

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

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

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

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

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

1 Kentucky cigarette tax has been paid, from a wholesaler licensed pursuant to KRS  
2 138.195, and makes them available to a retail establishment for resale;

3 (8) (a) "Tobacco product" means any cigarette, cigar, snuff, smokeless tobacco  
4 product, smoking tobacco, chewing tobacco, and any kind or form of tobacco  
5 prepared in a manner suitable for chewing or smoking, or both, or any kind or  
6 form of tobacco that is suitable to be placed in a person's mouth.

7 (b) "Tobacco product" does not include any alternative nicotine product, vapor  
8 product, or product regulated as a drug or device by the United States Food  
9 and Drug Administration under Chapter V of the Food, Drug, and Cosmetic  
10 Act; and

11 (9) (a) "Vapor product" means any noncombustible product that employs a heating  
12 element, battery, power source, electronic circuit, or other electronic,  
13 chemical, or mechanical means, regardless of shape or size and including the  
14 component parts and accessories thereto, that can be used to deliver vaporized  
15 nicotine or other substances to users inhaling from the device. "Vapor  
16 product" includes but is not limited to any electronic cigarette, electronic  
17 cigar, electronic cigarillo, electronic pipe, or similar product or device and  
18 every variation thereof, regardless of whether marketed as such, and any vapor  
19 cartridge or other container of a liquid solution or other material that is  
20 intended to be used with or in an electronic cigarette, electronic cigar,  
21 electronic cigarillo, electronic pipe, or other similar product or device.

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

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

26 (1) No person shall sell or cause to be sold any tobacco product, alternative nicotine  
27 product, or vapor product at retail to any person under the age of **twenty-one**

1        ~~(18)~~ (21), or solicit any person under the age of twenty-one (21) ~~(18)~~  
2        to purchase any tobacco product, alternative nicotine product, or vapor  
3        product at retail.

4        (2) Any person who sells tobacco products, alternative nicotine products, or vapor  
5        products at retail shall cause to be posted in a conspicuous place in his  
6        establishment a notice stating that it is illegal to sell tobacco products, alternative  
7        nicotine products, or vapor products to persons under age twenty-one (21) ~~(18)~~  
8        ~~(18)~~.

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

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

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

20       (1) Except for the provisions of KRS 438.330, it shall be unlawful for a person who has  
21       not attained the age of twenty-one (21) ~~(18)~~ years to purchase or accept  
22       receipt of or to attempt to purchase or accept receipt of a tobacco product,  
23       alternative nicotine product, or vapor product, or to present or offer to any person  
24       any purported proof of age which is false, fraudulent, or not actually his or her own,  
25       for the purpose of purchasing or receiving any tobacco product, alternative nicotine  
26       product, or vapor product. It shall not be unlawful for such a person to accept  
27       receipt of a tobacco product, alternative nicotine product, or vapor product from an

1 employer when required in the performance of the person's duties.

2 (2) *Any person eighteen (18) years of age or older who violates subsection (1) of this*  
 3 *section shall be fined not less than fifty dollars (\$50) nor more than five hundred*  
 4 *dollars (\$500) for each violation*~~[This offense shall be deemed a status offense and~~  
 5 ~~shall be under the jurisdiction of the juvenile session of the District Court].~~

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

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

13 (1) No wholesaler, retailer, or manufacturer of cigarettes, tobacco products, alternative  
 14 nicotine products, or vapor products may distribute cigarettes, tobacco products,  
 15 alternative nicotine products, or vapor products, including samples thereof, free of  
 16 charge or otherwise, to any person under the age of *twenty-one (21)*~~[eighteen (18)]~~.

17 (2) Any person who distributes cigarettes, tobacco products, alternative nicotine  
 18 products, or vapor products, including samples thereof, free of charge or otherwise  
 19 shall require proof of age from a prospective buyer or recipient if the person has  
 20 reason to believe that the prospective purchaser or recipient is under the age of  
 21 *twenty-one (21)*~~[eighteen (18)]~~.

22 (3) Any person who violates the provisions of this section shall be fined not less than  
 23 one thousand dollars (\$1,000) nor more than two thousand five hundred dollars  
 24 (\$2,500) for each offense. The fine shall be administered by the Department of  
 25 Alcoholic Beverage Control using a civil enforcement procedure for persons  
 26 eighteen (18) years of age or older.~~[For persons under the age of eighteen (18)~~  
 27 ~~years, the offense shall be deemed a status offense and shall be under the~~

1 ~~jurisdiction of the juvenile session of the District Court.]~~

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

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

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

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

15 (3) Except for vending machines located in factories or vending machines located in  
16 bars or taverns to which minors are not permitted access, any vending machine from  
17 which tobacco products, alternative nicotine products, or vapor products are  
18 dispensed shall be located in the line of sight of the cashier for the retail  
19 establishment.

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

27 (5) All peace officers with general law enforcement authority and employees of the

1 Department of Alcoholic Beverage Control may issue a uniform citation~~[, but may~~  
2 ~~not make an arrest, or take a child into custody,]~~ for a violation of this section.~~[If a~~  
3 ~~child fails to appear in court in response to a uniform citation issued pursuant to this~~  
4 ~~section, the court may compel the attendance of the defendant in the manner~~  
5 ~~specified by law.]~~

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

- 7 (1) Each owner of a retail establishment selling or distributing tobacco products,  
8 alternative nicotine products, or vapor products shall notify each individual  
9 employed in the retail establishment as a retail sales clerk that the sale of tobacco  
10 products, alternative nicotine products, or vapor products to any person under the  
11 age of **twenty-one (21)**~~[eighteen (18)]~~ years and the purchase of tobacco products,  
12 alternative nicotine products, or vapor products by any person under the age of  
13 **twenty-one (21)**~~[eighteen (18)]~~ years are prohibited.
- 14 (2) Each owner of a retail establishment selling or distributing tobacco products,  
15 alternative nicotine products, or vapor products shall notify each individual  
16 employed in the retail establishment as a retail sales clerk that proof of age is  
17 required from a prospective buyer or recipient if the person has reason to believe  
18 that the prospective purchaser or recipient is under the age of **twenty-one**  
19 **(21)**~~[eighteen (18)]~~.
- 20 (3) The notice to employees that is required in subsection (1) of this section shall be  
21 provided before the person commences work as a retail sales clerk, or, in the case of  
22 a person employed as a retail sales clerk on **the effective date of this Act**~~[April 10,~~  
23 ~~2014]~~, within thirty (30) days of that date. The employee shall signify receipt of the  
24 notice required by this section by signing a form that states as follows:  
25 "I understand that under the law of the Commonwealth of Kentucky it is illegal to  
26 sell or distribute tobacco products, alternative nicotine products, or vapor products  
27 to persons under the age of **twenty-one (21)**~~[eighteen (18)]~~ years and that it is illegal

1 for persons under the age of twenty-one (21)~~eighteen (18)~~ years to purchase  
2 tobacco products, alternative nicotine products, or vapor products."

3 (4) The owner of the retail establishment shall maintain the signed notice that is  
4 required pursuant to subsection (3) of this section in a place and in a manner so as  
5 to be easily accessible to any employee of the Department of Alcoholic Beverage  
6 Control or the Department of Agriculture conducting an inspection of the retail  
7 establishment for the purpose of monitoring compliance in limiting the sale or  
8 distribution of tobacco products, alternative nicotine products, or vapor products to  
9 persons under the age of twenty-one (21)~~eighteen (18)~~ as provided in KRS  
10 438.305 to 438.340.

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

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

16 (1) The Department of Alcoholic Beverage Control and the Department of Agriculture  
17 shall carry out annually conducted random, unannounced inspections of retail  
18 establishments where tobacco products, alternative nicotine products, or vapor  
19 products are sold or distributed for the purpose of enforcing the provisions of KRS  
20 438.305 to 438.340. The inspections shall be conducted to the extent necessary to  
21 assure that the Commonwealth remains in compliance with Public Law 102-321  
22 and applicable federal regulations. The Department of Alcoholic Beverage Control  
23 and the Department of Agriculture shall also ensure that targeted inspections are  
24 conducted at those retail establishments where, and at those times when, persons  
25 under the age of twenty-one (21)~~eighteen (18)~~ years are most likely to purchase  
26 tobacco products, alternative nicotine products, or vapor products. Persons under  
27 the age of twenty-one (21)~~eighteen (18)~~ years may be used to test compliance with

1 the provisions of KRS 438.305 to 438.340 only if the testing is conducted under the  
2 direct supervision of the Department of Alcoholic Beverage Control, sheriff, or  
3 chief of police, or their employees, and written parental consent has been obtained.

4 The Department of Alcoholic Beverage Control shall prepare annually, for  
5 submission by the Governor to the Secretary of the United States Department of  
6 Health and Human Services, the report required by Section 1926 of Subpart 1 of  
7 Part B of Title XIX of the Federal Public Health Service Act.

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

11 ➔Section 8. KRS 438.350 is amended to read as follows:

12 (1) No person under the age of twenty-one (21)~~eighteen (18)~~ shall possess or use  
13 tobacco products, alternative nicotine products, or vapor products.

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

18 (3) This section shall not apply to persons exempted as provided by KRS 438.311 and  
19 438.330.

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

22 ➔Section 9. KRS 600.020 is amended to read as follows:

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

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

26 (a) His or her parent, guardian, person in a position of authority or special trust, as  
27 defined in KRS 532.045, or other person exercising custodial control or



1 supervision of the child:

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

1 and remaining in foster care for fifteen (15) cumulative months out of  
2 forty-eight (48) months; or

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

6 (2) "Age or developmentally appropriate" has the same meaning as in 42 U.S.C. sec.  
7 675(11);

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

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

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

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

17 (d) The parent has been found by the cabinet to have engaged in abuse of the  
18 child that required removal from the parent's home two (2) or more times in  
19 the past two (2) years; or

20 (e) The parent has caused the child serious physical injury;

21 (4) "Beyond the control of parents" means a child who has repeatedly failed to follow  
22 the reasonable directives of his or her parents, legal guardian, or person exercising  
23 custodial control or supervision other than a state agency, which behavior results in  
24 danger to the child or others, and which behavior does not constitute behavior that  
25 would warrant the filing of a petition under KRS Chapter 645;

26 (5) "Beyond the control of school" means any child who has been found by the court to  
27 have repeatedly violated the lawful regulations for the government of the school as

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

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

- 1 (22) "Detention hearing" means a hearing held by a judge or trial commissioner within  
2 twenty-four (24) hours, exclusive of weekends and holidays, of the start of any  
3 period of detention prior to adjudication;
- 4 (23) "Diversion agreement" means a mechanism designed to hold a child accountable for  
5 his or her behavior and, if appropriate, securing services to serve the best interest of  
6 the child and to provide redress for that behavior without court action and without  
7 the creation of a formal court record;
- 8 (24) "Eligible youth" means a person who:
- 9 (a) Is or has been committed to the cabinet as dependent, neglected, or abused;
- 10 (b) Is eighteen (18) years of age to nineteen (19) years of age; and
- 11 (c) Is requesting to extend or reinstate his or her commitment to the cabinet in  
12 order to participate in state or federal educational programs or to establish  
13 independent living arrangements;
- 14 (25) "Emergency shelter" is a group home, private residence, foster home, or similar  
15 homelike facility which provides temporary or emergency care of children and  
16 adequate staff and services consistent with the needs of each child;
- 17 (26) "Emotional injury" means an injury to the mental or psychological capacity or  
18 emotional stability of a child as evidenced by a substantial and observable  
19 impairment in the child's ability to function within a normal range of performance  
20 and behavior with due regard to his or her age, development, culture, and  
21 environment as testified to by a qualified mental health professional;
- 22 (27) "Evidence-based practices" means policies, procedures, programs, and practices  
23 proven by scientific research to reliably produce reductions in recidivism;
- 24 (28) "Fictive kin" means an individual who is not related by birth, adoption, or marriage  
25 to a child, but who has an emotionally significant relationship with the child;
- 26 (29) "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- 27 (30) "Foster family home" means a private home in which children are placed for foster

- 1 family care under supervision of the cabinet or a licensed child-placing agency;
- 2 (31) "Graduated sanction" means any of a continuum of accountability measures,  
3 programs, and sanctions, ranging from less restrictive to more restrictive in nature,  
4 that may include but are not limited to:
- 5 (a) Electronic monitoring;
  - 6 (b) Drug and alcohol screening, testing, or monitoring;
  - 7 (c) Day or evening reporting centers;
  - 8 (d) Reporting requirements;
  - 9 (e) Community service; and
  - 10 (f) Rehabilitative interventions such as family counseling, substance abuse  
11 treatment, restorative justice programs, and behavioral or mental health  
12 treatment;
- 13 (32) "Habitual runaway" means any child who has been found by the court to have been  
14 absent from his or her place of lawful residence without the permission of his or her  
15 custodian for at least three (3) days during a one (1) year period;
- 16 (33) "Habitual truant" means any child who has been found by the court to have been  
17 reported as a truant as defined in KRS 159.150(1) two (2) or more times during a  
18 one (1) year period;
- 19 (34) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or  
20 public facility, health care facility, or part thereof, which is approved by the cabinet  
21 to treat children;
- 22 (35) "Independent living" means those activities necessary to assist a committed child to  
23 establish independent living arrangements;
- 24 (36) "Informal adjustment" means an agreement reached among the parties, with  
25 consultation, but not the consent, of the victim of the crime or other persons  
26 specified in KRS 610.070 if the victim chooses not to or is unable to participate,  
27 after a petition has been filed, which is approved by the court, that the best interest

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

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



- 1           apply for certification by the American Board of Psychiatry and Neurology,  
2           Inc.;
- 3           (c) A psychologist with the health service provider designation, a psychological  
4           practitioner, a certified psychologist, or a psychological associate licensed  
5           under the provisions of KRS Chapter 319;
- 6           (d) A licensed registered nurse with a master's degree in psychiatric nursing from  
7           an accredited institution and two (2) years of clinical experience with mentally  
8           ill persons, or a licensed registered nurse with a bachelor's degree in nursing  
9           from an accredited institution who is certified as a psychiatric and mental  
10          health nurse by the American Nurses Association and who has three (3) years  
11          of inpatient or outpatient clinical experience in psychiatric nursing and who is  
12          currently employed by a hospital or forensic psychiatric facility licensed by  
13          the Commonwealth or a psychiatric unit of a general hospital or a regional  
14          comprehensive care center;
- 15          (e) A licensed clinical social worker licensed under the provisions of KRS  
16          335.100, or a certified social worker licensed under the provisions of KRS  
17          335.080 with three (3) years of inpatient or outpatient clinical experience in  
18          psychiatric social work and currently employed by a hospital or forensic  
19          psychiatric facility licensed by the Commonwealth or a psychiatric unit of a  
20          general hospital or a regional comprehensive care center;
- 21          (f) A marriage and family therapist licensed under the provisions of KRS 335.300  
22          to 335.399 with three (3) years of inpatient or outpatient clinical experience in  
23          psychiatric mental health practice and currently employed by a hospital or  
24          forensic psychiatric facility licensed by the Commonwealth, a psychiatric unit  
25          of a general hospital, or a regional comprehensive care center;
- 26          (g) A professional counselor credentialed under the provisions of KRS 335.500 to  
27          335.599 with three (3) years of inpatient or outpatient clinical experience in

- 1 psychiatric mental health practice and currently employed by a hospital or  
2 forensic facility licensed by the Commonwealth, a psychiatric unit of a general  
3 hospital, or a regional comprehensive care center; or
- 4 (h) A physician assistant licensed under KRS 311.840 to 311.862, who meets one  
5 (1) of the following requirements:
- 6 1. Provides documentation that he or she has completed a psychiatric  
7 residency program for physician assistants;
  - 8 2. Has completed at least one thousand (1,000) hours of clinical experience  
9 under a supervising physician, as defined by KRS 311.840, who is a  
10 psychiatrist and is certified or eligible for certification by the American  
11 Board of Psychiatry and Neurology, Inc.;
  - 12 3. Holds a master's degree from a physician assistant program accredited  
13 by the Accreditation Review Commission on Education for the  
14 Physician Assistant or its predecessor or successor agencies, is  
15 practicing under a supervising physician as defined by KRS 311.840,  
16 and:
    - 17 a. Has two (2) years of clinical experience in the assessment,  
18 evaluation, and treatment of mental disorders; or
    - 19 b. Has been employed by a hospital or forensic psychiatric facility  
20 licensed by the Commonwealth or a psychiatric unit of a general  
21 hospital or a private agency or company engaged in the provision  
22 of mental health services or a regional community program for  
23 mental health and individuals with an intellectual disability for at  
24 least two (2) years; or
  - 25 4. Holds a bachelor's degree, possesses a current physician assistant  
26 certificate issued by the board prior to July 15, 2002, is practicing under  
27 a supervising physician as defined by KRS 311.840, and:



1 death or which causes serious and prolonged disfigurement, prolonged impairment  
2 of health, or prolonged loss or impairment of the function of any bodily member or  
3 organ;

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

10 (62) "Sexual exploitation" includes but is not limited to a situation in which a parent,  
11 guardian, person in a position of authority or special trust, as defined in KRS  
12 532.045, or other person having custodial control or supervision of a child or  
13 responsible for his or her welfare, allows, permits, or encourages the child to engage  
14 in an act which constitutes prostitution under Kentucky law; or a parent, guardian,  
15 person in a position of authority or special trust, as defined in KRS 532.045, or  
16 other person having custodial control or supervision of a child or responsible for his  
17 or her welfare, allows, permits, or encourages the child to engage in an act of  
18 obscene or pornographic photographing, filming, or depicting of a child as provided  
19 for under Kentucky law;

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

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

27 (65) (a) "Status offense action" is any action brought in the interest of a child who is

1 accused of committing acts, which if committed by an adult, would not be a  
2 crime. Such behavior shall not be considered criminal or delinquent and such  
3 children shall be termed status offenders. Status offenses shall include:

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

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

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

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

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

- 18 (a) Includes specific options on housing, health insurance, education, local  
19 opportunities for mentors and continuing support services, and workforce  
20 supports and employment services; and
- 21 (b) Is as detailed as the youth may elect;

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

- 24 (a) Who was brought before the court and made subject to the order;
- 25 (b) Whose future conduct was regulated by the order;
- 26 (c) Who was given written and verbal warning of the consequences of the  
27 violation of the order at the time the order was issued and whose attorney or

1 parent or legal guardian was also provided with a written notice of the  
2 consequences of violation of the order, which notification is reflected in the  
3 record of the court proceedings; and

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

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

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

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

14 ➔Section 10. KRS 610.010 is amended to read as follows:

15 (1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the  
16 District Court of each county shall have exclusive jurisdiction in proceedings  
17 concerning any child living or found within the county who has not reached his or  
18 her eighteenth birthday or of any person who at the time of committing a public  
19 offense was under the age of eighteen (18) years, who allegedly has committed a  
20 public offense prior to his or her eighteenth birthday, except a motor vehicle offense  
21 involving a child sixteen (16) years of age or older. A child sixteen (16) years of age  
22 or older taken into custody upon the allegation that the child has committed a motor  
23 vehicle offense shall be treated as an adult and shall have the same conditions of  
24 release applied to him or her as an adult. A child taken into custody upon the  
25 allegation that he or she has committed a motor vehicle offense who is not released  
26 under conditions of release applicable to adults shall be held, pending his or her  
27 appearance before the District Court, in a facility as defined in KRS 15A.067.

1 Children sixteen (16) years of age or older who are convicted of, or plead guilty to,  
2 a motor vehicle offense shall, if sentenced to a term of confinement, be placed in a  
3 facility for that period of confinement preceding their eighteenth birthday and an  
4 adult detention facility for that period of confinement subsequent to their eighteenth  
5 birthday. The term "motor vehicle offense" shall not be deemed to include the  
6 offense of stealing or converting a motor vehicle nor operating the same without the  
7 owner's consent nor any offense which constitutes a felony;

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

12 (a) Is beyond the control of the school or beyond the control of parents as defined  
13 in KRS 600.020;

14 (b) Is an habitual truant from school;

15 (c) Is an habitual runaway from his or her parent or other person exercising  
16 custodial control or supervision of the child;

17 (d) Is dependent, neglected, or abused;

18 (e) Has committed an alcohol offense in violation of KRS 244.085; or

19 (f) ~~Has committed a tobacco offense as provided in KRS 438.305 to 438.340; or~~

20 (g) ~~Is mentally ill.~~

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

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

25 (5) Actions brought under subsection (2)(d) of this section shall be considered to be  
26 nonoffender actions.

27 (6) Actions brought under subsection (2)(f) ~~(2)(g)~~ of this section shall be considered to

1 be mental health actions.

2 (7) Nothing in this chapter shall deprive other courts of the jurisdiction to determine the  
3 custody or guardianship of children upon writs of habeas corpus or to determine the  
4 custody or guardianship of children when such custody or guardianship is incidental  
5 to the determination of other causes pending in such other courts; nor shall anything  
6 in this chapter affect the jurisdiction of Circuit Courts over adoptions and  
7 proceedings for termination of parental rights.

8 (8) The court shall have no jurisdiction to make permanent awards of custody of a child  
9 except as provided by KRS 620.027.

10 (9) If the court finds an emergency to exist affecting the welfare of a child, or if the  
11 child is eligible for the relative or fictive kin caregiver assistance as established in  
12 KRS 620.142, it may make temporary orders for the child's custody; however, if the  
13 case involves allegations of dependency, neglect, or abuse, no emergency removal  
14 or temporary custody orders shall be effective unless the provisions of KRS Chapter  
15 620 are followed. Such orders shall be entirely without prejudice to the proceedings  
16 for permanent custody of the child and shall remain in effect until modified or set  
17 aside by the court. Upon the entry of a temporary or final judgment in the Circuit  
18 Court awarding custody of such child, all prior orders of the juvenile session of the  
19 District Court in conflict therewith shall be deemed canceled. This section shall not  
20 work to deprive the Circuit Court of jurisdiction over cases filed in Circuit Court.

21 (10) The court of each county wherein a public offense, as defined in subsection (1) of  
22 this section, is committed by a child who is a resident of another county of this state  
23 shall have concurrent jurisdiction over such child with the court of the county  
24 wherein the child resides or the court of the county where the child is found.  
25 Whichever court first acquires jurisdiction of such child may proceed to final  
26 disposition of the case, or in its discretion may make an order transferring the case  
27 to the court of the county of the child's residence or the county wherein the offense



1 was committed, as the case may be.

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

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

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

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

21 ➔Section 11. KRS 630.020 is amended to read as follows:

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

24 (1) Has been an habitual runaway from his parent or person exercising custodial control  
25 or supervision of the child;

26 (2) Is beyond the control of the school or beyond the control of parents as defined in  
27 KRS 600.020;

- 1 (3) Has been an habitual truant from school; or  
2 (4) ~~Has committed a tobacco offense under KRS 438.305 to 438.340; or~~  
3 (5) ~~Has committed an alcohol offense under KRS 244.085.~~

4 ➔Section 12. KRS 630.120 is amended to read as follows:

- 5 (1) All dispositional hearings conducted under this chapter shall be conducted in  
6 accordance with the provisions of KRS 610.060 and 610.070. In addition, the court  
7 shall, at the time the dispositional order is issued:  
8 (a) Give the child adequate and fair written warning of the consequences of the  
9 violation of the order; and  
10 (b) Provide the child and the child's attorney, and parent, or legal guardian a  
11 written statement setting forth the conditions of the order and the  
12 consequences for violating the order.

13 An order issued pursuant to this section is a valid court order and any child  
14 violating that order may be subject to the provisions of KRS 630.080(4).

- 15 (2) The court shall consider all appropriate local remedies to aid the child and the  
16 child's family subject to the following conditions:  
17 (a) Residential and nonresidential treatment programs for status offenders shall be  
18 community-based and nonsecure; and  
19 (b) With the approval of the education agency, the court may place the child in a  
20 nonsecure public or private education agency accredited by the Department of  
21 Education.

- 22 (3) At the disposition of a child adjudicated on a petition brought pursuant to this  
23 chapter, all information helpful in making a proper disposition, including oral and  
24 written reports, shall be received by the court provided that the child, the child's  
25 parents, their counsel, the prosecuting attorney, the child's counsel, or other  
26 interested parties as determined by the judge shall be afforded an opportunity to  
27 examine and controvert the reports. For good cause, the court may allow the

1 admission of hearsay evidence.

2 (4) The court shall affirmatively determine that all appropriate remedies have been  
3 considered and exhausted to assure that the least restrictive alternative method of  
4 treatment is utilized.

5 (5) The court may order the child and the child's family to participate in any programs  
6 which are necessary to effectuate a change in the child and the family.

7 (6) When all appropriate resources have been reviewed and considered insufficient to  
8 adequately address the needs of the child and the child's family, the court may,  
9 except as provided in subsection (7) of this section, commit the child to the cabinet  
10 for such services as may be necessary. The cabinet shall consider all appropriate  
11 local remedies to aid the child and the child's family subject to the following  
12 conditions:

13 (a) Treatment programs for status offenders shall be, unless excepted by federal  
14 law, community-based and nonsecure;

15 (b) The cabinet may place the child in a nonsecure public or private education  
16 agency accredited by the department of education;

17 (c) The cabinet may initiate proceedings pursuant to KRS 610.160 when the  
18 parents fail to participate in the cabinet's treatment programs; and

19 (d) The cabinet may discharge the child from commitment after providing ten  
20 (10) days' prior written notice to the committing court which may object to  
21 such discharge by holding court review of the commitment under KRS  
22 610.120.

23 (7) No child adjudicated guilty of an alcohol offense under KRS 244.085 ~~or a tobacco~~  
24 ~~offense under KRS 438.305 to 438.340~~ shall be committed as a result of that  
25 adjudication.

26 ➔Section 13. This Act takes effect on January 1, 2021.