state prisoner shall not be denied medical treatment because he or she has insufficient funds in his or her inmate account.

(d) This subsection shall not preclude other recovery of funds as provided in this section.

(e) This subsection does not authorize recovery of funds from a prisoner for medical care which has been paid or reimbursed by the state pursuant to this section.

(14) Except as provided in subsection (4), (5), or (8) of this section, all payments for necessary medical, dental, or psychological care for jail, regional jail, or holdover prisoners shall be made at a rate not to exceed the Medicaid rate for the same or similar services, which shall be paid within thirty (30) days under the provisions of KRS 65.140 of receiving a claim from the health facility or provider for the item or service. This subsection shall not obligate the Medicaid program to pay for services provided to a prisoner.

(15) (a) A peace officer or correctional officer having custody of a person shall not release the person from custody so that the person may receive treatment from a health care facility or health care provider, except pursuant to an order issued by a court of competent jurisdiction which specifically names the person to receive treatment.

(b) A peace officer or correctional officer having custody of a person may take the person to a health care facility or health care provider for the purpose of receiving treatment if a correctional officer remains with the person during the time the person is on the premises of the health care facility or health care provider, unless the facility or provider consents to the absence of the officer.

(c) A county, urban-county, consolidated local government, charter county, unified local government, jail, regional jail, holdover, local detention center, or other local correctional facility shall not be responsible for paying for the medical or other health care costs of a person who is released by a court of competent jurisdiction, except where the release is for the purpose of receiving medical or other health care services as evidenced by an order requiring the person to return to custody upon completion of treatment.

(d) When a county, urban-county, consolidated local government, charter county, unified local government, jail, regional jail, holdover, local detention center, or other local correctional facility is responsible for paying for medical or other health care costs under paragraph (c) of this subsection, payment shall be made only at the Medicaid rate for same or similar services.

(e) For the purposes of this subsection, "correctional officer" includes a:

1. Jailer or deputy jailer;

2. Director or other person in charge of a local detention center, local correctional facility, or regional jail; and

3. Correctional officer employed by a local detention center, local correctional facility, or regional jail.

➔Section 12. KRS 441.420 is amended to read as follows:

(1) No political subdivision of this Commonwealth, combination of subdivisions, or regional jail authority shall build a new local correctional facility unless:

(a) The facility meets the approval or complies with the standards and administrative regulations of the department promulgated pursuant to KRS 441.055;

(b) The construction results in a new facility with:

1. A minimum capacity of one hundred fifty (150) prisoner beds; or

2. If a larger facility is needed, more than one hundred fifty (150) prisoner beds in fifty (50) bed increments; and

(c) Construction of the local correctional facility is approved by the construction authority.

(2) Final authority for approval of plans for the construction of a local correctional facility, or an addition to a local correctional facility shall rest with the construction authority.

(3) The department shall pay~~[the design fees]~~ for ***the*** architectural ***plans*** and engineering services associated with any new local correctional facility approved by the construction authority.

(4) The department may promulgate administrative regulations to create a fee schedule for architectural plans~~[and architectural]~~ and engineering services required for the construction of local correctional facilities. A sample fee schedule for architectural plans~~[and architectural]~~ and engineering services may be developed by a committee consisting of department personnel, architects, and construction managers.

➔Section 13. KRS 441.430 is amended to read as follows:

(1) Any political subdivision, or combination of subdivisions, desiring to build a local correctional facility shall make application, in writing, to the department and the construction authority for approval of the plans for the local correctional facility not less than ninety (90) days before the advertising for bids for construction of the facility, or if bids are not to be let, ninety (90) days before the construction commences. ***The application shall include documentation of the items required by subsection (3) of this section.***

(2) The department's jail consultants shall review the ***application***~~[plans]~~ and within thirty (30) days of the department's receipt of the application, make a recommendation to the construction authority~~[as to whether the plans should be approved]~~. The construction authority shall make a decision within sixty (60) days after the department's jail consultants make their recommendation. The construction authority may delay a final decision on the construction of any new local correctional facility if the construction authority determines that it has insufficient information upon which to base a decision. If the construction authority determines that it has insufficient information upon which to base a decision, a final decision shall be delayed but shall be made within sixty (60) days after receipt of the information required by the construction authority. Construction shall not commence until the requisite approval is obtained.

(3) The construction authority shall not approve the construction of a local correctional facility unless the political subdivision or combination of subdivisions desiring to build a local correctional facility proves to the satisfaction of the construction authority that:

(a) The construction of a new local correctional facility is necessary;

(b) The construction of a new local correctional facility with the number of beds proposed is necessary;

(c) The political subdivision or combination of political subdivisions has sufficient bonding and revenue sources to pay the bonded indebtedness of the proposed local correctional facility;

(d) The number and sources of prisoners for the local correctional facility is sufficient to maintain the financial viability of the local correctional facility;

(e) The projected operating costs for the local correctional facility are appropriate to maintain the financial viability of the local correctional facility;

(f) The sources of revenue are sufficient to pay, in addition to the bonded indebtedness, the operation costs and maintenance for the local correctional facility;

(g) If applicable, there are contracts or interlocal cooperation agreements specifying details for sharing the liability for the costs of paying the bonded indebtedness and the operation costs for the local correctional facility;

(h) If applicable, there are contracts or interlocal cooperation agreements specifying details for the management and operation of the local correctional facility; and

(i) All information has been provided that the construction authority required pursuant to administrative regulation.

(4) (a) Upon approval by the construction authority of the new local correctional facility, or the expansion of an existing correctional facility, architectural plans shall be submitted to the department for approval. The department's jail consultants shall review the architectural plans and within sixty (60) days notify the applicant and the construction authority of their findings.

(b) The department's jail consultants may delay final approval of the architectural plans if the jail consultants determine the architectural plans for the facility do not comply with administrative regulations of the department promulgated pursuant to KRS 441.055.

(c) If the department determines that it has insufficient information upon which to make a decision, a final decision shall be delayed but shall be made within sixty (60) days after receipt of the information requested.

(d) Construction shall not commence until the requisite approvals have been obtained.

(e) If approval is denied by the department's jail consultants, the political subdivision or combination of subdivisions requesting the construction or expansion of a local correctional facility may appeal the decision to the construction authority.

➔Section 14. KRS 441.440 is amended to read as follows:

Except as provided in KRS 441.450, local correctional facilities shall be constructed pursuant to the approved ***architectural*** plans, and no alterations to the ***architectural*** plans or construction shall be made unless prior approval is obtained from the construction authority ***or the department if the alteration would increase the cost or bed capacity beyond the approved amounts. Alterations may be approved by the department in an amount not to exceed ten percent (10%) of the approved application. Any alteration or combination of alterations that exceed ten percent (10%) of the approved application shall be approved by the construction authority***~~[upon recommendation of the department's jail consultants]~~.

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

(1) Beginning January 1, 2014, every petition filed seeking expungement shall include a certification of eligibility for expungement. The Department of Kentucky State Police and the Administrative Office of the Courts shall certify that the agencies have conducted a criminal background check on the petitioner and whether or not the petitioner is eligible to have the requested record expunged. The Department of Kentucky State Police shall promulgate administrative regulations to implement this section, in consultation with the Administrative Office of the Courts.

(2) For the purposes of this section and Sections 2 and 3 of this Act, "expungement" means the removal or deletion of records by the court and other agencies which prevents the matter from appearing on official state performed background checks.

➔Section 16. KRS 431.076 is amended to read as follows:

(1) A person who has been charged with a criminal offense and who has been found not guilty of the offense, or against whom charges have been dismissed with prejudice, and not in exchange for a guilty plea to another offense, may make a motion, in the District or Circuit Court in which the charges were filed, to expunge all records~~[including, but not limited to, arrest records, fingerprints, photographs, index references, or other data, whether in documentary or electronic form, relating to the arrest, charge, or other matters arising out of the arrest or charge]~~.

(2) The expungement motion shall be filed no sooner than sixty (60) days following the order of acquittal or dismissal by the court.

(3) Following the filing of the motion, the court may set a date for a hearing. If the court does so, it shall notify the county or Commonwealth's attorney, as appropriate, of an opportunity for a response to the expungement motion. In addition, if the criminal charge relates to the abuse or neglect of a child, the court shall also notify the Office of General Counsel of the Cabinet for Health and Family Services of an opportunity for a response to the expungement motion. The counsel for the Cabinet for Health and Family Services shall respond to the expungement motion, within twenty (20) days of receipt of the notice, which period of time shall not be extended by the court, if the Cabinet for Health and Family Services has custody of records reflecting that the person charged with the criminal offense has been determined by the cabinet or by a court under KRS Chapter 620 to be a substantiated perpetrator of child abuse or neglect. If the cabinet fails to respond to the

expungement motion or if the cabinet fails to prevail, the order of expungement shall extend to the cabinet's records. If the cabinet prevails, the order of expungement shall not extend to the cabinet's records.

(4) If the court finds that there are no current charges or proceedings pending relating to the matter for which the expungement is sought, the court may grant the motion and order the ***expunging***~~[sealing]~~ of all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records. The court shall order the ***expunging***~~[sealing]~~ on a form provided by the Administrative Office of the Courts. Every agency, with records relating to the arrest, charge, or other matters arising out of the arrest or charge, that is ordered to ***expunge***~~[seal]~~ records, shall certify to the court within sixty (60) days of the entry of the expungement order, that the required ***expunging***~~[sealing]~~ action has been completed. All orders enforcing the expungement procedure shall also be ***expunged***~~[sealed]~~.

(5) After the expungement, the proceedings in the matter shall be deemed never to have occurred. ***The court and other agencies shall delete or remove the records from their computer systems so that any official state performed background check will indicate that the records do not exist.*** The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.

(6) ~~[Inspection of the expunged records may thereafter be permitted by the court only upon a motion by the person who is the subject of the records and only to those persons named in the motion.~~

~~(7)]~~This section shall be retroactive.

➔Section 17. KRS 431.078 is amended to read as follows:

(1) Any person who has been convicted of a misdemeanor***,***~~[or]~~ a violation, ***or a traffic infraction not otherwise classified as a misdemeanor or violation,*** or a series of misdemeanors***,***~~[or]~~ violations***, or traffic infractions*** arising from a single incident, may petition the court in which he was convicted for expungement of his misdemeanor or violation record, including a record of any charges for misdemeanors or violations that were dismissed or amended in the criminal action. The person shall be informed of the right at the time of adjudication.

(2) Except as provided in KRS 218A.275(8) and 218A.276(8), the petition shall be filed no sooner than five (5) years after the completion of the person's sentence or five (5) years after the successful completion of the person's probation, whichever occurs later.

(3) Upon the filing of a petition, the court shall set a date for a hearing and shall notify the county attorney; the victim of the crime, if there was an identified victim; and any other person whom the person filing the petition has reason to believe may have relevant information related to the expungement of the record. Inability to locate the victim shall not delay the proceedings in the case or preclude the holding of a hearing or the issuance of an order of expungement.

(4) The court shall order ***expunged***~~[sealed]~~ all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, if at the hearing the court finds that:

(a) The offense was not a sex offense or an offense committed against a child;

(b) The person had no previous felony conviction;

(c) The person had not been convicted of any other misdemeanor or violation offense in the five (5) years prior to the conviction sought to be expunged;

(d) The person had not since the time of the conviction sought to be expunged been convicted of a felony, a misdemeanor, or a violation;

(e) No proceeding concerning a felony, misdemeanor, or violation is pending or being instituted against him; and

(f) The offense was an offense against the Commonwealth of Kentucky.

(5) Upon the entry of an order to ***expunge***~~[seal]~~ the records, and payment to the circuit clerk of one hundred dollars ($100), the proceedings in the case shall be deemed never to have occurred; ***the court and other agencies shall cause records to be deleted or removed from their computer systems so that the matter shall not appear on official state performed background checks***~~[all index references shall be deleted]~~; the persons and the court may properly reply that no record exists with respect to the persons upon any inquiry in the matter; and the person whose record is expunged shall not have to disclose the fact of the record or any matter

relating thereto on an application for employment, credit, or other type of application. The first fifty dollars ($50) of each fee collected pursuant to this subsection shall be deposited into the general fund, and the remainder shall be deposited into a trust and agency account for deputy clerks.

(6) Copies of the order shall be sent to each agency or official named therein.

(7) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of the records and only to those persons named in the petition.

(8) This section shall be deemed to be retroactive, and any person who has been convicted of a misdemeanor prior to July 14, 1992, may petition the court in which he was convicted, or if he was convicted prior to the inception of the District Court to the District Court in the county where he now resides, for expungement of the record of one (1) misdemeanor offense or violation or a series of misdemeanor offenses or violations arising from a single incident, provided that the offense was not one specified in subsection (4) and that the offense was not the precursor offense of a felony offense for which he was subsequently convicted. This section shall apply only to offenses against the Commonwealth of Kentucky.

(9) As used in this section, "violation" has the same meaning as in KRS 500.080.

(10) Any person denied an expungement prior to the effective date of this Act due to the presence of a traffic infraction on his or her record may file a new petition for expungement of the previously petitioned offenses, which the court shall hear and decide under the terms of this section. No court costs or other fees, from the court or any other agency, shall be required of a person filing a new petition under this subsection.

➔Section 18. The following KRS section is repealed:

346.190 Reciprocal agreements with other states -- Provisions -- Effect.

Signed by Governor March 21, 2013.