

1 AN ACT relating to persistent felony offenders.

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

3 → Section 1. KRS 532.080 is amended to read as follows:

4 (1) (a) When a defendant is found to be a persistent felony offender, the jury, in lieu
5 of the sentence of imprisonment assessed under KRS 532.060 for the crime of
6 which ~~the~~~~such~~ person presently stands convicted, ~~may~~~~shall~~ fix an
7 enhanced~~a~~ sentence of imprisonment as authorized by subsection (5) or (6)
8 of this section.

9 (b) When a defendant is charged with being a persistent felony offender, the
10 determination of whether or not he or she is such an offender and the
11 punishment to be imposed pursuant to subsection (5) or (6) of this section
12 shall be determined in a separate proceeding from that proceeding which
13 resulted in his or her last conviction.

14 (c) ~~The~~~~Such~~ proceeding shall be conducted before the court sitting with the jury
15 that found the defendant guilty of his or her most recent offense unless the
16 court for good cause discharges that jury and impanels a new jury for that
17 purpose.

18 (2) A persistent felony offender in the second degree is a person who is more than
19 twenty-one (21) years of age and who stands convicted of a felony after having
20 been convicted of one (1) previous felony. As used in this provision, a previous
21 felony conviction is a conviction of a felony in this state or conviction of a crime in
22 any other jurisdiction provided:

23 (a) That a sentence to a term of imprisonment of one (1) year or more or a
24 sentence to death was imposed~~therefor~~~~and~~

25 (b) That the offender was over the age of eighteen (18) years at the time the
26 offense was committed; and

27 (c) That the offender:

- 1 1. ~~{Completed service of the sentence imposed on the previous felony~~
 2 ~~conviction within five (5) years prior to the date of commission of the~~
 3 ~~felony for which he now stands convicted; or~~
- 4 2. ~~—~~ Was on probation, parole, postincarceration supervision, conditional
 5 discharge, conditional release, furlough, appeal bond, or any other form
 6 of legal release from any of the previous felony convictions at the time
 7 of commission of the felony for which he or she now stands convicted;
 8 ~~{or~~
- 9 3. ~~—~~ Was discharged from probation, parole, postincarceration supervision,
 10 ~~conditional discharge, conditional release, or any other form of legal~~
 11 ~~release on any of the previous felony convictions within five (5) years~~
 12 ~~prior to the date of commission of the felony for which he now stands~~
 13 ~~convicted; or}~~
- 14 2.~~[4.]~~ Was in custody from the previous felony conviction at the time of
 15 commission of the felony for which he or she now stands convicted; or
- 16 3.~~[5.]~~ Had escaped from custody while serving any of the previous felony
 17 convictions at the time of commission of the felony for which he or she
 18 now stands convicted.
- 19 (3) A persistent felony offender in the first degree is a person who is more than twenty-
 20 one (21) years of age and who stands convicted of a felony after having been
 21 convicted of two (2) or more felonies, or one (1) or more felony sex crimes against
 22 a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more
 23 felonies. As used in this provision, a previous felony conviction is a conviction of a
 24 felony in this state or conviction of a crime in any other jurisdiction provided:
- 25 (a) That a sentence to a term of imprisonment of one (1) year or more or a
 26 sentence to death was imposed therefor; ~~and}~~
- 27 (b) That the offender was over the age of eighteen (18) years at the time the

1 offense was committed; and

2 (c) That the offender:

3 1. ~~[Completed service of the sentence imposed on any of the previous~~
4 ~~felony convictions within five (5) years prior to the date of the~~
5 ~~commission of the felony for which he now stands convicted; or~~

6 2. ~~]~~Was on probation, parole, postincarceration supervision, conditional
7 discharge, conditional release, furlough, appeal bond, or any other form
8 of legal release from any of the previous felony convictions at the time
9 of commission of the felony for which he or she now stands convicted;

10 ~~[or~~

11 3. ~~Was discharged from probation, parole, postincarceration supervision,~~
12 ~~conditional discharge, conditional release, or any other form of legal~~
13 ~~release on any of the previous felony convictions within five (5) years~~
14 ~~prior to the date of commission of the felony for which he now stands~~
15 ~~convicted; or]~~

16 2.~~[4.]~~Was in custody from the previous felony conviction at the time of
17 commission of the felony for which he or she now stands convicted; or

18 3.~~[5.]~~Had escaped from custody while serving any of the previous felony
19 convictions at the time of commission of the felony for which he or she
20 now stands convicted.

21 (4) For the purpose of determining whether a person has two (2) or more previous
22 felony convictions, two (2) or more convictions of crime for which that person
23 served concurrent or uninterrupted consecutive terms of imprisonment shall be
24 deemed to be only one (1) conviction, unless one (1) of the convictions was for an
25 offense committed while that person was imprisoned.

26 (5) (a) If a jury elects to impose an enhanced sentence under subsection (1) of this
27 section, a person who is found to be a persistent felony offender in the second

1 degree shall be sentenced to an indeterminate term of imprisonment pursuant
 2 to the sentencing provisions of KRS 532.060(2) for the next highest degree
 3 than the offense for which convicted.

4 **(b)** A person who is found to be a persistent felony offender in the second degree
 5 shall not be eligible for probation, shock probation, or conditional discharge,
 6 unless all offenses for which the person stands convicted are **Class C or** Class
 7 D felony offenses which do not involve a violent act against a person, in
 8 which case probation, shock probation, or conditional discharge may be
 9 granted.

10 **(c)** A violent offender who is found to be a persistent felony offender in the
 11 second degree shall not be eligible for parole except as provided in KRS
 12 439.3401.

13 **(6) If a jury elects to impose an enhanced sentence under subsection (1) of this**
 14 **section,** a person who is found to be a persistent felony offender in the first degree
 15 shall be sentenced to imprisonment as follows:

16 (a) If the offense for which he **or she** presently stands convicted is a Class A or
 17 Class B felony, or if the person was previously convicted of one (1) or more
 18 sex crimes committed against a minor as defined in KRS 17.500 and presently
 19 stands convicted of a subsequent sex crime, a persistent felony offender in the
 20 first degree shall be sentenced to an indeterminate term of imprisonment, the
 21 maximum of which shall not be less than twenty (20) years nor more than
 22 fifty (50) years, or life imprisonment, or life imprisonment without parole for
 23 twenty-five (25) years for a sex crime committed against a minor; **or**

24 (b) If the offense for which he **or she** presently stands convicted is a Class C or
 25 Class D felony, a persistent felony offender in the first degree shall be
 26 sentenced to an indeterminate term of imprisonment, the maximum of which
 27 shall not be less than ten (10) years nor more than twenty (20) years.

- 1 (7) **(a) If a jury elects to impose an enhanced sentence under subsection (1) of this**
 2 **section,** a person who is found to be a persistent felony offender in the first
 3 degree shall not be eligible for probation, shock probation, or conditional
 4 discharge, unless all offenses for which the person stands convicted are **Class**
 5 **C or** Class D felony offenses which do not involve a violent act against a
 6 person or a sex crime as that term is defined in KRS 17.500, in which case,
 7 probation, shock probation, or conditional discharge may be granted.
- 8 **(b)** If the offense the person presently stands convicted of is a Class A, B, or C
 9 felony **offense which involves a violent act against a person or a sex crime**
 10 **as defined in KRS 17.500,** the person shall not be eligible for parole until the
 11 person has served a minimum term of incarceration of not less than ten (10)
 12 years, unless another sentencing scheme applies.
- 13 **(c)** A violent offender who is found to be a persistent felony offender in the first
 14 degree shall not be eligible for parole except as provided in KRS 439.3401.
- 15 (8) A conviction, plea of guilty, or Alford plea under KRS 218A.1415 shall not trigger
 16 the application of this section, regardless of the number or type of prior felony
 17 convictions that may have been entered against the defendant. ~~[A conviction, plea~~
 18 ~~of guilty, or Alford plea under KRS 218A.1415 may be used as a prior felony~~
 19 ~~offense allowing this section to be applied if he or she is subsequently convicted of~~
 20 ~~a different felony offense.]~~
- 21 (9) **The provisions of this section shall be retroactive** ~~[The provisions of this section~~
 22 ~~amended by 1994 Ky. Acts ch. 396, sec. 11, shall be retroactive].~~
- 23 (10) (a) Except as provided in paragraph (b) of this subsection, this section shall not
 24 apply to a person convicted of a criminal offense if the penalty for that offense
 25 was increased from a misdemeanor to a felony, or from a lower felony
 26 classification to a higher felony classification, because the conviction
 27 constituted a second or subsequent violation of that offense.

- 1 (b) This subsection shall not prohibit the application of this section to a person
2 convicted of:
- 3 1. A felony offense arising out of KRS 189A.010, 189A.090, 506.140,
4 508.032, 508.140, or 510.015; or
 - 5 2. Any other felony offense if the penalty was not enhanced to a higher
6 level because the Commonwealth elected to prosecute the person as a
7 first-time violator of that offense.