

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

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

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

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

- 6 (1) (a) "Alternative nicotine product" means a noncombustible product containing
7 nicotine that is intended for human consumption, whether chewed, absorbed,
8 dissolved, or ingested by any other means.
- 9 (b) "Alternative nicotine product" does not include any product regulated as a
10 drug or device by the United States Food and Drug Administration under
11 Chapter V of the Food, Drug, and Cosmetic Act;
- 12 (2) "Manufacturer" means any person who manufactures or produces tobacco products
13 within or without this Commonwealth;
- 14 (3) "Nonresident wholesaler" means any person who purchases cigarettes or other
15 tobacco products directly from the manufacturer and maintains a permanent
16 location or locations outside this state at which Kentucky cigarette tax evidence is
17 attached or from which Kentucky cigarette tax is reported and paid;
- 18 (4) "Proof of age" means a driver's license or other documentary or written evidence ***of***
19 ***an individual's age***~~[that the individual is eighteen (18) years of age or older];~~
- 20 (5) "Resident wholesaler" means any person who purchases at least seventy-five
21 percent (75%) of all cigarettes or other tobacco products purchased by that person
22 directly from the cigarette manufacturer on which the cigarette tax provided for in
23 KRS 138.130 to 138.205 is unpaid, and who maintains an established place of
24 business in this state at which the person attaches cigarette tax evidence or receives
25 untaxed cigarettes;
- 26 (6) "Sample" means a tobacco product, alternative nicotine product, or vapor product
27 distributed to members of the general public at no cost;

- 1 (7) "Subjobber" means any person who purchases tobacco products, on which the
2 Kentucky cigarette tax has been paid, from a wholesaler licensed pursuant to KRS
3 138.195, and makes them available to a retail establishment for resale;
- 4 (8) (a) "Tobacco product" means any cigarette, cigar, snuff, smokeless tobacco
5 product, smoking tobacco, chewing tobacco, and any kind or form of tobacco
6 prepared in a manner suitable for chewing or smoking, or both, or any kind or
7 form of tobacco that is suitable to be placed in a person's mouth. **"Tobacco
8 product" also means any product made or derived from tobacco that is
9 intended for human consumption, including any component, part, or
10 accessory of a tobacco product, except for raw materials other than tobacco
11 used in manufacturing any component, part, or accessory of a tobacco
12 product, in accordance with the federal Tobacco Control Act, Pub. L. No.
13 111-31;**
- 14 (b) "Tobacco product" does not include any alternative nicotine product, vapor
15 product, or product regulated as a drug or device by the United States Food
16 and Drug Administration under Chapter V of the Food, Drug, and Cosmetic
17 Act; and
- 18 (9) (a) "Vapor product" means any noncombustible product that employs a heating
19 element, battery, power source, electronic circuit, or other electronic,
20 chemical, or mechanical means, regardless of shape or size and including the
21 component parts and accessories thereto, that can be used to deliver vaporized
22 nicotine or other substances to users inhaling from the device. "Vapor
23 product" includes but is not limited to **any device deemed to be an electronic
24 nicotine delivery system by the United States Food and Drug
25 Administration,** any electronic cigarette, electronic cigar, electronic cigarillo,
26 electronic pipe, or similar product or device and every variation thereof,
27 regardless of whether marketed as such, and any vapor cartridge or other

1 container of a liquid solution or other material that is intended to be used with
2 or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic
3 pipe, or other similar product or device.

4 (b) "Vapor product" does not include any product regulated as a drug or device by
5 the United States Food and Drug Administration under Chapter V of the Food,
6 Drug, and Cosmetic Act.

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

8 (1) No person shall sell or cause to be sold any tobacco product, alternative nicotine
9 product, or vapor product at retail to any person under the age of twenty-one
10 (21)~~eighteen (18)~~, or solicit any person under the age of twenty-one (21)~~eighteen~~
11 ~~(18)~~ to purchase any tobacco product, alternative nicotine product, or vapor
12 product at retail.

13 (2) Any person who sells tobacco products, alternative nicotine products, or vapor
14 products at retail shall cause to be posted in a conspicuous place in his
15 establishment a notice stating that it is illegal to sell tobacco products, alternative
16 nicotine products, or vapor products to persons under age twenty-one (21)~~eighteen~~
17 ~~(18)~~.

18 (3) Any person selling tobacco products, alternative nicotine products, or vapor
19 products shall require proof of age from a prospective buyer or recipient if the
20 person has reason to believe that the prospective buyer or recipient is under the age
21 of twenty-one (21)~~eighteen (18)~~.

22 (4) A person who violates subsection (1) or (2) of this section shall be subject to a fine
23 of not less than one hundred dollars (\$100) nor more than five hundred dollars
24 (\$500) for a first violation and a fine of not less than five hundred dollars (\$500) nor
25 more than one thousand dollars (\$1,000) for any subsequent violation. The fine
26 shall be administered by the Department of Alcoholic Beverage Control using a
27 civil enforcement procedure.

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

2 (1) Except for the provisions of KRS 438.330, it shall be unlawful for a person who has
3 not attained the age of **twenty-one (21)**~~eighteen (18)~~ years to purchase or accept
4 receipt of or to attempt to purchase or accept receipt of a tobacco product,
5 alternative nicotine product, or vapor product, or to present or offer to any person
6 any purported proof of age which is false, fraudulent, or not actually his or her own,
7 for the purpose of purchasing or receiving any tobacco product, alternative nicotine
8 product, or vapor product. It shall not be unlawful for such a person to accept
9 receipt of a tobacco product, alternative nicotine product, or vapor product from an
10 employer when required in the performance of the person's duties.

11 (2) ~~[This offense shall be deemed a status offense and shall be under the jurisdiction of
12 the juvenile session of the District Court.]~~

13 ~~(3) —~~All peace officers with general law enforcement authority and employees of the
14 Department of Alcoholic Beverage Control may **confiscate the tobacco product,
15 alternative nicotine product, or vapor product of a person under the age of
16 twenty-one (21) who has violated**~~[issue a uniform citation, but not make an arrest
17 or take a child into custody, for a violation of]~~ this section. **Notwithstanding any
18 provision of law to the contrary, no other penalty shall apply to a person under
19 the age of twenty-one (21) for a violation of this section.**~~[If a child fails to appear
20 in court in response to a uniform citation issued pursuant to the section, the court
21 may compel the attendance of the defendant in the manner specified by law.]~~

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

23 (1) No wholesaler, retailer, or manufacturer of cigarettes, tobacco products, alternative
24 nicotine products, or vapor products may distribute cigarettes, tobacco products,
25 alternative nicotine products, or vapor products, including samples thereof, free of
26 charge or otherwise, to any person under the age of **twenty-one (21)**~~eighteen (18)~~.

27 (2) Any person who distributes cigarettes, tobacco products, alternative nicotine

1 products, or vapor products, including samples thereof, free of charge or otherwise
2 shall require proof of age from a prospective buyer or recipient if the person has
3 reason to believe that the prospective purchaser or recipient is under the age of
4 twenty-one (21)~~eighteen (18)~~.

5 (3) Any person who violates the provisions of this section shall be fined not less than
6 one thousand dollars (\$1,000) nor more than two thousand five hundred dollars
7 (\$2,500) for each offense. The fine shall be administered by the Department of
8 Alcoholic Beverage Control using a civil enforcement procedure for persons
9 eighteen (18) years of age or older.~~[For persons under the age of eighteen (18)~~
10 ~~years, the offense shall be deemed a status offense and shall be under the~~
11 ~~jurisdiction of the juvenile session of the District Court.]~~

12 (4) All peace officers with general law enforcement authority and employees of the
13 Department of Alcoholic Beverage Control may issue a uniform citation, but may
14 not make an arrest, or take a child into custody, for a violation of this section.~~[If a~~
15 ~~child fails to appear in court in response to a uniform citation issued pursuant to this~~
16 ~~section, the court may compel the attendance of the defendant in the manner~~
17 ~~specified by law.]~~

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

19 (1) The sale of tobacco products, alternative nicotine products, or vapor products
20 dispensed through a vending machine is prohibited to any person under the age of
21 twenty-one (21)~~eighteen (18)~~ years.

22 (2) The purchase of tobacco products, alternative nicotine products, or vapor products
23 dispensed through a vending machine is prohibited to any person under the age of
24 twenty-one (21)~~eighteen (18)~~ years.

25 (3) Except for vending machines located in factories or vending machines located in
26 bars or taverns to which minors are not permitted access, any vending machine from
27 which tobacco products, alternative nicotine products, or vapor products are

1 dispensed shall be located in the line of sight of the cashier for the retail
2 establishment.

3 (4) Any owner of a retail establishment violating this section shall be subject to a fine
4 of not less than one hundred dollars (\$100) nor more than five hundred dollars
5 (\$500) for each violation. The fine shall be administered by the Department of
6 Alcoholic Beverage Control using a civil enforcement procedure for persons
7 eighteen (18) years of age or older.~~[For persons under the age of eighteen (18)~~
8 ~~years, the offense shall be deemed a status offense and shall be under the~~
9 ~~jurisdiction of the juvenile session of the District Court.]~~

10 (5) All peace officers with general law enforcement authority and employees of the
11 Department of Alcoholic Beverage Control may issue a uniform citation, but may
12 not make an arrest, or take a child into custody, for a violation of this section.~~[If a~~
13 ~~child fails to appear in court in response to a uniform citation issued pursuant to this~~
14 ~~section, the court may compel the attendance of the defendant in the manner~~
15 ~~specified by law.]~~

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

17 (1) Each owner of a retail establishment selling or distributing tobacco products,
18 alternative nicotine products, or vapor products shall notify each individual
19 employed in the retail establishment as a retail sales clerk that the sale of tobacco
20 products, alternative nicotine products, or vapor products to any person under the
21 age of twenty-one (21)~~[eighteen (18)]~~ years and the purchase of tobacco products,
22 alternative nicotine products, or vapor products by any person under the age of
23 twenty-one (21)~~[eighteen (18)]~~ years are prohibited.

24 (2) Each owner of a retail establishment selling or distributing tobacco products,
25 alternative nicotine products, or vapor products shall notify each individual
26 employed in the retail establishment as a retail sales clerk that proof of age is
27 required from a prospective buyer or recipient if the person has reason to believe

1 that the prospective purchaser or recipient is under the age of twenty-one
2 (21)~~eighteen (18)~~.

3 (3) The notice to employees that is required in subsection (1) of this section shall be
4 provided before the person commences work as a retail sales clerk, or, in the case of
5 a person employed as a retail sales clerk on the effective date of this Act~~April 10,~~
6 ~~2014~~, within thirty (30) days of that date. The employee shall signify receipt of the
7 notice required by this section by signing a form that states as follows:

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

13 (4) The owner of the retail establishment shall maintain the signed notice that is
14 required pursuant to subsection (3) of this section in a place and in a manner so as
15 to be easily accessible to any employee of the Department of Alcoholic Beverage
16 Control or the Department of Agriculture conducting an inspection of the retail
17 establishment for the purpose of monitoring compliance in limiting the sale or
18 distribution of tobacco products, alternative nicotine products, or vapor products to
19 persons under the age of twenty-one (21)~~eighteen (18)~~ as provided in KRS
20 438.305 to 438.340.

21 (5) Any owner of the retail establishment violating subsections (1) to (4) of this section
22 shall be subject to a fine of not less than one hundred dollars (\$100) nor more than
23 five hundred dollars (\$500) for each violation. The fine shall be administered by the
24 Department of Alcoholic Beverage Control in a civil enforcement procedure.

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

26 (1) The Department of Alcoholic Beverage Control and the Department of Agriculture
27 shall carry out annually conducted random, unannounced inspections of retail

1 establishments where tobacco products, alternative nicotine products, or vapor
 2 products are sold or distributed for the purpose of enforcing the provisions of KRS
 3 438.305 to 438.340. The inspections shall be conducted to the extent necessary to
 4 assure that the Commonwealth remains in compliance with Public Law 102-321
 5 and applicable federal regulations. The Department of Alcoholic Beverage Control
 6 and the Department of Agriculture shall also ensure that targeted inspections are
 7 conducted at those retail establishments where, and at those times when, persons
 8 under the age of twenty-one (21)~~eighteen (18)~~ years are most likely to purchase
 9 tobacco products, alternative nicotine products, or vapor products. Persons under
 10 the age of twenty-one (21)~~eighteen (18)~~ years may be used to test compliance with
 11 the provisions of KRS 438.305 to 438.340 only if the testing is conducted under the
 12 direct supervision of the Department of Alcoholic Beverage Control, sheriff, or
 13 chief of police, or their employees, and written parental consent has been obtained.
 14 The Department of Alcoholic Beverage Control shall prepare annually, for
 15 submission by the Governor to the Secretary of the United States Department of
 16 Health and Human Services, the report required by Section 1926 of Subpart 1 of
 17 Part B of Title XIX of the Federal Public Health Service Act.

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

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

22 (1) ~~Except for violations of the provisions of KRS 438.311, 438.313, and 438.315 by a~~
 23 ~~juvenile, which shall be under the jurisdiction of the juvenile session of the District~~
 24 ~~Court,~~ The Department of Alcoholic Beverage Control shall carry out the
 25 enforcement provisions of KRS 438.305 to 438.340.

26 (2) The Department of Alcoholic Beverage Control shall be entitled to the revenue
 27 produced by one-twentieth of one cent (\$0.0005) of the three-cent (\$0.03) per pack

1 revenue collected by the Finance and Administration Cabinet from the state excise
 2 tax on the sale of cigarettes as imposed by KRS 138.140 to be deposited in a trust
 3 and agency account created in the State Treasury, and to keep fifty percent (50%) of
 4 any fines collected under KRS 438.305 to 438.340 to offset the costs of
 5 enforcement of KRS 438.305 to 438.340.

6 (3) The Department of Alcoholic Beverage Control shall be responsible for maintaining
 7 statistics for compilation of required reports to be submitted to the United States
 8 Department of Health and Human Services.

9 (4) The Department of Alcoholic Beverage Control shall devise a plan and time frame
 10 for enforcement to determine by random inspection if the percentage of retailers or
 11 distributors making illegal sales to persons under the age of twenty-one
 12 (21)[minors] does or does not exceed federal guidelines preventing tobacco sales to
 13 persons under the age of twenty-one (21)[minors].

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

15 (1) No person under the age of twenty-one (21)[eighteen (18)] shall possess or use
 16 tobacco products, alternative nicotine products, or vapor products.

17 (2) Any tobacco product, alternative nicotine product, or vapor product found in the
 18 possession of a person under the age of twenty-one (21)[eighteen (18)] and in plain
 19 view of the law enforcement officer shall be confiscated by the law enforcement
 20 officer making the charge.

21 (3) This section shall not apply to persons exempted as provided by KRS 438.311 and
 22 438.330.

23 (4) The terms "alternative nicotine product," "tobacco product," and "vapor product,"
 24 shall have the same meanings as in KRS 438.305.

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

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

27 (1) "Abused or neglected child" means a child whose health or welfare is harmed or

1 threatened with harm when:

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

- 5 1. Inflicts or allows to be inflicted upon the child physical or emotional
6 injury as defined in this section by other than accidental means;
- 7 2. Creates or allows to be created a risk of physical or emotional injury as
8 defined in this section to the child by other than accidental means;
- 9 3. Engages in a pattern of conduct that renders the parent incapable of
10 caring for the immediate and ongoing needs of the child, including but
11 not limited to parental incapacity due to a substance use disorder as
12 defined in KRS 222.005;
- 13 4. Continuously or repeatedly fails or refuses to provide essential parental
14 care and protection for the child, considering the age of the child;
- 15 5. Commits or allows to be committed an act of sexual abuse, sexual
16 exploitation, or prostitution upon the child;
- 17 6. Creates or allows to be created a risk that an act of sexual abuse, sexual
18 exploitation, or prostitution will be committed upon the child;
- 19 7. Abandons or exploits the child;
- 20 8. Does not provide the child with adequate care, supervision, food,
21 clothing, shelter, and education or medical care necessary for the child's
22 well-being. A parent or other person exercising custodial control or
23 supervision of the child legitimately practicing the person's religious
24 beliefs shall not be considered a negligent parent solely because of
25 failure to provide specified medical treatment for a child for that reason
26 alone. This exception shall not preclude a court from ordering necessary
27 medical services for a child; or

- 1 9. Fails to make sufficient progress toward identified goals as set forth in
2 the court-approved case plan to allow for the safe return of the child to
3 the parent that results in the child remaining committed to the cabinet
4 and remaining in foster care for fifteen (15) cumulative months out of
5 forty-eight (48) months; or
- 6 (b) A person twenty-one (21) years of age or older commits or allows to be
7 committed an act of sexual abuse, sexual exploitation, or prostitution upon a
8 child less than sixteen (16) years of age;
- 9 (2) "Age or developmentally appropriate" has the same meaning as in 42 U.S.C. sec.
10 675(11);
- 11 (3) "Aggravated circumstances" means the existence of one (1) or more of the
12 following conditions:
- 13 (a) The parent has not attempted or has not had contact with the child for a period
14 of not less than ninety (90) days;
- 15 (b) The parent is incarcerated and will be unavailable to care for the child for a
16 period of at least one (1) year from the date of the child's entry into foster care
17 and there is no appropriate relative placement available during this period of
18 time;
- 19 (c) The parent has sexually abused the child and has refused available treatment;
- 20 (d) The parent has been found by the cabinet to have engaged in abuse of the
21 child that required removal from the parent's home two (2) or more times in
22 the past two (2) years; or
- 23 (e) The parent has caused the child serious physical injury;
- 24 (4) "Beyond the control of parents" means a child who has repeatedly failed to follow
25 the reasonable directives of his or her parents, legal guardian, or person exercising
26 custodial control or supervision other than a state agency, which behavior results in
27 danger to the child or others, and which behavior does not constitute behavior that

- 1 would warrant the filing of a petition under KRS Chapter 645;
- 2 (5) "Beyond the control of school" means any child who has been found by the court to
3 have repeatedly violated the lawful regulations for the government of the school as
4 provided in KRS 158.150, and as documented in writing by the school as a part of
5 the school's petition or as an attachment to the school's petition. The petition or
6 attachment shall describe the student's behavior and all intervention strategies
7 attempted by the school;
- 8 (6) "Boarding home" means a privately owned and operated home for the boarding and
9 lodging of individuals which is approved by the Department of Juvenile Justice or
10 the cabinet for the placement of children committed to the department or the
11 cabinet;
- 12 (7) "Cabinet" means the Cabinet for Health and Family Services;
- 13 (8) "Certified juvenile facility staff" means individuals who meet the qualifications of,
14 and who have completed a course of education and training in juvenile detention
15 developed and approved by, the Department of Juvenile Justice after consultation
16 with other appropriate state agencies;
- 17 (9) "Child" means any person who has not reached his or her eighteenth birthday,
18 unless otherwise provided;
- 19 (10) "Child-caring facility" means any facility or group home other than a state facility,
20 Department of Juvenile Justice contract facility or group home, or one certified by
21 an appropriate agency as operated primarily for educational or medical purposes,
22 providing residential care on a twenty-four (24) hour basis to children not related by
23 blood, adoption, or marriage to the person maintaining the facility;
- 24 (11) "Child-placing agency" means any agency, other than a state agency, which
25 supervises the placement of children in foster family homes or child-caring facilities
26 or which places children for adoption;
- 27 (12) "Clinical treatment facility" means a facility with more than eight (8) beds

- 1 designated by the Department of Juvenile Justice or the cabinet for the treatment of
2 mentally ill children. The treatment program of such facilities shall be supervised by
3 a qualified mental health professional;
- 4 (13) "Commitment" means an order of the court which places a child under the custodial
5 control or supervision of the Cabinet for Health and Family Services, Department of
6 Juvenile Justice, or another facility or agency until the child attains the age of
7 eighteen (18) unless otherwise provided by law;
- 8 (14) "Community-based facility" means any nonsecure, homelike facility licensed,
9 operated, or permitted to operate by the Department of Juvenile Justice or the
10 cabinet, which is located within a reasonable proximity of the child's family and
11 home community, which affords the child the opportunity, if a Kentucky resident, to
12 continue family and community contact;
- 13 (15) "Complaint" means a verified statement setting forth allegations in regard to the
14 child which contain sufficient facts for the formulation of a subsequent petition;
- 15 (16) "Court" means the juvenile session of District Court unless a statute specifies the
16 adult session of District Court or the Circuit Court;
- 17 (17) "Court-designated worker" means that organization or individual delegated by the
18 Administrative Office of the Courts for the purposes of placing children in
19 alternative placements prior to arraignment, conducting preliminary investigations,
20 and formulating, entering into, and supervising diversion agreements and
21 performing such other functions as authorized by law or court order;
- 22 (18) "Deadly weapon" has the same meaning as it does in KRS 500.080;
- 23 (19) "Department" means the Department for Community Based Services;
- 24 (20) "Dependent child" means any child, other than an abused or neglected child, who is
25 under improper care, custody, control, or guardianship that is not due to an
26 intentional act of the parent, guardian, or person exercising custodial control or
27 supervision of the child;

- 1 (21) "Detention" means the safe and temporary custody of a juvenile who is accused of
2 conduct subject to the jurisdiction of the court who requires a restricted or closely
3 supervised environment for his or her own or the community's protection;
- 4 (22) "Detention hearing" means a hearing held by a judge or trial commissioner within
5 twenty-four (24) hours, exclusive of weekends and holidays, of the start of any
6 period of detention prior to adjudication;
- 7 (23) "Diversion agreement" means a mechanism designed to hold a child accountable for
8 his or her behavior and, if appropriate, securing services to serve the best interest of
9 the child and to provide redress for that behavior without court action and without
10 the creation of a formal court record;
- 11 (24) "Eligible youth" means a person who:
- 12 (a) Is or has been committed to the cabinet as dependent, neglected, or abused;
- 13 (b) Is eighteen (18) years of age to nineteen (19) years of age; and
- 14 (c) Is requesting to extend or reinstate his or her commitment to the cabinet in
15 order to participate in state or federal educational programs or to establish
16 independent living arrangements;
- 17 (25) "Emergency shelter" is a group home, private residence, foster home, or similar
18 homelike facility which provides temporary or emergency care of children and
19 adequate staff and services consistent with the needs of each child;
- 20 (26) "Emotional injury" means an injury to the mental or psychological capacity or
21 emotional stability of a child as evidenced by a substantial and observable
22 impairment in the child's ability to function within a normal range of performance
23 and behavior with due regard to his or her age, development, culture, and
24 environment as testified to by a qualified mental health professional;
- 25 (27) "Evidence-based practices" means policies, procedures, programs, and practices
26 proven by scientific research to reliably produce reductions in recidivism;
- 27 (28) "Fictive kin" means an individual who is not related by birth, adoption, or marriage

- 1 to a child, but who has an emotionally significant relationship with the child;
- 2 (29) "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- 3 (30) "Foster family home" means a private home in which children are placed for foster
4 family care under supervision of the cabinet or a licensed child-placing agency;
- 5 (31) "Graduated sanction" means any of a continuum of accountability measures,
6 programs, and sanctions, ranging from less restrictive to more restrictive in nature,
7 that may include but are not limited to:
- 8 (a) Electronic monitoring;
- 9 (b) Drug and alcohol screening, testing, or monitoring;
- 10 (c) Day or evening reporting centers;
- 11 (d) Reporting requirements;
- 12 (e) Community service; and
- 13 (f) Rehabilitative interventions such as family counseling, substance abuse
14 treatment, restorative justice programs, and behavioral or mental health
15 treatment;
- 16 (32) "Habitual runaway" means any child who has been found by the court to have been
17 absent from his or her place of lawful residence without the permission of his or her
18 custodian for at least three (3) days during a one (1) year period;
- 19 (33) "Habitual truant" means any child who has been found by the court to have been
20 reported as a truant as defined in KRS 159.150(1) two (2) or more times during a
21 one (1) year period;
- 22 (34) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or
23 public facility, health care facility, or part thereof, which is approved by the cabinet
24 to treat children;
- 25 (35) "Independent living" means those activities necessary to assist a committed child to
26 establish independent living arrangements;
- 27 (36) "Informal adjustment" means an agreement reached among the parties, with

- 1 consultation, but not the consent, of the victim of the crime or other persons
2 specified in KRS 610.070 if the victim chooses not to or is unable to participate,
3 after a petition has been filed, which is approved by the court, that the best interest
4 of the child would be served without formal adjudication and disposition;
- 5 (37) "Intentionally" means, with respect to a result or to conduct described by a statute
6 which defines an offense, that the actor's conscious objective is to cause that result
7 or to engage in that conduct;
- 8 (38) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that
9 the program developed on the child's behalf is no more harsh, hazardous, or
10 intrusive than necessary; or involves no restrictions on physical movements nor
11 requirements for residential care except as reasonably necessary for the protection
12 of the child from physical injury; or protection of the community, and is conducted
13 at the suitable available facility closest to the child's place of residence to allow for
14 appropriate family engagement;
- 15 (39) "Motor vehicle offense" means any violation of the nonfelony provisions of KRS
16 Chapters 186, 189, or 189A, KRS 177.300, 304.39-110, or 304.39-117;
- 17 (40) "Near fatality" means an injury that, as certified by a physician, places a child in
18 serious or critical condition;
- 19 (41) "Needs of the child" means necessary food, clothing, health, shelter, and education;
- 20 (42) "Nonoffender" means a child alleged to be dependent, neglected, or abused and who
21 has not been otherwise charged with a status or public offense;
- 22 (43) "Nonsecure facility" means a facility which provides its residents access to the
23 surrounding community and which does not rely primarily on the use of physically
24 restricting construction and hardware to restrict freedom;
- 25 (44) "Nonsecure setting" means a nonsecure facility or a residential home, including a
26 child's own home, where a child may be temporarily placed pending further court
27 action. Children before the court in a county that is served by a state operated secure

- 1 detention facility, who are in the detention custody of the Department of Juvenile
2 Justice, and who are placed in a nonsecure alternative by the Department of
3 Juvenile Justice, shall be supervised by the Department of Juvenile Justice;
- 4 (45) "Out-of-home placement" means a placement other than in the home of a parent,
5 relative, or guardian, in a boarding home, clinical treatment facility, community-
6 based facility, detention facility, emergency shelter, fictive kin home, foster family
7 home, hospital, nonsecure facility, physically secure facility, residential treatment
8 facility, or youth alternative center;
- 9 (46) "Parent" means the biological or adoptive mother or father of a child;
- 10 (47) "Person exercising custodial control or supervision" means a person or agency that
11 has assumed the role and responsibility of a parent or guardian for the child, but that
12 does not necessarily have legal custody of the child;
- 13 (48) "Petition" means a verified statement, setting forth allegations in regard to the child,
14 which initiates formal court involvement in the child's case;
- 15 (49) "Physical injury" means substantial physical pain or any impairment of physical
16 condition;
- 17 (50) "Physically secure facility" means a facility that relies primarily on the use of
18 construction and hardware such as locks, bars, and fences to restrict freedom;
- 19 (51) "Public offense action" means an action, excluding contempt, brought in the interest
20 of a child who is accused of committing an offense under KRS Chapter 527 or a
21 public offense which, if committed by an adult, would be a crime, whether the same
22 is a felony, misdemeanor, or violation, other than an action alleging that a child
23 sixteen (16) years of age or older has committed a motor vehicle offense;
- 24 (52) "Qualified mental health professional" means:
- 25 (a) A physician licensed under the laws of Kentucky to practice medicine or
26 osteopathy, or a medical officer of the government of the United States while
27 engaged in the performance of official duties;

- 1 (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or
2 osteopathy, or a medical officer of the government of the United States while
3 engaged in the practice of official duties, and who is certified or eligible to
4 apply for certification by the American Board of Psychiatry and Neurology,
5 Inc.;
- 6 (c) A psychologist with the health service provider designation, a psychological
7 practitioner, a certified psychologist, or a psychological associate licensed
8 under the provisions of KRS Chapter 319;
- 9 (d) A licensed registered nurse with a master's degree in psychiatric nursing from
10 an accredited institution and two (2) years of clinical experience with mentally
11 ill persons, or a licensed registered nurse with a bachelor's degree in nursing
12 from an accredited institution who is certified as a psychiatric and mental
13 health nurse by the American Nurses Association and who has three (3) years
14 of inpatient or outpatient clinical experience in psychiatric nursing and who is
15 currently employed by a hospital or forensic psychiatric facility licensed by
16 the Commonwealth or a psychiatric unit of a general hospital or a regional
17 comprehensive care center;
- 18 (e) A licensed clinical social worker licensed under the provisions of KRS
19 335.100, or a certified social worker licensed under the provisions of KRS
20 335.080 with three (3) years of inpatient or outpatient clinical experience in
21 psychiatric social work and currently employed by a hospital or forensic
22 psychiatric facility licensed by the Commonwealth or a psychiatric unit of a
23 general hospital or a regional comprehensive care center;
- 24 (f) A marriage and family therapist licensed under the provisions of KRS 335.300
25 to 335.399 with three (3) years of inpatient or outpatient clinical experience in
26 psychiatric mental health practice and currently employed by a hospital or
27 forensic psychiatric facility licensed by the Commonwealth, a psychiatric unit

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

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

1 secure detention of children other than any facility in which adult prisoners are
2 confined;

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

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

13 (62) "Sexual exploitation" includes but is not limited to a situation in which a parent,
14 guardian, person in a position of authority or special trust, as defined in KRS
15 532.045, or other person having custodial control or supervision of a child or
16 responsible for his or her welfare, allows, permits, or encourages the child to engage
17 in an act which constitutes prostitution under Kentucky law; or a parent, guardian,
18 person in a position of authority or special trust, as defined in KRS 532.045, or
19 other person having custodial control or supervision of a child or responsible for his
20 or her welfare, allows, permits, or encourages the child to engage in an act of
21 obscene or pornographic photographing, filming, or depicting of a child as provided
22 for under Kentucky law;

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

27 (64) "Staff secure facility for residential treatment" means any setting which assures that

1 all entrances and exits are under the exclusive control of the facility staff, and in
2 which a child may reside for the purpose of receiving treatment;

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

- 7 1. Beyond the control of school or beyond the control of parents;
- 8 2. Habitual Runaway;
- 9 3. Habitual truant; ***and***
- 10 4. ~~Tobacco offenses as provided in KRS 438.305 to 438.340; and~~
- 11 5. ~~Alcohol offenses as provided in KRS 244.085.~~

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

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

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

20 (68) "Transition plan" means a plan that is personalized at the direction of the youth that:

21 (a) Includes specific options on housing, health insurance, education, local
22 opportunities for mentors and continuing support services, and workforce
23 supports and employment services; and

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

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

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

- 1 (b) Whose future conduct was regulated by the order;
- 2 (c) Who was given written and verbal warning of the consequences of the
3 violation of the order at the time the order was issued and whose attorney or
4 parent or legal guardian was also provided with a written notice of the
5 consequences of violation of the order, which notification is reflected in the
6 record of the court proceedings; and
- 7 (d) Who received, before the issuance of the order, the full due process rights
8 guaranteed by the Constitution of the United States;
- 9 (70) "Violation" means any offense, other than a traffic infraction, for which a sentence
10 of a fine only can be imposed;
- 11 (71) "Youth alternative center" means a nonsecure facility, approved by the Department
12 of Juvenile Justice, for the detention of juveniles, both prior to adjudication and
13 after adjudication, which meets the criteria specified in KRS 15A.320; and
- 14 (72) "Youthful offender" means any person regardless of age, transferred to Circuit
15 Court under the provisions of KRS Chapter 635 or 640 and who is subsequently
16 convicted in Circuit Court.

17 ➔Section 11. KRS 610.010 is amended to read as follows:

- 18 (1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the
19 District Court of each county shall have exclusive jurisdiction in proceedings
20 concerning any child living or found within the county who has not reached his or
21 her eighteenth birthday or of any person who at the time of committing a public
22 offense was under the age of eighteen (18) years, who allegedly has committed a
23 public offense prior to his or her eighteenth birthday, except a motor vehicle offense
24 involving a child sixteen (16) years of age or older. A child sixteen (16) years of age
25 or older taken into custody upon the allegation that the child has committed a motor
26 vehicle offense shall be treated as an adult and shall have the same conditions of
27 release applied to him or her as an adult. A child taken into custody upon the

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

11 (2) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the
 12 District Court of each county or the family division of the Circuit Court shall have
 13 exclusive jurisdiction in proceedings concerning any child living or found within
 14 the county who has not reached his or her eighteenth birthday and who allegedly:

- 15 (a) Is beyond the control of the school or beyond the control of parents as defined
 16 in KRS 600.020;
- 17 (b) Is an habitual truant from school;
- 18 (c) Is an habitual runaway from his or her parent or other person exercising
 19 custodial control or supervision of the child;
- 20 (d) Is dependent, neglected, or abused;
- 21 (e) Has committed an alcohol offense in violation of KRS 244.085; or
- 22 (f) ~~Has committed a tobacco offense as provided in KRS 438.305 to 438.340; or~~
- 23 (g) Is mentally ill.

24 (3) Actions brought under subsection (1) of this section shall be considered to be public
 25 offense actions.

26 (4) Actions brought under subsection (2)(a), (b), (c), and (e) ~~, and (f)~~ of this section
 27 shall be considered to be status offense actions.

- 1 (5) Actions brought under subsection (2)(d) of this section shall be considered to be
2 nonoffender actions.
- 3 (6) Actions brought under subsection ~~(2)(f)~~~~(2)(g)~~ of this section shall be considered to
4 be mental health actions.
- 5 (7) Nothing in this chapter shall deprive other courts of the jurisdiction to determine the
6 custody or guardianship of children upon writs of habeas corpus or to determine the
7 custody or guardianship of children when such custody or guardianship is incidental
8 to the determination of other causes pending in such other courts; nor shall anything
9 in this chapter affect the jurisdiction of Circuit Courts over adoptions and
10 proceedings for termination of parental rights.
- 11 (8) The court shall have no jurisdiction to make permanent awards of custody of a child
12 except as provided by KRS 620.027.
- 13 (9) If the court finds an emergency to exist affecting the welfare of a child, or if the
14 child is eligible for the relative or fictive kin caregiver assistance as established in
15 KRS 620.142, it may make temporary orders for the child's custody; however, if the
16 case involves allegations of dependency, neglect, or abuse, no emergency removal
17 or temporary custody orders shall be effective unless the provisions of KRS Chapter
18 620 are followed. Such orders shall be entirely without prejudice to the proceedings
19 for permanent custody of the child and shall remain in effect until modified or set
20 aside by the court. Upon the entry of a temporary or final judgment in the Circuit
21 Court awarding custody of such child, all prior orders of the juvenile session of the
22 District Court in conflict therewith shall be deemed canceled. This section shall not
23 work to deprive the Circuit Court of jurisdiction over cases filed in Circuit Court.
- 24 (10) The court of each county wherein a public offense, as defined in subsection (1) of
25 this section, is committed by a child who is a resident of another county of this state
26 shall have concurrent jurisdiction over such child with the court of the county
27 wherein the child resides or the court of the county where the child is found.

1 Whichever court first acquires jurisdiction of such child may proceed to final
2 disposition of the case, or in its discretion may make an order transferring the case
3 to the court of the county of the child's residence or the county wherein the offense
4 was committed, as the case may be.

5 (11) Nothing in this chapter shall prevent the court from holding a child in contempt of
6 court to enforce valid court orders previously issued by the court, subject to the
7 requirements contained in KRS 610.265 and 630.080.

8 (12) Except as provided in KRS 635.060(4), 630.120(5), or 635.090, nothing in this
9 chapter shall confer upon the District Court or the family division of the Circuit
10 Court, as appropriate, jurisdiction over the actions of the Department of Juvenile
11 Justice or the cabinet in the placement, care, or treatment of a child committed to
12 the Department of Juvenile Justice or committed to or in the custody of the cabinet;
13 or to require the department or the cabinet to perform, or to refrain from
14 performing, any specific act in the placement, care, or treatment of any child
15 committed to the department or committed to or in the custody of the cabinet.

16 (13) Unless precluded by KRS Chapter 635 or 640, in addition to informal adjustment,
17 the court shall have the discretion to amend the petition to reflect jurisdiction
18 pursuant to the proper chapter of the Kentucky Unified Juvenile Code.

19 (14) The court shall have continuing jurisdiction over a child pursuant to subsection (1)
20 of this section, to review dispositional orders, and to conduct permanency hearings
21 under 42 U.S.C. sec. 675(5)(c) until the child is placed for adoption, returned home
22 to his or her parents with all the court imposed conditions terminated, completes a
23 disposition pursuant to KRS 635.060, or reaches the age of eighteen (18) years.

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

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

27 (1) Has been an habitual runaway from his parent or person exercising custodial control

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

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