

CHAPTER 35

(SB 56)

AN ACT relating to the sale of tobacco, alternative nicotine, and vapor products and declaring an emergency.

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

→Section 1. KRS 438.305 is amended to read as follows:

As used in KRS 438.305 to 438.340, unless the context requires otherwise:

- (1) (a) "Alternative nicotine product" means a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means.
- (b) "Alternative nicotine product" does not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act;
- (2) "Manufacturer" means any person who manufactures or produces tobacco products within or without this Commonwealth;
- (3) "Nonresident wholesaler" means any person who purchases cigarettes or other tobacco products directly from the manufacturer and maintains a permanent location or locations outside this state at which Kentucky cigarette tax evidence is attached or from which Kentucky cigarette tax is reported and paid;
- (4) "Proof of age" means a driver's license or other documentary or written evidence *of an individual's age* ~~that the individual is eighteen (18) years of age or older~~;
- (5) "Resident wholesaler" means any person who purchases at least seventy-five percent (75%) of all cigarettes or other tobacco products purchased by that person directly from the cigarette manufacturer on which the cigarette tax provided for in KRS 138.130 to 138.205 is unpaid, and who maintains an established place of business in this state at which the person attaches cigarette tax evidence or receives untaxed cigarettes;
- (6) "Sample" means a tobacco product, alternative nicotine product, or vapor product distributed to members of the general public at no cost;
- (7) "Subjobber" means any person who purchases tobacco products, on which the Kentucky cigarette tax has been paid, from a wholesaler licensed pursuant to KRS 138.195, and makes them available to a retail establishment for resale;
- (8) (a) "Tobacco product" means any cigarette, cigar, snuff, smokeless tobacco product, smoking tobacco, chewing tobacco, and any kind or form of tobacco prepared in a manner suitable for chewing or smoking, or both, or any kind or form of tobacco that is suitable to be placed in a person's mouth. *"Tobacco product" also means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product, except for raw materials other than tobacco used in manufacturing any component, part, or accessory of a tobacco product, in accordance with the federal Tobacco Control Act, Pub. L. No. 111-31;*
- (b) "Tobacco product" does not include any alternative nicotine product, vapor product, or product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act; and
- (9) (a) "Vapor product" means any noncombustible product that employs a heating element, battery, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size and including the component parts and accessories thereto, that can be used to deliver vaporized nicotine or other substances to users inhaling from the device. "Vapor product" includes but is not limited to *any device deemed to be an electronic nicotine delivery system by the United States Food and Drug Administration*, any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and every variation thereof, regardless of whether marketed as such, and any vapor cartridge or other container of a liquid solution or other material that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar product or device.
- (b) "Vapor product" does not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

➔Section 2. KRS 438.310 is amended to read as follows:

- (1) No person shall sell or cause to be sold any tobacco product, alternative nicotine product, or vapor product at retail to any person under the age of **twenty-one (21)**~~eighteen (18)~~, or solicit any person under the age of **twenty-one (21)**~~eighteen (18)~~ to purchase any tobacco product, alternative nicotine product, or vapor product at retail.
- (2) Any person who sells tobacco products, alternative nicotine products, or vapor products at retail shall cause to be posted in a conspicuous place in his establishment a notice stating that it is illegal to sell tobacco products, alternative nicotine products, or vapor products to persons under age **twenty-one (21)**~~eighteen (18)~~.
- (3) Any person selling tobacco products, alternative nicotine products, or vapor products shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective buyer or recipient is under the age of **twenty-one (21)**~~eighteen (18)~~.
- (4) A person who violates subsection (1) or (2) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for a first violation and a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for any subsequent violation. The fine shall be administered by the Department of Alcoholic Beverage Control using a civil enforcement procedure.

➔Section 3. KRS 438.311 is amended to read as follows:

- (1) Except for the provisions of KRS 438.330, it shall be unlawful for a person who has not attained the age of **twenty-one (21)**~~eighteen (18)~~ years to purchase or accept receipt of or to attempt to purchase or accept receipt of a tobacco product, alternative nicotine product, or vapor product, or to present or offer to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product, alternative nicotine product, or vapor product. It shall not be unlawful for such a person to accept receipt of a tobacco product, alternative nicotine product, or vapor product from an employer when required in the performance of the person's duties.
- (2) ~~[This offense shall be deemed a status offense and shall be under the jurisdiction of the juvenile session of the District Court.]~~
- ~~(3) [All peace officers with general law enforcement authority and employees of the Department of Alcoholic Beverage Control may **confiscate the tobacco product, alternative nicotine product, or vapor product of a person under the age of twenty-one (21) who has violated** issue a uniform citation, but not make an arrest or take a child into custody, for a violation of] this section. **Notwithstanding any provision of law to the contrary, no other penalty shall apply to a person under the age of twenty-one (21) for a violation of this section.** [If a child fails to appear in court in response to a uniform citation issued pursuant to the section, the court may compel the attendance of the defendant in the manner specified by law.]~~

➔Section 4. KRS 438.313 is amended to read as follows:

- (1) No wholesaler, retailer, or manufacturer of cigarettes, tobacco products, alternative nicotine products, or vapor products may distribute cigarettes, tobacco products, alternative nicotine products, or vapor products, including samples thereof, free of charge or otherwise, to any person under the age of **twenty-one (21)**~~eighteen (18)~~.
- (2) Any person who distributes cigarettes, tobacco products, alternative nicotine products, or vapor products, including samples thereof, free of charge or otherwise shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective purchaser or recipient is under the age of **twenty-one (21)**~~eighteen (18)~~.
- (3) Any person who violates the provisions of this section shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500) for each offense. The fine shall be administered by the Department of Alcoholic Beverage Control using a civil enforcement procedure for persons eighteen (18) years of age or older. ~~[For persons under the age of eighteen (18) years, the offense shall be deemed a status offense and shall be under the jurisdiction of the juvenile session of the District Court.]~~
- (4) All peace officers with general law enforcement authority and employees of the Department of Alcoholic Beverage Control may issue a uniform citation, but may not make an arrest, or take a child into custody, for a violation of this section. ~~[If a child fails to appear in court in response to a uniform citation issued pursuant to this section, the court may compel the attendance of the defendant in the manner specified by law.]~~

➔Section 5. KRS 438.315 is amended to read as follows:

- (1) The sale of tobacco products, alternative nicotine products, or vapor products dispensed through a vending machine is prohibited to any person under the age of *twenty-one (21)*~~*eighteen (18)*~~ years.
- (2) The purchase of tobacco products, alternative nicotine products, or vapor products dispensed through a vending machine is prohibited to any person under the age of *twenty-one (21)*~~*eighteen (18)*~~ years.
- (3) Except for vending machines located in factories or vending machines located in bars or taverns to which minors are not permitted access, any vending machine from which tobacco products, alternative nicotine products, or vapor products are dispensed shall be located in the line of sight of the cashier for the retail establishment.
- (4) Any owner of a retail establishment violating this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation. The fine shall be administered by the Department of Alcoholic Beverage Control using a civil enforcement procedure for persons eighteen (18) years of age or older.~~[For persons under the age of eighteen (18) years, the offense shall be deemed a status offense and shall be under the jurisdiction of the juvenile session of the District Court.]~~
- (5) All peace officers with general law enforcement authority and employees of the Department of Alcoholic Beverage Control may issue a uniform citation, but may not make an arrest, or take a child into custody, for a violation of this section.~~[If a child fails to appear in court in response to a uniform citation issued pursuant to this section, the court may compel the attendance of the defendant in the manner specified by law.]~~

➔Section 6. KRS 438.325 is amended to read as follows:

- (1) Each owner of a retail establishment selling or distributing tobacco products, alternative nicotine products, or vapor products shall notify each individual employed in the retail establishment as a retail sales clerk that the sale of tobacco products, alternative nicotine products, or vapor products to any person under the age of *twenty-one (21)*~~*eighteen (18)*~~ years and the purchase of tobacco products, alternative nicotine products, or vapor products by any person under the age of *twenty-one (21)*~~*eighteen (18)*~~ years are prohibited.
- (2) Each owner of a retail establishment selling or distributing tobacco products, alternative nicotine products, or vapor products shall notify each individual employed in the retail establishment as a retail sales clerk that proof of age is required from a prospective buyer or recipient if the person has reason to believe that the prospective purchaser or recipient is under the age of *twenty-one (21)*~~*eighteen (18)*~~.
- (3) The notice to employees that is required in subsection (1) of this section shall be provided before the person commences work as a retail sales clerk, or, in the case of a person employed as a retail sales clerk on *the effective date of this Act*~~*April 10, 2014*~~, within thirty (30) days of that date. The employee shall signify receipt of the notice required by this section by signing a form that states as follows:

"I understand that under the law of the Commonwealth of Kentucky it is illegal to sell or distribute tobacco products, alternative nicotine products, or vapor products to persons under the age of *twenty-one (21)*~~*eighteen (18)*~~ years and that it is illegal for persons under the age of *twenty-one (21)*~~*eighteen (18)*~~ years to purchase tobacco products, alternative nicotine products, or vapor products."

- (4) The owner of the retail establishment shall maintain the signed notice that is required pursuant to subsection (3) of this section in a place and in a manner so as to be easily accessible to any employee of the Department of Alcoholic Beverage Control or the Department of Agriculture conducting an inspection of the retail establishment for the purpose of monitoring compliance in limiting the sale or distribution of tobacco products, alternative nicotine products, or vapor products to persons under the age of *twenty-one (21)*~~*eighteen (18)*~~ as provided in KRS 438.305 to 438.340.
- (5) Any owner of the retail establishment violating subsections (1) to (4) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation. The fine shall be administered by the Department of Alcoholic Beverage Control in a civil enforcement procedure.

➔Section 7. KRS 438.330 is amended to read as follows:

- (1) The Department of Alcoholic Beverage Control and the Department of Agriculture shall carry out annually conducted random, unannounced inspections of retail establishments where tobacco products, alternative nicotine products, or vapor products are sold or distributed for the purpose of enforcing the provisions of KRS 438.305 to 438.340. The inspections shall be conducted to the extent necessary to assure that the Commonwealth remains in compliance with Public Law 102-321 and applicable federal regulations. The Department of Alcoholic Beverage Control and the Department of Agriculture shall also ensure that targeted

inspections are conducted at those retail establishments where, and at those times when, persons under the age of *twenty-one (21)*~~*eighteen (18)*~~ years are most likely to purchase tobacco products, alternative nicotine products, or vapor products. Persons under the age of *twenty-one (21)*~~*eighteen (18)*~~ years may be used to test compliance with the provisions of KRS 438.305 to 438.340 only if the testing is conducted under the direct supervision of the Department of Alcoholic Beverage Control, sheriff, or chief of police, or their employees, and written parental consent has been obtained. The Department of Alcoholic Beverage Control shall prepare annually, for submission by the Governor to the Secretary of the United States Department of Health and Human Services, the report required by Section 1926 of Subpart 1 of Part B of Title XIX of the Federal Public Health Service Act.

- (2) The Department of Alcoholic Beverage Control shall develop and implement the survey sampling methodologies to carry out the inspections as described in this section.

➔Section 8. KRS 438.337 is amended to read as follows:

- (1) ~~[Except for violations of the provisions of KRS 438.311, 438.313, and 438.315 by a juvenile, which shall be under the jurisdiction of the juvenile session of the District Court,]~~The Department of Alcoholic Beverage Control shall carry out the enforcement provisions of KRS 438.305 to 438.340.
- (2) The Department of Alcoholic Beverage Control shall be entitled to the revenue produced by one-twentieth of one cent (\$0.0005) of the three-cent (\$0.03) per pack revenue collected by the Finance and Administration Cabinet from the state excise tax on the sale of cigarettes as imposed by KRS 138.140 to be deposited in a trust and agency account created in the State Treasury, and to keep fifty percent (50%) of any fines collected under KRS 438.305 to 438.340 to offset the costs of enforcement of KRS 438.305 to 438.340.
- (3) The Department of Alcoholic Beverage Control shall be responsible for maintaining statistics for compilation of required reports to be submitted to the United States Department of Health and Human Services.
- (4) The Department of Alcoholic Beverage Control shall devise a plan and time frame for enforcement to determine by random inspection if the percentage of retailers or distributors making illegal sales to *persons under the age of twenty-one (21)*~~*minors*~~ does or does not exceed federal guidelines preventing tobacco sales to *persons under the age of twenty-one (21)*~~*minors*~~.

➔Section 9. KRS 438.350 is amended to read as follows:

- (1) No person under the age of *twenty-one (21)*~~*eighteen (18)*~~ shall possess or use tobacco products, alternative nicotine products, or vapor products.
- (2) Any tobacco product, alternative nicotine product, or vapor product found in the possession of a person under the age of *twenty-one (21)*~~*eighteen (18)*~~ and in plain view of the law enforcement officer shall be confiscated by the law enforcement officer making the charge.
- (3) This section shall not apply to persons exempted as provided by KRS 438.311 and 438.330.
- (4) The terms "alternative nicotine product," "tobacco product," and "vapor product," shall have the same meanings as in KRS 438.305.

➔Section 10. KRS 600.020 is amended to read as follows:

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

- (1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when:
- (a) His or her parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person exercising custodial control or supervision of the child:
1. Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
 2. Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
 3. Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child, including but not limited to parental incapacity due to a substance use disorder as defined in KRS 222.005;
 4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;

5. Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
 6. Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
 7. Abandons or exploits the child;
 8. Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child; or
 9. Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) cumulative months out of forty-eight (48) months; or
- (b) A person twenty-one (21) years of age or older commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon a child less than sixteen (16) years of age;
- (2) "Age or developmentally appropriate" has the same meaning as in 42 U.S.C. sec. 675(11);
 - (3) "Aggravated circumstances" means the existence of one (1) or more of the following conditions:
 - (a) The parent has not attempted or has not had contact with the child for a period of not less than ninety (90) days;
 - (b) The parent is incarcerated and will be unavailable to care for the child for a period of at least one (1) year from the date of the child's entry into foster care and there is no appropriate relative placement available during this period of time;
 - (c) The parent has sexually abused the child and has refused available treatment;
 - (d) The parent has been found by the cabinet to have engaged in abuse of the child that required removal from the parent's home two (2) or more times in the past two (2) years; or
 - (e) The parent has caused the child serious physical injury;
 - (4) "Beyond the control of parents" means a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency, which behavior results in danger to the child or others, and which behavior does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645;
 - (5) "Beyond the control of school" means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all intervention strategies attempted by the school;
 - (6) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or the cabinet for the placement of children committed to the department or the cabinet;
 - (7) "Cabinet" means the Cabinet for Health and Family Services;
 - (8) "Certified juvenile facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training in juvenile detention developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;
 - (9) "Child" means any person who has not reached his or her eighteenth birthday, unless otherwise provided;
 - (10) "Child-caring facility" means any facility or group home other than a state facility, Department of Juvenile Justice contract facility or group home, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;

- (11) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;
- (12) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;
- (13) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Health and Family Services, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless otherwise provided by law;
- (14) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;
- (15) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;
- (16) "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;
- (17) "Court-designated worker" means that organization or individual delegated by the Administrative Office of the Courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;
- (18) "Deadly weapon" has the same meaning as it does in KRS 500.080;
- (19) "Department" means the Department for Community Based Services;
- (20) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;
- (21) "Detention" means the safe and temporary custody of a juvenile who is accused of conduct subject to the jurisdiction of the court who requires a restricted or closely supervised environment for his or her own or the community's protection;
- (22) "Detention hearing" means a hearing held by a judge or trial commissioner within twenty-four (24) hours, exclusive of weekends and holidays, of the start of any period of detention prior to adjudication;
- (23) "Diversion agreement" means a mechanism designed to hold a child accountable for his or her behavior and, if appropriate, securing services to serve the best interest of the child and to provide redress for that behavior without court action and without the creation of a formal court record;
- (24) "Eligible youth" means a person who:
 - (a) Is or has been committed to the cabinet as dependent, neglected, or abused;
 - (b) Is eighteen (18) years of age to nineteen (19) years of age; and
 - (c) Is requesting to extend or reinstate his or her commitment to the cabinet in order to participate in state or federal educational programs or to establish independent living arrangements;
- (25) "Emergency shelter" is a group home, private residence, foster home, or similar homelike facility which provides temporary or emergency care of children and adequate staff and services consistent with the needs of each child;
- (26) "Emotional injury" means an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial and observable impairment in the child's ability to function within a normal range of performance and behavior with due regard to his or her age, development, culture, and environment as testified to by a qualified mental health professional;
- (27) "Evidence-based practices" means policies, procedures, programs, and practices proven by scientific research to reliably produce reductions in recidivism;
- (28) "Fictive kin" means an individual who is not related by birth, adoption, or marriage to a child, but who has an emotionally significant relationship with the child;

- (29) "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- (30) "Foster family home" means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;
- (31) "Graduated sanction" means any of a continuum of accountability measures, programs, and sanctions, ranging from less restrictive to more restrictive in nature, that may include but are not limited to:
 - (a) Electronic monitoring;
 - (b) Drug and alcohol screening, testing, or monitoring;
 - (c) Day or evening reporting centers;
 - (d) Reporting requirements;
 - (e) Community service; and
 - (f) Rehabilitative interventions such as family counseling, substance abuse treatment, restorative justice programs, and behavioral or mental health treatment;
- (32) "Habitual runaway" means any child who has been found by the court to have been absent from his or her place of lawful residence without the permission of his or her custodian for at least three (3) days during a one (1) year period;
- (33) "Habitual truant" means any child who has been found by the court to have been reported as a truant as defined in KRS 159.150(1) two (2) or more times during a one (1) year period;
- (34) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or public facility, health care facility, or part thereof, which is approved by the cabinet to treat children;
- (35) "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;
- (36) "Informal adjustment" means an agreement reached among the parties, with consultation, but not the consent, of the victim of the crime or other persons specified in KRS 610.070 if the victim chooses not to or is unable to participate, after a petition has been filed, which is approved by the court, that the best interest of the child would be served without formal adjudication and disposition;
- (37) "Intentionally" means, with respect to a result or to conduct described by a statute which defines an offense, that the actor's conscious objective is to cause that result or to engage in that conduct;
- (38) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that the program developed on the child's behalf is no more harsh, hazardous, or intrusive than necessary; or involves no restrictions on physical movements nor requirements for residential care except as reasonably necessary for the protection of the child from physical injury; or protection of the community, and is conducted at the suitable available facility closest to the child's place of residence to allow for appropriate family engagement;
- (39) "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189, or 189A, KRS 177.300, 304.39-110, or 304.39-117;
- (40) "Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;
- (41) "Needs of the child" means necessary food, clothing, health, shelter, and education;
- (42) "Nonoffender" means a child alleged to be dependent, neglected, or abused and who has not been otherwise charged with a status or public offense;
- (43) "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;
- (44) "Nonsecure setting" means a nonsecure facility or a residential home, including a child's own home, where a child may be temporarily placed pending further court action. Children before the court in a county that is served by a state operated secure detention facility, who are in the detention custody of the Department of Juvenile Justice, and who are placed in a nonsecure alternative by the Department of Juvenile Justice, shall be supervised by the Department of Juvenile Justice;

- (45) "Out-of-home placement" means a placement other than in the home of a parent, relative, or guardian, in a boarding home, clinical treatment facility, community-based facility, detention facility, emergency shelter, fictive kin home, foster family home, hospital, nonsecure facility, physically secure facility, residential treatment facility, or youth alternative center;
- (46) "Parent" means the biological or adoptive mother or father of a child;
- (47) "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;
- (48) "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;
- (49) "Physical injury" means substantial physical pain or any impairment of physical condition;
- (50) "Physically secure facility" means a facility that relies primarily on the use of construction and hardware such as locks, bars, and fences to restrict freedom;
- (51) "Public offense action" means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;
- (52) "Qualified mental health professional" means:
- (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;
 - (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
 - (c) A psychologist with the health service provider designation, a psychological practitioner, a certified psychologist, or a psychological associate licensed under the provisions of KRS Chapter 319;
 - (d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;
 - (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;
 - (f) A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth, a psychiatric unit of a general hospital, or a regional comprehensive care center;
 - (g) A professional counselor credentialed under the provisions of KRS 335.500 to 335.599 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, a psychiatric unit of a general hospital, or a regional comprehensive care center; or
 - (h) A physician assistant licensed under KRS 311.840 to 311.862, who meets one (1) of the following requirements:
 1. Provides documentation that he or she has completed a psychiatric residency program for physician assistants;

2. Has completed at least one thousand (1,000) hours of clinical experience under a supervising physician, as defined by KRS 311.840, who is a psychiatrist and is certified or eligible for certification by the American Board of Psychiatry and Neurology, Inc.;
 3. Holds a master's degree from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor agencies, is practicing under a supervising physician as defined by KRS 311.840, and:
 - a. Has two (2) years of clinical experience in the assessment, evaluation, and treatment of mental disorders; or
 - b. Has been 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 program for mental health and individuals with an intellectual disability for at least two (2) years; or
 4. Holds a bachelor's degree, possesses a current physician assistant certificate issued by the board prior to July 15, 2002, is practicing under a supervising physician as defined by KRS 311.840, and:
 - a. Has three (3) years of clinical experience in the assessment, evaluation, and treatment of mental disorders; or
 - b. Has been 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 program for mental health and individuals with an intellectual disability for at least three (3) years;
- (53) "Reasonable and prudent parent standard" has the same meaning as in 42 U.S.C. sec. 675(10);
- (54) "Residential treatment facility" means a facility or group home with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of children;
- (55) "Retain in custody" means, after a child has been taken into custody, the continued holding of the child by a peace officer for a period of time not to exceed twelve (12) hours when authorized by the court or the court-designated worker for the purpose of making preliminary inquiries;
- (56) "Risk and needs assessment" means an actuarial tool scientifically proven to identify specific factors and needs that are related to delinquent and noncriminal misconduct;
- (57) "School personnel" means those certified persons under the supervision of the local public or private education agency;
- (58) "Secretary" means the secretary of the Cabinet for Health and Family Services;
- (59) "Secure juvenile detention facility" means any physically secure facility used for the secure detention of children other than any facility in which adult prisoners are confined;
- (60) "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily member or organ;
- (61) "Sexual abuse" includes but is not necessarily limited to any contacts or interactions in which the parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person having custodial control or supervision of the child or responsibility for his or her welfare, uses or allows, permits, or encourages the use of the child for the purposes of the sexual stimulation of the perpetrator or another person;
- (62) "Sexual exploitation" includes but is not limited to a situation in which a parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person having custodial control or supervision of a child or responsible for his or her welfare, allows, permits, or encourages the child to engage in an act which constitutes prostitution under Kentucky law; or a parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person having custodial control or supervision of a child or responsible for his or her welfare, allows, permits, or encourages the child to engage in an act of obscene or pornographic photographing, filming, or depicting of a child as provided for under Kentucky law;

- (63) "Social service worker" means any employee of the cabinet or any private agency designated as such by the secretary of the cabinet or a social worker employed by a county or city who has been approved by the cabinet to provide, under its supervision, services to families and children;
- (64) "Staff secure facility for residential treatment" means any setting which assures that all entrances and exits are under the exclusive control of the facility staff, and in which a child may reside for the purpose of receiving treatment;
- (65) (a) "Status offense action" is any action brought in the interest of a child who is accused of committing acts, which if committed by an adult, would not be a crime. Such behavior shall not be considered criminal or delinquent and such children shall be termed status offenders. Status offenses shall include:
1. Beyond the control of school or beyond the control of parents;
 2. Habitual Runaway;
 3. Habitual truant; *and*
 4. ~~Tobacco offenses as provided in KRS 438.305 to 438.340; and~~
 5. Alcohol offenses as provided in KRS 244.085.
- (b) Status offenses shall not include violations of state or local ordinances which may apply to children such as a violation of curfew;
- (66) "Take into custody" means the procedure by which a peace officer or other authorized person initially assumes custody of a child. A child may be taken into custody for a period of time not to exceed two (2) hours;
- (67) "Transitional living support" means all benefits to which an eligible youth is entitled upon being granted extended or reinstated commitment to the cabinet by the court;
- (68) "Transition plan" means a plan that is personalized at the direction of the youth that:
- (a) Includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and workforce supports and employment services; and
 - (b) Is as detailed as the youth may elect;
- (69) "Valid court order" means a court order issued by a judge to a child alleged or found to be a status offender:
- (a) Who was brought before the court and made subject to the order;
 - (b) Whose future conduct was regulated by the order;
 - (c) Who was given written and verbal warning of the consequences of the violation of the order at the time the order was issued and whose attorney or parent or legal guardian was also provided with a written notice of the consequences of violation of the order, which notification is reflected in the record of the court proceedings; and
 - (d) Who received, before the issuance of the order, the full due process rights guaranteed by the Constitution of the United States;
- (70) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;
- (71) "Youth alternative center" means a nonsecure facility, approved by the Department of Juvenile Justice, for the detention of juveniles, both prior to adjudication and after adjudication, which meets the criteria specified in KRS 15A.320; and
- (72) "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.
- ➔Section 11. KRS 610.010 is amended to read as follows:
- (1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his or her eighteenth birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years, who allegedly has committed a public offense prior to his or her eighteenth birthday, except a motor vehicle offense involving a child sixteen (16) years of age or older. A child sixteen (16) years of age or older taken into custody upon the allegation that the child has committed a

motor vehicle offense shall be treated as an adult and shall have the same conditions of release applied to him or her as an adult. A child taken into custody upon the allegation that he or she has committed a motor vehicle offense who is not released under conditions of release applicable to adults shall be held, pending his or her appearance before the District Court, in a facility as defined in KRS 15A.067. Children sixteen (16) years of age or older who are convicted of, or plead guilty to, a motor vehicle offense shall, if sentenced to a term of confinement, be placed in a facility for that period of confinement preceding their eighteenth birthday and an adult detention facility for that period of confinement subsequent to their eighteenth birthday. The term "motor vehicle offense" shall not be deemed to include the offense of stealing or converting a motor vehicle nor operating the same without the owner's consent nor any offense which constitutes a felony;

- (2) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county or the family division of the Circuit Court shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his or her eighteenth birthday and who allegedly:
 - (a) Is beyond the control of the school or beyond the control of parents as defined in KRS 600.020;
 - (b) Is an habitual truant from school;
 - (c) Is an habitual runaway from his or her parent or other person exercising custodial control or supervision of the child;
 - (d) Is dependent, neglected, or abused;
 - (e) Has committed an alcohol offense in violation of KRS 244.085; *or*
 - (f) ~~Has committed a tobacco offense as provided in KRS 438.305 to 438.340; or~~
 - ~~(g)~~ Is mentally ill.
- (3) Actions brought under subsection (1) of this section shall be considered to be public offense actions.
- (4) Actions brought under subsection (2)(a), (b), (c), **and** (e) ~~and (f)~~ of this section shall be considered to be status offense actions.
- (5) Actions brought under subsection (2)(d) of this section shall be considered to be nonoffender actions.
- (6) Actions brought under subsection ~~(2)(f)~~ ~~(2)(g)~~ of this section shall be considered to be mental health actions.
- (7) Nothing in this chapter shall deprive other courts of the jurisdiction to determine the custody or guardianship of children upon writs of habeas corpus or to determine the custody or guardianship of children when such custody or guardianship is incidental to the determination of other causes pending in such other courts; nor shall anything in this chapter affect the jurisdiction of Circuit Courts over adoptions and proceedings for termination of parental rights.
- (8) The court shall have no jurisdiction to make permanent awards of custody of a child except as provided by KRS 620.027.
- (9) If the court finds an emergency to exist affecting the welfare of a child, or if the child is eligible for the relative or fictive kin caregiver assistance as established in KRS 620.142, it may make temporary orders for the child's custody; however, if the case involves allegations of dependency, neglect, or abuse, no emergency removal or temporary custody orders shall be effective unless the provisions of KRS Chapter 620 are followed. Such orders shall be entirely without prejudice to the proceedings for permanent custody of the child and shall remain in effect until modified or set aside by the court. Upon the entry of a temporary or final judgment in the Circuit Court awarding custody of such child, all prior orders of the juvenile session of the District Court in conflict therewith shall be deemed canceled. This section shall not work to deprive the Circuit Court of jurisdiction over cases filed in Circuit Court.
- (10) The court of each county wherein a public offense, as defined in subsection (1) of this section, is committed by a child who is a resident of another county of this state shall have concurrent jurisdiction over such child with the court of the county wherein the child resides or the court of the county where the child is found. Whichever court first acquires jurisdiction of such child may proceed to final disposition of the case, or in its discretion may make an order transferring the case to the court of the county of the child's residence or the county wherein the offense was committed, as the case may be.

- (11) Nothing in this chapter shall prevent the court from holding a child in contempt of court to enforce valid court orders previously issued by the court, subject to the requirements contained in KRS 610.265 and 630.080.
- (12) Except as provided in KRS 635.060(4), 630.120(5), or 635.090, nothing in this chapter shall confer upon the District Court or the family division of the Circuit Court, as appropriate, jurisdiction over the actions of the Department of Juvenile Justice or the cabinet in the placement, care, or treatment of a child committed to the Department of Juvenile Justice or committed to or in the custody of the cabinet; or to require the department or the cabinet to perform, or to refrain from performing, any specific act in the placement, care, or treatment of any child committed to the department or committed to or in the custody of the cabinet.
- (13) Unless precluded by KRS Chapter 635 or 640, in addition to informal adjustment, the court shall have the discretion to amend the petition to reflect jurisdiction pursuant to the proper chapter of the Kentucky Unified Juvenile Code.
- (14) The court shall have continuing jurisdiction over a child pursuant to subsection (1) of this section, to review dispositional orders, and to conduct permanency hearings under 42 U.S.C. sec. 675(5)(c) until the child is placed for adoption, returned home to his or her parents with all the court imposed conditions terminated, completes a disposition pursuant to KRS 635.060, or reaches the age of eighteen (18) years.

➔Section 12. KRS 630.020 is amended to read as follows:

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

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

➔Section 13. Whereas it is critical to bring the Commonwealth's purchase age requirements for tobacco, alternative nicotine, and vapor products into conformance with recently enacted federal purchase age requirements, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by Governor March 26, 2020.