

1 AN ACT relating to juvenile justice.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 610 IS CREATED TO  
4 READ AS FOLLOWS:

5 *(1) A child is not responsible for status offenses or public offenses if at the time of*  
6 *such conduct, as a result of developmental immaturity, mental illness, or*  
7 *intellectual disability, the child lacks substantial capacity either to appreciate the*  
8 *criminality of his conduct or to conform his conduct to the requirements of law.*

9 *(2) A person shall not be charged, adjudicated, diverted, or made the subject of a*  
10 *complaint for an offense committed when the person was under twelve (12) years*  
11 *of age.*

12 *(3) As used in this section, the term "mental illness or intellectual disability" does*  
13 *not include an abnormality manifested only by repeated criminal or otherwise*  
14 *antisocial conduct.*

15 *(4) A person may prove developmental immaturity, mental illness, or intellectual*  
16 *disability in exculpation of criminal or noncriminal conduct.*

17 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 610 IS CREATED TO  
18 READ AS FOLLOWS:

19 *As used in Sections 1 to 5 of this Act, unless the context otherwise requires:*

20 *(1) "Developmental immaturity" means incomplete development relative to adults, or*  
21 *delayed development relative to a child's age, which impacts a child's capacity to*  
22 *understand the criminality or wrongfulness of their actions, to resist the impulse*  
23 *to act, to appreciate the nature and consequences of the proceedings, or to*  
24 *participate rationally in his or her own defense;*

25 *(2) "Foreseeable future" means not more than three hundred sixty (360) days;*

26 *(3) "Incompetency to stand trial" means, as a result of mental condition, lack of*  
27 *capacity to appreciate the nature and consequences of the proceedings against*

1 one or to participate rationally in one's own defense;

2 (4) "Individual with an intellectual disability" means an individual with significantly  
3 subaverage general intellectual functioning existing concurrently with deficits in  
4 adaptive behavior and manifested during the developmental period and is a  
5 condition which may exist concurrently with mental illness or insanity;

6 (5) "Insanity" means, as a result of mental condition, lack of substantial capacity  
7 either to appreciate the criminality of one's conduct or to conform one's conduct  
8 to the requirements of law;

9 (6) "Mental illness" means substantially impaired capacity to use self-control,  
10 judgment, or discretion in the conduct of one's affairs and social relations,  
11 associated with maladaptive behavior or recognized emotional symptoms where  
12 impaired capacity, maladaptive behavior, or emotional symptoms can be related  
13 to physiological, psychological, or social factors, or to a traumatic or acquired  
14 brain injury;

15 (7) "Psychiatric facility" means a crisis stabilization unit or any facility licensed by  
16 the cabinet and which provides inpatient, outpatient, psychosocial rehabilitation,  
17 emergency, and consultation and education services for the diagnosis and  
18 treatment of children who have a mental illness;

19 (8) "Qualified mental health professional" has the same meaning as in KRS  
20 202A.011; and

21 (9) "Treatment" means medication or counseling, therapy, psychotherapy, and other  
22 professional services provided by or at the direction of qualified mental health  
23 practitioners. "Treatment" shall not include electroshock therapy or  
24 psychosurgery.

25 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 610 IS CREATED TO  
26 READ AS FOLLOWS:

27 (1) A child who intends to introduce evidence of his developmental immaturity,

1 mental illness, or insanity at the time of the offense shall file written notice of his  
2 intention at least twenty (20) days before trial.

3 (2) The prosecution shall be granted reasonable time to move for examination of the  
4 child, or the court may order an examination on its own motion.

5 (3) If the court orders an examination, it shall appoint at least one (1) qualified  
6 mental health practitioner to examine, treat, and report on the child's mental  
7 condition. The examination shall be performed in the least restrictive alternative  
8 environment. If it appears the examination will not be completed before the trial  
9 date, the court may, on its own motion or on motion of either party, postpone the  
10 trial date until after the examination.

11 (4) No less than ten (10) days before trial, the prosecution shall file the names and  
12 addresses of witnesses it proposes to offer in rebuttal along with reports prepared  
13 by its witnesses.

14 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 610 IS CREATED TO  
15 READ AS FOLLOWS:

16 (1) A court may commit a child to a psychiatric facility so that a qualified mental  
17 health practitioner can examine, treat, and report on the child's mental  
18 condition. Commitment under this section shall be for up to twenty-one (21) days,  
19 but not longer than necessary to complete the examination, treatment, or report.

20 (2) Reports on a child's mental condition prepared under this chapter shall be filed  
21 within ten (10) days of the examination.

22 (3) The child shall be present at any hearing on his or her mental condition unless  
23 he or she waives the right to be present.

24 (4) The examining qualified mental health practitioner shall appear at any hearing  
25 on the child's mental condition unless the child waives the right to have him or  
26 her appear.

27 (5) A qualified mental health practitioner retained by the child shall be permitted to

1 participate in any examination under this chapter.

2 (6) The cabinet, if the cabinet or its agent or employee does not provide the  
3 examination, shall pay a reasonable fee to any qualified mental health  
4 practitioner ordered to examine, treat, and report on a child's mental condition.

5 (7) No disclosure made by a child during observation, diagnosis, or treatment shall  
6 be admissible in any status offense actions, public offense actions, or criminal  
7 proceedings unless the child introduces evidence concerning his or her mental  
8 condition at such a proceeding.

9 (8) The termination of criminal proceedings under this chapter is not a bar to the  
10 institution of civil commitment proceedings.

11 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 610 IS CREATED TO  
12 READ AS FOLLOWS:

13 (1) If the court finds a child accused of a public offense or a status offense  
14 incompetent to stand trial but there is a substantial probability he or she will  
15 attain competency in the foreseeable future, it shall:

16 (a) If the child's incompetence to stand trial is related to developmental  
17 immaturity or intellectual disability, refer the child for remedial competency  
18 education services; or

19 (b) If the child's incompetence to stand trial is related to mental illness, commit  
20 the child to a psychiatric facility as provided in KRS Chapter 645 or  
21 appropriate community-based treatment agency.

22 (2) If the court finds the child incompetent to stand trial but there is no substantial  
23 probability the child will attain competency in the foreseeable future, it shall:

24 (a) Dismiss the case with prejudice; or

25 (b) If the child is accused of an offense which would classify him or her as a  
26 violent offender under KRS 439.3401, dismiss the case without prejudice. If  
27 the case is not refiled within twelve (12) months of dismissal, the case shall

1           *be considered dismissed with prejudice. If the case is refiled, the child shall*  
2           *not be eligible for prosecution as a youthful offender unless the child was*  
3           *eligible at the time the case was originally dismissed.*

4           *(3) If the court finds the child competent to stand trial, the court shall continue the*  
5           *proceedings against the child.*

6           ➔Section 6. KRS 610.030 is amended to read as follows:

7           Except as otherwise provided in KRS Chapters 600 to 645:

8           (1) If any person files a complaint alleging that a child, except a child alleged to be  
9           neglected, abused, dependent or mentally ill who is subject to the jurisdiction of the  
10           court, may be within the purview of KRS Chapters 600 to 645, the court-designated  
11           worker shall make a preliminary determination as to whether the complaint is  
12           complete. In any case where the court-designated worker finds that the complaint is  
13           incomplete, the court-designated worker shall return the complaint without delay to  
14           the person or agency originating the complaint or having knowledge of the facts, or  
15           to the appropriate law enforcement agency having investigative jurisdiction of the  
16           offense, and request additional information in order to complete the complaint. The  
17           complainant shall promptly furnish the additional information requested. *If the*  
18           *child is less than twelve (12) years of age, the court-designated worker shall take*  
19           *no action on the complaint and shall refer the child to the family accountability,*  
20           *intervention, and response team.*<sup>[+]</sup>

21           (2) (a) Upon receipt of a complaint which appears to be complete and which alleges  
22           that a child has committed a public offense, the court-designated worker shall  
23           refer the complaint to the county attorney for review pursuant to KRS  
24           635.010.

25           (b) If after review the county attorney elects to proceed, the court-designated  
26           worker shall conduct a preliminary intake inquiry to recommend whether the  
27           interests of the child or the public require that further action be taken or

1           whether, in the interest of justice, the complaint can be resolved informally  
2           without the filing of a petition;

3       (3) Upon receipt of a complaint that appears to be complete and that alleges that the  
4       child has committed a status offense, the court-designated worker shall conduct a  
5       preliminary intake inquiry to determine whether the interests of the child or the  
6       public require that further action be taken *pursuant to subsection (6)(a) of this*  
7       *section*;

8       (4) Prior to conducting a preliminary intake inquiry, the court-designated worker shall  
9       notify the child and the child's parent, guardian, or other person exercising custodial  
10      control or supervision of the child in writing:

11      (a) Of their opportunity to be present at the preliminary intake inquiry;

12      (b) That they may have counsel present during the preliminary intake inquiry as  
13      well as the formal conference thereafter;

14      (c) 1. That all information supplied by the child to a court-designated worker  
15      during any process prior to the filing of the petition shall be deemed  
16      confidential and shall not be subject to subpoena or to disclosure  
17      without the written consent of the child.

18      2. Information may be shared between treatment providers, the court-  
19      designated worker, and the family accountability, intervention, and  
20      response team to enable the court-designated worker to facilitate  
21      services and facilitate compliance with the diversion agreement; and

22      (d) That the child has the right to deny the allegation and demand a formal court  
23      hearing;

24      (5) The preliminary intake inquiry shall include the administration of an evidence-based  
25      screening tool and, if appropriate and available, a validated risk and needs  
26      assessment, in order to identify whether the child and his or her family are in need  
27      of services and the level of intervention needed;

- 1 (6) Upon the completion of the preliminary intake inquiry, the court-designated worker  
2 may:
- 3 (a) If the complaint alleges a status offense, determine that no further action be  
4 taken subject to review by the family accountability, intervention, and  
5 response team;
- 6 (b) If the complaint alleges a public offense, refer the complaint to the county  
7 attorney;
- 8 (c) Refer a public offense complaint for informal adjustment; or
- 9 (d) Based upon the results of the preliminary intake inquiry, other information  
10 obtained, and a determination that the interests of the child and the public  
11 would be better served, and with the written approval of the county attorney  
12 for a public offense complaint, if necessary, conduct a formal conference and  
13 enter into a diversion agreement;
- 14 (7) Upon receiving written approval of the county attorney, if necessary, to divert a  
15 public offense complaint, and prior to conducting a formal conference, the court-  
16 designated worker shall advise in writing the complainant, the victim if any, and the  
17 law enforcement agency having investigative jurisdiction of the offense:
- 18 (a) Of the recommendation and the reasons therefor and that the complainant,  
19 victim, or law enforcement agency may submit within ten (10) days from  
20 receipt of such notice a complaint to the county attorney for special review; or
- 21 (b) In the case of a misdemeanor diverted pursuant to KRS 635.010(4), of the fact  
22 that the child was statutorily entitled to divert the case;
- 23 (8) A formal conference shall include the child and his or her parent, guardian, or other  
24 person exercising custodial control or supervision. The formal conference shall be  
25 used to:
- 26 (a) Present information obtained at the preliminary intake inquiry; and
- 27 (b) Develop a diversion agreement that shall require that the child regularly attend

1 school, shall not exceed six (6) months in duration, and may include:

- 2 1. Referral of the child, and family if appropriate, to a public or private  
3 entity or person for the provision of identified services to address the  
4 complaint or assessed needs;
- 5 2. Referral of the child, and family if appropriate, to a community service  
6 program within the limitations provided under KRS 635.080(2);
- 7 3. Restitution, limited to the actual pecuniary loss suffered by the victim, if  
8 the child has the means or ability to make restitution;
- 9 4. Notification that the court-designated worker may apply graduated  
10 sanctions for failure to comply with the diversion agreement;
- 11 5. Any other program or effort which reasonably benefits the community  
12 and the child; and
- 13 6. A plan for monitoring the child's progress and completion of the  
14 agreement;

15 (9) (a) If a child successfully completes a diversion agreement, the underlying  
16 complaint shall be dismissed and further action related to that complaint shall  
17 be prohibited.

18 (b) If a child fails to appear for a preliminary intake inquiry, declines to enter into  
19 a diversion agreement, or fails to complete a diversion agreement, then:

- 20 1. For a public offense complaint, the matter shall be referred to the county  
21 attorney for formal court action and, if a petition is filed, the child may  
22 request that the court dismiss the complaint based upon his or her  
23 substantial compliance with the terms of the diversion agreement; and
- 24 2. For a status offense complaint, the court-designated worker shall refer  
25 the matter to the family accountability, intervention, and response team  
26 for review and further action;

27 (10) If a complaint is referred to the court, the complaint and findings of the court-



1 designated worker's preliminary intake inquiry shall be submitted to the court for  
2 the court to determine whether process should issue; and

3 (11) At any stage in the proceedings described in this section, the court or the county  
4 attorney may review any decision of the court-designated worker. The court upon its  
5 own motion or upon written request of the county attorney may refer any complaint  
6 for a formal hearing.

7 ➔Section 7. KRS 605.035 is amended to read as follows:

8 (1) There is hereby created in each judicial district a family accountability, intervention,  
9 and response team that shall develop enhanced case management plans and  
10 opportunities for services for children referred to the team. The family  
11 accountability, intervention, and response team shall consist of not more than  
12 fifteen (15) persons.

13 (2) The membership of the team shall include the following representatives as  
14 appointed by their agencies or organizations:

15 (a) A court-designated worker in that judicial circuit or district;

16 (b) The members of the regional interagency council specified in KRS  
17 200.509(1)(a) to (d) and (f), or corresponding members of the local  
18 interagency council if one exists;

19 (c) A representative from the cabinet knowledgeable about services available  
20 through the cabinet and authorized to facilitate access to services;

21 (d) A representative from the office of a county attorney within the judicial  
22 district;

23 (e) A representative from the Department for Public Advocacy;

24 (f) A representative from a local public school within the judicial district;

25 (g) A representative of law enforcement; and

26 (h) Other persons interested in juvenile justice issues, as identified by the family  
27 accountability, intervention, and response team, who are necessary for a

1 complete representation of resources within each judicial circuit or district.

2 (3) A court-designated worker from within the judicial circuit or district shall lead the  
3 team and be responsible for convening and staffing the team.

4 (4) The team shall adopt a case management approach and process for reviewing:

5 (a) Referrals from the court-designated worker involving cases in which a child  
6 has failed to appear for a preliminary intake inquiry, declined to enter into a  
7 diversion agreement, or failed to complete the terms of the agreement, or if  
8 the child is less than twelve (12) years of age; and

9 (b) Status offense cases if the court-designated worker, after reviewing the  
10 complaint, has determined that no further action is necessary.

11 (5) After reviewing the actions taken by the court-designated worker, including  
12 referrals made for the child and his or her family, efforts to address barriers to  
13 successful completion, and whether other appropriate services are available to  
14 address the needs of the child and his or her family, the team may:

15 (a) Refer the case back to the court-designated worker to take further action as  
16 recommended by the team;

17 (b) For a child under twelve (12) years of age, refer the case to the cabinet for  
18 assessment and services; or

19 (c)~~(b)~~ Advise the court-designated worker to refer the case to the county  
20 attorney if the team has no further recommendations to offer.