Report of the Task Force on Services and Supports for Individuals With Acquired Brain Injuries (Senate Concurrent Resolution 17)

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LEGISLATIVE RESEARCH COMMISSION
State Capitol **700 Capital Avenue** **Frankfort KY 40601**

502/564-8100

Capitol FAX 502-223-5094
Annex FAX 502-564-6543
www.lrc.state.ky.us/home.htm

Robert Sherman
Director

TO: Senator David Williams
Representative Jody Richards
Members of the Legislative Research Commission

FROM: Senator Julie Denton, Co-Chair
Representative Mary Lou Marzian, Co-Chair

SUBJECT: **Final Report of the Task Force on Services and Supports for Individuals with Acquired Brain Injuries**

DATE: January 6, 2004

Senate Concurrent Resolution 17 of the 2003 General Assembly established the Task Force on Services and Supports for Individuals with Acquired Brain Injuries and directed the task force to make recommendations concerning services for brain-injured individuals. This report contains the recommendations and proposed legislation for the 2004 General Assembly and is presented for your review. The work of the task force was completed December 10, 2003.

We wish to acknowledge the commitment and efforts of the task force members and of those who volunteered their time and expertise to the workgroups. Please contact either of us if additional issues or questions arise.

Staff of the Legislative Research Commission prepared the report, and their assistance to the task force is gratefully acknowledged.

2003 Task Force on Services and Supports for Individuals With Acquired Brain Injuries

2003 SCR 17

Legislative Members

Senator Julie Denton, Co-Chair

Representative Mary Lou Marzian, Co-Chair

Citizen Members

Bruce Crump
Department of Vocational Rehabilitation

Heidi Flemming
Franklin, KY

Scott Furkin, Executive Director
Brain Injury Association of Kentucky

David Hanna, Ph.D.
Department for Medicaid Services
Cabinet for Health Services

Mary Hass, Chair
Traumatic Brain Injury Trust Fund Board

William Kraft, Ph.D.
Frazier Rehabilitation Center

Kevin Lightle, Ed.D., Director
Division of Mental Retardation and Developmental Disabilities
Department for Mental Health and Mental Retardation Services

Carol Lunney
Danville, KY

Judy Mallory
Department of Education

Sharon Marsh
Eckman-Freeman and Associates

Sandra Mlinarcik, Ph.D.
Seven Counties Services

Margaret Pennington, Commissioner
Department for Mental Health and Mental Retardation Services

Richard T. Purvis, Psy.D.
Division of Mental Health
Department of Corrections

Colleen Ryall, Ed.D., Director,
Brain Injuries Services Unit
Division of Mental Health
Department for Mental Health and Mental Retardation Services

Bruce Scott, Director
Division of Mental Health
Department for Mental Health and Mental Retardation Services

Joanna Thomas
Kentucky Hospital Association

Michael Townsend, Director
Division of Substance Abuse
Department for Mental Health and Mental Retardation Services

Cindy Whitehouse
Eckman-Freeman and Associates

James Woodrum, Executive Director
Kentucky Jailers' Association

Legislative Research Commission Task Force Staff
Murray Wood, Eric Clark, and Gina Rigsby

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EXECUTIVE SUMMARY

The 2003 Task Force on Services and Supports for Individuals with Acquired Brain Injuries is a continuation of the 2001 legislative task force (01 HCR 67). The task force was reauthorized by the 2003 General Assembly (Concurrent Resolution 17) to continue the work of the original task force and to develop specific recommendations for needed services and supports.

Because the 2003 task force was a continuation, little time was spent on background information about acquired brain injury (ABI) such as incidence, definitions, and current available service systems. This type of information is contained in the final report of the 2001 task force (Legislative Research Commission Research Memorandum No. 496).

Highlights from the report of the 2001 task force include:

- A traumatic brain injury is commonly understood to be an injury to the brain resulting from a blow to the head. The term acquired brain injury refers to any injury that may result from a variety of factors including a lack of oxygen, exposure to toxic substances, allergic reactions, infection, or similar events. Kentucky has chosen to serve persons with acquired brain injuries, rather than restricting services to the narrower category of traumatic brain injuries (TBI).
- The major causes of acquired brain injuries are motor vehicle accidents, falls, and violent crime.
- Improvements in medical care and technology have increased the rates of survival for individuals with a severe brain injury.
- Brain injury occurs more frequently than Alzheimer's Disease, and more people suffer from brain injury than multiple sclerosis, HIV, and breast cancer combined.
- Individuals with brain injuries have cognitive, physical, and emotional deficits that may last for the rest of their lives. Even a "mild" brain injury can have devastating long-term consequences for the individual and his or her family.
- Two publicly funded programs, the Medicaid ABI Waiver Program and the Traumatic Brain Injury Trust Fund, are designed specifically for individuals with ABI. These programs are limited in capacity, scope, and duration and do not provide long-term support.
- Training on brain injury is needed for providers within non-brain injury programs to assure the delivery of effective and appropriate care.
- Families and individuals with brain injury would benefit from ongoing outreach and education efforts.

Senate Concurrent Resolution 17 established a 21-member Task Force on Services and Supports for Individuals with Acquired Brain Injuries (Appendix A). The task force was required to develop recommendations regarding:

- Mechanisms to make an accurate assessment of the number of adults and children with ABI who receive publicly funded services;
- Changes to existing administrative regulations governing publicly funded programs that would increase access to existing services and supports for individuals with ABI;
- The elimination of barriers to access to and the provision of services, including but not limited to, a centralized information and referral source and increasing the number of professionals skilled in the area of brain injury;
- Strategies to develop intensive inpatient services that provide crisis stabilization, specialized evaluation, and treatment for adults with ABI;
- Strategies to increase the effectiveness of services to individuals with ABI receiving public services outside the existing brain injury programs;
- Strategies for the decriminalization of individuals with ABI; and
- Strategies to increase the employment of and vocational training and educational services to individuals with ABI.

TASK FORCE ACTIVITY

The ABI task force met five times between August and December 2003, to address the directives of 2003 Senate Concurrent Resolution 17. The task force established three workgroups to address the directives of the resolution:

- Workgroup on Decriminalization and Specialized Services;
- Workgroup on Access to Existing Services; and
- Workgroup on Long-Term Supports.

The task force received testimony regarding a prevalence study conducted by the Center on Alcohol and Drug Research and funded by the Traumatic Brain Injury Trust Fund in 2003. Over 3200 randomly selected households were surveyed. It is estimated that 19.4 percent of all Kentucky households have at least one member who has sustained a brain injury. Additionally, the Kentucky Injury Prevention and Research Center of the University of Kentucky has collected data suggesting that more than 5,000 Kentuckians are newly injured each year.

The Kentucky Injury Prevention and Research Center of the University of Kentucky estimated the costs associated with brain injuries. Precise estimates cannot be determined because the loss of productivity and life are difficult to establish, and rehabilitation services and costs differ greatly from individual to individual. It was estimated that brain injuries cost $803 million annually in Kentucky:

- $434 million in work loss, disability, and vocational rehabilitation;
- $273 million in income loss from premature death; and
- $96 million in medical and related care.

Preliminary data from the Department for Medicaid Services, obtained from diagnostic codes most often associated with brain injuries, indicate that for fiscal year 2003, $65 million was spent in Medicaid for individuals with brain injuries. Approximately $42 million of that money is in the Supports for Community Living

Program. The Department for Medicaid Services will continue to analyze expenditures for persons with brain injuries.

The two publicly funded programs serving individuals with brain injury, the Acquired Brain Injury Medicaid Waiver Program and the Traumatic Brain Injury Trust Fund Program, both implemented waiting lists in FY 2002. Both programs are limited in benefit amounts or by eligibility criteria, and neither provides long-term support. While the effects of the injuries often last a lifetime, the only long-term services or supports available are programs that provide assistance to other disabled persons, such as Medicaid, Medicare, Social Security Disability, and other non-brain injury Medicaid waiver programs. Task force members and others expressed concern that these programs do not appropriately or effectively serve brain-injured individuals.

The task force endorsed recommendations from each workgroup and four drafts of legislation for consideration by the 2004 General Assembly.

RECOMMENDATIONS

The task force adopted the following recommendations from each workgroup:

Access to Existing Services

- Use a "wrap-around" model of service delivery for individuals with co-occurring disorders, including brain injury, that allows for the use of multiple funding streams and flexible funding for service to maintain an individual in the community;
- Ensure assessment for brain injury in all publicly funded programs by developing and distributing instruments for screening and assessing level of need or acuity;
- Provide cross-system case management to improve access resources and to prevent duplication of case management efforts;
- Provide incentives to support advanced training, education, or experience in providing case management services; and
- Develop a panel of clinicians and consultants to assist providers in non-brain injury systems in their efforts to appropriately and effectively serve persons with brain injury.

Decriminalization and Specialized Services

- Encourage the establishment of an in-patient neurobehavioral unit within an existing medical facility;
- Endorse existing efforts to identify and divert persons with disabilities who come into contact with the criminal justice system currently in process with the House Bill 843 Commission on Mental Health and ensure those efforts to specifically include the population of brain-injured individuals;

- Endorse the use of grant funds by the Division of Protection and Advocacy within the Public Protection and Regulation Cabinet to provide advocacy to persons with brain injuries who have been arrested;
- Endorse current training efforts for jailers, crisis teams, and judges to include information related to brain injury; and
- Present these recommendations to the "843 Commission" (mental health and substance abuse disorders), the Kentucky Association of Regional Programs, and the "144 Commission" (mental retardation and developmental disorders) for the purpose of requesting the support of those bodies in addressing the decriminalization of persons with brain injuries.

Long-Term Supports

- Establish a long-term supports model program of non-Medicaid services, including lifelong case management;
- Secure funding in the approximate amount of $1 million for the long-term supports program from a General Fund appropriation, a portion of increased taxes on cigarettes, and other fees that may be available;
- Increase the number of persons served through the ABI Medicaid Waiver from 110 to 250; and
- Continue work of this task force by establishment of an advisory committee to the TBI Trust Fund Board, which would be composed of state agency representatives and consumers.

PROPOSED LEGISLATION

The task force recognized the need for funds to expand services and to make existing services more effective for individuals with brain injuries. Benefits from the Traumatic Brain Injury Trust Fund to eligible persons are limited to $15,000 annually with a lifetime maximum of $60,000. Persons with brain injury may also be eligible for publicly funded programs designed to serve persons with other disabilities. However, to be eligible, the individual must have a co-occurring disorder that is a second disability in addition to the brain injury. Non-brain injury program staff are often unfamiliar with the nature of ABI, leading to a failure to accurately assess the person's needs and which ultimately may lead to the development of services that may be inappropriate and ineffective. Only one program, the Supports for Community Living Medicaid Waiver Program, provides long-term supports, and access to this program is limited to those persons who sustained a brain injury prior to age 21. The task force was interested in finding ways to fund services, including long-term supports, specifically for persons with ABI.

The task force voted to support the following four bills in the 2004 General Assembly.

1. 04 RS BR 394 – AN ACT relating to services for individuals with brain injuries.

This bill: (1) increases the DUI service fee associated with education and treatment classes from $250 to $325; (2) specifies that 16 percent of the service fee shall be dedicated to the Traumatic Brain Injury Trust Fund and the Division of Mental Health and Mental Retardation Services within the Cabinet for Health Services for the purpose of providing services to brain-injured individuals and training and consultation to professionals working with individuals with brain injuries; (3) specifies that the funds obtained from the DUI service fees do not apply to the limits established within the traumatic brain injury trust fund; and (4) increases the annual limit to the traumatic brain injury trust fund from $2.75 million to $3.25 million.

2. 04 RS BR 396 – AN ACT relating to all-terrain vehicles.

This bill: (1) requires a person operating an all-terrain vehicle to wear protective headgear; (2) requires that no person under 16 years of age shall operate an all-terrain vehicle; and (3) requires the penalty to be community service for a first offense and a $100 fine for each subsequent offense.

3. 04 RS BR 438 – AN ACT relating to fines for traffic offenses.

This bill: (1) increases the child restraint fine from $25 to $75; (2) increases the seat belt fine from not exceeding $25 to not exceeding $50; (3) specifies that $25 of each of these fines shall be placed in the Traumatic Brain Injury Trust Fund; and (4) specifies that these funds do not apply to the limits within the Traumatic Brain Injury Trust Fund.

4. 04 RS BR 808 – AN ACT relating to the Traumatic Brain Injury Trust Fund.

This bill increases the limit of court fees to the Traumatic Brain Injury Trust Fund from $2.75 million to $3.25 million.

INTRODUCTION

The 2003 Task Force on Services and Supports for Individuals with Acquired Brain Injuries met five times between August and December 2003 to address the directives of 2003 Senate Concurrent Resolution 17. The task force established three workgroups to address the directives of the resolution: Decriminalization and Specialized Services, Access to Existing Services, and Long-Term Supports.

The 2003 Task Force on Acquired Brain Injuries is a continuation of a similar task force established by 2001 House Concurrent Resolution 67. The 2001 task force was limited by time constraints, and the 2003 task force was reauthorized to complete the work of the prior task force. Brief background information about brain injuries, as reported in the final report of the 2001 task force, LRC Research Memorandum 496, is presented below.

Background From the 2001 Task Force

Definitions

Brain injury is defined as structural brain damage that occurs after birth and is not inherited, congenital, or degenerative. A traumatic brain injury is commonly understood to be an injury to the brain resulting from a blow to the head. The term acquired brain injury refers to any injury that may result from a variety of factors, including a lack of oxygen, exposure to toxic substances, allergic reactions, infection, or similar events. Kentucky has chosen to serve persons with acquired brain injuries, rather than restricting services to the narrower category of traumatic brain injuries.

Impact of Brain Injury

Individuals with brain injury have cognitive, physical, and emotional difficulties that include difficulty driving, working, maintaining relationships, remembering recent events, managing a household, recognizing safety hazards, controlling their behavior, and living and performing daily activities without support. The specific impact of a brain injury on an individual depends on the area of the brain affected. Unlike many other physical conditions, there is often no improvement in the physical condition of the brain, and individuals who sustain brain injuries often have these difficulties for the rest of their lives. Both the 2001 and 2003 task forces noted the importance of injury prevention as the only "cure" for brain injuries and the resulting lifelong impact on the individual and their family members.

Existing Services

Two publicly funded programs are designed specifically to assist individuals with brain injury: the Acquired Brain Injury Waiver Program, administered by the Brain Injury Services Unit of the Department for Mental Health and Mental Retardation Services; and the TBI Trust Fund, governed by an executive board and funded by a

percentage of statewide court fees assessed in criminal cases. Updates on these programs are included in the next section of this report.

INCIDENCE

The TBI Trust Fund Board commissioned the Survey Research Center at the University of Kentucky, in cooperation with the Center on Drug and Alcohol Research, to conduct a household telephone survey to better estimate the number of Kentuckians with brain injury. This study was conducted from November 2002 to May 2003 and is the first statewide prevalence study related to head injury in the country. The survey results suggested that 19.4 percent, or 309,000 Kentucky households, have at least one member with any type of head injury. The study estimated that between 202,000 and 214,000 Kentuckians have head injuries with potentially clinically significant problems that could require continued health, mental health, and rehabilitation services (Walker). More than one-half of traumatic brain injuries in Kentucky are caused by motor vehicle crashes and falls (Christian).

Other data collection efforts include the Behavioral Risk Factor Surveillance Survey conducted by the Department for Public Health in cooperation with the federal Centers for Disease Control and Prevention (CDC) and the TBI Trust Fund Surveillance Project, conducted by the Kentucky Injury Prevention and Research Center at the University of Kentucky. The Behavioral Risk Factor Survey will include questions specific to the need for services by affected persons in the 2004 version. The Research Center reports that more than 5,000 persons annually sustain brain injuries in Kentucky (Christian). The incidence rate in Kentucky of 96 per 100,000 residents and its annual fatality rate of 24.5 per 100,000 residents are higher than the national averages.

The "Traumatic Brain Injury and Spinal Cord Injury Surveillance Report: Fiscal Year 2003 Final Report" (Christian) included information received from hospital discharge data, trauma centers data, and death certificates for 2000, and is the most recently available data. The report noted significant improvement in data collection for the year 2000 and stated that because of better data collection, brain injuries are more common than suggested by previous surveillance reports. The reported incident rate of traumatic brain injury increased from 62.5 to 96 per 100,000 residents from 1998 to 2000, and the reported incidence rate for non-traumatic or acquired brain injury increased from 40 to 78.6 per 100,000 residents during the same time period. Incident rates are population-based ratios that can be used to evaluate trends.

Other findings from year 2000 data and the surveillance project include:

- 3,882 cases of traumatic brain injuries and 3,177 cases of acquired brain injuries in that year;
- The most populous counties (Jefferson, Fayette, Daviess, Hardin, and McCracken) had the highest total numbers of brain injury due to trauma;

- The highest incidence rate for brain injury due to trauma was Green County, with 28 cases, making that an incidence rate of 243.1 per 100,000 residents;
- A block of Eastern Kentucky counties (Breathitt, Lee, Leslie, Magoffin, Morgan, Perry, and Wolfe) have high incidence rates of TBI at more than 150 per 100,000 residents;
- Motor vehicle traffic crashes and falls were the cause of 58 percent of all brain injuries due to trauma; and
- Injuries, including poisoning, accounted for 40 percent; and oxygen deprivation accounted for almost 24 percent of non-traumatic or acquired brain injuries.

The task force noted that additional data and information is needed regarding (1) the number of individuals with brain injury who are receiving publicly funded services other than the two specific programs; (2) effective service delivery models; (3) consumer satisfaction information; and (4) outcome studies.

ESTIMATED COSTS OF BRAIN INJURIES

Task force materials included a 1998 report from the National Institutes of Health on rehabilitation of persons with TBI. This report estimated:

- The number of persons living with TBI in the U.S. to be between 2.5 million and 6.5 million;
- The annual cost of acute care and rehabilitation in the U.S. for new cases of TBI to be between $9 and $10 billion per year;
- The average lifetime cost of care for one person with severe TBI to be from $600,000 to $1,875,000.

The report also indicated that these estimates "may grossly underestimate the economic burden of TBI to family and society because they do not include lost earnings, costs to social services systems, and the value of the time and foregone earnings of family members who care for persons with TBI" (NIH).

Attempts were made to estimate the cost of traumatic brain injury in Kentucky. Precise estimates are difficult and understated because national and state data from the CDC focus on traumatic brain injury only, and Kentucky also serves persons with acquired brain injury. There is no marker or screen for brain injuries in other social, justice, or corrections systems, and medical diagnosis codes may underreport brain injury. A 2003 report to the U.S. Congress from the CDC found that "mild" brain injury is often misdiagnosed, underreported, and presents a significant public health issue (National Center). The Kentucky Injury Prevention and Research Center estimated that the total costs of traumatic brain injury in Kentucky are $800 million per year: $270 million in income loss from premature death; $430 million in work losses, disability, and vocational rehabilitation; and $100 million in medical and related care (Costich).

A 1999 survey of brain-injured individuals and their families indicated that 37 percent had commercial health insurance; 39 percent were Medicaid participants; 32 percent were Medicare participants; and 5 percent were self-pay, no insurance, or other. Medicaid expenditures for brain injury services are greater for individuals in community-based programs than for those in acute care settings (Costich).

Preliminary data from the Department for Medicaid Services estimates that in fiscal year 2003 approximately $65 million was spent on services associated with diagnostic codes most commonly used to identify brain injuries. The Department for Medicaid Services will continue to analyze expenditures for persons with brain injuries.

SERVICES

The types of publicly funded services that may be accessed by individuals with brain injuries include case management, rehabilitation, occupational therapy, speech therapy, and other psychological and social therapies, residential services, structured day programs, supported employment, and respite services. Services offered within existing programs are described below.

The Brain Injury Services Unit within the Department for Mental Health and Mental Retardation Services conducted a survey in 1999 to determine service needs of persons with brain injury. The services most frequently cited as being needed included case management, psychological and mental health services, cognitive rehabilitation, residential options, and employment services. Other publicly funded programs designed to serve persons with disabilities may be available to individuals with brain injuries, but the barriers to these programs include lengthy waiting lists, restrictive eligibility criteria, and lack of expertise in brain injury on the part providers in other service delivery systems. Family members are most likely to be caring for brain-injured individuals and they indicated the need for respite care and financial and legal counseling.

Acquired Brain Injury Medicaid Waiver Program

The Acquired Brain Injury Medicaid Waiver Program is a rehabilitation and community re-entry program offered as an alternative to nursing facility care. To access defined services by approved providers under this program, an individual must be financially eligible for Medicaid and must meet nursing facility level of care criteria. The administrative regulations governing this program, 907 KAR 3:090 and 3:100, state that recipients "shall not remain in the program for an indefinite period of time" and that eligibility for nursing facility level of care will be evaluated every six months. A recipient who improves to a point that he or she does not meet nursing facility level of care is no longer eligible for services from this program.

The waiver program is limited to serving 110 unduplicated participants each calendar year. A person who receives services for only part of a year counts as one of the 110 persons, and that position in the program is considered used for that year. A waiting

list for services was implemented in September 2003 and as of November 30, 2003, 60 persons were on the waiting list.

Task force members suggested changes to the Acquired Brain Injury Waiver Program, including allowing a vacant position within the program to be reused when a person exits the program during the calendar year and counting the slots on a monthly rather than yearly basis. Neither of these suggestions are permitted by the federal agency that oversees state Medicaid programs. This task force, like the one in 2001, recommends that the number of slots be increased.

Task force members also discussed the need for services that do not involve the constraints of the Medicaid program. It was noted that an estimated two-thirds of individuals with brain injuries have mild to moderate disabilities, and that these individuals will not meet nursing facility level of care criteria. However, these individuals often have needs for long-term supports, given the devastating nature of even a "mild" brain injury.

Traumatic Brain Injury (TBI) Trust Fund

The Traumatic Brain Injury Trust Fund was created in 1998 by HB 299,[1] and the provisions governing the trust fund and its nine-member board are codified as KRS 211.470 to 211.478 (Appendix B). The definition of "traumatic brain injury" in the statutes includes that of acquired brain injuries. Access to the trust fund is governed by Kentucky Administrative Regulation 908 KAR 4:030. Individuals are eligible for up to $15,000 per year with a lifetime maximum of $60,000. Unlike the Medicaid Waiver Program, applicants for benefits from the trust fund are not subject to age, income, or level of care requirements.

The TBI Trust Fund obtains revenue from a percentage of the court fees collected statewide, as mandated and limited to $2.75 million per year by KRS 42.320. The trust fund receives approximately $198,000 per month, or approximately $2.3 million per year. The program administrator reported that as of August 2003, more than 1,200 individuals in 103 counties have been served by the TBI Trust Fund. Since August 2001, $3.25 million has been allocated for direct services. A waiting list was implemented in December 2001, and as of November 30, 2003, 697 individuals were on the waiting list, with over 1,142 requests for assistance. More than 70 percent of claims paid by the TBI Trust Fund are for respite and "wrap-around" services. Wrap-around services are services that fill in a gap left by other funding sources.

It was noted that in 2002, the Acquired Brain Injury Medicaid Waiver Program spent approximately $3.25 million on 110 persons, and the Traumatic Brain Injury Trust Fund spent approximately $3.25 million on 1,400 persons. The average cost per person in the ABI Waiver Program is approximately $30,000 per year; and the average cost per

[1] 98 Senate Bill 145 also established a Traumatic Brain Injury Trust Fund, was passed by the General Assembly, and vetoed by the Governor. The veto message indicated that the provisions of HB 299 were preferred.

person receiving services from the Trust Fund is $1,400. The ABI Waiver Program includes the most expensive service, residential care, while the TBI Trust Fund does not. The Acquired Brain Injury Medicaid Waiver Program is an intensive rehabilitation program with a comprehensive service array, and a person may access ABI Waiver services for only part of year but uses one of the 110 "slots" for the entire year. The Traumatic Brain Injury Trust Fund is not intended to provide intensive services, but, rather to provide financial assistance for persons who have no other payor source. The task force noted the lack of resources for much needed long-term supports to individuals with brain injury. The only true long-term support program is the Supports for Community Living Program, a Medicaid waiver program designed for persons with mental retardation and other developmental disorders. This program denies eligibility to persons who sustained a brain injury after age 21, and it currently has a waiting list of approximately 2,000 persons.

Federal Grant Initiatives

The Brain Injury Services Unit of the Department of Mental Health and Mental Retardation in the Cabinet for Health Services was awarded an implementation grant by the federal Health Resources Services Administration, Bureau of Maternal and Child Health. The cabinet receives almost $200,000 annually for a three-year period. Of that amount, approximately $165,000 will be used to establish an information and support network for individuals with brain injuries and their families. The Brain Injury Association of Kentucky, under contract with the Department for Mental Health and Mental Retardation, will develop and implement the family support network over a three-year period. The Brain Injury Services Unit will use $20,000 of this grant annually to develop training in brain injury for other programs administered by the Department for Mental Health and Mental Retardation Services over the next three years. Kentucky is one of six states to receive federal funding from the grants program of the Traumatic Brain Injury Act.

Congress also passed the Children's Health Act of 2000, which contained funding for protection and advocacy services to individuals with traumatic brain injuries. Kentucky was one of 27 states to receive funds because of the high incidence rate of TBI. The 2003 Maternal and Child Health grant was awarded to the Kentucky Public Protection and Regulation Cabinet, Division of Protection and Advocacy. The grant is for $50,000 per year for three years. The objectives of the grant include advocacy for and representation of brain-injured individuals who are unnecessarily institutionalized, transitioning from schools or state custody, alleging employment discrimination, or seeking reasonable accommodations by educational institutions; to provide information and referral services to individuals with brain injuries and their families; to develop program recommendations to enhance treatment and rehabilitative efforts; and to advocate for injury prevention initiatives.

WORKGROUP ACTIVITY

ACCESS TO EXISTING SERVICES WORKGROUP

The workgroup focused on developing recommendations for encouraging the adaptation of services delivered by existing programs to meet the specific needs of children and adults with brain injuries who use those services. It was noted that a new service system for persons with ABI was not desired or needed; rather, the existing service systems should be enhanced to address the unique needs of persons with ABI. A common screening and assessment tool is needed for all programs to identify persons with brain injuries in order to develop appropriate service or care plans. The workgroup proposed a wrap-around model of service delivery that could access different funding sources and piece together a system of needed supports. Case management is a critical service for many individuals with ABI because they often have difficulty navigating through various agencies and programs. The workgroup also supports the establishment of consultation and training for providers working with persons with ABI and their families.

The task force adopted the following recommendations of this workgroup:

- Use a wrap-around model of service delivery for individuals with co-occurring disorders, including brain injury, that allows for the use of multiple funding streams and flexible funding for service to maintain an individual in the community;
- Ensure assessment for brain injury in all publicly funded programs by developing and distributing instruments for screening and assessing level of need or acuity;
- Provide cross-system case management to access resources and to prevent duplication of case management efforts;
- Provide incentives to support advanced training, education, or experience in providing case management services; and
- Develop a panel of clinicians and consultants to assist providers in non-brain injury systems in their efforts to appropriately and effectively serve persons with brain injury.

DECRIMINALIZATION AND SPECIALIZED SERVICES WORKGROUP

Sometimes the inappropriate behavior of brain-injured individuals leads to arrest and incarceration. Often the behavior is a result of the injury instead of criminality. The decriminalization and specialized services workgroup focused on making specific recommendations regarding how mechanisms for the provision of services to brain-injured individuals could be created where they do not currently exist and how funding for such services could become available. The specific charge to this workgroup was to develop specific recommendations for the (1) establishment of a specialized unit serving adults with brain injuries whose behavior places them or others at risk, including the identification of potential funding mechanisms; and (2) identification and diversion of persons with brain injury who come into contact with the criminal justice system.

Workgroup members agreed that it makes sense to support the existing House Bill 843 Commission recommendations because (1) legislators will be presented with a unified message from the disability community; (2) significant effort has been invested in drafting these recommendations, and they reflect the development of a system that can meet the needs of the ABI community; and (3) the recommendations are systemic rather than clinical, meaning no significant divergence from content is necessary. The workgroup found that if the House Bill 843 Commission's recommendations were adopted, specialized training units would be established in each of the 14 regions; and four specialized jails would be established as referral sites for individuals whose behavior indicated a mental health, chemical abuse, or (pending approval from the House Bill 843 Commission) ABI diagnosis. The workgroup recommends that decriminalization issues and recommendations also be referred to the House Bill 144 Commission, which focuses on individuals with mental retardation and other developmental disorders.

Regarding the workgroup's charge to develop specific recommendations for the establishment of a specialized unit serving adults with brain injuries whose behavior places them or others at risk, and identification of potential funding mechanisms, workgroup members first acknowledged limitations to the current system of crisis stabilization units (CSUs). The voluntary nature of existing CSUs means that unless the individual agrees to enter the CSU, services could not be provided. Professionals who staff CSUs generally have not been trained to work with brain-injured individuals. However, the combination of court-ordered treatment options versus incarceration often makes voluntary engagement in services more likely. It is unclear whether it would be possible to designate some beds within existing psychiatric hospitals as neurobehavioral beds. The workgroup discussed the possibility of using psychiatric hospitals as an option for housing specialized units and using medical health codes (CPT codes) to draw reimbursement for neurobehavioral services in medical settings. CPT codes are a listing of descriptive terms and identifying codes for reporting medical services and procedures under health insurance programs. New CPT codes allow billing psychiatric services as medical procedures.

Jail crisis networks were also of interest to this workgroup. The workgroup endorsed the jail crisis network, currently being piloted at the Bluegrass Community Mental Health Center, which offers inmates unlimited access to a qualified mental health professional. The qualified mental health professional provides mental health risk triage by telephone. A risk level is assigned to the inmate through this network and the jail then implements management protocols. The qualified mental health professional provides the inmate with consultation for follow-up treatment and linkages to community providers. The workgroup was interested in adding ABI to the triage instrument in this network because not all qualified mental health professionals are familiar with ABI issues.

The task force adopted the following recommendations of this workgroup:

- Encourage the establishment of an in-patient neurobehavioral unit within an existing medical facility;

- Endorse existing efforts to identify and divert persons with disabilities who come into contact with the criminal justice system currently in process with the House Bill 843 Commission and the House Bill 144 Commission and ensure those efforts to specifically include the population of brain-injured individuals;
- Endorse the use of grant funds by the Division of Protection and Advocacy within the Public Protection and Regulation Cabinet to provide advocacy to persons with brain injuries who have been arrested;
- Endorse current training efforts for jailers, crisis teams, and judges to include information related to brain injury; and
- Present these recommendations to the 843 Commission, the 144 Commission, and the Kentucky Association of Regional Programs for the purpose of requesting the support of those bodies in addressing the decriminalization of persons with brain injury.

LONG-TERM SUPPORTS WORKGROUP

The long-term supports workgroup began as the "long-term care" workgroup, but at its first meeting, members suggested a change of name to "long-term supports" to reflect the variety of needs of individuals with ABI and to minimize confusion regarding nursing facility care.

The workgroup identified a range of common needs and discussed what services would be necessary to prevent crises. The workgroup itemized needs under the domains of medical care, vocational services, social and legal issues, financial management, educational opportunities, psychological and spiritual needs, behavioral therapies, and crisis intervention strategies. The workgroup also considered issues regarding the adequacy of the safety net, awareness and expertise of service providers, service availability, and involvement with other governmental entities such as commissions, boards, and advisory committees.

The workgroup proposed that the number of people served through the Acquired Brain Injury Medicaid Waiver program be increased from 110 to 250. The Department for Medicaid Services reported a preliminary estimate of the cost of this expansion at an additional $4 million, bringing the total program to approximately $8 million.

The need for lifelong access to case management services was highlighted as critical to the establishment of a safety net for Kentuckians with brain injury. Absent case management, accessing effective services is often a result of happenstance or tenacity on the part of case managers and family members. Skilled case managers are particularly needed to work with individuals with brain injuries and their families because an absence of knowledge and awareness about services and supports can precipitate a crisis and lead the family into further disarray.

The workgroup also discussed self-directed funding models and their applicability and appropriateness for this population of disabled persons. It was recommended that a community support program that is consumer-directed be established. This program

would include specialized, independent case managers chosen by the individual who would assist in budget and service plan development. Services recommended for this program would include non-medical health care services to augment the existing system of care provided through private insurance, Medicare, and Medicaid. These services may include homemaking, personal care, chores, respites, minor home repairs, non-emergency transportation, day services and social and recreational activities, housing supplements or subsidies, and independent living skills training. It was suggested that the Traumatic Brain Injury Trust Fund Board take responsibility for follow up on this proposal.

The task force adopted the following recommendations of this workgroup:

- Establish a long-term supports model program of non-Medicaid services, including lifelong case management;
- Secure funding in the approximate amount of $1 million for the long-term supports program from a General Fund appropriation, a portion of increased taxes on cigarettes, and other fees that may be available;
- Increase the number of persons served through the ABI Medicaid Waiver from 110 to 250; and
- Continue work of this task force by establishment of an advisory committee to the TBI Trust Fund Board, which would be composed of state agency representatives and consumers.

PROPOSED LEGISLATION

The task force recognized the need for funds to expand services and make existing services more effective for individuals with brain injuries. Services funded by the Traumatic Brain Injury Trust Fund are limited to $15,000 annually with a lifetime maximum of $60,000. Other programs potentially available for individuals with brain injuries have lengthy waiting lists, are primarily focused on other disabilities, and have providers who are often unfamiliar with the nature of brain injury. Only one program, the Supports for Community Living Medicaid Waiver Program, provides long-term supports; however, this program was not designed for individuals with brain injury. The task force was interested in finding ways to fund long-term support services for individuals with brain injuries.

The task force voted to support four bills in the 2004 General Assembly:

1. 04 RS BR 394 – AN ACT relating to services for individuals with brain injuries.

This bill would: (1) increase the DUI service fee associated with education and treatment classes from $250 to $325; (2) specify that 16 percent of the service fee shall be utilized toward the Traumatic Brain Injury Trust Fund and the Division of Mental Health and Mental Retardation Services within the Cabinet for Health Services for the purpose of providing services to brain-injured individuals and training and consultation to professionals working with individuals with brain injuries; (3) specify that funds obtained

from the DUI service fees do not apply to the limits established within the traumatic brain injury trust fund; and (4) increase the limit to the traumatic brain injury trust fund from $2.75 million to $3.25 million.

2. 04 RS BR 396 – AN ACT relating to all-terrain vehicles.

This bill would: (1) require a person operating an all-terrain vehicle to wear protective headgear; (2) require that no person under 16 years of age operate an all-terrain vehicle; and (3) require the penalty to be community service for a first offense and a $100 fine for each subsequent offense.

3. 04 RS BR 438 – AN ACT relating to fines for traffic offenses.

This bill would: (1) increase the child restraint fine from $25 to $75; (2) increase the seat belt fine from not exceeding $25 to not exceeding $50; (3) specify that $25 of each of these fines shall be placed in the Traumatic Brain Injury Trust Fund; and (4) specify that these funds do not apply to the limits within the Traumatic Brain Injury Trust Fund.

4. 04 RS BR 808 – AN ACT relating to the Traumatic Brain Injury Trust Fund.

This bill would increase the limit of court fees to the Traumatic Brain Injury Trust Fund from $2.75 million to $3.25 million.

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APPENDIX A

2003 SENATE CONCURRENT RESOLUTION 17

A CONCURRENT RESOLUTION reestablishing a task force on services and supports for individuals with acquired brain injuries.

WHEREAS, it is estimated that each year thousands of Kentuckians suffer from acquired brain injuries; and

WHEREAS, the physical, emotional, vocational, and rehabilitative needs of individuals with acquired brain injuries are complex and may involve a combination of issues and services, such as health care, employment, substance abuse, mental health, physical and sexual abuse, criminal behavior, emotional disabilities, developmental and learning disabilities, and behavior disorders; and

WHEREAS, preliminary information from a prevalence survey funded by the Traumatic Brain Injury Trust Fund indicates that approximately twenty percent (20%) of random Kentucky households surveyed had one or more household members who had sustained a brain injury; and

WHEREAS, individuals with acquired brain injuries and their families can be productive members of the community but may need life-long supports and services to do so, and existing services are limited and unavailable in many areas of the state, and do not provide life-long supports and services; and

WHEREAS, in this Commonwealth there are no intensive, inpatient services for adults with acquired brain injuries who are in need of specialized crisis stabilization, evaluation, and treatment, and the lack of services and supports, including treatment for behavior disorders, may result in the arrest and incarceration of individuals with acquired brain injuries; and

WHEREAS, at the end of January, 2003, there were over 400 more requests for assistance than could be funded by the Traumatic Brain Injury Trust Fund, and there were 152 people on the waiting list for the Acquired Brain Injury Medicaid waiver program; and

WHEREAS, the legislative task force on acquired brain injuries, created by 2001

House Concurrent Resolution 67, found that more time and work was necessary to provide a thorough review of programs, services, and supports for individuals with brain injuries and the task force strongly recommended continuation of their efforts; and

WHEREAS, the provision of the appropriate level of care, treatment, and services in a fiscally responsible manner is in the best interests of the individuals with acquired brain injuries, their families, their employers, their communities and the Commonwealth at large;

NOW, THEREFORE,

Be it resolved by the Senate of the General Assembly of the Commonwealth of Kentucky, the House of Representatives concurring therein:

Section 1. There shall be created a Task Force on Services and Supports for Individuals with Acquired Brain Injuries. The task force shall be charged to make recommendations regarding:

(1) Mechanisms to make an accurate estimate of the number of adults and children with acquired brain injuries that receive publicly funded services;

(2) Changes to existing administrative regulations governing existing publicly funded programs that would increase access to services and supports for individuals with acquired brain injuries;

(3) The elimination of barriers to the access to and provision of services, including but not limited to a centralized information and referral source and increasing the number of professionals skilled in the area of brain injury;

(4) Strategies to develop intensive inpatient services that provide crisis stabilization, specialized evaluation, and treatment for adults with acquired brain injuries;

(5) Strategies to increase the effectiveness of services to individuals with acquired brain injuries receiving public services outside of the existing brain injury programs;

(6) Strategies for the decriminalization of individuals with acquired brain injuries; and

(7) Strategies to increase the employment of vocational training and educational services to individuals with acquired brain injuries.

Section 2. The members of the task force shall include:

(1) One (1) member of the Senate, appointed by the President of the Senate;

(2) One (1) member of the House of Representatives, appointed by the Speaker of the House;

(3) One (1) individual with acquired brain injury and one (1) family member of an individual with acquired brain injury appointed by the Legislative Research Commission from a list of six (6) names submitted by the Brain Injury Association of Kentucky;

(4) The chairperson of the Traumatic Brain Injury Trust Fund Board or designee;

(5) The executive director of the Brain Injury Association of Kentucky or designee;

(6) The Commissioner of the Department of Vocational Rehabilitation or designee;

(7) The Secretary of the Justice Cabinet or designee;

(8) The Commissioner of the Department of Education or designee;

(9) The executive director of the Kentucky Jailers Association or designee;

(10) The Commissioner of the Department for Medicaid Services or designee;

(11) The Commissioner of the Department for Mental Health and Mental Retardation Services who shall also designate one (1) representative from the Division of Substance Abuse, one (1) representative from the Division of Mental Retardation and Developmental Disabilities, and two (2) representatives from the Division of Mental Health, one (1) of whom shall represent the Brain Injury Services Unit to be appointed by the Legislative Research Commission;

(12) One (1) representative of a community mental health center appointed by the Legislative Research Commission from a list of three (3) names submitted by the Kentucky Association of Regional Mental Health/Mental Retardation Programs;

(13) One (1) case manager with experience in the provision of community-based services to individuals receiving services through the Acquired Brain Injury Medicaid waiver program, designated by the secretary of the Cabinet for Health Services and appointed by the Legislative Research Commission;

(14) One (1) administrator of the Benefits Management Program of the Traumatic Brain Injury Trust Fund designated by the chairperson of the Traumatic Brain Injury Trust Fund and appointed by the Legislative Research Commission;

(15) One (1) neuropsychologist appointed by the Legislative Research Commission from a list of three (3) names of individuals with at least three (3) years of experience working with individuals with acquired brain injuries submitted by the Kentucky Psychological Association; and

(16) One (1) rehabilitation specialist appointed by the Legislative Research Commission from a list of three (3) names of individuals with at least three (3) years of experience working in a hospital that provides rehabilitation services to individuals with acquired brain injuries submitted by the Kentucky Hospital Association.

Section 3. The task force shall conduct its first meeting no later than July 15, 2003, and shall make a final report of its findings and specific legislative recommendations to the Legislative Research Commission and the Governor no later than January 15, 2004.

Section 4. Provisions of this resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternately assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

APPENDIX B

STATUTES GOVERNING THE TRAUATIC BRAIN INJURY TRUST FUND AND BOARD

KRS 211.470 TO 211.478

Traumatic Brain Injuries

211.470 Definitions for KRS 211.470 to 211.478.

As used in KRS 211.470 to 211.478:

(1) "Board" means the Traumatic Brain Injury Trust Fund Board created pursuant to KRS 211.472;

(2) "Cabinet" means the Cabinet for Health Services;

(3) "Traumatic brain injury" means a partial or total disability caused by injury to the central nervous system from physical trauma, damage to the central nervous system from anoxia, hypoxic episodes, allergic conditions, toxic substances, or other acute medical clinical incidents resulting in impaired cognitive abilities or impaired physical functioning. "Traumatic brain injury" does not include:

(a) Strokes that can be treated in nursing facilities providing routine rehabilitation services;

(b) Spinal cord injuries for which there are no known or obvious injuries to the intracranial central nervous system;

(c) Progressive dementias and other mentally impairing conditions;

(d) Depression and psychiatric disorders in which there is no known or obvious central nervous system damage;

(e) Mental retardation and birth defect related disorders of long standing nature; or

(f) Neurological degenerative, metabolic, and other medical conditions of a chronic, degenerative nature.

(4) "Trust fund" means the traumatic brain injury trust fund created pursuant to KRS 211.476.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 124, sec. 1, effective July 14, 2000. -- Created 1998 Ky. Acts ch. 124, sec. 1, effective July 15, 1998.

211.472 Kentucky Traumatic Brain Injury Trust Fund Board.

(1) The Kentucky Traumatic Brain Injury Trust Fund Board is hereby created for the purpose of administering the trust fund. The board shall be composed of nine (9) members including the secretary of the Cabinet for Health Services or the secretary's designee, the executive director of the Brain Injury Association of Kentucky or the executive director's designee, the state medical epidemiologist, and the following members, to be appointed by the Governor:

(a) One (1) member shall be a neurosurgeon;

(b) One (1) member shall be a neuropsychologist or psychiatrist;

(c) One (1) member shall be a rehabilitation specialist;

(d) One (1) member shall be a social worker experienced in working with brain-injured individuals; and

(e) Two (2) members shall be family members of or individuals with a brain injury.

(2) Board members shall not be compensated for serving, but shall be reimbursed for ordinary travel expenses, including meals and lodging incurred in the performance of their duties.

(3) The terms of appointed board members shall be four (4) years, except that the terms of initial members shall be staggered to end as follows:

(a) Two (2) on June 30, 2000;

(b) Two (2) on June 30, 2001; and

(c) Two (2) on June 30, 2002.

(4) At the end of a term, a member shall continue to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun shall serve the rest of the term and until a successor is appointed and qualifies. A member who serves two (2) consecutive four (4) year terms shall not be reappointed for four (4) years after completion of those terms.

(5) A majority of the full authorized membership shall constitute a quorum.

(6) The board shall elect, by a majority vote, a director who shall be the presiding officer of the board, preside at all meetings, and coordinate the functions and activities of the board. The director shall be elected or reelected for each calendar year.

(7) The board may establish any organizational structure it determines is necessary to accomplish its functions and duties, including the hiring of any necessary support personnel. The administrative costs of the board shall be limited to three percent (3%) of the proceeds from the trust fund.

(8) Meetings of the board shall be held at least twice a year but may be held more frequently, as deemed necessary, subject to call by the director or by the request of a majority of the board members.

(9) The board shall be attached to the cabinet for administrative purposes.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 124, sec. 2, effective July 14, 2000. -- Created 1998 Ky. Acts ch. 124, sec. 2, effective July 15, 1998.

211.474 Operating parameters -- Duties.

The board shall:

(1) Promulgate administrative regulations necessary to carry out the provisions of KRS 211.470 to 211.478;

(2) Formulate policies and procedures for determining individual eligibility for assistance from the trust fund in accordance with the following guidelines:

(a) The trust fund shall serve as a funding source of last resort for residents of the Commonwealth of Kentucky. To be eligible for assistance from the trust fund, an individual must have exhausted all other funding sources that cover the type of services sought through the trust fund. Individuals who have continuing health insurance benefits, including Medicaid, may access the trust fund for services that are needed but not covered by insurance or any other funding source. Individuals who qualify for institutional care through Medicaid shall not qualify for services through the trust fund;

(b) All individuals receiving assistance from the fund shall receive case management services;

(c) Expenditures on behalf of any one (1) brain-injured individual may not exceed fifteen thousand dollars ($15,000) for any twelve (12) month period, and may not exceed a lifetime maximum of sixty thousand dollars ($60,000). At its discretion and subject to fund availability, the board may waive the expenditure or time limitations or both in special circumstances;

(d) Services covered by the trust fund shall include:

1. Case management;
2. Community residential services;
3. Structured day program services;
4. Psychological and mental health services;
5. Prevocational services;
6. Supported employment;
7. Companion services;
8. Respite care;
9. Occupational therapy; and
10. Speech and language therapy;

(e) Covered services shall not include institutionalization, hospitalization, or medications;

(3) Establish a confidential medical registry for traumatic brain and spinal cord injuries occurring in the Commonwealth of Kentucky, or to residents of the Commonwealth of Kentucky.

(a) The board may promulgate administrative regulations requiring licensed or certified professionals or health services providers to report the occurrence of brain and spinal cord injuries, relevant medical and epidemiological information about the injuries, and other information describing the circumstances of the injury to the board or its designated agent. The reporting of data by licensed hospitals under this section shall be limited to that which is reported to the cabinet pursuant to KRS 216.2920 to 216.2929 and the board

shall obtain this data from the cabinet. Each licensed hospital shall grant the board, upon presentation of proper identification, access to the medical records of patients with reportable brain and spinal cord injuries for the sole purpose of collecting additional information that is not available in the data obtained from the cabinet. All costs associated with copying medical records shall be borne by the board. No liability of any kind shall arise or be enforced against any licensed hospital or hospital employee for providing the board access to a patient's medical record.

(b) The board and its designated agent, if one is appointed, shall observe the same confidentiality requirements established for the Kentucky birth surveillance registry in KRS 211.670;

(4) Investigate the needs of brain-injured individuals and identify gaps in current services;

(5) Assist the cabinet in developing programs for brain-injured individuals;

(6) Monitor and evaluate services provided by the trust fund; and

(7) Provide the Governor, the General Assembly, and the Legislative Research Commission an annual report by January 1 of each year summarizing the activities of the board and the trust fund.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 124, sec. 3, effective July 14, 2000. -- Created 1998 Ky. Acts ch. 124, sec. 3, effective July 15, 1998.

211.476 Traumatic brain injury trust fund.

(1) The traumatic brain injury trust fund is created as a separate revolving fund.

(2) The trust fund may receive the proceeds from grants, contributions, appropriations, and any other moneys that may be made available for the purposes of the trust fund.

(3) Expenditures from the trust fund on behalf of the medical registry created under KRS 211.474 shall not exceed one hundred twenty-five thousand dollars ($125,000) for any fiscal year.

(4) Funds unexpended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year.

(5) Any interest earnings of the trust fund shall become a part of the trust fund and shall not lapse to the general fund.

Effective: August 1, 2002

History: Amended 2002 Ky. Acts ch. 183, sec. 20, effective August 1, 2002. -- Created 1998 Ky. Acts ch. 124, sec. 4, effective July 15, 1998.

211.478 Distribution of trust fund moneys.

Trust fund moneys shall be distributed for the following purposes:

(1) To provide services to individuals suffering from conditions that qualify for assistance from the fund, in accordance with criteria established by the board in KRS 211.474;

(2) To establish and maintain a state medical registry for traumatic brain and spinal cord injuries; and

(3) To meet the obligations incurred by the board in meeting its duties in accordance with the provisions of KRS 211.472 and 211.474.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 124, sec. 5, effective July 15, 1998.

APPENDIX C

WORKGROUP REPORTS

Legislative Task Force on Services and Supports for Persons with Brain Injury
Subcommittee on Access to Existing Services and Funding
Final Recommendations

Subcommittee Members:
Donna Cundiff, Advocate
Mary Hass, Brain Injury Association of Kentucky
Marsha Hockensmith, Protection and Advocacy
Kevin Lightle, Department for Mental Health and Mental Retardation Services
Sharon Marsh, Eckman/Freeman and Associates
Lisa Rice, Division of Mental Health
Colleen Ryall, Brain Injury Services Unit
Bruce Scott, Department for Mental Health and Mental Retardation Services
Mike Townsend, Department for Mental Health and Mental Retardation Services

Subcommittee meeting dates: September 12, 2003;

Subcommittee Charge: To develop concrete recommendations for encouraging the adaptation of services delivered in existing programs to meet the specific needs of children and adults with brain injury who use those services.

Goals:

The Subcommittee recommends that the Task Force endorse the following goals for the adaptation of services within existing service delivery systems:

- Use of a "wrap around" model for the delivery of services to individuals with co-occurring disorders including brain injury which allows for the use of multiple funding streams

- Assessment across health domains (mental health, substance abuse, mental retardation, physical health, brain injury) of the needs of individuals regardless of the service delivery system to which they present

- Provision of cross systems case management to individuals with co-occurring disorders including brain injury to prevent duplication of effort, assure access, and ensure the appropriateness of care

Strategies to Accomplish Goals:

The Subcommittee recommends that the Task Force endorse the following strategies for accomplishing the goals detailed above:

1) Develop a tool for use across the behavioral health care system to screen for individual needs related to mental health, substance abuse, mental retardation, physical health, and brain injury
2) Develop a tool for assessing the acuity of case management needs and for mapping care when multiple systems of care should be accessed to meet individual need
3) Create incentives to attain cross-systems case management skills for individuals with co-occurring disorders including brain injury by developing a registry that recognizes and lists case managers who meet:
   a) Credentialing standards for advanced training and experience; and
   b) Skill testing
4) Develop a panel of clinicians and other consultants available to provide programmatic consultation, training, and specialized individual clinical consultation

Strategies 1) and 2) are best developed through collaboration among divisions of the Cabinet for Health Services working with brain injury providers and other stakeholders, and implemented using contracts with providers in existing delivery systems.

Funding:

The Committee recommends that the Task Force endorse a request for an appropriation to the Department for Mental Health and Mental Retardation Services for the purpose of developing mechanisms to recognize advanced case management skills and provide technical assistance and consultation to providers, through a Request for Proposal and subsequent contract with a qualified entity. The proposed budget includes:

Brain Injury and Co-Occurring Disorders Center
Proposed Budget

Item	Amount
Personnel:	
1 FT Coordinator	45,000
Benefits @ .275	12,375
Consultants:	
2000 hrs X $100/hr	200,000
Operations: (includes)	100,000
Rent/utilities	
Travel	
Training	
Consultation	
Stipends for testing	
Indirect	34,738
Grand Total	$392,113

TASK FORCE ON SERVICES AND SUPPORTS FOR PERSONS WITH ACQUIRED BRAIN INJURIES

Subcommittee on Specialized Services and Decriminalization of Brain Injury

Subcommittee Members:

Eric Clark, LRC
Bill Dolan, Protection & Advocacy
Artus Fox, Brain Injury Association of Kentucky
Mary Hass, Brain Injury Association of Kentucky
Dr. William Kraft, Frazier Rehabilitation Institute
Dr. Sandy Mlinarcik, Seven Counties Services
Dr. James Phifer, Implement Neurorehabilitation
Dr. Rick Purvis, Department of Corrections
Rita Ruggles, Department for Mental Health & Mental Retardation Services
Dr. Colleen Ryall, Department for Mental Health & Mental Retardation Services
Amanda Stanley, Christian Church Homes of Kentucky
Jennifer Szendei, Implement Neurorehabilitation

Meeting Dates: September 10, 2003; September 24, 2003; October 8, 2003; November 10, 2003 (conference call).

Subcommittee Charge:

- To develop specific recommendations for the establishment of a specialized unit serving adults with brain injuries whose behavior places them or others at risk, including the identification of potential funding mechanisms.

- To develop specific recommendations for the identification and diversion of persons with brain injury who come into contact with the criminal justice system

Final Recommendations:

1. It is recommended that Task Force endorse the establishment of an in-patient neurobehavioral unit within a medical facility (hospital), with the use of CPT codes as the basis for reimbursement.

2. It is recommended that the Task Force endorse existing efforts to decriminalize persons with disabilities, including those currently underway in the HB 843 Commission. Specifically, it is recommended that the Task Force endorse:

- the Jail Crisis Network effort, currently being piloted at Bluegrass Community Mental Health Center, contingent upon the inclusion of screening questions about brain injury on the assessment tool and the inclusion of training in brain injury to those QMHP's who will be evaluating individuals;
- the final recommendations to the HB 843 Commission made by the Criminal Justice/Behavioral Health Interface Work Group of that commission, as follows:
    - A continued emphasis on regional criminal justice/behavioral health planning and resource development under the direction of the Regional Planning Councils, which should include professionals and advocates for persons with brain injury.
    - The establishment of the Regional Planning Councils and their Criminal Justice/Behavioral Health work groups as the vehicle for facilitating and formalizing cross-system education and training
    - The allocation of funding to support the implementation of two Disability Courts (referred to as mental health courts) – one in an urban setting and one in a rural setting) in regions that recommended a Disability Court
    - The allocation of funding to allow each Regional Planning Council to increase the number of staff devoted to criminal justice/behavioral health services, particularly specialized intensive case management and resource coordination. Additional funding must be made available to provide wraparound services for individuals who receive specialized intensive case management
    - The allocation of resources to be accessed by the regions to support the development and operation of a mobile crisis team and other crisis stabilization services identified by the Regional Planning Council as needed. Training for crisis stabilization personnel should include information about brain injury and the resources available to meet the needs of persons with brain injury.
    - The allocation of resources for Regional Planning Councils to develop an array of housing options designed to meet the special needs of people with disabilities in their regions, including those with brain injury.
    - The allocation of adequate resources for the development of specialized behavioral health jail units in regions where the Regional Planning Council deems such action appropriate. These specialized jails, or portions of jails, would provide residential substance abuse treatment, medication management, specialized mental health (including brain injury) assessment and treatment, and a sheltered, protective environment with supportive behavioral health treatment interventions to support and sustain a fragile and needy population.

3. It is recommended that the Task Force endorse the use of grant funds by Protection & Advocacy to provide advocacy to persons with brain injury who have been arrested.

4. It is recommended that the Task Force endorse the amendment of current training efforts for jailers, crisis teams, and judges to include information about brain injury,

5. It is recommended that the Task Force endorsements and recommendations be presented to the HB 843 Commission and to the Kentucky Association of Regional Programs for the purpose of requesting the support of those bodies to address the decriminalization of persons with brain injury.

Report and Recommendations
From the Long-Term-Supports Subcommittee
For the Brain Injury Task Force

November 12, 2003

Subcommittee Members

Darla Bailey, Kaleidoscope, Inc
Eric Clark, LRC
Michele Finn, BIAK
Scott Furkin, BIAK
Kerrie Johnson, Stepping Stones
Kevin Lightle, DMRDD
Sharon Marsh, Eckman/Freeman
Gina Rigsby, LRC
Joanna Thomas, KY Hosp. Assoc
Bill Baumann, Center for Comprehensive Services
Mary Crawford, Parent
Artus Fox, Survivor
Mary Hass, BIAK
Jim Kimbrough, Office of Protection and Advocacy
Carol Lunney, Chairperson and parent
Amy Newkirk, Louisville Ind. Case Mgt.
Colleen Ryall, Brain Injury Service Unit
Murray Wood, LRC

Subcommitte Charge

The Long-Term Supports Subcommittee will develop a comprehensive plan to:

1) Increase the effectiveness of services to individuals with acquired brain injuries receiving public services outside of the existing brain injury programs;

2) Increase the employment of vocational training and educational services to individuals with acquired brain injuries;

3) Facilitate the interaction of services available to individuals with acquired brain injuries and assure access.

Recommendations of the Long-Term-Supports Subcommittee

The Subcommittee requests that the Task Force endorse the following recommendations:

1) **Comprehensive Model:** We recommend that the state of Kentucky establish a long-term supports model program that provides a comprehensive array of non-Medicaid supports which will include access to life-long independent case management and the full array of supports that will enable individuals with brain injury to live and maintain themselves in their communities. **See attached model.**

A COMPREHENSIVE SYSTEM OF LONG-TERM SUPPORTS FOR PERSONS WITH BRAIN INJURY

For several decades, the emphasis and focus of supports and services for persons who have sustained a brain injury has been home and community based. This marks a profound shift from the practice of lengthy – sometimes life-long – institutionalization.

To prevent unneeded institutionalization and unnecessary cost to the state as well as an individual's resources, we must recognize that brain-injured individuals have an ongoing need for maintenance services. For many persons who have a brain injury, maintaining a plateaued rehabilitation level is an achievement, if living at that level is sufficient to avoid institutionalization and participate in home and community activities.

The growth in the number of individuals who have sustained a brain injury, and the longer lifespan of persons with a disability has led to Kentucky's need to reconfigure the system of long-term supports and services available to persons who need them in order to live in the least restrictive environment appropriate to their condition.

The current continuum of care of a person who sustains a brain injury flows from intensive care (trauma intervention) to acute care (hospitalization for stabilization and therapeutic services) to post-acute rehabilitation to home and community-based services and supports. However, the jarring disconnect occurs when someone leaves facility-based post-acute rehabilitation and attempts to live in her/his home and community. There are only two brain-injury specific programs available outside of private insurance-paid services and supports. These are the Brain Injury Waiver, a Medicaid waiver which has a current cap of 110 slots annually statewide, and is intended to provide intensive rehabilitative services outside an institution or facility, and the Brain Injury Trust Fund, which Is designed to supplement other services to meet the needs of an individual. It is capped at $15,000 per person per year, with a life-time maximum of $60,000 allowed. While it is extremely flexible in what it can pay for, the annual and life-time cap does limit it. Also, the fact that its funding comes from a capped Trust Fund limits its ability to care for as many individuals as qualify for it.

Both the Medicaid Waiver, with its statewide annual cap of 110 slots as well as the individual be financially eligible for Kentucky Medicaid, and the Brain Injury Trust Fund, with its cap of an annual and lifelong funding amount, as well as the cap on the total amount it can be funded, mean that there are waiting lists for both programs at this time with little prospect for improving access to home and community-based services and supports unless changes are made to remove the Medicaid cap and increase funds under the Trust Fund.

There are five pillars necessary for successful life in the community:

- Accessible, affordable, available housing
- Reliable transportation
- Access to necessary health care services
- Income maintenance, including employment, sufficient for living expenses
- Supportive services adequate to compensate for deficits caused by the brain injury

This paper focuses on the last, supportive services. This is not to minimize the necessity to have the other four arenas available, but instead responds to the Work Group's charge to describe what long-term supports individuals need to be integrated in the community.

This system shall not supplant or replace existing services currently provided to an eligible individual, including services being adequately met by an informal support system in place at the time of assessment. However, an individual who requires respite services shall not be deemed ineligible as a consequence of this informal support system.

In developing this design, the Work Group reviewed several existing state programs in Kentucky that provide services and supports. These included the Supports for Community Living, Personal Care Attendant, Supported Living, and HomeCare Programs. Also, TBI home and community based programs in some other states were reviewed. And, the Traumatic Brain Injury Trust Fund and ABI Medicaid Waiver Programs have been discussed.

The Work Group recommends that the following design for a system of home and community based supports for persons with brain injuries:

The Brain Injury Services Unit (BISU) of the Department for Mental Health and Mental Retardation Services (DMHMRS) will procure, using a competitive

solicitation process, qualified assessment/case management providers from which the individual with a brain injury can select. The BISU will establish criteria for acceptance, review, and selection of proposals to provide services. Assessment/case management providers will be independent of direct services providers. There will be sufficient assessment/case management providers for individuals in all counties in Kentucky to make selections.

The Brain Injury Trust Fund Board of Directors will provide oversight and direction to the BISU in developing procurement standards. The Trust Fund Board will designate an Advisory Committee for this purpose, appointed by the Trust Fund Board, and having representation from appropriate state agencies as well as having 50% of its composition made up of consumers of services and supports funded under it. Consumers shall mean persons with a brain injury or immediate family members/partners of a person with a brain injury.

All services and supports will be consumer-planned and consumer-directed. Budgets for each individual receiving services and supports will be developed by the individual, or her/his designee, collaborating with her/his case manager, on no less than an annual basis, with revisions occurring as necessary if the individuals condition or circumstance changes.

Definitions of services to be provided are:

Assessment – The collection of in-depth information about an individual's situation and functioning which identifies needs and resources so that a comprehensive plan of supports and services can be developed. This is the process which determines whether an individual is eligible for services. Assessment includes medical, environmental, financial, social, employment/educational, and personal support system information. It describes the extent of injury and prognosis for recovery, deficits as a result of the injury, strengths in cognitive, psychosocial, vocational, and other skills, prognosis for return to work, school, and other activities, and serves as a measurable baseline against future assessments. Assessment will be done at the time that a person applies for services and supports, and re-assessment will be performed at least semi-annually or when/if a significant life event change occurs during the time that the individual receives services and supports or remains on a waiting list for such services.

Case Management – The development, in collaboration with the individual with a brain injury or some designated friend or family member, of a plan for

appropriate, comprehensive, and timely delivery of services and supports for the individual. This is to maximize services, supports, and resources in order to achieve the highest level of functioning. Case management includes linking the individual with appropriate providers, advocating for the individual with his/her support system to achieve the best possible provision in the most effective way, and ongoing monitoring for quality assurance of services and supports delivered by both formal and informal systems. It requires competence about available services and supports and best practices for individuals with brain injuries.

The non-medical health care services and supports described below will be provided upon order of the case manager, in collaboration with the individual with a brain injury or her/his designee, from any willing provider. These social supports and services will augment the existing system of health care provided through private insurance, out-of-pocket payments, and Medicare and Medicaid. The development of these services and supports is an acknowledgement that, for many individuals with a brain injury, being able to live in their own home and own community is not a matter of medical care, but social supports that may be as elementary, and as essential, as sweeping their floor or changing their bed linens. To that end, the following services will be provided throughout Kentucky using local providers.

Essential Services – These are services and supports provided by community organizations that provide the ability for an individual to live, work, and participate in the life of his or her community. Care plans developed by the person with a brain injury and their case manager will access whichever of these services are appropriate for that person and his/her current condition. The individual, or her/his designee, will be able to choose among providers in the community.

> Homemaking – Assist the individual with household management, including meal preparation, laundry, cleaning, and shopping for food and other essential items.
>
> Personal Care – Assists individual with hygiene and grooming activities, including bathing, dressing, toileting, hair care/styling, dental/oral hygiene, positioning/lifting/transferring individuals as needed, shaving, menses care, and personal appliances and mobility tools appearance care. Also includes providing companion care (safety and protection while

traveling to an appointment), and assistance with communicating with someone at an essential appointment the individual has.

Chore – Performance of heavy housekeeping activities, usually performed only a few times a year related to significant cleaning needs, such as defrosting refrigerators or oven cleaning. Also can include needed yard chores, and pest control activities.

Respite – Provision of care by someone other than the usual caregiver for a designated period of time due to the absence or need for relief of the primary caregiver.

Minor Home Repair – Provision of minor home adaptations, additions, or modifications to enable someone to live independently or safely or to facilitate mobility. This can include, when appropriate, an emergency alert or summons system.

Non-Emergency Transportation – Transportation of an individual to essential, social, employment, and/or leisure activities or sites within the community.

Day Services – Medical Model – Non-residential or outpatient services and supports providing therapeutic interventions and supervised activities aimed at facilitating successful community integration. Addresses functional skills attainment, psychological and behavioral adjustments, and vocational rehabilitation needs.

Day Services – Social Model – Structured community-based program in a group setting to improve and maintain the individual's community living skills. Provides health, social, recreational, and therapeutic activities.

Housing Supplements/Subsidies – Financial assistance to either supplement or underwrite the cost of living in one's own home. Includes the cost of rent, mortgage, necessary rental/utility deposits, and housing maintenance.

Independent Living Skills Training – Provides training to assist the individual in activities related to daily living and household maintenance. Includes directing personal care, performing household management chores, menu planning, grocery shopping, meal preparation, budgeting,

arranging/accessing public transportation, scheduling and keeping appointments.

A fuller definition of each of these categories of services and supports will be developed by the Brain Injury Trust Board's Advisory Committee.

In summary, a comprehensive system of home and community-based services and supports must be developed in the Commonwealth because:

- There are an estimated 130,000 individuals in Kentucky who have sustained a brain injury which affects their ability to fully participate in living, working, playing, and worshipping in their own home and community.
- Between 3,000 – 4,000 Kentuckians sustain a new brain injury each year.
- The current system for providing services and supports is very inadequate, with
    - The Medicaid Brain Injury Waiver capped at 110 annual slots, with a current waiting list that is growing, not shrinking.
    - The ABI Waiver is only for intensive rehabilitation services, **and** the individual must qualify under Kentucky Medicaid's waiver requirements.
    - The Brain Injury Trust Fund is capped at an annual amount of $15,000 worth of services per individual, with a $60,000 lifetime maximum.
    - The Brain Injury Trust Fund's income is capped for how much it can take in annually.
    - Currently, the Trust Fund is operating month to month due to the cap on income source.
    - After the ABI Waiver and the Trust Fund are used, there is **nothing** available for home and community living supports for someone with a brain injury.

November 2003

APPENDIX D

MEETING AGENDAS

TASK FORCE ON SERVICES AND SUPPORTS FOR INDIVIDUALS WITH ACQUIRED BRAIN INJURIES

Meeting No. 1

TIME:	**1:00 p.m.**
PLACE:	**Room 327, Capitol**
DATE:	**August 12, 2003**

I. Call to Order and Roll Call

II. Introduction of Members

III. Follow Up from the First Task Force on Services and Supports for Individuals with Acquired Brain Injuries

Brain Injury Services Unit

Colleen Ryall, Ed.D.
Director, Brain Injury Services Unit
Division of Mental Health
Cabinet for Health Services

- Prevalence Report
- Data collection
- Waiting list for ABI Waiver Services
- Projects and Grants
- Orientation offered for new members

Traumatic Brain Injury Trust Fund Board

Mary Hass, Chairperson
Traumatic Brain Injury Trust Fund Board

- Waiting list for Trust Fund Services
- Update on Board funds
- Helmets and Brain Injuries
- Initiatives with Department of Justice

Brain Injury Association of Kentucky

Scott Furkin, Executive Director
Brain Injury Association of Kentucky

- Overview of the Association
- Development of natural support networks

IV. Discussion

V. Establishment of Workgroups

1. Access to Existing Services
2. Specialized Services and Decriminalization
3. Long-Term Care

VI. Meeting Dates and Locations

VII. Adjournment

TASK FORCE ON SERVICES AND SUPPORTS FOR INDIVIDUALS WITH ACQUIRED BRAIN INJURIES

Meeting No. 2

TIME:	**1:00 p.m.**
PLACE:	**Room 111, Capitol Annex**
DATE:	**September 15, 2003**

I. Call to Order and Roll Call

II. Protection and Advocacy

2000 Child Health Act Grant
Protection and Advocacy for Individuals with Traumatic Brain Injury
Jim Kimbrough, Protection and Advocacy Division

Representation of Individuals with Acquired Brain Injuries
William Dolan, Attorney
Protection and Advocacy Division

III. Update on Drivers' License Reinstatement Fees

IV. Data Collection and Service Needs

Robert Walker, M.S.W.
Center for Alcohol and Drug Research
University of Kentucky
Traumatic Brain Injury Trust Fund Board Member

V. Reports from Workgroups

1. Access to Existing Services - Bruce Scott
2. Specialized Services and Decriminalization – Colleen Ryall
3. Long-Term Care – Carol Lunney

VI. Discussion on Next Meeting (Costs related to brain injuries and prevention)

VII. Next Meeting Date – October 14, 2003

VIII. Adjournment

TASK FORCE ON SERVICES AND SUPPORTS FOR INDIVIDUALS WITH ACQUIRED BRAIN INJURIES

Meeting No. 3

TIME:	**1:00 p.m.**
PLACE:	**Room 125, Capitol Annex**
DATE:	**October 14, 2003**

I. Call to Order and Roll Call

II. Approval of Minutes from the September 15, 2003 Meeting

III. Discussion on Gaps in Data Collection Relating to Brain Injuries

Dr. Colleen Ryall
Brain Injury Services Unit
Department for MH/MR

Dr. Julia Costich
Ky. Injury Prevention and Research Center
University of Kentucky

Sara Robeson
Department for Public Health
Behavioral Risk Factor Surveillance Survey

IV. Preliminary Recommendations from Workgroups/Task Force Action

1. Access to Existing Services - Bruce Scott
2. Long-Term Supports – Carol Lunney
3. Specialized Services and Decriminalization – Colleen Ryall

V. Proposed Legislation Discussion

VI. Next Meeting Date – November 12, 2003 at 1:00 p.m.

VII. Adjournment

TASK FORCE ON SERVICES AND SUPPORTS FOR INDIVIDUALS WITH ACQUIRED BRAIN INJURIES

Meeting No. 4

TIME:	**1:00 p.m.**
PLACE:	**Room 125, Capitol Annex**
DATE:	**November 12, 2003**

I. Call to Order and Roll Call

II. Approval of Minutes from the October 14, 2003 Meeting

III. Estimated Costs Associated with Brain Injuries

Julia Costich, J.D. Ph.D.
Kentucky Injury Prevention Research Center
University of Kentucky

IV. Recommendations from Workgroups/Task Force Action

1. Access to Existing Services - Bruce Scott
2. Long-Term Supports – Carol Lunney
3. Specialized Services and Decriminalization – Colleen Ryall

IV. Proposed Legislation Discussion/Task Force Action

V. Final Report Preparation

VI. Next Meeting Date – December 10, 2003 at 1:00 p.m.

VII. Adjournment

TASK FORCE ON SERVICES AND SUPPORTS FOR INDIVIDUALS WITH ACQUIRED BRAIN INJURIES

Meeting No. 5

TIME:	**1:00 p.m.**
PLACE:	**Room 125, Capitol Annex**
DATE:	**Decebmer 10, 2003**

I. **Call to Order and Roll Call**

II. **Approval of Minutes from the November Meeting**

III. **Review of Draft Report**

IV. **Review of Proposed Legislation**

V. **Adjournment**

APPENDIX E

PROPOSED LEGISLATION

AN ACT relating to services for individuals with brain injuries.

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

Section 1. KRS 189A.050 is amended to read as follows:

(1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), or (d) shall be sentenced to pay a service fee of ***three hundred twenty-five***~~[two hundred fifty]~~ dollars ***($325)***~~[($250)]~~, which shall be in addition to all other penalties authorized by law.

(2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 relating to the method of imposition and KRS 534.060 as to remedies for nonpayment of the fee.

(3) The revenue collected from the service fee imposed by this section shall be utilized as follows:

(a) ***Twelve***~~[Fifteen]~~ percent ***(12%)***~~[(15%)]~~ of the amount collected shall be transferred to the Kentucky State Police forensic laboratory for the acquisition, maintenance, testing, and calibration of alcohol concentration testing instruments and the training of laboratory personnel to perform these tasks;

(b) ***Twenty***~~[Twenty-five]~~ percent ***(20%)***~~[(25%)]~~ of the service fee collected pursuant to this section shall be allocated to the Department of Public Advocacy;

(c) One percent (1%) shall be transferred to the Prosecutor's Advisory Council for training of prosecutors for the prosecution of persons charged with violations of this chapter and for obtaining expert witnesses in cases involving the prosecution of persons charged with violations of this chapter or any other offense in which driving under the influence is a factor in the commission of the offense charged;

(d) ***Sixteen percent (16%) of the amount collected shall be transferred as***

follows:

1. Fifty percent (50%) shall be credited to the Traumatic Brain Injury Trust Fund established under KRS 211.476. Funds collected under this subsection shall not apply to the limits established under KRS 42.320(2)(d); and

2. Fifty percent (50%) shall be credited to the Cabinet for Health Services, Department for Mental Health and Mental Retardation Services, for the purposes of providing direct services to individuals with brain injuries that may include long-term supportive services and training and consultation to professionals working with individuals with brain injuries. As funding becomes available under this subparagraph, the Cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the services permitted by this subparagraph.

(e) Any amount specified by a specific statute shall be transferred as provided in that statute; and

(f)~~[(e)]~~ The remainder of the service fee shall be utilized to fund enforcement of this chapter and for the support of jails, recordkeeping, treatment, and educational programs authorized by this chapter and by the Department of Public Advocacy.

(4) The amounts specified in subsection (3)(a), (b),~~[and]~~ (c), ***and (d)*** of this section shall be placed in trust and agency accounts that shall not lapse.

Section 2. KRS 42.320 is amended to read as follows:

(1) There is hereby established the court cost distribution fund, which is created to provide a central account into which the court costs collected by all circuit clerks, under KRS 23A.205(1) and 24A.175(1), shall be paid.

(2) The fund shall be administered by the Finance and Administration Cabinet, which

shall make monthly disbursements from the fund according to the following schedule:

(a) Forty-nine percent (49%) of each court cost shall be paid into the general fund;

(b) Ten and eight-tenths percent (10.8%) of each court cost, up to five million four hundred thousand dollars ($5,400,000), shall be paid into the State Treasury for the benefit and use of the Kentucky Local Correctional Facilities Construction Authority under KRS 441.605 to 441.695;

(c) Six and one-half percent (6.5%) of each court cost, up to three million two hundred fifty thousand dollars ($3,250,000), shall be paid into the spinal cord and head injury research trust fund created in KRS 211.504;

(d) Five and one-half percent (5.5%) of each court cost, up to ***three million two hundred fifty thousand***~~[two million seven hundred fifty thousand]~~ dollars ***($3,250,000)***~~[($2,750,000)]~~, shall be paid into the traumatic brain injury trust fund created in KRS 211.476;

(e) Five percent (5%) of each court cost, up to two million five hundred thousand dollars ($2,500,000), shall be paid into a trust and agency account with the Administrative Office of the Courts and is to be used by the circuit clerks to hire additional deputy clerks and to enhance deputy clerk salaries;

(f) Three and one-half percent (3.5%) of each court cost, up to one million seven hundred fifty thousand dollars ($1,750,000), shall be paid to a special trust and agency account that shall not lapse for the Department of Public Advocacy;

(g) Three and four-tenths percent (3.4%) of each court cost, up to one million seven hundred thousand dollars ($1,700,000), shall be paid into the crime victims' compensation fund created in KRS 346.185;

(h) Seven-tenths of one percent (0.7%) of each court cost, up to three hundred

fifty thousand dollars ($350,000), shall be paid to the Justice Cabinet to defray the costs of conducting record checks on prospective firearms purchasers pursuant to the Brady Handgun Violence Prevention Act and for the collection, testing, and storing of DNA samples;

(i) Ten and one-tenth percent (10.1%) of each court cost, up to five million fifty thousand dollars ($5,050,000), deposited in the fund shall be paid to the county sheriff in the county from which the court cost was received; and

(j) Five and one-half percent (5.5%) of each court cost, up to two million seven hundred fifty thousand dollars ($2,750,000), deposited in the fund shall be paid to the county treasurer in the county from which the court cost was received and shall be used by the fiscal court in that county for the purposes of defraying the costs of operation of the county jail and the transportation of prisoners.

(3) Any moneys remaining in the fund after the monthly disbursements in subsection (2) of this section shall be paid into the general fund.

(4) Any moneys collected above the prescribed amount shall be paid into the general fund.

AN ACT relating to all-terrain vehicles.

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

Section 1. KRS 189.515 is amended to read as follows:

(1) Except for vehicles authorized to operate on a public highway as of July 15, 1998, and except as provided in subsection (6) of this section, a person shall not operate an all-terrain vehicle upon any public highway or roadway or upon the right-of-way of any public highway or roadway.

(2) A person shall not operate an all-terrain vehicle on private property without the consent of the landowner, tenant, or individual responsible for the property.

(3) A person shall not operate an all-terrain vehicle on public property unless the governmental agency responsible for the property has approved the use of all-terrain vehicles.

(4) Except for vehicles authorized to operate on a public highway, a person operating an all-terrain vehicle~~[on public property]~~ shall wear approved protective headgear, in the manner prescribed by the secretary of the Transportation Cabinet, at all times that the vehicle is in motion.~~[The approved headgear requirement shall not apply when the operator of any all-terrain vehicle is engaged in:~~

~~(a) Farm or agriculture related activities;~~

~~(b) Mining or mining exploration activities;~~

~~(c) Logging activities;~~

~~(d) Any other business, commercial, or industrial activity; or~~

~~(e) Use of that vehicle on private property.]~~

(5) ~~[(a)]~~A person under the age of sixteen (16) years shall not operate an all-terrain vehicle~~[with an engine size exceeding ninety (90) cubic centimeters displacement, and a person under the age of sixteen (16) years shall not operate an all-terrain vehicle except under direct parental supervision.~~

~~(b) A person under the age of twelve (12) years shall not operate an all-terrain~~

~~vehicle with an engine size exceeding seventy (70) cubic centimeters displacement~~].

(6) (a) A person may operate an all-terrain vehicle on any two (2) lane public highway in order to cross the highway. In crossing the highway under this paragraph, the operator shall cross the highway at as close to a ninety (90) degree angle as is practical and safe, and shall not travel on the highway for more than two-tenths (2/10) of a mile.

(b) A person may operate an all-terrain vehicle on any two (2) lane public highway, if the operator is engaged in farm or agricultural related activities, construction, road maintenance, or snow removal.

(c) The Transportation Cabinet may designate, and a city or county government may designate, those public highways, segments of public highways, and adjoining rights-of-way of public highways under its jurisdiction where all-terrain vehicles that are prohibited may be operated.

(d) A person operating an all-terrain vehicle on a public highway under this subsection shall possess a valid operator's license.

(e) A person operating an all-terrain vehicle on a public highway under this subsection shall comply with all applicable traffic regulations.

(f) A person shall not operate an all-terrain vehicle under this subsection unless the all-terrain vehicle has at least one (1) headlight and two (2) taillights, which shall be illuminated at all times the vehicle is in operation.

(g) A person operating an all-terrain vehicle under this subsection shall restrict the operation to daylight hours, except when engaged in snow removal or emergency road maintenance.

Section 2. KRS 189.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections

(1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.285, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456, and 189.960 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

(2) (a) Any person who violates the weight provisions of KRS 189.212, 189.221, 189.222, 189.226, 189.230, or 189.270 shall be fined two cents ($0.02) per pound for each pound of excess load when the excess is five thousand (5,000) pounds or less. When the excess exceeds five thousand (5,000) pounds the fine shall be two cents ($0.02) per pound for each pound of excess load, but the fine levied shall not be less than one hundred dollars ($100) and shall not be more than five hundred dollars ($500).

(b) Any person who violates the provisions of KRS 189.271 and is operating on a route designated on the permit shall be fined one hundred dollars ($100); otherwise, the penalties in paragraph (a) of this subsection shall apply.

(c) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, 189.490, or the dimension provisions of KRS 189.212, for which another penalty is not specifically provided shall be fined not less than ten

dollars ($10) nor more than five hundred dollars ($500).

(d) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars ($15).

(b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned not less than thirty (30) days nor more than sixty (60) days, or both. For each subsequent offense occurring within three (3) years, the person shall be fined not less than three hundred dollars ($300) nor more than five hundred dollars ($500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510[~~ or KRS 189.515~~] shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8) ***Any person who violates Section 1 of this Act shall be sentenced to community service for twenty (20) hours for the first offense. A second or subsequent offense shall result in a fine of one hundred dollars ($100), fifty dollars ($50) of which shall be deposited in the traumatic brain injury trust fund established under KRS 211.476. Funds collected under this subsection shall not apply to the limits established under KRS 42.320(2)(d).***

(9) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(10)[~~(9)~~] (a) Any person who violates KRS 189.530(1) shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(b) Any person who violates KRS 189.530(2) shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(11)[~~(10)~~] Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(12)[~~(11)~~] Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(13)[~~(12)~~] The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and, in the case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(14)[~~(13)~~] Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(15)[~~(14)~~] Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(16)[~~(15)~~] Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(17)[~~(16)~~] Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars ($100) and, upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(18)[~~(17)~~] (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name the vehicle used in the transportation of inflammable liquids or explosives is licensed, the person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(19)[~~(18)~~] Any person who abandons a vehicle upon the right-of-way of a state highway for three (3) consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(20)[~~(19)~~] Every person violating KRS 189.393 shall be guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which the defendant was also charged with

violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor.

(21)[~~(20)~~] Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(22)[~~(21)~~] A person who elects to operate a bicycle in accordance with any regulations adopted pursuant to KRS 189.287 and who willfully violates a provision of a regulation shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

(23)[~~(22)~~] Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(24)[~~(23)~~] Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(25)[~~(24)~~] Any person who violates the provisions of KRS 189.125(3) shall be fined fifty dollars ($50).

(26)[~~(25)~~] Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars ($25).

(27)[~~(26)~~] Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

(28)[~~(27)~~] A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating

a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

Section 3. KRS 186.574 is amended to read as follows:

(1) The Transportation Cabinet shall establish a state traffic school for new drivers and for traffic offenders. The school shall be composed of uniform education and training elements designed to create a lasting influence on new drivers and a corrective influence on traffic offenders. District Courts may in lieu of assessing penalties for traffic offenses, other than for KRS 189A.010, sentence offenders to state traffic school and no other. The Transportation Cabinet shall enroll a person in state traffic school who fails to complete a driver's education course pursuant to KRS 186.410(5).

(2) If a District Court stipulates in its judgment of conviction that a person attend state traffic school, the court shall indicate this in the space provided on the abstract of conviction filed with the Transportation Cabinet. Upon receipt of an abstract, the Transportation Cabinet, or its representative, shall schedule the person to attend state traffic school. Failure of the person to attend and satisfactorily complete state traffic school in compliance with the court order, may be punished as contempt of the sentencing court.

(3) The Transportation Cabinet shall supervise, operate, and administer state traffic school, and shall promulgate administrative regulations pursuant to KRS Chapter 13A governing facilities, equipment, courses of instruction, instructors, and records of the program. In the event a person sentenced under subsection (1) of this section does not attend or satisfactorily complete state traffic school, the Transportation Cabinet may deny that person a license or suspend the license of that person until he

reschedules attendance or completes state traffic school, at which time a denial or suspension shall be rescinded.

(4) Persons participating in the state traffic school as provided in this section shall pay a fee of fifteen dollars ($15) to defray the cost of operating the school, except that if enrollment in state traffic school is to satisfy the requirement of KRS 186.410(4)(c), a fee shall not be assessed. Any funds collected pursuant to KRS 186.535(1) that are dedicated to the road fund for use in the state driver education program may be used for the purposes of state traffic school.

(5) The following procedures shall govern persons attending state traffic school pursuant to this section:

(a) A person convicted of any violation of traffic codes set forth in KRS Chapters 177, 186, or 189, and who is otherwise eligible, may in the sole discretion of the trial judge, be sentenced to attend state traffic school. Upon payment of the fee required by subsection (4) of this section, and upon successful completion of state traffic school, the sentence to state traffic school shall be the person's penalty in lieu of any other penalty, except for the payment of court costs;

(b) Except as provided in KRS 189.990*(28)*[~~(27)~~], a person shall not be eligible to attend state traffic school who has been cited for a violation of KRS Chapters 177, 186, or 189 that has a penalty of mandatory revocation or suspension of an offender's driver's license;

(c) Except as provided in KRS 189.990*(28)*[~~(27)~~], a person shall not be eligible to attend state traffic school for any violation if, at the time of the violation, the person did not have a valid driver's license or the person's driver's license was suspended or revoked by the cabinet;

(d) Except as provided in KRS 189.990*(28)*[~~(27)~~], a person shall not be eligible to attend state traffic school more than once in any one (1) year period, unless the person wants to attend state traffic school to comply with the driver

education requirements of KRS 186.410; and

(e) The cabinet shall notify the sentencing court regarding any person who was sentenced to attend state traffic school who was ineligible to attend state traffic school. A court notified by the cabinet pursuant to this paragraph shall return the person's case to an active calendar for a hearing on the matter. The court shall issue a summons for the person to appear and the person shall demonstrate to the court why an alternative sentence should not be imposed.

AN ACT relating to fines for traffic offenses.

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

Section 1. KRS 189.990 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsections (1), (2), and (5) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.285, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, 189.450 to 189.480, subsection (1) of KRS 189.520, KRS 189.540, KRS 189.570 to 189.630, except subsection (1) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456, and 189.960 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense. Any person who violates subsection (1) of KRS 189.580 shall be fined not less than twenty dollars ($20) nor more than two thousand dollars ($2,000) or imprisoned in the county jail for not more than one (1) year, or both. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars ($11) nor more than thirty dollars ($30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

(2) (a) Any person who violates the weight provisions of KRS 189.212, 189.221, 189.222, 189.226, 189.230, or 189.270 shall be fined two cents ($0.02) per pound for each pound of excess load when the excess is five thousand (5,000) pounds or less. When the excess exceeds five thousand (5,000) pounds the fine shall be two cents ($0.02) per pound for each pound of excess load, but the fine levied shall not be less than one hundred dollars ($100) and shall not be more than five hundred dollars ($500).

(b) Any person who violates the provisions of KRS 189.271 and is operating on a route designated on the permit shall be fined one hundred dollars ($100);

otherwise, the penalties in paragraph (a) of this subsection shall apply.

(c) Any person who violates any provision of subsections (3) and (4) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, 189.490, or the dimension provisions of KRS 189.212, for which another penalty is not specifically provided shall be fined not less than ten dollars ($10) nor more than five hundred dollars ($500).

(d) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.

(3) (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars ($15).

(b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars ($35) nor more than two hundred dollars ($200).

(4) (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars ($25) nor more than one hundred dollars ($100).

(c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.

(5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars ($100) nor more than two hundred dollars ($200) or imprisoned not less than thirty (30) days nor more than sixty (60) days, or both. For each subsequent offense occurring within three (3) years, the person shall be fined

not less than three hundred dollars ($300) nor more than five hundred dollars ($500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.

(6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars ($15) in excess of the cost of the repair of the road.

(7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars ($20) nor more than fifty dollars ($50).

(8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(9) (a) Any person who violates KRS 189.530(1) shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.

(b) Any person who violates KRS 189.530(2) shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100).

(10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.

(11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars ($30) nor more than one hundred dollars ($100) for each offense.

(12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and, in the case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.

(13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars ($20) nor more than twenty-five dollars ($25).

(15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100) for each offense.

(16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars ($100) and, upon subsequent convictions, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or imprisoned for thirty (30) days, or both.

(17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.

(b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name the vehicle used in the transportation of inflammable liquids or explosives is licensed, the person shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500). Each violation shall constitute a separate offense.

(18) Any person who abandons a vehicle upon the right-of-way of a state highway for three (3) consecutive days shall be fined not less than thirty-five dollars ($35) nor more than one hundred dollars ($100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.

(19) Every person violating KRS 189.393 shall be guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which the defendant was also charged with violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor.

(20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.

(21) A person who elects to operate a bicycle in accordance with any regulations adopted

pursuant to KRS 189.287 and who willfully violates a provision of a regulation shall be fined not less than ten dollars ($10) nor more than one hundred dollars ($100). A person who operates a bicycle without complying with any regulations adopted pursuant to KRS 189.287 or vehicle safety statutes shall be prosecuted for violation of the latter.

(22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars ($500) or imprisoned for not more than six (6) months, or both.

(23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars ($25) nor more than three hundred dollars ($300).

(24) Any person who violates the provisions of KRS 189.125(3) shall be fined ***seventy-five dollars ($75). Twenty-five dollars ($25) of each fine assessed under this subsection shall be divided as follows:***

(a) Twelve dollars and fifty cents ($12.50) shall be deposited into the traumatic brain injury trust fund established under KRS 211.476. Funds deposited into the traumatic brain injury trust fund under this subsection shall not apply to the limits established under KRS 42.320(2)(d); and

(b) Twelve dollars and fifty cents ($12.50) shall be credited to the Cabinet for Health Services, Department for Mental Health and Mental Retardation Services, for the purposes of providing direct services to individuals with brain injuries, that may include long-term supportive services, and training and consultation to professionals working with individuals with brain injuries. As funding becomes available under this paragraph, the Cabinet for Health Services may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the services permitted by this paragraph ~~[fifty dollars ($50)]~~.

(25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed ***fifty dollars ($50).*** Twenty-five dollars ($25) ***of each fine***

assessed under this subsection shall be divided as follows:

(a) Twelve dollars and fifty cents ($12.50) shall be deposited into the traumatic brain injury trust fund established under KRS 211.476. Funds deposited into the traumatic brain injury trust fund under this subsection shall not apply to the limits established under KRS 42.320(2)(d); and

(b) Twelve dollars and fifty cents ($12.50) shall be credited tot he Cabinet for Health Services, Department for Mental Health and Mental Retardation Services, for the purposes of providing direct services to individuals with brain injuries, that may include long-term supportive services, and training and consultation to professionals working with individuals with brain injuries. As funding becomes available under this paragraph, the Cabinet for Health Services may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the services permitted by this paragraph.

(26) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.

(27) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:

(a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and

(b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.

AN ACT relating to the traumatic brain injury trust fund.

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

Section 1. KRS 42.320 is amended to read as follows:

(1) There is hereby established the court cost distribution fund, which is created to provide a central account into which the court costs collected by all circuit clerks, under KRS 23A.205(1) and 24A.175(1), shall be paid.

(2) The fund shall be administered by the Finance and Administration Cabinet, which shall make monthly disbursements from the fund according to the following schedule:

(a) Forty-nine percent (49%) of each court cost shall be paid into the general fund;

(b) Ten and eight-tenths percent (10.8%) of each court cost, up to five million four hundred thousand dollars ($5,400,000), shall be paid into the State Treasury for the benefit and use of the Kentucky Local Correctional Facilities Construction Authority under KRS 441.605 to 441.695;

(c) Six and one-half percent (6.5%) of each court cost, up to three million two hundred fifty thousand dollars ($3,250,000), shall be paid into the spinal cord and head injury research trust fund created in KRS 211.504;

(d) Five and one-half percent (5.5%) of each court cost, up to ***three million two hundred fifty thousand dollars ($3,250,000)***~~[two million seven hundred fifty thousand dollars ($2,750,000)]~~, shall be paid into the traumatic brain injury trust fund created in KRS 211.476;

(e) Five percent (5%) of each court cost, up to two million five hundred thousand dollars ($2,500,000), shall be paid into a trust and agency account with the Administrative Office of the Courts and is to be used by the circuit clerks to hire additional deputy clerks and to enhance deputy clerk salaries;

(f) Three and one-half percent (3.5%) of each court cost, up to one million seven

hundred fifty thousand dollars ($1,750,000), shall be paid to a special trust and agency account that shall not lapse for the Department of Public Advocacy;

(g) Three and four-tenths percent (3.4%) of each court cost, up to one million seven hundred thousand dollars ($1,700,000), shall be paid into the crime victims' compensation fund created in KRS 346.185;

(h) Seven-tenths of one percent (0.7%) of each court cost, up to three hundred fifty thousand dollars ($350,000), shall be paid to the Justice Cabinet to defray the costs of conducting record checks on prospective firearms purchasers pursuant to the Brady Handgun Violence Prevention Act and for the collection, testing, and storing of DNA samples;

(i) Ten and one-tenth percent (10.1%) of each court cost, up to five million fifty thousand dollars ($5,050,000), deposited in the fund shall be paid to the county sheriff in the county from which the court cost was received; and

(j) Five and one-half percent (5.5%) of each court cost, up to two million seven hundred fifty thousand dollars ($2,750,000), deposited in the fund shall be paid to the county treasurer in the county from which the court cost was received and shall be used by the fiscal court in that county for the purposes of defraying the costs of operation of the county jail and the transportation of prisoners.

(3) Any moneys remaining in the fund after the monthly disbursements in subsection (2) of this section shall be paid into the general fund.

(4) Any moneys collected above the prescribed amount shall be paid into the general fund.