

1 AN ACT relating to juvenile competency in status and public offenses.

2 WHEREAS, it is a fundamental guaranty of due process that a defendant cannot be
3 tried or convicted for a crime while he or she is mentally incompetent; and

4 WHEREAS, Kentucky provides for detailed procedures both in court rules and
5 statutes on how to proceed in the case of an adult that is alleged to be incompetent; and

6 WHEREAS, Constitutional due process prohibits a court from subjecting an
7 incompetent juvenile to legal proceedings, but Kentucky law is silent with regard to what
8 actions a court should take to hold a juvenile accountable, if at all, and protect the public
9 from harm; and

10 WHEREAS, juvenile competency was the subject of a bill jointly sponsored by
11 Senators Westerfield and Neal in the 2019 regular session, but failed to be enacted; and

12 WHEREAS, the National Conference of State Legislators lists 20 states that have
13 enacted a juvenile competency statute; and

14 WHEREAS, this issue was most recently addressed by the West Virginia Supreme
15 Court in a decision released in May 2019 and captioned *State v. J.C.*; and

16 WHEREAS, the West Virginia Supreme Court stated, "while the Legislature has
17 designed detailed procedures for adults facing criminal charges who are not competent to
18 stand trial . . . no such statutory procedures exist for juveniles. It is therefore incumbent
19 upon the Legislature to create such a process for juveniles, and we call upon that body to
20 study and clearly define the method by which a juvenile's competency to understand the
21 legal process may be examined, considered and protected"; and

22 WHEREAS, the constitutional rights of Kentucky's children should be honored and
23 a juvenile competency process and standard be established in law;

24 NOW, THEREFORE,

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

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

1 As used in Sections 1 to 6 of this Act, unless the context otherwise requires:

2 (1) "Developmental immaturity" means incomplete development relative to adults, or
3 delayed development relative to a child's age, which impacts a child's capacity to
4 understand the criminality or wrongfulness of his or her actions, to resist the
5 impulse to act, to appreciate the nature and consequences of the proceedings, or
6 to participate rationally in his or her own defense;

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

8 (3) "Incompetency to be adjudicated" means, as a result of mental condition, lack of
9 capacity to appreciate the nature and consequences of the proceedings against
10 one or to participate rationally in one's own defense;

11 (4) "Insanity" means, as a result of mental condition, lack of substantial capacity
12 either to appreciate the criminality of one's conduct or to conform one's conduct
13 to the requirements of law;

14 (5) "Intellectual disability" means significantly subaverage general intellectual
15 functioning existing concurrently with deficits in adaptive behavior and
16 manifested during the developmental period, and may exist concurrently with
17 mental illness or insanity;

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

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

1 (8) "Qualified mental health practitioner" means a person who:

2 (a) Is a qualified mental health professional, as defined in KRS 202A.011;

3 (b) Has training or experience in child clinical psychology or psychiatry; and

4 (c) Has forensic experience; and

5 (9) "Treatment" means:

6 (a) Medication or counseling, therapy, psychotherapy, and other professional
 7 services provided by or at the direction of qualified mental health
 8 practitioners; but

9 (b) Does not include electroshock therapy or psychosurgery.

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

12 (1) A child is not responsible for status offenses or public offenses if, at the time of
 13 the conduct and as a result of developmental immaturity, mental illness, or
 14 intellectual disability, the child lacks substantial capacity either to appreciate the
 15 criminality of his or her conduct or to conform his or her conduct to the
 16 requirements of law.

17 (2) A person shall not be charged, adjudicated, diverted, or made the subject of a
 18 complaint for an offense committed when the person was less than eleven (11)
 19 years of age.

20 (3) A person who has been charged or made the subject of a complaint for an offense
 21 committed when the person was at least eleven (11) years old but less than
 22 fourteen (14) years old shall be rebuttably presumed incompetent to be
 23 adjudicated.

24 (4) A person who has been charged or made the subject of a complaint for an offense
 25 committed when the person was at least fourteen (14) years old shall be
 26 rebuttably presumed competent to be adjudicated.

27 (5) A person may prove developmental immaturity, mental illness, or intellectual

1 disability in exculpation of status offenses or public offenses.

2 6) As used in this section, the terms "mental illness" and "intellectual disability" do
3 not include abnormalities manifested only by repeated criminal or otherwise
4 antisocial conduct.

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

7 (1) A person who intends to introduce evidence of his or her developmental
8 immaturity, mental illness, or insanity at the time of the offense shall file written
9 notice of his or her intention at least twenty (20) days before the adjudication
10 hearing.

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

13 (3) If the court orders an examination, it shall appoint at least one (1) qualified
14 mental health practitioner to examine, treat, and report on the child's mental
15 condition. The examination shall be performed in the least restrictive alternative
16 environment. The examination shall be completed within sixty (60) days of the
17 order if the child is in custody, or within one hundred twenty (120) days if the
18 child is not in custody. If it appears the examination will not be completed before
19 the adjudication date, the court may, on its own motion or on motion of either
20 party, postpone the adjudication date until after the examination.

21 (4) No less than ten (10) days before the adjudication hearing, the prosecution shall
22 file the names and addresses of witnesses it proposes to offer in rebuttal along
23 with reports prepared by its witnesses.

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

26 (1) If the prosecution seeks to set an adjudication hearing for an offense committed
27 when the person was at least eleven (11) years old but less than fourteen (14)

1 years old, the defense shall be granted reasonable time for examination of the
2 child, or the court may order an examination on its own motion.

3 (2) If the court orders an examination, it shall appoint at least one (1) qualified
4 mental health practitioner to examine, treat, and report on the child's mental
5 condition. The examination shall be performed in the least restrictive alternative
6 environment. The examination shall be completed within sixty (60) days of the
7 order if the child is in custody, or within one hundred twenty (120) days if the
8 child is not in custody. The court shall not set a date for adjudication until the
9 examination is complete.

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

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

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

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

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

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

26 (5) A qualified mental health practitioner retained by the child shall be permitted to
27 participate in any examination under this chapter.

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

4 (7) A disclosure made by a child during observation, diagnosis, or treatment shall
5 not be admissible in any status offense actions, public offense actions, or criminal
6 proceedings unless the child introduces evidence concerning his or her mental
7 condition at the proceeding.

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

10 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 610 IS CREATED TO
11 READ AS FOLLOWS:

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

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

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

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

24 (a) Dismiss the case with prejudice; or

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

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

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

6 ➔Section 7. KRS 610.030 is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 ➔Section 8. KRS 605.035 is amended to read as follows:

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

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

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

16 (b) One (1) or more members, one (1) of whom shall be a representative of the
17 community mental health center, of the regional interagency council specified
18 in KRS 200.509(1)(a) to (d) and (g), or corresponding members of the local
19 interagency council if one exists;

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

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

24 (e) A representative from the Department of Public Advocacy;

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

26 (g) A representative of law enforcement; and

27 (h) Other persons interested in juvenile justice issues, as identified by the family

1 accountability, intervention, and response team, who are necessary for a
2 complete representation of resources within each judicial circuit or district.

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

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

6 (a) Referrals from the court-designated worker involving cases in which a child
7 has failed to appear for a preliminary intake inquiry, declined to enter into a
8 diversion agreement, or failed to complete the terms of the agreement, **or if**
9 **the child is less than eleven (11) years of age**; and

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

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

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

18 **(b) For a child less than eleven (11) years of age, refer the case to the cabinet**
19 **for assessment and services**; or

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