

AN ACT relating to child welfare.

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

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

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

(1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when:

(a) *He or she is suffering from, has sustained, or may be in immediate danger of suffering from or sustaining a wound, injury, disability, or physical or mental condition caused by brutality, neglect, or other actions or inactions of a parent, relative, guardian, or caretaker;*

(b) *He or she is without a parent, guardian, or legal custodian;*

(c) *His or her parent, guardian, legal custodian, or person with whom the child lives, by reason of cruelty, mental incapacity, immorality, or depravity, is unfit to properly care for the child;*

(d) *He or she is under unlawful or improper care, supervision, custody, or restraint by any person, corporation, agency, association, institution, society, or other organization or he or she is unlawfully kept out of school;*

(e) *His or her parent, guardian, or legal custodian neglects or refuses to provide necessary medical, surgical, institutional, or hospital care for the child. 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 the child;*

(f) *Because of lack of proper supervision, he or she is found in any place the existence of which is in violation of law;*

(g) *His or her is suffering from abuse or neglect by failing to provide adequate*

food, clothing, shelter, and education for the child's well-being;

(h) He or she has been in the care and control of one (1) or more agencies or persons not related to the child by blood or marriage for a continuous period of six (6) months or longer in the absence of a power of attorney or court order, and the person or agency has not initiated judicial proceedings seeking either legal custody or adoption of the child;

(i) He or she is or has been allowed, encouraged, or permitted to engage in prostitution or obscene or pornographic photographing, filming, posing, or similar activity and whose parent, guardian, or other legal custodian neglects or refuses to protect the child from further such activity; or

(j) He or she has willfully been left in the sole financial care and sole physical care of a related caregiver for not less than eighteen (18) consecutive months by the child's parent, guardian, or legal custodian, and the child will suffer substantial harm if removed from the continuous care of the related caregiver. A child willfully left with a related caregiver because of the parent's military service shall not be subject to action pursuant to KRS 403.270~~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 alcohol and other drug abuse 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;~~
  - ~~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) of the most recent twenty-two (22) 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) "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; or
  - (f) *The parent has failed 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, which failure has resulted in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months;*
- (3) "Beyond the control of parents" means a child who has repeatedly failed to follow the reasonable directives of his or her parents, legal guardian, or person exercising custodial control or supervision other than a state agency, which behavior results in danger to the child or others, and which behavior does not constitute behavior that would warrant the filing of a petition under KRS Chapter 645;
- (4) "Beyond the control of school" means any child who has been found by the court to have repeatedly violated the lawful regulations for the government of the school as provided in KRS 158.150, and as documented in writing by the school as a part of the school's petition or as an attachment to the school's petition. The petition or attachment shall describe the student's behavior and all intervention strategies attempted by the school;
- (5) "Boarding home" means a privately owned and operated home for the boarding and lodging of individuals which is approved by the Department of Juvenile Justice or

the cabinet for the placement of children committed to the department or the cabinet;

- (6) "Cabinet" means the Cabinet for Health and Family Services;
- (7) "Certified juvenile facility staff" means individuals who meet the qualifications of, and who have completed a course of education and training in juvenile detention developed and approved by, the Department of Juvenile Justice after consultation with other appropriate state agencies;
- (8) "Child" means any person who has not reached his or her eighteenth birthday, unless otherwise provided;
- (9) "Child-caring facility" means any facility or group home other than a state facility, Department of Juvenile Justice contract facility or group home, or one certified by an appropriate agency as operated primarily for educational or medical purposes, providing residential care on a twenty-four (24) hour basis to children not related by blood, adoption, or marriage to the person maintaining the facility;
- (10) "Child-placing agency" means any agency, other than a state agency, which supervises the placement of children in foster family homes or child-caring facilities or which places children for adoption;
- (11) "Clinical treatment facility" means a facility with more than eight (8) beds designated by the Department of Juvenile Justice or the cabinet for the treatment of mentally ill children. The treatment program of such facilities shall be supervised by a qualified mental health professional;
- (12) "Commitment" means an order of the court which places a child under the custodial control or supervision of the Cabinet for Health and Family Services, Department of Juvenile Justice, or another facility or agency until the child attains the age of eighteen (18) unless otherwise provided by law;
- (13) "Community-based facility" means any nonsecure, homelike facility licensed, operated, or permitted to operate by the Department of Juvenile Justice or the

cabinet, which is located within a reasonable proximity of the child's family and home community, which affords the child the opportunity, if a Kentucky resident, to continue family and community contact;

- (14) "Complaint" means a verified statement setting forth allegations in regard to the child which contain sufficient facts for the formulation of a subsequent petition;
- (15) "Court" means the juvenile session of District Court unless a statute specifies the adult session of District Court or the Circuit Court;
- (16) "Court-designated worker" means that organization or individual delegated by the Administrative Office of the Courts for the purposes of placing children in alternative placements prior to arraignment, conducting preliminary investigations, and formulating, entering into, and supervising diversion agreements and performing such other functions as authorized by law or court order;
- (17) "Deadly weapon" has the same meaning as it does in KRS 500.080;
- (18) "Department" means the Department for Community Based Services;
- (19) "Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child;
- (20) "Detention" means the safe and temporary custody of a juvenile who is accused of conduct subject to the jurisdiction of the court who requires a restricted or closely supervised environment for his or her own or the community's protection;
- (21) "Detention hearing" means a hearing held by a judge or trial commissioner within twenty-four (24) hours, exclusive of weekends and holidays, of the start of any period of detention prior to adjudication;
- (22) "Diversion agreement" means 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;

(23) "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;

(24) "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;

~~(25) "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;~~

~~(26) "Evidence-based practices" means policies, procedures, programs, and practices proven by scientific research to reliably produce reductions in recidivism;~~

(26)~~(27)~~ "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;

(27)~~(28)~~ "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;

(28)~~(29)~~ "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;

(29)~~[(30)]~~ "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;

(30)~~[(31)]~~ "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;

(31)~~[(32)]~~ "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;

(32)~~[(33)]~~ "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;

(33)~~[(34)]~~ "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;

(34)~~[(35)]~~ "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;

(35)~~[(36)]~~ "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;

(36)~~(37)~~ "Motor vehicle offense" means any violation of the nonfelony provisions of KRS Chapters 186, 189, or 189A, KRS 177.300, 304.39-110, or 304.39-117;

(37)~~(38)~~ "Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;

(38)~~(39)~~ ~~"Needs of the child" means necessary food, clothing, health, shelter, and education;~~

~~(40)~~ "Nonoffender" means a child alleged to be dependent, neglected, or abused and who has not been otherwise charged with a status or public offense;

(39)~~(41)~~ "Nonsecure facility" means a facility which provides its residents access to the surrounding community and which does not rely primarily on the use of physically restricting construction and hardware to restrict freedom;

(40)~~(42)~~ "Nonsecure setting" means a nonsecure facility or a residential home, including a child's own home, where a child may be temporarily placed pending further court action. Children before the court in a county that is served by a state operated secure detention facility, who are in the detention custody of the Department of Juvenile Justice, and who are placed in a nonsecure alternative by the Department of Juvenile Justice, shall be supervised by the Department of Juvenile Justice;

(41)~~(43)~~ "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, foster family home, hospital, nonsecure facility, physically secure facility, residential treatment facility, or youth alternative center;

~~(42)~~~~(44)~~ "Parent" means the biological or adoptive mother or father of a child;

~~(43)~~~~(45)~~ "Person exercising custodial control or supervision" means a person or agency that has assumed the role and responsibility of a parent or guardian for the child, but that does not necessarily have legal custody of the child;

~~(44)~~~~(46)~~ "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;

~~(45)~~~~(47)~~ "Physical injury" means substantial physical pain or any impairment of physical condition;

~~(46)~~~~(48)~~ "Physically secure facility" means a facility that relies primarily on the use of construction and hardware such as locks, bars, and fences to restrict freedom;

~~(47)~~~~(49)~~ "Public offense action" means an action, excluding contempt, brought in the interest of a child who is accused of committing an offense under KRS Chapter 527 or a public offense which, if committed by an adult, would be a crime, whether the same is a felony, misdemeanor, or violation, other than an action alleging that a child sixteen (16) years of age or older has committed a motor vehicle offense;

~~(48)~~~~(50)~~ "Qualified mental health professional" means:

- (a) A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;
- (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, and who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
- (c) A psychologist with the health service provider designation, a psychological practitioner, a certified psychologist, or a psychological associate licensed under the provisions of KRS Chapter 319;

- (d) A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse with a bachelor's degree in nursing from an accredited institution who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;
- (e) A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a regional comprehensive care center;
- (f) A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth, a psychiatric unit of a general hospital, or a regional comprehensive care center; or
- (g) A professional counselor credentialed under the provisions of KRS 335.500 to 335.599 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, a psychiatric unit of a general hospital, or a regional comprehensive care center;

**(49) "Related caregiver" includes the child's biological, step, or legal grandparent, great grandparent, sibling, aunt, uncle, or any other person**

**who is legally or biologically related to the child;**

**(50)**~~(51)~~ "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;

**(51)**~~(52)~~ "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;

**(52)**~~(53)~~ "Risk and needs assessment" means an actuarial tool scientifically proven to identify specific factors and needs that are related to delinquent and noncriminal misconduct;

**(53)**~~(54)~~ "School personnel" means those certified persons under the supervision of the local public or private education agency;

**(54)**~~(55)~~ "Secretary" means the secretary of the Cabinet for Health and Family Services;

**(55)**~~(56)~~ "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;

**(56)**~~(57)~~ "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;

**(57) "Severe child abuse" means:**

**(a) The knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause serious physical injury or death and the knowing use of force on a child that is likely to cause serious physical injury or death;**

- (b) Specific brutality, abuse, or neglect towards a child that in the opinion of qualified mental health experts has caused or will reasonably be expected to produce severe psychosis, severe neurotic disorder, severe depression, severe developmental delay or intellectual disability, or severe impairment of the child's ability to function adequately in the child's environment, and the knowing failure to protect a child from such conduct;**
- (c) The commission of any act towards the child prohibited by KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 530.020, and 531.310 or the knowing failure to protect the child from the commission of any such act towards the child; or**
- (d) Knowingly allowing a child to be present within a structure where the act of creating methamphetamine, as that substance is identified in KRS 218A.070, is occurring;**

(58) "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;

(59) "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;
- (60) "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;
- (61) "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;
- (62) (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;
  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;
- (63) "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;
- (64) "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;
- (65) "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;
- (66) "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;
- (67) "Violation" means any offense, other than a traffic infraction, for which a sentence of a fine only can be imposed;
- (68) "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
- (69) "Youthful offender" means any person regardless of age, transferred to Circuit Court under the provisions of KRS Chapter 635 or 640 and who is subsequently convicted in Circuit Court.

➔Section 2. KRS 610.080 is amended to read as follows:

- (1) Juvenile proceedings shall consist of two (2) distinct hearings, an adjudication and a disposition, which shall be held on separate days unless the child, after consultation with an attorney, waives the right to a formal predisposition investigation report and

moves that the hearings be held the same day. However, if the disposition is to be commitment, the child's waiver shall not be valid without the consent of the Department of Juvenile Justice or the cabinet.

~~(2)~~~~(1)~~ The adjudication shall determine the truth or falsity of the allegations in the petition and shall be made on the basis of an admission or confession of the child to the court or by the taking of evidence.

~~(3)~~~~(2)~~ Unless otherwise exempted, upon motion by any child brought before the court on a petition under KRS 610.010(1), or 610.010(2)(a), (b), or (c), the Rules of Criminal Procedure shall apply. All adjudications shall be supported by evidence beyond a reasonable doubt, unless specified to the contrary by other provisions of KRS Chapters 600 to 645. For actions under KRS 610.010(2)(d) the Kentucky Rules of Civil Procedure shall apply.

(4) After hearing the evidence on the petition, the court shall make and file its findings as to whether the child is a dependent or abused and neglected child, or, if the petition alleges that the child is delinquent or unruly, whether the acts ascribed to the child were committed by that child. If the court finds that the child is not a dependent or abused and neglected child or that the allegations of delinquency or unruly conduct have not been established, it shall dismiss the petition and order the child discharged from any detention or other restriction ordered in the proceeding up to that time.

(5) If the petition alleged the child was dependent or abused and neglected as defined in Section 1 of this Act, or if the court so finds regardless of the grounds alleged in the petition, the court shall determine whether the parents or either of them or another person who had custody of the child committed severe child abuse. The court shall file written findings of fact that are the basis of its conclusions on that issue within thirty (30) days of the close of the hearing or, if an appeal or a petition for certiorari is filed, within five (5) days thereafter, excluding Sundays.

**(6) If the court finds on proof beyond a reasonable doubt that the child committed the acts by reason of which the child is alleged to be delinquent, it shall proceed immediately or at a postponed hearing to hear evidence as to whether the child is in need of treatment or rehabilitation and to make and file its findings thereon. If the court finds that the child is not in need of treatment or rehabilitation, it may dismiss the proceeding and discharge the child from any detention or other restriction ordered up to that time. In the absence of evidence to the contrary, evidence of the commission of acts that constitute a felony or that reflect recidivistic delinquency is sufficient to sustain a finding that the child is in need of treatment or rehabilitation.**

**(7) If the court finds from clear and convincing evidence that the child is dependent or abused and neglected or unruly, the court shall proceed immediately or at a postponed hearing to make a proper disposition of the case.**

➔Section 3. KRS 610.342 is amended to read as follows:

(1) Any statute to the contrary notwithstanding, an attorney representing a child **and an attorney representing any parent or legal guardian** in any proceeding under KRS Chapters 600 to 645 or in any adult criminal proceeding shall have full access to all records, including juvenile records, held by law enforcement, courts, social work agencies, or any other record, public or private, relating to that child which the attorney believes is necessary to the representation of that child **or parent or legal guardian**.

(2) All courts shall enforce the provisions of subsection (1) of this section through appropriate orders, upon request of an attorney representing a child **or parent or legal guardian** in any proceeding specified in subsection (1) of this section.

➔Section 4. KRS 620.100 is amended to read as follows:

(1) If the court determines, as a result of a temporary removal hearing, that further proceedings are required, the court shall advise the child and his parent or other

person exercising custodial control or supervision of their right to appointment of separate counsel:

- (a) The court shall appoint counsel for the child to be paid for by the Finance and Administration Cabinet. Counsel shall document participation in training on the role of counsel that includes training in early childhood, child, and adolescent development. The clerk of the court shall arrange for service on all parties, including the local representative of the Cabinet for Health and Family Services, of the order appointing counsel. The fee to be fixed by the court shall not exceed five hundred dollars (\$500)~~}; however, if the action has final disposition in the District Court, the fee shall not exceed two hundred fifty dollars (\$250)}~~;
- (b) The court shall appoint separate counsel for the parent who exercises custodial control or supervision if the parent is unable to afford counsel pursuant to KRS Chapter 31. The clerk of the court shall arrange for service on all parties, including the local representative of the Cabinet for Health and Family Services, of the order appointing counsel. The parent's counsel shall be provided or paid for by the Finance and Administration Cabinet. The fee to be fixed by the court shall not exceed five hundred dollars (\$500)~~}; however, if the action has final disposition in the District Court, the fee shall not exceed two hundred fifty dollars (\$250)}~~;
- (c) The court may, in the interest of justice, appoint separate counsel for a nonparent who exercises custodial control or supervision of the child, if the person is unable to afford counsel, pursuant to KRS Chapter 31. The clerk of the court shall arrange for service on all parties, including the local representative of the Cabinet for Health and Family Services, of the order appointing counsel. Counsel for the person shall be provided or paid for by the Finance and Administration Cabinet. The fee to be fixed by the court shall not

exceed five hundred dollars (\$500)~~]; however, if the action has final disposition in the District Court, the fee shall not exceed two hundred fifty dollars (\$250)]; and~~

- (d) The court may, in the interest of justice, appoint a court-appointed special advocate volunteer to represent the best interests of the child pursuant to KRS 620.500 to 620.550. The clerk of the court shall arrange for service on all parties, including the local representative of the cabinet, of the order appointing the court-appointed special advocate volunteer.
- (2) If the court determines that further proceedings are required, the court also shall advise the child and his parent or other person exercising custodial control or supervision that they have a right to not incriminate themselves, and a right to a full adjudicatory hearing at which they may confront and cross-examine all adverse witnesses, present evidence on their own behalf and to an appeal.
- (3) The adjudication shall determine the truth or falsity of the allegations in the complaint. The burden of proof shall be upon the petitioner~~complainant~~, and a determination of dependency, neglect, and abuse shall be made by clear and convincing~~a preponderance of the~~ evidence. The Kentucky Rules of Civil Procedure and The Kentucky Rules of Family Court shall apply.
- (4) The disposition shall determine the action to be taken by the court on behalf of the child and his parent or other person exercising custodial control or supervision.
- (5) Foster parents, preadoptive parents, or relatives providing care for the child shall receive notice of, and shall have a right to be heard in, any proceeding held with respect to the child. This subsection shall not be construed to require that a foster parent, preadoptive parent, or relative caring for the child be made a party to a proceeding solely on the basis of the notice and right to be heard.

➔Section 5. KRS 620.230 is amended to read as follows:

- (1) For each child placed in the custody of the cabinet by an order of commitment, the

cabinet shall file a case permanency plan for the child with the court and send a copy to the Administrative Office of the Courts Citizen Foster Care Review Board Program as soon as the plan is prepared but no later than thirty (30) days after the effective date of the order. Notwithstanding the provisions of KRS 620.090(5), if a child remains in the temporary custody of the cabinet for longer than forty-five (45) days and if a request is submitted by the Administrative Office of the Courts Citizen Foster Care Review Board Program, the cabinet shall provide a copy of the case permanency plan for the child.

- (2) The case permanency plan shall include~~[-]~~ but need not be limited to:
- (a) A concise statement of the reasons why the child is in the custody of the cabinet;
  - (b) A statement of the actions which have been taken with regard to the child to the date of the plan and one (1) of the following goals identified for each child:
    - 1. Return of the child to parent;
    - 2. Permanent placement of the child with a fit and willing relative or relatives of the child;
    - 3. Adoption, giving appropriate consideration to placement when applicable;
    - 4. Permanent guardianship; or
    - 5. A planned permanent living arrangement;
  - (c) A statement of the proposed actions which may be taken or are contemplated with regard to the child during the next six (6) months and during the entire duration of the time the child is in the custody of the cabinet;
  - (d) Contemplated placements for the child;
  - (e) If the child is placed outside the home, reasons why the child cannot be protected adequately in the home, the harms the child may suffer if left in the

- home, factors which may indicate when the child can be returned to the home, and efforts the cabinet or others are making to return the child to the home;
- (f) If the child is placed outside the home, the steps that the cabinet will take to minimize the harm to the child as a result of the action, both at the time of removal and on a long-term basis;
  - (g) A description of the type of home, child-caring facility, child-placing agency or facility in which the child is to be placed or has been placed, and a statement why the placement is appropriate for the child, including but not limited to:
    - 1. Age;
    - 2. Educational needs;
    - 3. Medical needs;
    - 4. Emotional needs;
    - 5. Relationship with parents; and
    - 6. Number of children the home is authorized to care for and the number of children currently residing in the home;
  - (h) If the placement is outside the child's original county of residence, documentation that no closer placement is appropriate or available, and the reasons why the placement made was chosen;
  - (i) A description of the services for the child and his family to be provided or arranged by the cabinet to facilitate the return of the child to his own home or to another permanent placement;
  - (j) A list of objectives and specific tasks, together with specific time frames for each task, for which the parents have agreed to assume responsibility, including a schedule of regular visits with the child;
  - (k) A projected schedule of time intervals by which each of the services, objectives, and tasks outlined in the case permanency plan should be

accomplished and a schedule of time intervals which have already been accomplished or are in the process of accomplishment; and

(l) If the child is to remain at home, a description of the potential harm which could befall the child and measures that are being taken to prevent or minimize such harm~~]; and~~

~~(m) If the child is to remain at home, reasons why he cannot be placed in foster care or why such care is not needed].~~

(3) Under no circumstance shall a child be placed in a home, facility, or other shelter with a child who has been committed to the Department of Juvenile Justice for commission of a sex crime as defined in KRS 17.500, unless the child committed for the commission of a sex crime is kept segregated from other children in the home, facility, or other shelter that have not been committed for the commission of a sex crime.

**(4) Each case permanency plan is subject to modification and shall be reevaluated and updated at least annually, except when a long-term agreement has been made in accordance with this chapter.**

**(5) The case permanency plan for any child in foster care shall include a statement of the responsibilities of the parents, the agency, and the caseworker of the agency. These statements shall include the responsibilities of each party in specific terms and shall be reasonably related to the achievement of the goal specified in subsection (2)(b) of this section. The statement shall include the definitions of aggravated circumstances pursuant to Section 1 of this Act and the criteria and procedures for termination of parental rights. Each party shall sign the statement and be given a copy of it. The court shall review the proposed case permanency plan, make any necessary modifications and ratify or approve the plan within sixty (60) days of the foster care placement.**

**(6) The parents or legal guardians of the child shall receive notice to appear at the**

court review of the case permanency plan and the court shall, on the record, explain aggravated circumstance and shall also explain that the consequences of failure to visit or support the child will be termination of the parents' or legal guardians' rights to the child. The court shall further explain that the parents or legal guardians may seek an attorney to represent them in any termination proceeding. If the parents or legal guardians are not at the hearing to review the case permanency plan, the court shall explain to the parents or legal guardians at any subsequent hearing regarding the child that the consequences of failure to visit or support the child will be termination of the parents' or legal guardians' rights to the child and that they may seek an attorney to represent them in a termination proceeding;

(7) If the parents or legal guardians of the child cannot be given notice to appear at the court review of the case permanency plan, refuse or fail to appear at the court review of the case permanency plan, or cannot be found to provide notice for the court review of the case permanency plan, then any agency that holds custody of the child in foster care or in any other type of care and that seeks to terminate parental or legal guardian rights based upon aggravated circumstances of that child shall not be precluded from proceeding with the termination based upon the grounds of aggravated circumstances, if the agency demonstrates at the time of the termination proceeding;

(a) That the court record shows, or the petitioning party presents to the court a copy of the case permanency plan that shows that the defendant parents or legal guardians, subsequent to the court review in this section, have signed the portion of the case permanency plan that describes the criteria for establishing aggravated circumstances, or that the court record shows that, at a subsequent hearing regarding the child, the court made the statements to the parents or legal guardians required by this section; or

- (b) By an affidavit, that the child's case permanency plan containing language that describes the criteria for establishing aggravated circumstances was presented by the agency party to the parents or legal guardians at any time prior to filing the termination petition, or that there was an attempt at any time to present the plan that describes the criteria for establishing aggravated circumstances to the parents or guardians by the agency party, and that this attempt was refused by the parents or legal guardians.
- (8) If the court record does not contain a signed copy of the case permanency plan, or if the petitioning agency cannot present evidence of a permanency plan showing evidence of the notice having been given, or an affidavit showing that the plan was given, or that the plan was attempted to be given to the parents or legal guardians by the agency and was refused by the parents or legal guardians, and, in this circumstance, if there is no other court record of the explanation by the court of the consequences of abandonment and the right to seek an attorney at any time, then the petitioning agency shall file with the court an affidavit in the termination proceeding that describes in detail the party's diligent efforts to bring the notice required by this section to the parent or legal guardian at any time prior to the agency's filing of the termination petition.
- (9) Substantial noncompliance by the parent or legal guardian with the statement of responsibilities shall provide grounds for the termination of parental rights, notwithstanding other statutory provisions for termination of parental rights, and notwithstanding the failure of the parent to sign or to agree to the statement if the court finds the parent was informed of its contents and that the requirements of the statement are reasonable and are related to remedying the conditions that necessitate foster care placement. The case permanency plan shall not require the parent or legal guardian to obtain employment if the parent or legal guardian has sufficient resources from other means to care for the child, and shall not require

the parent or legal guardian to provide the child with the child's own bedroom unless specific safety or medical reasons exist that would make bedroom placement of the child with another child unsafe.

(10) At any hearing in which a court orders a child to be placed in foster care, the judge shall determine whether a case permanency plan has been prepared and whether the statement of responsibilities has been agreed upon by the parties. If a statement has been agreed upon by the parties, the court shall review it and approve it if the court finds it to be in the best interest of the child. If a case permanency plan had not been prepared or the parties have not agreed to a statement of responsibilities, the court may continue the hearing for a time, not to exceed thirty (30) days, as necessary to give the parties an opportunity to attempt to agree on a suitable plan. This plan may then be approved by the court without a further hearing if the court finds the plan to be in the best interest of the child, but no longer than sixty (60) days after the foster care placement.

(11) (a) If the parties are unable to agree on a statement of responsibilities during this period of time, the court shall hold an informal hearing to decide on a statement of responsibilities. At this hearing, all relevant evidence, including oral and written reports, may be received by the court and relied upon to the extent of its probative value. The parties or their counsel shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making the reports.

(b) In determining the terms of the statement, the court shall, insofar as possible and in accordance with the best interest of the child, seek to:

1. Return the child to the parent;
2. Permanently place the child with a fit and willing relative or relatives of the child;
3. Pursue adoptive placement;

4. Pursue permanent guardianship; or

5. Provide a planned permanent living arrangement for the child.

(c) The court shall take any action necessary to develop and approve a case permanency plan that it finds to be in the best interest of the child. The case permanency plan shall be approved within sixty (60) days of the foster care placement.

(12) In cases involving child abuse and neglect, when the child has been placed in foster care, the statement of responsibilities shall stipulate that the abusing or neglecting parent shall receive appropriate rehabilitative assistance through mental health consultation, if so ordered by the court.

→Section 6. KRS 620.240 is amended to read as follows:

The cabinet shall file for each child a case progress report at least once every six (6) months with the court and the Administrative Office of the Courts Citizen Foster Care Review Board Program. The first case progress report after the child is placed in the custody of the cabinet by an order of temporary custody or commitment shall be mailed to the Administrative Office of the Courts Citizen Foster Care Review Board Program and subsequent case progress reports shall be provided to the local citizen foster care review board within the case file. At the time the progress report is provided to the court and foster care review board, the cabinet shall also provide a copy of the report to the child's parent or parents whose rights have not been terminated or surrendered, the parent's attorney, the guardian ad litem and or attorney for the child, and the child who is a party to the proceeding. The case progress report shall include but is not limited to:

- (1) The length of time the child has been in the custody of the cabinet;
- (2) The number, location, and date for each placement during the time the child has been in the custody of the cabinet;
- (3) A description of the services and assistance provided or arranged by the cabinet to

- the parents since the last case permanency plan or case progress report, and results achieved;
- (4) A description of the efforts and progress of the parents since the last case permanency plan and case progress report, including the number and dates of parental visits and the extent, quality, and frequency of the parents' communication with the child;
  - (5) The barriers, familial and institutional, to returning the child home or releasing the child from the custody of the cabinet and services that are not currently available in the community;
  - (6) An evaluation of the child's current placement and services provided to the child;
  - (7) Recommendations for necessary services required to release the child from the custody of the cabinet, to return the child home, or to facilitate another permanent placement;
  - (8) A timetable for the child's return home or other permanent placement; and
  - (9) If return home is not recommended, a specific recommendation for a permanent placement, including termination of parental rights if appropriate. If continued foster care is recommended, an explanation as to why another permanent placement is not appropriate.

➔Section 7. KRS 620.270 is amended to read as follows:

- (1) Subject to the provisions of KRS 620.230, the local citizen foster care review board shall review the case of each child placed in the custody of the cabinet by an order of temporary custody or commitment by the court in the county or counties which the local board serves. The review shall occur at least once every six (6) months until the child is no longer in the custody of the cabinet or until an adoption proceeding becomes final.
- (2) During each six (6) month review, the local citizen foster care review board shall review:

- (a) The past, current, and future status of the child and his placement as shown through the case permanency plan, case record, case progress reports submitted by the cabinet, and other information as the board may require;
  - (b) The efforts or adjustment the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time considering the age of the child;
  - (c) The efforts of the cabinet to locate and provide services to the biological parents of the child;
  - (d) The efforts of the cabinet and other agencies to facilitate the return of the child to the home or to find an alternative permanent placement if reunion with the parent or previous custodian is not feasible. The cabinet shall report to the board all factors which either favor or mitigate against any decision or alternative with regard to these matters; and
  - (e) Any problems, solutions, or alternatives which may be capable of exploration, or other matters with regard to the child as the cabinet or the board determine to be explored with regard to the best interests of the state or of the child.
- (3) Upon completion of a training curriculum developed and provided jointly by the Administrative Office of the Courts and by the Department for Community Based Services and approved by the state review board in regard to child sexual abuse, the local citizen foster care review board may review, at the discretion of the board, a sample of all petitions filed in the District Court of the county served by the board alleging sexual abuse of any child, not to exceed two hundred (200) petitions per year statewide, in order to determine the adequacy of the investigation, and the appropriateness of findings, adjudication, and disposition of the court. The board shall have access to all records of the cabinet, medical professionals, and law enforcement agencies pertaining to these cases. The board shall provide the cabinet and the court a full report of the findings and recommendations concerning the

review.

**(4) Notice of this review and the right to attend and participate in the review shall be provided to either or both of the child's parents whose rights have not been terminated or surrendered, the parent's attorney, either the guardian ad litem or the attorney for the child or both, the foster parents, the prospective adoptive parent or parents, the relative providing care for the child, and the child who is a party to the proceeding. The cabinet and the court shall develop adequate procedures to provide notice of the review to these persons.**