

AN ACT relating to juvenile justice.

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

➔Section 1. KRS 15A.305 is amended to read as follows:

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

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

➔Section 2. KRS 610.030 is amended to read as follows:

Except as otherwise provided in KRS Chapters 600 to 645:

- (1) If any person files a complaint alleging that a child, except a child alleged to be neglected, abused, dependent or mentally ill who is subject to the jurisdiction of the court, may be within the purview of KRS Chapters 600 to 645, the court-designated worker shall make a preliminary determination as to whether the complaint is complete. In any case where the court-designated worker finds that the complaint is incomplete, the court-designated worker shall return the complaint without delay to the person or agency originating the complaint or having knowledge of the facts, or to the appropriate law enforcement agency having investigative jurisdiction of the offense, and request additional information in order to complete the complaint. The complainant shall promptly furnish the additional information requested;
- (2) (a) Upon receipt of a complaint which appears to be complete and which alleges that a child has committed a public offense, the court-designated worker shall refer the complaint to the county attorney for review pursuant to KRS 635.010.

- (b) If after review the county attorney elects to proceed, the court-designated worker shall conduct a preliminary intake inquiry to recommend whether the interests of the child or the public require that further action be taken or whether, in the interest of justice, the complaint can be resolved informally without the filing of a petition;
- (3) Upon receipt of a complaint that appears to be complete and that alleges that the child has committed a status offense, the court-designated worker shall conduct a preliminary intake inquiry to determine whether the interests of the child or the public require that further action be taken;
- (4) Prior to conducting a preliminary intake inquiry, the court-designated worker shall notify the child and the child's parent, guardian, or other person exercising custodial control or supervision of the child in writing:
 - (a) Of their opportunity to be present at the preliminary intake inquiry;
 - (b) That they may have counsel present during the preliminary intake inquiry as well as the formal conference thereafter;
 - (c)
 - 1. That all information supplied by the child to a court-designated worker during any process prior to the filing of the petition shall be deemed confidential and shall not be subject to subpoena or to disclosure without the written consent of the child.
 - 2. Information may be shared between treatment providers, the court-designated worker, and the family accountability, intervention, and response team to enable the court-designated worker to facilitate services and facilitate compliance with the diversion agreement; and
 - (d) That the child has the right to deny the allegation and demand a formal court hearing;
- (5) The preliminary intake inquiry shall include the administration of an evidence-based screening tool and, if appropriate and available, a validated risk and needs

- assessment, in order to identify whether the child and his or her family are in need of services and the level of intervention needed;
- (6) Upon the completion of the preliminary intake inquiry, the court-designated worker may:
- (a) If the complaint alleges a status offense, determine that no further action be taken subject to review by the family accountability, intervention, and response team;
 - (b) If the complaint alleges a public offense, refer the complaint to the county attorney;
 - (c) Refer a public offense complaint for informal adjustment; or
 - (d) Based upon the results of the preliminary intake inquiry, other information obtained, and a determination that the interests of the child and the public would be better served, and with the written approval of the county attorney for a public offense complaint, if necessary, conduct a formal conference and enter into a diversion agreement;
- (7) Upon receiving written approval of the county attorney, if necessary, to divert a public offense complaint, and prior to conducting a formal conference, the court-designated worker shall advise in writing the complainant, the victim if any, and the law enforcement agency having investigative jurisdiction of the offense:
- (a) Of the recommendation and the reasons therefor and that the complainant, victim, or law enforcement agency may submit within ten (10) days from receipt of such notice a complaint to the county attorney for special review; or
 - (b) In the case of a misdemeanor diverted pursuant to KRS 635.010(4), of the fact that the child was statutorily entitled to divert the case;
- (8) A formal conference shall include the child and his or her parent, guardian, or other person exercising custodial control or supervision. The formal conference shall be used to:

- (a) Present information obtained at the preliminary intake inquiry; and
 - (b) Develop a diversion agreement that shall require that the child regularly attend school, shall not exceed six (6) months in duration, and may include:
 - 1. Referral of the child, and family if appropriate, to a public or private entity or person for the provision of identified services to address the complaint or assessed needs;
 - 2. Referral of the child, and family if appropriate, to a community service program within the limitations provided under KRS 635.080(2);
 - 3. Restitution, limited to the actual pecuniary loss suffered by the victim, if the child has the means or ability to make restitution;
 - 4. Notification that the court-designated worker may apply graduated sanctions for failure to comply with the diversion agreement;
 - 5. Any other program or effort which reasonably benefits the community and the child; and
 - 6. A plan for monitoring the child's progress and completion of the agreement;
- (9) (a) If a child successfully completes a diversion agreement, the underlying complaint shall be dismissed and further action related to that complaint shall be prohibited.
- (b) If a child fails to appear for a preliminary intake inquiry, declines to enter into a diversion agreement, or fails to complete a diversion agreement, then:
- 1. For a public offense complaint, the matter shall be referred to the county attorney for formal court action and, if a petition is filed, the child may request that the court dismiss the complaint based upon his or her substantial compliance with the terms of the diversion agreement; and
 - 2. For a status offense complaint, the court-designated worker shall refer the matter to the family accountability, intervention, and response team

for review and further action;

- (10) If a complaint is referred to the court, the complaint and findings of the court-designated worker's preliminary intake inquiry shall be submitted to the court for the court to determine whether process should issue; and
- (11) At any stage in the proceedings described in this section, the court or the county attorney may review any decision of the court-designated worker. The court upon its own motion or upon written request of the county attorney may refer any complaint for a formal hearing.

➔Section 3. KRS 610.105 is amended to read as follows:

- (1) Upon the court's motion or the motion of any party, following notice to the county attorney, an informal adjustment may be made at any time during the proceedings and with the victim and with those persons specified in KRS 610.070 having prior notification of the motion.
- (2) An informal adjustment does not require adjudication of the case. If an adjudication has occurred, the court shall dismiss the case following successful completion under subsection (3) of this section.
- (3) If the court orders an informal adjustment, the order may include any of the following:
- (a) Referral of the case to **a program designed to hold the child accountable, secure services as appropriate for the best interests of the child, and to provide redress for the child's behavior.**~~[diversion, but,]~~ If the child does not successfully complete the terms of the **program**~~[diversion]~~, the case shall not be dismissed as a result~~[of the diversion]~~ but shall be returned to court; or
- (b) Placement of the child on community supervision or monitoring by the court under the informal adjustment with additional conditions as determined appropriate by the court for a period not to exceed six (6) months.

➔Section 4. KRS 635.010 is amended to read as follows:

- (1) The county attorney shall cause a review to be made of each complaint alleging that a public offense has been committed. The purpose of this review shall be to determine from the available evidence whether there are reasonable grounds to believe that the alleged facts would constitute a public offense. The county attorney may elect not to proceed with the complaint, regardless of whether reasonable grounds exist, and dismiss the complaint.
- (2) The county attorney, upon receipt of a request for special review, shall consider the facts presented by the complainant and by the court-designated worker who made the recommendation that no petition be filed, before the county attorney makes a final decision as to whether a public offense petition shall or shall not be filed.
- (3) In all cases in which the child is alleged to have committed a public offense and is not detained, the court-designated worker shall submit his written recommendation to the county attorney or designee within twenty (20) days, exclusive of weekends and holidays, from the date the child was taken into custody or the complaint was filed. In cases where the child is detained, the court-designated worker's report shall be submitted within seventy-two (72) hours of the time the child is ordered detained.
- (4) The county attorney ~~shall~~~~may~~ not file a petition if the complaint is a misdemeanor and the child who is the subject of the diversion agreement has no prior adjudications and no prior diversions.
- (5) If a public offense petition is filed, it shall be verified by information and belief and contain the information listed in KRS 610.020.

➔Section 5. KRS 635.060 is amended to read as follows:

If in its decree the juvenile court finds that the child comes within the purview of this chapter, the court, at the dispositional hearing, may impose any combination of the following, except that the court shall, if a validated risk and needs assessment tool is available ***and has not been waived by the parties with consent of the court***, consider the

validated risk and needs assessment submitted to the court and parties by the Department of Juvenile Justice or other agency before imposing any disposition:

- (1) Order the child or his parents, guardian, or person exercising custodial control to make restitution or reparation to any injured person to the extent, in the sum and upon the conditions as the court determines. However, no parent, guardian, or person exercising custodial control shall be ordered to make restitution or reparation unless the court has provided notice of the hearing, provided opportunity to be heard, and made a finding that the person's failure to exercise reasonable control or supervision was a substantial factor in the child's delinquency;
- (2) (a) Place the child:
 1. Under parental supervision in the child's own home or in a suitable home or boarding home, upon the conditions that the court shall determine, or
 2. On probation under conditions that the court shall determine.
- (b)
 1. At the time the child is placed on probation, the court shall explain to the child the sanctions which may be imposed if the court's conditions are violated, and shall include notice of those sanctions as part of its written order of probation. A child placed on probation shall be subject to the visitation and supervision of a probation officer or an employee of the Department of Juvenile Justice.
 2. The conditions of probation shall include authorization for the use of graduated sanctions prior to a court review for the imposition of a term of detention. If the court has previously imposed graduated sanctions for a violation of conditions of supervision by a child monitored by the court, or makes a finding that the graduated sanctions have previously been imposed for a child on probation, then the court may impose a sanction of up to thirty (30) days' detention for a violation of the

conditions of supervision or probation. A court may not impose detention prior to use of graduated sanctions unless there is clear and convincing evidence that there are no graduated sanctions available that are appropriate for the child and the child is an immediate threat to himself or others. Except where commitment has been probated pursuant to subsection (5) of this section, a child may not be committed or recommitted to the Department of Juvenile Justice for a violation of a condition of probation.

- (c) A child placed on probation or supervision with court monitoring shall remain subject to the jurisdiction of the court as follows, except that if a person is placed on probation after the person reaches the age of seventeen (17) years and six (6) months, the probation shall be for a period not to exceed one (1) year:
1. If the child was adjudicated for an offense that would be a violation if committed by an adult, the period of probation or supervision shall not exceed thirty (30) days, except that the court may order up to three (3) months of supervision if the court-ordered treatment includes a program that requires longer than thirty (30) days to complete;
 2. If the child was adjudicated for an offense that would be a misdemeanor if committed by an adult, other than an offense for which a child has been declared a juvenile sex offender under KRS 635.510 or an offense involving a deadly weapon, the period of probation or supervision shall not exceed six (6) months, except that the court may order up to twelve (12) months of supervision if the court-ordered substance abuse or mental health treatment includes a program that requires longer than six (6) months to complete;
 3. If the child was adjudicated for an offense that would be a Class D

- felony if committed by an adult, other than an offense for which a child has been declared a juvenile sex offender under KRS 635.510 or an offense involving a deadly weapon, the period of probation or supervision shall not exceed twelve (12) months, *except that the court may order up to eighteen (18) months of supervision if the court-ordered substance abuse or mental health treatment includes a program that requires longer than twelve (12) months to complete*; or
4. If the child was adjudicated for an offense that would be a felony offense if committed by an adult, other than a Class D felony offense, or for an offense involving a deadly weapon, or for an offense in which the child has not been declared a sexual offender pursuant to KRS 635.510, the child may be placed on probation up to age eighteen (18);
- (3) (a) If the child was adjudicated for an offense other than an offense that would be a violation if committed by an adult, order the child confined in an approved secure detention facility or detention program, as authorized by KRS Chapter 15A, as follows:
1. If the child is fourteen (14) years of age but less than sixteen (16) years of age, the child may be confined for a period of time not to exceed forty-five (45) days; or
 2. If the child is sixteen (16) years of age or older, the child may be confined for a period of time not to exceed ninety (90) days.
- (b) The Department of Juvenile Justice shall pay for the confinement of children confined pursuant to this subsection in accordance with the statewide detention plan and administrative regulations implementing the plan;
- (4) (a) Order the child to be committed or recommitted to the custody of the Department of Juvenile Justice, grant guardianship to a child-caring facility or a child-placing agency authorized to care for the child, or place the child under

the custody and supervision of a suitable person if:

1. The child was adjudicated for an offense that would be a misdemeanor or Class D felony if committed by an adult and the child has at least three (3) prior adjudications, excluding prior adjudications of offenses designated as a violation, or at least four (4) prior adjudications of violations, which do not arise from the same course of conduct; or
 2. The child was adjudicated for an offense involving a deadly weapon, an offense in which the child has been declared a juvenile sexual offender under KRS 635.510, or an offense that would be a felony offense if committed by an adult, other than a Class D felony.
- (b) The commitment shall be for the following term, subject to KRS 635.070 and the power of the court to terminate the order and discharge the child prior thereto:
1. If the child was adjudicated for an offense that would be a misdemeanor if committed by an adult, other than an offense for which a child has been declared a juvenile sex offender under KRS 635.510 or an offense involving a deadly weapon, the child may be committed for a period not to exceed twelve (12) months, including all time spent in the treatment plan established pursuant to KRS 15A.0652;
 2. If the child was adjudicated for an offense that would be a Class D felony if committed by an adult, other than an offense for which a child has been declared a juvenile sex offender under KRS 635.510 or an offense involving a deadly weapon, the child may be committed for a period not to exceed eighteen (18) months, including all time spent in the treatment plan established pursuant to KRS 15A.0652;
 3. If the child was adjudicated for an offense that would be a felony offense if committed by an adult, other than a Class D felony offense, or an

offense involving a deadly weapon, the child may be committed up to age eighteen (18);

4. If the child was adjudicated for an offense that results in the child being declared a juvenile sexual offender, the commitment shall be as provided in KRS 635.515;
 5. The court, in its discretion, upon motion by the child and with the concurrence of the Department of Juvenile Justice, may authorize an extension of commitment up to age twenty-one (21) to permit the Department of Juvenile Justice to assist the child in establishing independent living arrangements; and
 6. If a child is committed after the child reaches the age of seventeen (17) years and six (6) months, and except as provided in subparagraph 4. of this paragraph, the commitment shall be for a period not to exceed one (1) year.
- (c) The Department of Juvenile Justice shall:
1. Accept physical custody of a child who is detained in an approved secure juvenile detention facility in accordance with KRS 15A.200 to 15A.240 at the time the child is committed or recommitted to the custody of the Department of Juvenile Justice. The Department of Juvenile Justice shall remove the child from the approved secure juvenile detention facility and secure appropriate placement as soon as possible but not to exceed thirty-five (35) days of the time of commitment or recommitment; and
 2. Pay for the cost of detention from the date of commitment or recommitment, on the current charge, until the child is removed from the detention facility and placed.
- (d) All orders of commitment may include advisory recommendations the court

may deem proper in the best interests of the child and of the public; or

- (5) (a) The court may probate or suspend a commitment ordered pursuant to subsection (4) of this section, except that if a court probates or suspends a commitment in conjunction with any other dispositional alternative, that fact shall be explained to the juvenile and contained in a written order.
- (b) Any probation or suspension imposed shall not exceed the time limitations established under subsection (2) of this section.
- (c) If the child successfully completes the conditions of probation, the court shall terminate the case.
- (d) 1. The court may, for violations of the conditions of probation, revoke the probation or suspension ordered under this section and order the child committed.
2. The period of the commitment shall not exceed the terms established under subsection (4) of this section.
3. Any time a child has spent in out-of-home placement as a result of a violation of a condition of probation or suspension under this section shall be credited toward the period of commitment.
4. If a commitment is probated or suspended after a child reaches the age of seventeen (17) years and six (6) months, the period of the suspension, and commitment if revoked, shall be for a period not to exceed one (1) year, but not to exceed age nineteen (19).

(6) The court shall not enter any disposition in a public offender case, except as provided by this section or by KRS 635.090.

➔Section 6. KRS 610.190 is amended to read as follows:

- (1) The law relating to the persons by whom and the circumstances under which a person may be arrested for a public offense shall be applicable to children, but the taking of a child into custody under such law shall not be termed an arrest until the

court has made the decision to try the child in Circuit or District Court as an adult. The law relating to bail shall not be applicable to children detained in accordance with this chapter unless the child is subject to being tried in Circuit or District Court as an adult.

- (2) ~~[A peace officer may take a child into protective custody if the officer suspects the child to be a runaway.]~~ A child taken into protective custody ~~[under this subsection]~~ shall not be considered to have been arrested and may be held at the locations specified in KRS 610.220(1), **while** ~~[after which]~~ the officer **conducts** ~~[shall proceed with]~~ an initial investigation as provided for in KRS 610.200.
- (3) When a child is taken into custody by a person other than a peace officer, such person shall as soon as possible place the child in the custody of a peace officer.

➔Section 7. KRS 610.200 is amended to read as follows:

- (1) When a peace officer has taken or received a child into custody on a charge of committing an offense, the officer shall immediately inform the child of his constitutional rights and afford him the protections required thereunder, notify the parent, or if the child is committed, the Department of Juvenile Justice or the cabinet, as appropriate, and if the parent is not available, then a relative, guardian, or person exercising custodial control or supervision of the child, that the child has been taken into custody, give an account of specific charges against the child, including the specific statute alleged to have been violated, and the reasons for taking the child into custody.
- (2) (a) When a peace officer has taken or received a child into protective custody ~~[on suspicion of being a runaway]~~, the officer shall immediately notify:
1. The child's parent, guardian, or person exercising custodial control or supervision of the child, if determined;
 2. The cabinet or Department of Juvenile Justice, if appropriate; and
 3. The court-designated worker.

- (b) If the parent, guardian, or other person exercising custodial control or supervision is identified and notified, the peace officer may retain custody of the child for a reasonable period to allow the person notified the opportunity to arrive at the officer's location and collect the child.
 - (c) If the parent, guardian, or other person exercising custodial control or supervision cannot be identified or located, the peace officer may retain custody of the child for a period of time not to exceed two (2) hours to continue his or her investigation.
 - (d) If, at the conclusion of the peace officer's investigation, the parent, guardian, or person exercising custodial control or supervision of the child is identified and notified, the peace officer shall return the child to the custody of that person and ~~may~~ *shall* file a status offense complaint ~~case~~ with the court-designated worker.
 - (e) If, at the conclusion of the peace officer's investigation, the parent, guardian, or person exercising custodial control or supervision of the child cannot be identified or located, or that person refuses to collect the child, the peace officer shall file a complaint to initiate detention or placement procedures pending a detention or custody hearing ~~[pursuant to KRS 610.012]~~.
- (3) Unless the child is subject to trial as an adult or unless the nature of the offense or other circumstances are such as to indicate the necessity of retaining the child in custody, the officer shall release the child to the custody of his parent or if the child is committed, the Department of Juvenile Justice or the cabinet, as appropriate; or if the parent is not available, then a relative, guardian, or person exercising custodial control or supervision or other responsible person or agency approved by the court upon the written promise, signed by such person or agency, to bring the child to the court at a stated time or at such time as the court may order. The written promise, accompanied by a written report by the officer, shall be submitted forthwith to the

court or court-designated worker and shall detail the reasons for having taken custody of the child, the release of the child, the person to whom the child was released, and the reasons for the release.

- (4) (a) If the person fails to produce the child as agreed or upon notice from the Court as provided in subsection (3) of this section, a summons, warrant, or custody order may be issued for the apprehension of the person or of the child, or both.
- (b) If the person notified to collect a child taken into protective custody~~[suspected runaway pursuant to subsection (2)(a) of this section]~~ fails or refuses to collect the child, the peace officer shall notify the county attorney, who may file a charge of endangering the welfare of a minor, and the cabinet.
- (5) The release of a child pursuant to this section shall not preclude a peace officer from proceeding with a complaint against a child or any other person.
- (6) Unless the child is subject to trial as an adult, if the child is not released, the peace officer shall contact the court-designated worker who may:
- (a) Release the child to his parents;
 - (b) Release the child to such other persons or organizations as are authorized by law;
 - (c) Release the child to either of the above subject to stated conditions; or
 - (d) Except as provided in subsection (7) of this section, authorize the peace officer to retain custody of the child for an additional period not to exceed twelve (12) hours during which the peace officer may transport the child to a secure juvenile detention facility or a nonsecure facility. If the child is retained in custody, the court-designated worker shall give notice to the child's parents or person exercising custodial control or supervision of the fact that the child is being retained in custody.

- (7) (a) Except as provided in paragraph (b) of this subsection, no child ten (10) years of age or under shall be taken to or placed in a juvenile detention facility.
- (b) Any child ten (10) years of age or under who has been charged with the commission of a capital offense or with an offense designated as a Class A or Class B felony may be taken to or placed in a secure juvenile detention facility or youth alternative center when there is no available less restrictive alternative.

➔Section 8. KRS 610.220 is amended to read as follows:

- (1) Except as otherwise provided by statute, if an officer takes or receives a child into custody on an allegation of committing a public offense or into protective custody *pursuant to KRS 630.030(2) and charged as an habitual*~~[on being a suspected]~~ runaway, the child may be held at a police station, secure juvenile detention facility, youth alternative center, a nonsecure facility, or, as necessary, in a hospital or clinic for the following purposes:
- (a) Identification and booking;
 - (b) Attempting to notify the parents or person exercising custodial control or supervision of the child, a relative, guardian, other responsible person, or the cabinet;
 - (c) Photographing;
 - (d) Fingerprinting;
 - (e) Physical examinations, including examinations for evidence;
 - (f) Evidence collection, including scientific tests;
 - (g) Records checks;
 - (h) Determining whether the child is subject to trial as an adult; and
 - (i) Other inquiries of a preliminary nature.
- (2) A child may be held in custody pursuant to this section for a period of time not to exceed two (2) hours, unless an extension of time is granted. Permission for an

extension of time may be granted by the court, trial commissioner, or court-designated worker pursuant to KRS 610.200(6)(d) and the child may be retained in custody for up to an additional ten (10) hours at a facility of the type listed in subsection (1) of this section except for an intermittent holding facility for the period of retention.

- (3) Any child held in custody pursuant to this section shall be sight and sound separated from any adult prisoners held in secure custody at the same location, and shall not be handcuffed to or otherwise securely attached to any stationary object.

➔Section 9. KRS 630.030 is amended to read as follows:

Under the provisions of this chapter~~[a child may be taken into custody by any peace officer]~~:

- (1) **A child may be taken into custody by any peace officer** pursuant to an order of the court for failure to appear before the court for a previous status offense; or
- (2) **A child may be taken into protective custody by any peace officer** if there are reasonable grounds to believe that the child ~~is~~^{has been} an habitual runaway from his parent or person exercising custodial control or supervision of the child.

➔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 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;
- (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;
- (27) "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- (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;
- (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;
- (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;
- (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;
- (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;
- (33) "Independent living" means those activities necessary to assist a committed child to establish independent living arrangements;
- (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;
- (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;
- (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;
- (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;
- (38) "Near fatality" means an injury that, as certified by a physician, places a child in serious or critical condition;
- (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;
- (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;
- (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;
- (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;
- (44) "Parent" means the biological or adoptive mother or father of a child;
- (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;

- (46) "Petition" means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case;
- (47) "Physical injury" means substantial physical pain or any impairment of physical condition;
- (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;
- (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;
- (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;
- (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;
- (52) **"Restorative justice practices" means practices which emphasize repairing the harm caused to victims and the community by offenses. "Restorative justice practices" are facilitated meetings attended voluntarily by the victim or victim's**

representatives, the victim's supporters, the offender, and the offender's supporters and may include community members and are conducted with the goal of reaching a written consensus of all participants. "Restorative justice practices" may be used in addition to any other conditions, consequences, diversion, or disposition imposed by the court.

(53) "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;

(54)~~(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;

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

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

(57)~~(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;

(58)~~(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;

(59)~~(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;

~~(60)~~~~(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;

~~(61)~~~~(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;

~~(62)~~~~(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;

~~(63)~~~~(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;

~~(64)~~~~((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;

~~(65)~~~~((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;

~~(66)~~~~((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;

~~(67)~~~~((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;

~~(68)~~~~((67))~~ "Violation" means any offense, other than a traffic infraction, for which a

sentence of a fine only can be imposed;

~~(69)~~~~((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

~~(70)~~~~((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 11. KRS 630.070 is amended to read as follows:

No status offender shall be placed in a secure juvenile detention facility or juvenile holding facility as a means or form of punishment except following a finding that the status offender has violated a valid court order. **An order of detention for a child found to have violated a valid court order shall not exceed thirty (30) days.**

→Section 12. The following KRS section is repealed:

610.012 Exclusive jurisdiction of District Court or family division of Circuit Court concerning temporary detention of suspected runaway.