

1 AN ACT relating to juvenile responsibility.

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

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

5 ***A person shall not be charged, adjudicated, diverted, or made the subject of a***
6 ***complaint for an offense committed when the person was less than eleven (11) years of***
7 ***age.***

8 ➔Section 2. KRS 600.020 is amended to read as follows:

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

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

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

15 1. Inflicts or allows to be inflicted upon the child physical or emotional
16 injury as defined in this section by other than accidental means;

17 2. Creates or allows to be created a risk of physical or emotional injury as
18 defined in this section to the child by other than accidental means;

19 3. Engages in a pattern of conduct that renders the parent incapable of
20 caring for the immediate and ongoing needs of the child including, but
21 not limited to, parental incapacity due to alcohol and other drug abuse as
22 defined in KRS 222.005;

23 4. Continuously or repeatedly fails or refuses to provide essential parental
24 care and protection for the child, considering the age of the child;

25 5. Commits or allows to be committed an act of sexual abuse, sexual
26 exploitation, or prostitution upon the child;

27 6. Creates or allows to be created a risk that an act of sexual abuse, sexual

1 exploitation, or prostitution will be committed upon the child;

2 7. Abandons or exploits the child;

3 8. Does not provide the child with adequate care, supervision, food,
4 clothing, shelter, and education or medical care necessary for the child's
5 well-being. A parent or other person exercising custodial control or
6 supervision of the child legitimately practicing the person's religious
7 beliefs shall not be considered a negligent parent solely because of
8 failure to provide specified medical treatment for a child for that reason
9 alone. This exception shall not preclude a court from ordering necessary
10 medical services for a child;

11 9. Fails to make sufficient progress toward identified goals as set forth in
12 the court-approved case plan to allow for the safe return of the child to
13 the parent that results in the child remaining committed to the cabinet
14 and remaining in foster care for fifteen (15) of the most recent twenty-
15 two (22) months; or

16 **10. Continuously or repeatedly fails or refuses to exercise reasonable**
17 **diligence in the control of a child ten (10) years of age or younger,**
18 **resulting in conduct by the child which, but for his or her age, would**
19 **constitute a public offense; or**

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

23 (2) "Age or developmentally appropriate" has the same meaning as in 42 U.S.C. sec.
24 675(11);

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

27 (a) The parent has not attempted or has not had contact with the child for a period

- 1 of not less than ninety (90) days;
- 2 (b) The parent is incarcerated and will be unavailable to care for the child for a
3 period of at least one (1) year from the date of the child's entry into foster care
4 and there is no appropriate relative placement available during this period of
5 time;
- 6 (c) The parent has sexually abused the child and has refused available treatment;
- 7 (d) The parent has been found by the cabinet to have engaged in abuse of the
8 child that required removal from the parent's home two (2) or more times in
9 the past two (2) years; or
- 10 (e) The parent has caused the child serious physical injury;
- 11 (4) "Beyond the control of parents" means a child who has repeatedly failed to follow
12 the reasonable directives of his or her parents, legal guardian, or person exercising
13 custodial control or supervision other than a state agency, which behavior results in
14 danger to the child or others, and which behavior does not constitute behavior that
15 would warrant the filing of a petition under KRS Chapter 645;
- 16 (5) "Beyond the control of school" means any child who has been found by the court to
17 have repeatedly violated the lawful regulations for the government of the school as
18 provided in KRS 158.150, and as documented in writing by the school as a part of
19 the school's petition or as an attachment to the school's petition. The petition or
20 attachment shall describe the student's behavior and all intervention strategies
21 attempted by the school;
- 22 (6) "Boarding home" means a privately owned and operated home for the boarding and
23 lodging of individuals which is approved by the Department of Juvenile Justice or
24 the cabinet for the placement of children committed to the department or the
25 cabinet;
- 26 (7) "Cabinet" means the Cabinet for Health and Family Services;
- 27 (8) "Certified juvenile facility staff" means individuals who meet the qualifications of,

- 1 and who have completed a course of education and training in juvenile detention
2 developed and approved by, the Department of Juvenile Justice after consultation
3 with other appropriate state agencies;
- 4 (9) "Child" means any person who has not reached his or her eighteenth birthday,
5 unless otherwise provided;
- 6 (10) "Child-caring facility" means any facility or group home other than a state facility,
7 Department of Juvenile Justice contract facility or group home, or one certified by
8 an appropriate agency as operated primarily for educational or medical purposes,
9 providing residential care on a twenty-four (24) hour basis to children not related by
10 blood, adoption, or marriage to the person maintaining the facility;
- 11 (11) "Child-placing agency" means any agency, other than a state agency, which
12 supervises the placement of children in foster family homes or child-caring facilities
13 or which places children for adoption;
- 14 (12) "Clinical treatment facility" means a facility with more than eight (8) beds
15 designated by the Department of Juvenile Justice or the cabinet for the treatment of
16 mentally ill children. The treatment program of such facilities shall be supervised by
17 a qualified mental health professional;
- 18 (13) "Commitment" means an order of the court which places a child under the custodial
19 control or supervision of the Cabinet for Health and Family Services, Department of
20 Juvenile Justice, or another facility or agency until the child attains the age of
21 eighteen (18) unless otherwise provided by law;
- 22 (14) "Community-based facility" means any nonsecure, homelike facility licensed,
23 operated, or permitted to operate by the Department of Juvenile Justice or the
24 cabinet, which is located within a reasonable proximity of the child's family and
25 home community, which affords the child the opportunity, if a Kentucky resident, to
26 continue family and community contact;
- 27 (15) "Complaint" means a verified statement setting forth allegations in regard to the

- 1 child which contain sufficient facts for the formulation of a subsequent petition;
- 2 (16) "Court" means the juvenile session of District Court unless a statute specifies the
3 adult session of District Court or the Circuit Court;
- 4 (17) "Court-designated worker" means that organization or individual delegated by the
5 Administrative Office of the Courts for the purposes of placing children in
6 alternative placements prior to arraignment, conducting preliminary investigations,
7 and formulating, entering into, and supervising diversion agreements and
8 performing such other functions as authorized by law or court order;
- 9 (18) "Deadly weapon" has the same meaning as it does in KRS 500.080;
- 10 (19) "Department" means the Department for Community Based Services;
- 11 (20) "Dependent child" means any child:
- 12 (a) ~~[-]~~ Other than an abused or neglected child, who is under improper care,
13 custody, control, or guardianship that is not due to an intentional act of the
14 parent, guardian, or person exercising custodial control or supervision of the
15 child; or
- 16 (b) *Ten (10) years of age or younger who has exhibited conduct which, but for*
17 *the child's age, would be a public offense and is in need of reasonable*
18 *control or supervision;*
- 19 (21) "Detention" means the safe and temporary custody of a juvenile who is accused of
20 conduct subject to the jurisdiction of the court who requires a restricted or closely
21 supervised environment for his or her own or the community's protection;
- 22 (22) "Detention hearing" means a hearing held by a judge or trial commissioner within
23 twenty-four (24) hours, exclusive of weekends and holidays, of the start of any
24 period of detention prior to adjudication;
- 25 (23) "Diversion agreement" means a mechanism designed to hold a child accountable for
26 his or her behavior and, if appropriate, securing services to serve the best interest of
27 the child and to provide redress for that behavior without court action and without

- 1 the creation of a formal court record;
- 2 (24) "Eligible youth" means a person who:
- 3 (a) Is or has been committed to the cabinet as dependent, neglected, or abused;
- 4 (b) Is eighteen (18) years of age to nineteen (19) years of age; and
- 5 (c) Is requesting to extend or reinstate his or her commitment to the cabinet in
- 6 order to participate in state or federal educational programs or to establish
- 7 independent living arrangements;
- 8 (25) "Emergency shelter" is a group home, private residence, foster home, or similar
- 9 homelike facility which provides temporary or emergency care of children and
- 10 adequate staff and services consistent with the needs of each child;
- 11 (26) "Emotional injury" means an injury to the mental or psychological capacity or
- 12 emotional stability of a child as evidenced by a substantial and observable
- 13 impairment in the child's ability to function within a normal range of performance
- 14 and behavior with due regard to his or her age, development, culture, and
- 15 environment as testified to by a qualified mental health professional;
- 16 (27) "Evidence-based practices" means policies, procedures, programs, and practices
- 17 proven by scientific research to reliably produce reductions in recidivism;
- 18 (28) "Firearm" shall have the same meaning as in KRS 237.060 and 527.010;
- 19 (29) "Foster family home" means a private home in which children are placed for foster
- 20 family care under supervision of the cabinet or a licensed child-placing agency;
- 21 (30) "Graduated sanction" means any of a continuum of accountability measures,
- 22 programs, and sanctions, ranging from less restrictive to more restrictive in nature,
- 23 that may include but are not limited to:
- 24 (a) Electronic monitoring;
- 25 (b) Drug and alcohol screening, testing, or monitoring;
- 26 (c) Day or evening reporting centers;
- 27 (d) Reporting requirements;

- 1 (e) Community service; and
- 2 (f) Rehabilitative interventions such as family counseling, substance abuse
3 treatment, restorative justice programs, and behavioral or mental health
4 treatment;
- 5 (31) "Habitual runaway" means any child who has been found by the court to have been
6 absent from his or her place of lawful residence without the permission of his or her
7 custodian for at least three (3) days during a one (1) year period;
- 8 (32) "Habitual truant" means any child who has been found by the court to have been
9 reported as a truant as defined in KRS 159.150(1) two (2) or more times during a
10 one (1) year period;
- 11 (33) "Hospital" means, except for purposes of KRS Chapter 645, a licensed private or
12 public facility, health care facility, or part thereof, which is approved by the cabinet
13 to treat children;
- 14 (34) "Independent living" means those activities necessary to assist a committed child to
15 establish independent living arrangements;
- 16 (35) "Informal adjustment" means an agreement reached among the parties, with
17 consultation, but not the consent, of the victim of the crime or other persons
18 specified in KRS 610.070 if the victim chooses not to or is unable to participate,
19 after a petition has been filed, which is approved by the court, that the best interest
20 of the child would be served without formal adjudication and disposition;
- 21 (36) "Intentionally" means, with respect to a result or to conduct described by a statute
22 which defines an offense, that the actor's conscious objective is to cause that result
23 or to engage in that conduct;
- 24 (37) "Least restrictive alternative" means, except for purposes of KRS Chapter 645, that
25 the program developed on the child's behalf is no more harsh, hazardous, or
26 intrusive than necessary; or involves no restrictions on physical movements nor
27 requirements for residential care except as reasonably necessary for the protection

- 1 of the child from physical injury; or protection of the community, and is conducted
2 at the suitable available facility closest to the child's place of residence to allow for
3 appropriate family engagement;
- 4 (38) "Motor vehicle offense" means any violation of the nonfelony provisions of KRS
5 Chapters 186, 189, or 189A, KRS 177.300, 304.39-110, or 304.39-117;
- 6 (39) "Near fatality" means an injury that, as certified by a physician, places a child in
7 serious or critical condition;
- 8 (40) "Needs of the child" means necessary food, clothing, health, shelter, and education;
- 9 (41) "Nonoffender" means a child alleged to be dependent, neglected, or abused and who
10 has not been otherwise charged with a status or public offense;
- 11 (42) "Nonsecure facility" means a facility which provides its residents access to the
12 surrounding community and which does not rely primarily on the use of physically
13 restricting construction and hardware to restrict freedom;
- 14 (43) "Nonsecure setting" means a nonsecure facility or a residential home, including a
15 child's own home, where a child may be temporarily placed pending further court
16 action. Children before the court in a county that is served by a state operated secure
17 detention facility, who are in the detention custody of the Department of Juvenile
18 Justice, and who are placed in a nonsecure alternative by the Department of
19 Juvenile Justice, shall be supervised by the Department of Juvenile Justice;
- 20 (44) "Out-of-home placement" means a placement other than in the home of a parent,
21 relative, or guardian, in a boarding home, clinical treatment facility, community-
22 based facility, detention facility, emergency shelter, foster family home, hospital,
23 nonsecure facility, physically secure facility, residential treatment facility, or youth
24 alternative center;
- 25 (45) "Parent" means the biological or adoptive mother or father of a child;
- 26 (46) "Person exercising custodial control or supervision" means a person or agency that
27 has assumed the role and responsibility of a parent or guardian for the child, but that

- 1 does not necessarily have legal custody of the child;
- 2 (47) "Petition" means a verified statement, setting forth allegations in regard to the child,
3 which initiates formal court involvement in the child's case;
- 4 (48) "Physical injury" means substantial physical pain or any impairment of physical
5 condition;
- 6 (49) "Physically secure facility" means a facility that relies primarily on the use of
7 construction and hardware such as locks, bars, and fences to restrict freedom;
- 8 (50) "Public offense action" means an action, excluding contempt, brought in the interest
9 of a child eleven (11) years of age or older who is accused of committing an
10 offense under KRS Chapter 527 or a public offense which, if committed by an
11 adult, would be a crime, whether the same is a felony, misdemeanor, or violation,
12 other than an action alleging that a child sixteen (16) years of age or older has
13 committed a motor vehicle offense;
- 14 (51) "Qualified mental health professional" means:
- 15 (a) A physician licensed under the laws of Kentucky to practice medicine or
16 osteopathy, or a medical officer of the government of the United States while
17 engaged in the performance of official duties;
- 18 (b) A psychiatrist licensed under the laws of Kentucky to practice medicine or
19 osteopathy, or a medical officer of the government of the United States while
20 engaged in the practice of official duties, and who is certified or eligible to
21 apply for certification by the American Board of Psychiatry and Neurology,
22 Inc.;
- 23 (c) A psychologist with the health service provider designation, a psychological
24 practitioner, a certified psychologist, or a psychological associate licensed
25 under the provisions of KRS Chapter 319;
- 26 (d) A licensed registered nurse with a master's degree in psychiatric nursing from
27 an accredited institution and two (2) years of clinical experience with mentally

1 ill persons, or a licensed registered nurse with a bachelor's degree in nursing
2 from an accredited institution who is certified as a psychiatric and mental
3 health nurse by the American Nurses Association and who has three (3) years
4 of inpatient or outpatient clinical experience in psychiatric nursing and who is
5 currently employed by a hospital or forensic psychiatric facility licensed by
6 the Commonwealth or a psychiatric unit of a general hospital or a regional
7 comprehensive care center;

8 (e) A licensed clinical social worker licensed under the provisions of KRS
9 335.100, or a certified social worker licensed under the provisions of KRS
10 335.080 with three (3) years of inpatient or outpatient clinical experience in
11 psychiatric social work and currently employed by a hospital or forensic
12 psychiatric facility licensed by the Commonwealth or a psychiatric unit of a
13 general hospital or a regional comprehensive care center;

14 (f) A marriage and family therapist licensed under the provisions of KRS 335.300
15 to 335.399 with three (3) years of inpatient or outpatient clinical experience in
16 psychiatric mental health practice and currently employed by a hospital or
17 forensic psychiatric facility licensed by the Commonwealth, a psychiatric unit
18 of a general hospital, or a regional comprehensive care center; or

19 (g) A professional counselor credentialed under the provisions of KRS 335.500 to
20 335.599 with three (3) years of inpatient or outpatient clinical experience in
21 psychiatric mental health practice and currently employed by a hospital or
22 forensic facility licensed by the Commonwealth, a psychiatric unit of a general
23 hospital, or a regional comprehensive care center;

24 (52) "Reasonable and prudent parent standard" has the same meaning as in 42 U.S.C.
25 sec. 675(10);

26 (53) "Residential treatment facility" means a facility or group home with more than eight
27 (8) beds designated by the Department of Juvenile Justice or the cabinet for the

1 treatment of children;

2 (54) "Retain in custody" means, after a child has been taken into custody, the continued
3 holding of the child by a peace officer for a period of time not to exceed twelve (12)
4 hours when authorized by the court or the court-designated worker for the purpose
5 of making preliminary inquiries;

6 (55) "Risk and needs assessment" means an actuarial tool scientifically proven to
7 identify specific factors and needs that are related to delinquent and noncriminal
8 misconduct;

9 (56) "School personnel" means those certified persons under the supervision of the local
10 public or private education agency;

11 (57) "Secretary" means the secretary of the Cabinet for Health and Family Services;

12 (58) "Secure juvenile detention facility" means any physically secure facility used for the
13 secure detention of children other than any facility in which adult prisoners are
14 confined;

15 (59) "Serious physical injury" means physical injury which creates a substantial risk of
16 death or which causes serious and prolonged disfigurement, prolonged impairment
17 of health, or prolonged loss or impairment of the function of any bodily member or
18 organ;

19 (60) "Sexual abuse" includes but is not necessarily limited to any contacts or interactions
20 in which the parent, guardian, person in a position of authority or special trust, as
21 defined in KRS 532.045, or other person having custodial control or supervision of
22 the child or responsibility for his or her welfare, uses or allows, permits, or
23 encourages the use of the child for the purposes of the sexual stimulation of the
24 perpetrator or another person;

25 (61) "Sexual exploitation" includes but is not limited to a situation in which a parent,
26 guardian, person in a position of authority or special trust, as defined in KRS
27 532.045, or other person having custodial control or supervision of a child or

1 responsible for his or her welfare, allows, permits, or encourages the child to engage
2 in an act which constitutes prostitution under Kentucky law; or a parent, guardian,
3 person in a position of authority or special trust, as defined in KRS 532.045, or
4 other person having custodial control or supervision of a child or responsible for his
5 or her welfare, allows, permits, or encourages the child to engage in an act of
6 obscene or pornographic photographing, filming, or depicting of a child as provided
7 for under Kentucky law;

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

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

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

- 19 1. Beyond the control of school or beyond the control of parents;
- 20 2. Habitual Runaway;
- 21 3. Habitual truant;
- 22 4. Tobacco offenses as provided in KRS 438.305 to 438.340; and
- 23 5. Alcohol offenses as provided in KRS 244.085.

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

26 (65) "Take into custody" means the procedure by which a peace officer or other
27 authorized person initially assumes custody of a child. A child may be taken into

- 1 custody for a period of time not to exceed two (2) hours;
- 2 (66) "Transitional living support" means all benefits to which an eligible youth is
3 entitled upon being granted extended or reinstated commitment to the cabinet by the
4 court;
- 5 (67) "Transition plan" means a plan that is personalized at the direction of the youth that:
6 (a) Includes specific options on housing, health insurance, education, local
7 opportunities for mentors and continuing support services, and workforce
8 supports and employment services; and
9 (b) Is as detailed as the youth may elect;
- 10 (68) "Valid court order" means a court order issued by a judge to a child alleged or found
11 to be a status offender:
12 (a) Who was brought before the court and made subject to the order;
13 (b) Whose future conduct was regulated by the order;
14 (c) Who was given written and verbal warning of the consequences of the
15 violation of the order at the time the order was issued and whose attorney or
16 parent or legal guardian was also provided with a written notice of the
17 consequences of violation of the order, which notification is reflected in the
18 record of the court proceedings; and
19 (d) Who received, before the issuance of the order, the full due process rights
20 guaranteed by the Constitution of the United States;
- 21 (69) "Violation" means any offense, other than a traffic infraction, for which a sentence
22 of a fine only can be imposed;
- 23 (70) "Youth alternative center" means a nonsecure facility, approved by the Department
24 of Juvenile Justice, for the detention of juveniles, both prior to adjudication and
25 after adjudication, which meets the criteria specified in KRS 15A.320; and
- 26 (71) "Youthful offender" means any person regardless of age, transferred to Circuit
27 Court under the provisions of KRS Chapter 635 or 640 and who is subsequently

1 convicted in Circuit Court.