

1 AN ACT relating to child welfare.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Approved provider" has the same meaning as in KRS 17.500;*

7 *(b) "Criminal offense against a victim who is a minor" has the same meaning*
8 *as in KRS 17.500;*

9 *(c) "Qualified mental health professional" has the same meaning as in Section*
10 *6 of this Act;*

11 *(d) "Registrant" has the same meaning has in KRS 17.500; and*

12 *(e) "Sex offender treatment program" means the program operated by the*
13 *Department of Corrections pursuant to KRS 197.400 to 197.440.*

14 *(2) Except as provided in subsection (3) of this section, no person shall be granted*
15 *custody of or visitation with a child if that person is a registrant or has been*
16 *convicted of a criminal offense against a victim who is a minor.*

17 *(3) A person may be granted custody of or:*

18 *(a) Unsupervised visitation with a child if:*

19 *1. There is not a criminal sentencing order prohibiting custody of or*
20 *unsupervised visitation with a child;*

21 *2. The person is in compliance with any applicable probationary terms;*

22 *3. The person, if required to complete the sex offender treatment*
23 *program, has:*

24 *a. Successfully completed the sex offender treatment program; and*

25 *b. Been deemed to not pose a risk to children by an approved*
26 *provider;*

27 *4. Successfully completed a program of substance abuse counseling if*

1 the person has been required to do so by a court; and
 2 5. The court determines based upon the factors outlined in KRS 403.270
 3 and 620.023 that it is in the best interest of the child for the person to
 4 have custody of or unsupervised visitation with the child; or
 5 (b) Supervised visitation with a child who is the victim of the person's
 6 registrable offense or criminal offense against a victim who is a minor if, in
 7 addition to the factors listed in paragraph (a) of this subsection, the court
 8 considers expert testimony from a qualified mental health professional that
 9 custody of or visitation with the child is in the child's best interest.

10 (4) If:

11 (a) More than one (1) party to the custody or visitation proceeding is a
 12 registrant or has been convicted of a criminal offense against a minor; or
 13 (b) In violation of a criminal or civil court order, the party who currently has
 14 custody of the child has permitted the party who is a registrant or has been
 15 convicted of a criminal offense against a minor to exercise residential or
 16 custodial responsibilities for or have visitation with the child;
 17 the court shall refer the case to the Cabinet for Health and Family Services for
 18 investigation as to whether the child is or has been abused, dependent, or
 19 neglected as a result of these circumstances.

20 ➔Section 2. KRS 403.270 is amended to read as follows:

21 (1) (a) As used in this chapter and KRS 405.020, unless the context requires
 22 otherwise, "de facto custodian" means a person who has been shown by clear
 23 and convincing evidence to have been the primary caregiver for, and financial
 24 supporter of, a child who has resided with the person for a period of six (6)
 25 months or more if the child is under three (3) years of age and for a period of
 26 one (1) year or more if the child is three (3) years of age or older or has been
 27 placed by the Department for Community Based Services. Any period of time

1 after a legal proceeding has been commenced by a parent seeking to regain
2 custody of the child shall not be included in determining whether the child has
3 resided with the person for the required minimum period.

4 (b) A person shall not be a de facto custodian until a court determines by clear
5 and convincing evidence that the person meets the definition of de facto
6 custodian established in paragraph (a) of this subsection. Once a court
7 determines that a person meets the definition of de facto custodian, the court
8 shall give the person the same standing in custody matters that is given to each
9 parent under this section and KRS 403.280, 403.340, 403.350, 403.822, and
10 405.020.

11 (2) **Subject to Section 1 of this Act,** the court shall determine custody in accordance
12 with the best interests of the child and equal consideration shall be given to each
13 parent and to any de facto custodian. Subject to KRS 403.315, there shall be a
14 presumption, rebuttable by a preponderance of evidence, that joint custody and
15 equally shared parenting time is in the best interest of the child. If a deviation from
16 equal parenting time is warranted, the court shall construct a parenting time
17 schedule which maximizes the time each parent or de facto custodian has with the
18 child and is consistent with ensuring the child's welfare. The court shall consider all
19 relevant factors including:

20 (a) The wishes of the child's parent or parents, and any de facto custodian, as to
21 his or her custody;

22 (b) The wishes of the child as to his or her custodian, with due consideration
23 given to the influence a parent or de facto custodian may have over the child's
24 wishes;

25 (c) The interaction and interrelationship of the child with his or her parent or
26 parents, his or her siblings, and any other person who may significantly affect
27 the child's best interests;

- 1 (d) The motivation of the adults participating in the custody proceeding;
- 2 (e) The child's adjustment and continuing proximity to his or her home, school,
3 and community;
- 4 (f) The mental and physical health of all individuals involved;
- 5 (g) A finding by the court that domestic violence and abuse, as defined in KRS
6 403.720, has been committed by one (1) of the parties against a child of the
7 parties or against another party. The court shall determine the extent to which
8 the domestic violence and abuse has affected the child and the child's
9 relationship to each party, with due consideration given to efforts made by a
10 party toward the completion of any domestic violence treatment, counseling,
11 or program;
- 12 (h) The extent to which the child has been cared for, nurtured, and supported by
13 any de facto custodian;
- 14 (i) The intent of the parent or parents in placing the child with a de facto
15 custodian;
- 16 (j) The circumstances under which the child was placed or allowed to remain in
17 the custody of a de facto custodian, including whether the parent now seeking
18 custody was previously prevented from doing so as a result of domestic
19 violence as defined in KRS 403.720 and whether the child was placed with a
20 de facto custodian to allow the parent now seeking custody to seek
21 employment, work, or attend school; and
- 22 (k) The likelihood a party will allow the child frequent, meaningful, and
23 continuing contact with the other parent or de facto custodian, except that the
24 court shall not consider this likelihood if there is a finding that the other
25 parent or de facto custodian engaged in domestic violence and abuse, as
26 defined in KRS 403.720, against the party or a child and that a continuing
27 relationship with the other parent will endanger the health or safety of either

1 that party or the child.

2 (3) The abandonment of the family residence by a custodial party shall not be
3 considered where said party was physically harmed or was seriously threatened with
4 physical harm by his or her spouse, when such harm or threat of harm was causally
5 related to the abandonment.

6 (4) If the court grants custody to a de facto custodian, the de facto custodian shall have
7 legal custody under the laws of the Commonwealth.

8 ➔Section 3. KRS 403.280 is amended to read as follows:

9 (1) A party to a custody proceeding may move for a temporary custody order. The
10 motion must be supported by an affidavit as provided in KRS 403.350. **Subject to**
11 **Section 1 of this Act,** the court may award temporary custody under the standards of
12 KRS 403.270 after a hearing, or, if there is no objection, solely on the basis of the
13 affidavits. If the parents or a de facto custodian joined under subsection (9) of this
14 section present a temporary custody agreement and mutually agreed plan for
15 parenting time, and the court confirms that the agreement adequately provides for
16 the welfare of the child, the agreement shall become the temporary custody order of
17 the court.

18 (2) Subject to KRS 403.315, in making an order for temporary custody, there shall be a
19 presumption, rebuttable by preponderance of evidence, that it is in the best interest
20 of the child for the parents or a de facto custodian joined under subsection (9) of
21 this section to have temporary joint custody and share equally in parenting time.

22 (3) If a deviation from equal parenting time is warranted, the court shall construct a
23 parenting time schedule which maximizes the time each parent or de facto custodian
24 joined under subsection (9) of this section has with the child and is consistent with
25 ensuring the child's welfare.

26 (4) Each temporary custody order shall include specific findings of fact and conclusions
27 of law, except when the court confirms the agreement of the parties.

- 1 (5) Any temporary custody order shall address the circumstance in which physical
2 possession of the child will be exchanged.
- 3 (6) Subject to KRS 403.320(4) and 403.340(5), modification of a temporary custody
4 order may be sought when there is a material and substantial change in the
5 circumstances of the parents, de facto custodian, or child.
- 6 (7) If a proceeding for dissolution of marriage or legal separation is dismissed, any
7 temporary custody order is vacated unless a parent or the child's custodian moves
8 that the proceeding continue as a custody proceeding and the court finds, after a
9 hearing, that the circumstances of the parents and the best interests of the child
10 require that a custody decree be issued.
- 11 (8) If a custody proceeding commenced in the absence of a petition for dissolution of
12 marriage or legal separation under KRS 403.822(1)(a) or (b) is dismissed, any
13 temporary custody order is vacated.
- 14 (9) If a court determines by clear and convincing evidence that a person is a de facto
15 custodian, the court shall join that person in the action, as a party needed for just
16 adjudication under Rule 19 of the Kentucky Rules of Civil Procedure.
- 17 ➔Section 4. KRS 403.340 is amended to read as follows:
- 18 (1) As used in this section, "custody" means sole or joint custody, whether ordered by a
19 court or agreed to by the parties.
- 20 (2) No motion to modify a custody decree shall be made earlier than two (2) years after
21 its date, unless the court permits it to be made on the basis of affidavits that there is
22 reason to believe that:
- 23 (a) The child's present environment may endanger seriously his physical, mental,
24 moral, or emotional health; or
- 25 (b) The custodian appointed under the prior decree has placed the child with a de
26 facto custodian.
- 27 (3) If a court of this state has jurisdiction pursuant to the Uniform Child Custody

1 Jurisdiction Act, the court shall not modify a prior custody decree unless after
2 hearing it finds, upon the basis of facts that have arisen since the prior decree or that
3 were unknown to the court at the time of entry of the prior decree, that a change has
4 occurred in the circumstances of the child or his custodian, and that the
5 modification is necessary to serve the best interests of the child. When determining
6 if a change has occurred and whether a modification of custody is in the best
7 interests of the child, the court shall consider the following:

- 8 (a) Whether the custodian agrees to the modification;
- 9 (b) Whether the child has been integrated into the family of the petitioner with
10 consent of the custodian;
- 11 (c) The factors set forth in KRS 403.270(2) and 620.023 to determine the best
12 interests of the child;
- 13 (d) Whether the child's present environment endangers seriously his physical,
14 mental, moral, or emotional health;
- 15 (e) Whether the harm likely to be caused by a change of environment is
16 outweighed by its advantages to him; and
- 17 (f) Whether the custodian has placed the child with a de facto custodian.

18 (4) In determining whether a child's present environment may endanger seriously his
19 physical, mental, moral, or emotional health, the court shall consider all relevant
20 factors, including, but not limited to:

- 21 (a) The interaction and interrelationship of the child with his parent or parents, his
22 de facto custodian, his siblings, and any other person who may significantly
23 affect the child's best interests;
- 24 (b) The mental and physical health of all individuals involved;
- 25 (c) Repeated or substantial failure, without good cause as specified in KRS
26 403.240, of either parent to observe visitation, child support, or other
27 provisions of the decree which affect the child, except that modification of

1 custody orders shall not be made solely on the basis of failure to comply with
2 visitation or child support provisions, or on the basis of which parent is more
3 likely to allow visitation or pay child support;

4 (d) If domestic violence and abuse, as defined in KRS 403.720, is found by the
5 court to exist, the extent to which the domestic violence and abuse has
6 affected the child and the child's relationship to both parents; **and**

7 **(e) If one (1) or more of the parties to the proceeding under this section is**
8 **required to register pursuant to KRS 17.510 or has been convicted of a**
9 **criminal offense against a victim who is a minor as defined in KRS 17.500.**

10 (5) (a) Except as provided in paragraph (b) of this subsection, any court-ordered
11 modification of a child custody decree, based in whole or in part on:

- 12 1. The active duty of a parent or a de facto custodian as a regular member
13 of the United States Armed Forces deployed outside the United States;
14 or
- 15 2. Any federal active duty of a parent or a de facto custodian as a member
16 of a state National Guard or a Reserve component;

17 shall be temporary and shall revert back to the previous child custody decree
18 at the end of the deployment outside the United States or the federal active
19 duty, as appropriate.

20 (b) A parent or de facto custodian identified in paragraph (a) of this subsection
21 may consent to a modification of a child custody decree that continues past the
22 end of the deployment outside the United States or the federal active duty, as
23 appropriate.

24 (6) Subject to KRS 403.315, if the court orders a modification of a child custody
25 decree, there shall be a presumption, rebuttable by a preponderance of evidence,
26 that it is in the best interest of the child for the parents to have joint custody and
27 share equally in parenting time. If a deviation from equal parenting time is

1 warranted, the court shall construct a parenting time schedule which maximizes the
2 time each parent or de facto custodian has with the child and is consistent with
3 ensuring the child's welfare.

4 (7) Attorney fees and costs shall be assessed against a party seeking modification if the
5 court finds that the modification action is vexatious and constitutes harassment.

6 ➔Section 5. KRS 403.740 is amended to read as follows:

7 (1) Following a hearing ordered under KRS 403.730, if a court finds by a
8 preponderance of the evidence that domestic violence and abuse has occurred and
9 may again occur, the court may issue a domestic violence order:

10 (a) Restraining the adverse party from:

- 11 1. Committing further acts of domestic violence and abuse;
- 12 2. Any unauthorized contact or communication with the petitioner or other
13 person specified by the court;
- 14 3. Approaching the petitioner or other person specified by the court within
15 a distance specified in the order, not to exceed five hundred (500) feet;
- 16 4. Going to or within a specified distance of a specifically described
17 residence, school, or place of employment or area where such a place is
18 located; and
- 19 5. Disposing of or damaging any of the property of the parties;

20 (b) Directing or prohibiting any other actions that the court believes will be of
21 assistance in eliminating future acts of domestic violence and abuse, except
22 that the court shall not order the petitioner to take any affirmative action;

23 (c) Directing that either or both of the parties receive counseling services
24 available in the community in domestic violence and abuse cases; and

25 (d) Additionally, if applicable:

- 26 1. Directing the adverse party to vacate a residence shared by the parties to
27 the action;

1 2. Utilizing the criteria set forth in KRS 403.270, 403.320, and 403.822,
2 grant temporary custody, subject to KRS 403.315 and Section 1 of this
3 Act; and

4 3. Utilizing the criteria set forth in KRS 403.211, 403.212, and 403.213,
5 award temporary child support.

6 (2) In imposing a location restriction described in subsection (1)(a)4. of this section, the
7 court shall:

8 (a) Afford the petitioner and respondent, if present, an opportunity to testify on
9 the issue of the locations and areas from which the respondent should or
10 should not be excluded;

11 (b) Only impose a location restriction where there is a specific, demonstrable
12 danger to the petitioner or other person protected by the order;

13 (c) Specifically describe in the order the locations or areas prohibited to the
14 respondent; and

15 (d) Consider structuring a restriction so as to allow the respondent transit through
16 an area if the respondent does not interrupt his or her travel to harass, harm, or
17 attempt to harass or harm the petitioner.

18 (3) When temporary child support is granted under this section, the court shall enter an
19 order detailing how the child support is to be paid and collected. Child support
20 ordered under this section may be enforced utilizing the same procedures as any
21 other child support order.

22 (4) A domestic violence order shall be effective for a period of time fixed by the court,
23 not to exceed three (3) years, and may be reissued upon expiration for subsequent
24 periods of up to three (3) years each. The fact that an order has not been violated
25 since its issuance may be considered by a court in hearing a request for a reissuance
26 of the order.

27 ➔Section 6. KRS 600.020 is amended to read as follows:

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

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

4 (a) His or her parent, guardian, person in a position of authority or special trust, as
5 defined in KRS 532.045, or other person exercising custodial control or
6 supervision of the child:

- 7 1. Inflicts or allows to be inflicted upon the child physical or emotional
8 injury as defined in this section by other than accidental means;
- 9 2. Creates or allows to be created a risk of physical or emotional injury as
10 defined in this section to the child by other than accidental means;
- 11 3. Engages in a pattern of conduct that renders the parent incapable of
12 caring for the immediate and ongoing needs of the child, including but
13 not limited to parental incapacity due to a substance use disorder as
14 defined in KRS 222.005;
- 15 4. Continuously or repeatedly fails or refuses to provide essential parental
16 care and protection for the child, considering the age of the child;
- 17 5. Commits or allows to be committed an act of sexual abuse, sexual
18 exploitation, or prostitution upon the child;
- 19 6. Creates or allows to be created a risk that an act of sexual abuse, sexual
20 exploitation, or prostitution will be committed upon the child;
- 21 7. **Knowingly allows the child to have unsupervised contact with a person**
22 **who is required to register pursuant to KRS 17.510 or has been**
23 **convicted of a criminal offense against a victim that is a minor as**
24 **defined in KRS 17.500;**
- 25 **8.** Abandons or exploits the child;
- 26 **9.**~~[8.]~~ Does not provide the child with adequate care, supervision, food,
27 clothing, shelter, and education or medical care necessary for the child's

1 well-being. A parent or other person exercising custodial control or
2 supervision of the child legitimately practicing the person's religious
3 beliefs shall not be considered a negligent parent solely because of
4 failure to provide specified medical treatment for a child for that reason
5 alone. This exception shall not preclude a court from ordering necessary
6 medical services for a child; or

7 ~~10.19.1~~ Fails to make sufficient progress toward identified goals as set
8 forth in the court-approved case plan to allow for the safe return of the
9 child to the parent that results in the child remaining committed to the
10 cabinet and remaining in foster care for fifteen (15) cumulative months
11 out of forty-eight (48) months; or

12 (b) A person twenty-one (21) years of age or older commits or allows to be
13 committed an act of sexual abuse, sexual exploitation, or prostitution upon a
14 child less than sixteen (16) years of age;

15 (2) "Age or developmentally appropriate" has the same meaning as in 42 U.S.C. sec.
16 675(11);

17 (3) "Aggravated circumstances" means the existence of one (1) or more of the
18 following conditions:

19 (a) The parent has not attempted or has not had contact with the child for a period
20 of not less than ninety (90) days;

21 (b) The parent is incarcerated and will be unavailable to care for the child for a
22 period of at least one (1) year from the date of the child's entry into foster care
23 and there is no appropriate relative placement available during this period of
24 time;

25 (c) The parent has sexually abused the child and has refused available treatment;

26 (d) The parent has been found by the cabinet to have engaged in abuse of the
27 child that required removal from the parent's home two (2) or more times in

- 1 the past two (2) years; or
- 2 (e) The parent has caused the child serious physical injury;
- 3 (4) "Beyond the control of parents" means a child who has repeatedly failed to follow
- 4 the reasonable directives of his or her parents, legal guardian, or person exercising
- 5 custodial control or supervision other than a state agency, which behavior results in
- 6 danger to the child or others, and which behavior does not constitute behavior that
- 7 would warrant the filing of a petition under KRS Chapter 645;
- 8 (5) "Beyond the control of school" means any child who has been found by the court to
- 9 have repeatedly violated the lawful regulations for the government of the school as
- 10 provided in KRS 158.150, and as documented in writing by the school as a part of
- 11 the school's petition or as an attachment to the school's petition. The petition or
- 12 attachment shall describe the student's behavior and all intervention strategies
- 13 attempted by the school;
- 14 (6) "Boarding home" means a privately owned and operated home for the boarding and
- 15 lodging of individuals which is approved by the Department of Juvenile Justice or
- 16 the cabinet for the placement of children committed to the department or the
- 17 cabinet;
- 18 (7) "Cabinet" means the Cabinet for Health and Family Services;
- 19 (8) "Certified juvenile facility staff" means individuals who meet the qualifications of,
- 20 and who have completed a course of education and training in juvenile detention
- 21 developed and approved by, the Department of Juvenile Justice after consultation
- 22 with other appropriate state agencies;
- 23 (9) "Child" means any person who has not reached his or her eighteenth birthday,
- 24 unless otherwise provided;
- 25 (10) "Child-caring facility" means any facility or group home other than a state facility,
- 26 Department of Juvenile Justice contract facility or group home, or one certified by
- 27 an appropriate agency as operated primarily for educational or medical purposes,

- 1 providing residential care on a twenty-four (24) hour basis to children not related by
2 blood, adoption, or marriage to the person maintaining the facility;
- 3 (11) "Child-placing agency" means any agency, other than a state agency, which
4 supervises the placement of children in foster family homes or child-caring facilities
5 or which places children for adoption;
- 6 (12) "Clinical treatment facility" means a facility with more than eight (8) beds
7 designated by the Department of Juvenile Justice or the cabinet for the treatment of
8 mentally ill children. The treatment program of such facilities shall be supervised by
9 a qualified mental health professional;
- 10 (13) "Commitment" means an order of the court which places a child under the custodial
11 control or supervision of the Cabinet for Health and Family Services, Department of
12 Juvenile Justice, or another facility or agency until the child attains the age of
13 eighteen (18) unless otherwise provided by law;
- 14 (14) "Community-based facility" means any nonsecure, homelike facility licensed,
15 operated, or permitted to operate by the Department of Juvenile Justice or the
16 cabinet, which is located within a reasonable proximity of the child's family and
17 home community, which affords the child the opportunity, if a Kentucky resident, to
18 continue family and community contact;
- 19 (15) "Complaint" means a verified statement setting forth allegations in regard to the
20 child which contain sufficient facts for the formulation of a subsequent petition;
- 21 (16) "Court" means the juvenile session of District Court unless a statute specifies the
22 adult session of District Court or the Circuit Court;
- 23 (17) "Court-designated worker" means that organization or individual delegated by the
24 Administrative Office of the Courts for the purposes of placing children in
25 alternative placements prior to arraignment, conducting preliminary investigations,
26 and formulating, entering into, and supervising diversion agreements and
27 performing such other functions as authorized by law or court order;

- 1 (18) "Deadly weapon" has the same meaning as it does in KRS 500.080;
- 2 (19) "Department" means the Department for Community Based Services;
- 3 (20) "Dependent child" means any child, other than an abused or neglected child, who is
4 under improper care, custody, control, or guardianship that is not due to an
5 intentional act of the parent, guardian, or person exercising custodial control or
6 supervision of the child;
- 7 (21) "Detention" means the safe and temporary custody of a juvenile who is accused of
8 conduct subject to the jurisdiction of the court who requires a restricted or closely
9 supervised environment for his or her own or the community's protection;
- 10 (22) "Detention hearing" means a hearing held by a judge or trial commissioner within
11 twenty-four (24) hours, exclusive of weekends and holidays, of the start of any
12 period of detention prior to adjudication;
- 13 (23) "Diversion agreement" means a mechanism designed to hold a child accountable for
14 his or her behavior and, if appropriate, securing services to serve the best interest of
15 the child and to provide redress for that behavior without court action and without
16 the creation of a formal court record;
- 17 (24) "Eligible youth" means a person who:
- 18 (a) Is or has been committed to the cabinet as dependent, neglected, or abused;
- 19 (b) Is eighteen (18) years of age to nineteen (19) years of age; and
- 20 (c) Is requesting to extend or reinstate his or her commitment to the cabinet in
21 order to participate in state or federal educational programs or to establish
22 independent living arrangements;
- 23 (25) "Emergency shelter" is a group home, private residence, foster home, or similar
24 homelike facility which provides temporary or emergency care of children and
25 adequate staff and services consistent with the needs of each child;
- 26 (26) "Emotional injury" means an injury to the mental or psychological capacity or
27 emotional stability of a child as evidenced by a substantial and observable

- 1 impairment in the child's ability to function within a normal range of performance
2 and behavior with due regard to his or her age, development, culture, and
3 environment as testified to by a qualified mental health professional;
- 4 (27) "Evidence-based practices" means policies, procedures, programs, and practices
5 proven by scientific research to reliably produce reductions in recidivism;
- 6 (28) "Fictive kin" means an individual who is not related by birth, adoption, or marriage
7 to a child, but who has an emotionally significant relationship with the child;
- 8 (29) "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- 9 (30) "Foster family home" means a private home in which children are placed for foster
10 family care under supervision of the cabinet or a licensed child-placing agency;
- 11 (31) "Graduated sanction" means any of a continuum of accountability measures,
12 programs, and sanctions, ranging from less restrictive to more restrictive in nature,
13 that may include but are not limited to:
- 14 (a) Electronic monitoring;
- 15 (b) Drug and alcohol screening, testing, or monitoring;
- 16 (c) Day or evening reporting centers;
- 17 (d) Reporting requirements;
- 18 (e) Community service; and
- 19 (f) Rehabilitative interventions such as family counseling, substance abuse
20 treatment, restorative justice programs, and behavioral or mental health
21 treatment;
- 22 (32) "Habitual runaway" means any child who has been found by the court to have been
23 absent from his or her place of lawful residence without the permission of his or her
24 custodian for at least three (3) days during a one (1) year period;
- 25 (33) "Habitual truant" means any child who has been found by the court to have been
26 reported as a truant as defined in KRS 159.150(1) two (2) or more times during a
27 one (1) year period;

- 1 (34) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or
2 public facility, health care facility, or part thereof, which is approved by the cabinet
3 to treat children;
- 4 (35) "Independent living" means those activities necessary to assist a committed child to
5 establish independent living arrangements;
- 6 (36) "Informal adjustment" means an agreement reached among the parties, with
7 consultation, but not the consent, of the victim of the crime or other persons
8 specified in KRS 610.070 if the victim chooses not to or is unable to participate,
9 after a petition has been filed, which is approved by the court, that the best interest
10 of the child would be served without formal adjudication and disposition;
- 11 (37) "Intentionally" means, with respect to a result or to conduct described by a statute
12 which defines an offense, that the actor's conscious objective is to cause that result
13 or to engage in that conduct;
- 14 (38) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that
15 the program developed on the child's behalf is no more harsh, hazardous, or
16 intrusive than necessary; or involves no restrictions on physical movements nor
17 requirements for residential care except as reasonably necessary for the protection
18 of the child from physical injury; or protection of the community, and is conducted
19 at the suitable available facility closest to the child's place of residence to allow for
20 appropriate family engagement;
- 21 (39) "Motor vehicle offense" means any violation of the nonfelony provisions of KRS
22 Chapters 186, 189, or 189A, KRS 177.300, 304.39-110, or 304.39-117;
- 23 (40) "Near fatality" means an injury that, as certified by a physician, places a child in
24 serious or critical condition;
- 25 (41) "Needs of the child" means necessary food, clothing, health, shelter, and education;
- 26 (42) "Nonoffender" means a child alleged to be dependent, neglected, or abused and who
27 has not been otherwise charged with a status or public offense;

- 1 (43) "Nonsecure facility" means a facility which provides its residents access to the
2 surrounding community and which does not rely primarily on the use of physically
3 restricting construction and hardware to restrict freedom;
- 4 (44) "Nonsecure setting" means a nonsecure facility or a residential home, including a
5 child's own home, where a child may be temporarily placed pending further court
6 action. Children before the court in a county that is served by a state operated secure
7 detention facility, who are in the detention custody of the Department of Juvenile
8 Justice, and who are placed in a nonsecure alternative by the Department of
9 Juvenile Justice, shall be supervised by the Department of Juvenile Justice;
- 10 (45) "Out-of-home placement" means a placement other than in the home of a parent,
11 relative, or guardian, in a boarding home, clinical treatment facility, community-
12 based facility, detention facility, emergency shelter, fictive kin home, foster family
13 home, hospital, nonsecure facility, physically secure facility, residential treatment
14 facility, or youth alternative center;
- 15 (46) "Parent" means the biological or adoptive mother or father of a child;
- 16 (47) "Person exercising custodial control or supervision" means a person or agency that
17 has assumed the role and responsibility of a parent or guardian for the child, but that
18 does not necessarily have legal custody of the child;
- 19 (48) "Petition" means a verified statement, setting forth allegations in regard to the child,
20 which initiates formal court involvement in the child's case;
- 21 (49) "Physical injury" means substantial physical pain or any impairment of physical
22 condition;
- 23 (50) "Physically secure facility" means a facility that relies primarily on the use of
24 construction and hardware such as locks, bars, and fences to restrict freedom;
- 25 (51) "Public offense action" means an action, excluding contempt, brought in the interest
26 of a child who is accused of committing an offense under KRS Chapter 527 or a
27 public offense which, if committed by an adult, would be a crime, whether the same

1 is a felony, misdemeanor, or violation, other than an action alleging that a child
2 sixteen (16) years of age or older has committed a motor vehicle offense;

3 (52) "Qualified mental health professional" means:

- 4 (a) A physician licensed under the laws of Kentucky to practice medicine or
5 osteopathy, or a medical officer of the government of the United States while
6 engaged in the performance of official duties;
- 7 (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or
8 osteopathy, or a medical officer of the government of the United States while
9 engaged in the practice of official duties, and who is certified or eligible to
10 apply for certification by the American Board of Psychiatry and Neurology,
11 Inc.;
- 12 (c) A psychologist with the health service provider designation, a psychological
13 practitioner, a certified psychologist, or a psychological associate licensed
14 under the provisions of KRS Chapter 319;
- 15 (d) A licensed registered nurse with a master's degree in psychiatric nursing from
16 an accredited institution and two (2) years of clinical experience with mentally
17 ill persons, or a licensed registered nurse with a bachelor's degree in nursing
18 from an accredited institution who is certified as a psychiatric and mental
19 health nurse by the American Nurses Association and who has three (3) years
20 of inpatient or outpatient clinical experience in psychiatric nursing and who is
21 currently employed by a hospital or forensic psychiatric facility licensed by
22 the Commonwealth or a psychiatric unit of a general hospital or a regional
23 comprehensive care center;
- 24 (e) A licensed clinical social worker licensed under the provisions of KRS
25 335.100, or a certified social worker licensed under the provisions of KRS
26 335.080 with three (3) years of inpatient or outpatient clinical experience in
27 psychiatric social work and currently employed by a hospital or forensic

- 1 psychiatric facility licensed by the Commonwealth or a psychiatric unit of a
2 general hospital or a regional comprehensive care center;
- 3 (f) A marriage and family therapist licensed under the provisions of KRS 335.300
4 to 335.399 with three (3) years of inpatient or outpatient clinical experience in
5 psychiatric mental health practice and currently employed by a hospital or
6 forensic psychiatric facility licensed by the Commonwealth, a psychiatric unit
7 of a general hospital, or a regional comprehensive care center;
- 8 (g) A professional counselor credentialed under the provisions of KRS 335.500 to
9 335.599 with three (3) years of inpatient or outpatient clinical experience in
10 psychiatric mental health practice and currently employed by a hospital or
11 forensic facility licensed by the Commonwealth, a psychiatric unit of a general
12 hospital, or a regional comprehensive care center; or
- 13 (h) A physician assistant licensed under KRS 311.840 to 311.862, who meets one
14 (1) of the following requirements:
- 15 1. Provides documentation that he or she has completed a psychiatric
16 residency program for physician assistants;
 - 17 2. Has completed at least one thousand (1,000) hours of clinical experience
18 under a supervising physician, as defined by KRS 311.840, who is a
19 psychiatrist and is certified or eligible for certification by the American
20 Board of Psychiatry and Neurology, Inc.;
 - 21 3. Holds a master's degree from a physician assistant program accredited
22 by the Accreditation Review Commission on Education for the
23 Physician Assistant or its predecessor or successor agencies, is
24 practicing under a supervising physician as defined by KRS 311.840,
25 and:
 - 26 a. Has two (2) years of clinical experience in the assessment,
27 evaluation, and treatment of mental disorders; or

- 1 b. Has been employed by a hospital or forensic psychiatric facility
2 licensed by the Commonwealth or a psychiatric unit of a general
3 hospital or a private agency or company engaged in the provision
4 of mental health services or a regional community program for
5 mental health and individuals with an intellectual disability for at
6 least two (2) years; or
- 7 4. Holds a bachelor's degree, possesses a current physician assistant
8 certificate issued by the board prior to July 15, 2002, is practicing under
9 a supervising physician as defined by KRS 311.840, and:
- 10 a. Has three (3) years of clinical experience in the assessment,
11 evaluation, and treatment of mental disorders; or
- 12 b. Has been employed by a hospital or forensic psychiatric facility
13 licensed by the Commonwealth or a psychiatric unit of a general
14 hospital or a private agency or company engaged in the provision
15 of mental health services or a regional community program for
16 mental health and individuals with an intellectual disability for at
17 least three (3) years;
- 18 (53) "Reasonable and prudent parent standard" has the same meaning as in 42 U.S.C.
19 sec. 675(10);
- 20 (54) "Residential treatment facility" means a facility or group home with more than eight
21 (8) beds designated by the Department of Juvenile Justice or the cabinet for the
22 treatment of children;
- 23 (55) "Retain in custody" means, after a child has been taken into custody, the continued
24 holding of the child by a peace officer for a period of time not to exceed twelve (12)
25 hours when authorized by the court or the court-designated worker for the purpose
26 of making preliminary inquiries;
- 27 (56) "Risk and needs assessment" means an actuarial tool scientifically proven to

1 identify specific factors and needs that are related to delinquent and noncriminal
2 misconduct;

3 (57) "School personnel" means those certified persons under the supervision of the local
4 public or private education agency;

5 (58) "Secretary" means the secretary of the Cabinet for Health and Family Services;

6 (59) "Secure juvenile detention facility" means any physically secure facility used for the
7 secure detention of children other than any facility in which adult prisoners are
8 confined;

9 (60) "Serious physical injury" means physical injury which creates a substantial risk of
10 death or which causes serious and prolonged disfigurement, prolonged impairment
11 of health, or prolonged loss or impairment of the function of any bodily member or
12 organ;

13 (61) "Sexual abuse" includes but is not necessarily limited to any contacts or interactions
14 in which the parent, guardian, person in a position of authority or special trust, as
15 defined in KRS 532.045, or other person having custodial control or supervision of
16 the child or responsibility for his or her welfare, uses or allows, permits, or
17 encourages the use of the child for the purposes of the sexual stimulation of the
18 perpetrator or another person;

19 (62) "Sexual exploitation" includes but is not limited to a situation in which a parent,
20 guardian, person in a position of authority or special trust, as defined in KRS
21 532.045, or other person having custodial control or supervision of a child or
22 responsible for his or her welfare, allows, permits, or encourages the child to engage
23 in an act which constitutes prostitution under Kentucky law; or a parent, guardian,
24 person in a position of authority or special trust, as defined in KRS 532.045, or
25 other person having custodial control or supervision of a child or responsible for his
26 or her welfare, allows, permits, or encourages the child to engage in an act of
27 obscene or pornographic photographing, filming, or depicting of a child as provided

1 for under Kentucky law;

2 (63) "Social service worker" means any employee of the cabinet or any private agency
3 designated as such by the secretary of the cabinet or a social worker employed by a
4 county or city who has been approved by the cabinet to provide, under its
5 supervision, services to families and children;

6 (64) "Staff secure facility for residential treatment" means any setting which assures that
7 all entrances and exits are under the exclusive control of the facility staff, and in
8 which a child may reside for the purpose of receiving treatment;

9 (65) (a) "Status offense action" is any action brought in the interest of a child who is
10 accused of committing acts, which if committed by an adult, would not be a
11 crime. Such behavior shall not be considered criminal or delinquent and such
12 children shall be termed status offenders. Status offenses shall include:

- 13 1. Beyond the control of school or beyond the control of parents;
- 14 2. Habitual Runaway;
- 15 3. Habitual truant;
- 16 4. Tobacco offenses as provided in KRS 438.305 to 438.340; and
- 17 5. Alcohol offenses as provided in KRS 244.085.

18 (b) Status offenses shall not include violations of state or local ordinances which
19 may apply to children such as a violation of curfew;

20 (66) "Take into custody" means the procedure by which a peace officer or other
21 authorized person initially assumes custody of a child. A child may be taken into
22 custody for a period of time not to exceed two (2) hours;

23 (67) "Transitional living support" means all benefits to which an eligible youth is
24 entitled upon being granted extended or reinstated commitment to the cabinet by the
25 court;

26 (68) "Transition plan" means a plan that is personalized at the direction of the youth that:
27 (a) Includes specific options on housing, health insurance, education, local

1 opportunities for mentors and continuing support services, and workforce
2 supports and employment services; and

3 (b) Is as detailed as the youth may elect;

4 (69) "Valid court order" means a court order issued by a judge to a child alleged or found
5 to be a status offender:

6 (a) Who was brought before the court and made subject to the order;

7 (b) Whose future conduct was regulated by the order;

8 (c) Who was given written and verbal warning of the consequences of the
9 violation of the order at the time the order was issued and whose attorney or
10 parent or legal guardian was also provided with a written notice of the
11 consequences of violation of the order, which notification is reflected in the
12 record of the court proceedings; and

13 (d) Who received, before the issuance of the order, the full due process rights
14 guaranteed by the Constitution of the United States;

15 (70) "Violation" means any offense, other than a traffic infraction, for which a sentence
16 of a fine only can be imposed;

17 (71) "Youth alternative center" means a nonsecure facility, approved by the Department
18 of Juvenile Justice, for the detention of juveniles, both prior to adjudication and
19 after adjudication, which meets the criteria specified in KRS 15A.320; and

20 (72) "Youthful offender" means any person regardless of age, transferred to Circuit
21 Court under the provisions of KRS Chapter 635 or 640 and who is subsequently
22 convicted in Circuit Court.