

## CHAPTER 345

## (HB 475)

AN ACT relating to criminal justice.

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

Section 1. KRS 196.037 is amended to read as follows:

- (1) All personnel of the department, while acting for the department in any capacity entailing the maintenance of custody over any prisoners, shall have all the authority and powers of peace officers.
- (2) All department personnel who are officially requested by a law enforcement agency in a county of Kentucky or by the Kentucky State Police to assist in the apprehension of a prisoner who has escaped from the legal or physical custody of the Department of Corrections or a detention facility of the Department of Corrections shall possess, while responding to and for the duration of the matter for which the request was made, the same powers of arrest as peace officers.
- (3) Probation and parole officers, while acting for the department in any capacity entailing the maintenance of custody or supervision of any confined prisoner, paroled prisoner, escaped prisoner, ~~or~~ probationer, **or other person otherwise placed under their supervision** shall have all the authority and powers of peace officers. Section 2. KRS 197.025 is amended to read as follows:
  - (1) KRS 61.884 and 61.878 to the contrary notwithstanding, no person, including any inmate confined in a jail or any facility or any individual on active supervision under the jurisdiction of the department, shall have access to any records if the disclosure is deemed by the commissioner of the department or his designee to constitute a threat to the security of the inmate, any other inmate, correctional staff, the institution, or any other person.
  - (2) KRS 61.872 to the contrary notwithstanding, the department shall not be required to comply with a request for any record from any inmate confined in a jail or any facility or any individual on active supervision under the jurisdiction of the department, unless the request is for a record which pertains to that individual.
  - (3) KRS 61.880 to the contrary notwithstanding, all persons confined in a penal facility shall challenge any denial of an open record with the Attorney General **by mailing or otherwise sending the appropriate documents to the Attorney General within twenty (20) days of the denial** pursuant to the procedures set out in KRS 61.880(2) before an appeal can be filed in a Circuit Court.
  - (4) KRS 61.872 to the contrary notwithstanding, the Department of Corrections shall refuse to accept the hand delivery of an open records request from a confined inmate.
  - (5) KRS 61.870 to 61.884 to the contrary notwithstanding, all records containing information expunged pursuant to law shall not be open to the public.
  - (6) The policies and procedures of administrative regulations of the department which address the security and control of inmates and penitentiaries shall not be accessible to the public or inmates. The Administrative Regulations Review Subcommittee's review process for these policies and procedures shall be conducted in closed sessions.

- (7) KRS 61.880(1) to the contrary notwithstanding, upon receipt of a request for any record, the department shall determine within five (5) days after receipt of the request, excepting Saturdays, Sundays, and legal holidays, whether the record shall be released.

Section 3. KRS 197.045 is amended to read as follows:

- (1) Any person convicted and sentenced to a state penal institution may receive a credit on his sentence of not exceeding ten (10) days for each month served, except as otherwise provided in this section, to be determined by the department from the conduct of the prisoner. In addition, the department shall provide an educational good time credit of sixty (60) days to any prisoner who successfully receives a graduate equivalency diploma or a high school diploma, a two (2) or four (4) year college degree, or a two (2) year or four (4) year certification in applied sciences, or who receives a technical education diploma as provided and defined by the department; prisoners may earn additional credit for each program completed. The department may forfeit any good time previously earned by the prisoner or deny the prisoner the right to earn good time in any amount if during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.
- (2) When two (2) or more consecutive sentences are to be served, the several sentences shall be merged and served in the aggregate for the purposes of the good time credit computation or in computing dates of expiration of sentence.
- (3) An inmate may, at the discretion of the commissioner, be allowed a deduction from a sentence not to exceed five (5) days per month for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs. The allowance shall be an addition to commutation of time for good conduct and under the same terms and conditions and without regard to length of sentence.
- (4) Until successful completion of the sex offender treatment program, a sex offender may earn good time. However, the good time shall not be credited to the sex offender's sentence. Upon the successful completion of the sex offender treatment program, as determined by the program director, the offender shall be eligible for all good time earned but not otherwise forfeited under administrative regulations promulgated by the Department of Corrections. After successful completion of the sex offender treatment program, a sex offender may continue to earn good time in the manner provided by administrative regulations promulgated by the Department of Corrections. Any sex offender, as defined in KRS 197.410, who has not successfully completed the sex offender treatment program as determined by the program director shall not be entitled to the benefit of any credit on his sentence. A sex offender who does not complete the sex offender treatment program for any reason shall serve his entire sentence without benefit of good time, parole, or other form of early release. The provisions of this section shall not apply to any sex offender convicted before July 15, 1998, or to any mentally retarded sex offender.
- (5) (a) The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of good time and the ability to earn good time in the future for those inmates who have civil actions dismissed because the court found the action to be malicious, ~~or~~ harassing, ~~or if satisfied that the action is legally without merit or~~ factually frivolous.
- (b) Penalties set by administrative regulation pursuant to this subsection shall be as uniform as practicable throughout all institutions operated by, under contract to, or

under the control of the department and shall specify a specific number of days or months of good time forfeited as well as any prohibition imposed on the future earning of good time.

Section 4. KRS 438.250 is amended to read as follows:

- (1) When a public servant, as defined in KRS 521.010, or victim of a crime is bitten by, suffers a puncture wound caused by, or is exposed to the blood or body fluids of a criminal defendant, inmate, parolee, or probationer or the blood or body fluids of a criminal defendant, inmate, parolee, or probationer have come into contact with the skin or unprotected clothing of a public servant during any incident in which the public servant and the criminal defendant, inmate, parolee, or probationer are involved, the criminal defendant, inmate, parolee, or probationer shall be ordered to submit to testing~~[of the blood]~~ for human immunodeficiency virus (HIV), hepatitis A, B, and C, and tuberculosis.
- (2) The written results of the testing shall be made available to each public servant, criminal defendant, inmate, parolee, or probationer coming within the purview of subsection (1). However, the results shall not be public records and shall be disclosed to others only on a need-to-know basis.
- (3) If a criminal defendant, inmate, parolee, or probationer fails or refuses to be tested as ordered, he may be held in criminal contempt. A Circuit or District Judge shall compel the criminal defendant, inmate, parolee, or probationer to undergo the testing required herein if he fails or refuses to do so. Undergoing compulsory testing after a failure or refusal to be tested shall not relieve the criminal defendant, inmate, parolee, or probationer of the liability imposed by this subsection.
- (4) The costs of the testing shall be borne by the criminal defendant, inmate, parolee, or probationer unless he is determined unable to pay for the test by a court of competent jurisdiction for criminal defendants and probationers and by the Department of Corrections pursuant to their indigency standards for inmates and parolees, in which case the Commonwealth shall pay for the testing.
- (5) The provisions of subsections (1) to (4) of this section shall apply to juveniles falling within any category specified in subsections (1) to (4) of this section as well as to adults.

Section 5. KRS 439.563 is amended to read as follows:

- (1) When there is an identified victim of a defendant's crime to whom restitution has been ordered but not yet paid in full, or restitution has been ordered paid to a government agency and has not yet been paid in full, the Parole Board shall order the defendant to pay restitution as a condition of parole.
- (2) When the Parole Board orders restitution, the board shall:
  - (a) Order the restitution to be paid to a specific person or organization through the Division of Probation and Parole, which shall disburse the moneys as ordered by the board;
  - ~~(b) The Division of Probation and Parole shall be responsible for overseeing the collection of the restitution;~~
  - ~~(c) Set the amount of restitution to be paid, if not already set;~~

- ~~(c)(d)~~ Set the amount and frequency of each restitution payment or require the payment to be made in a lump sum;
- ~~(e)~~ Monitor the payment of the restitution to assure that payment is being made;
- ~~(f)~~ If restitution is not being paid as ordered, institute parole violation proceedings to determine why the restitution is not being paid;
- ~~(g)~~ If the restitution is not being paid and no good reason exists therefor, institute sanctions against the defendant; and
- ~~(h)~~ Not release the defendant from parole supervision until restitution has been paid in full.
- (3) ***When the Parole Board orders restitution, the Department of Probation and Parole shall:***
- (a) ***Monitor and oversee the collection of the restitution;***
- (b) ***Institute parole violation proceedings if the restitution is not being paid;***
- (c) ***Institute sanctions against the defendant if restitution is not being paid and good cause is not shown for the nonpayment; and***
- (d) ***Maintain parole supervision over the defendant until restitution has been paid in full.***
- (4) The board, in addition to any other sanctions which may be imposed on the defendant, ask a court to hold a defendant who is not paying restitution in the manner or amount prescribed in contempt of court.
- ~~(5)(4)~~ Any statute relating to the length of parole supervision notwithstanding, the parole for a person owing restitution shall be until the restitution is paid in full, even if this would lengthen the period of supervision beyond the statutory limit of parole supervision or the statutory limit for serving out the sentence imposed.
- ~~(6)(5)~~ Payment of restitution in full prior to the end of the period of parole supervision shall not shorten the period of parole supervision.

Section 6. KRS 454.405 is amended to read as follows:

- (1) At any time, and upon its own motion or on motion of a party, a court may dismiss a civil action brought by an inmate or on behalf of an inmate if satisfied that the action is malicious or harassing or if satisfied that the action is legally without merit or factually frivolous. In addition to any other available disposition, a court may dismiss the civil action if satisfied that the affidavit of poverty in support of a request to proceed in forma pauperis is wholly or partly false or misleading.
- (2) This section does not apply to criminal or collateral criminal proceedings.
- (3) A court which dismisses a civil action brought by an inmate for any of the reasons set out in subsection (1) of this section shall include as part of its order specific findings as to the reasons for the dismissal. The court shall, upon issuing the order, direct the circuit clerk to transmit a copy of the entire court order to the official having custody of the inmate and to the county attorney of the county where the action was filed.
- (4) A court which dismisses a civil action brought by an inmate for any of the reasons set out in subsection (1) of this section may include as part of its order an assessment of fines and costs against the inmate as the court may deem reasonable and prudent. The Department of

Corrections may enforce this assessment against the inmate's prison account and against any other assets of the inmate through any other mechanism provided by law.

- (5) ***No inmate may maintain a civil action for monetary damages in any state court for mental or emotional injury without a prior showing of physical injury.***

Section 7. KRS 508.025 is amended to read as follows:

- (1) A person is guilty of assault in the third degree when the actor:
- (a) Recklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury to:
    1. A state, county, city, or federal peace officer;
    2. An employee of a detention facility, or state residential treatment facility or state secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender;
    3. An employee of the Department for Social Services employed as a social worker to provide direct client services, if the event occurs while the worker is performing job related duties; or
    4. A probation and parole officer; or
  - (b) Being a person confined in a detention facility, or state residential treatment facility or state secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender, inflicts physical injury upon or throws or causes feces, ~~or~~ urine, ***or other bodily fluid*** to be thrown upon an employee of the facility.
- (2) Assault in the third degree is a Class D felony.

Section 8. KRS 510.120 is amended to read as follows:

- (1) A person is guilty of sexual abuse in the second degree when:
- (a) He subjects another person to sexual contact who is incapable of consent because he is mentally retarded or mentally incapacitated; ~~or~~
  - (b) He subjects another person who is less than fourteen (14) years old to sexual contact;  
***or***
  - (c) ***Being an employee, contractor, vendor, or volunteer of the Department of Corrections, or a detention facility as defined in KRS 520.010, or of an entity under contract with either the department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he subjects an offender who is incarcerated, supervised, evaluated, or treated by the Department of Corrections, the detention facility, or the contracting entity, to sexual contact. In any prosecution under this paragraph, the defendant may prove in exculpation that, at the time he engaged in the conduct constituting the offense, he and the offender were married to each other.***
- (2) Sexual abuse in the second degree is a Class A misdemeanor.

Section 9. KRS 532.043 is amended to read as follows:

- (1) In addition to the penalties authorized by law, any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510, KRS **529.030**, 530.020, 530.064, ~~or~~ 531.310, **or 531.320** shall be *subject*~~{sentenced}~~ to a period of conditional discharge following release from:
  - (a) Incarceration upon expiration of sentence; or (b) Completion of parole.
- (2) The period of conditional discharge shall be three (3) years.
- (3) During the period of conditional discharge, the defendant shall:
  - (a) Be subject to all orders specified by the Department of Corrections; and
  - (b) Comply with all education, treatment, testing, or combination thereof required by the Department of Corrections.
- (4) Persons under conditional discharge pursuant to this section shall be subject to the supervision of the Division of Probation and Parole.
- (5) If a person violates a provision specified in subsection (3) of this section, the violation shall be reported in writing to the Commonwealth's attorney in the county of conviction. The Commonwealth's attorney may petition the court to revoke the defendant's conditional discharge and reincarcerate the defendant *as set forth in KRS 532.060*~~{for no longer than the time remaining on the conditional discharge}~~.
- (6) The provisions of this section shall apply only to persons convicted, pleading guilty, or entering an Alford plea after July 15, 1998.

Section 10. KRS 533.025 is amended to read as follows:

- (1) When a person is convicted of, pleads guilty to, or enters an Alford plea to a felony offense and is sentenced to jail as a condition of conditional discharge or as a condition of probation, the Department of Corrections shall pay for the incarceration of that person in a county jail at the same rate and under the same conditions as for a Class D felon who is incarcerated in the county jail under KRS 532.100.
- (2) If a person incarcerated in a county jail on conditional discharge or probation under subsection (1) of this section is granted work release, he shall pay the work release fees required by law to the jailer. The amount of work release fees paid by a prisoner shall be deducted from the amount which the Department of Corrections shall pay for the incarceration of that prisoner.
- (3) ***The Department of Corrections may, during the prisoner's period of incarceration in the county jail, take custody of the prisoner and hold that person in a state prison facility for the purpose of treating the following medical conditions:***
  - (a) ***Chronic heart and lung conditions;***
  - (b) ***Psychiatric conditions;***
  - (c) ***Acute medical conditions that require diagnostic testing or hospitalization;***
  - (d) ***Acute surgical conditions;***
  - (e) ***Pregnancy; or***
  - (f) ***Any other medical condition which the Department of Corrections may set out by administrative regulation.***

**Approved April 6, 2000**