

CHAPTER 11

(HB 86)

AN ACT relating to criminal justice matters, including but not limited to, inmate lawsuits.

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

Section 1. 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 *contains a specific reference*~~[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 ~~or~~~~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 *or administrative regulations* 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 2. KRS 454.415 is amended to read as follows:

- (1)
 - (a) *No action shall be brought by an inmate, with respect to a prison disciplinary proceeding or challenges to a sentence calculation or challenges to custody credit, until administrative remedies as set forth in Department of Corrections policies and procedures are exhausted.*
 - (b) *Administrative remedies shall be exhausted even if the remedy the inmate seeks is unavailable.*
 - (c) *The inmate shall attach to any complaint filed documents verifying that administrative remedies have been exhausted.*

- (2) In any civil action brought by an inmate, the court may continue the action for a period of time not to exceed one hundred and eighty (180) days in order to require the inmate to exhaust any plain, speedy, and effective administrative remedies available, if the court believes that such a requirement would be appropriate and in the interests of justice.

Section 3. KRS 413.140 is amended to read as follows:

- (1) The following actions shall be commenced within one (1) year after the cause of action accrued:
- (a) An action for an injury to the person of the plaintiff, or of her husband, his wife, child, ward, apprentice, or servant;
 - (b) An action for injuries to persons, cattle, or other livestock by railroads or other corporations, with the exception of hospitals licensed pursuant to KRS Chapter 216;
 - (c) An action for malicious prosecution, conspiracy, arrest, seduction, criminal conversation, or breach of promise of marriage;
 - (d) An action for libel or slander;
 - (e) An action against a physician, surgeon, dentist, or hospital licensed pursuant to KRS Chapter 216, for negligence or malpractice;
 - (f) A civil action, arising out of any act or omission in rendering, or failing to render, professional services for others, whether brought in tort or contract, against a real estate appraiser holding a certificate or license issued under KRS Chapter 324A;
 - (g) An action for the escape of a prisoner, arrested or imprisoned on civil process;
 - (h) An action for the recovery of usury paid for the loan or forbearance of money or other thing, against the loaner or forbearer or assignee of either;
 - (i) An action for the recovery of stolen property, by the owner thereof against any person having the same in his possession;~~[-and]~~
 - (j) An action for the recovery of damages or the value of stolen property, against the thief or any accessory; *and*
 - (k) *An action arising out of a detention facility disciplinary proceeding, whether based upon state or federal law.*
- (2) In respect to the action referred to in paragraph (e) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the injury is first discovered or in the exercise of reasonable care should have been discovered; provided that such action shall be commenced within five (5) years from the date on which the alleged negligent act or omission is said to have occurred.
- (3) In respect to the action referred to in paragraph (f) of subsection (1) of this section, the cause of action shall be deemed to accrue within one (1) year from the date of the occurrence or from the date when the cause of action was, or reasonably should have been, discovered by the party injured.
- (4) In respect to the action referred to in paragraph (h) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time of payment. This limitation shall apply to all payments made on all demands, whether evidenced by writing or existing only in parol.

- (5) In respect to the action referred to in paragraph (i) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time the property is found by its owner.
- (6) In respect to the action referred to in paragraph (j) of subsection (1) of this section, the cause of action shall be deemed to accrue at the time of discovery of the liability.
- (7) ***In respect to the action referred to in paragraph (k) of subsection (1) of this section, the cause of action shall be deemed to accrue on the date an appeal of the disciplinary proceeding is decided by the institutional warden.***

Section 4. KRS 454.410 is amended to read as follows:

- (1) When an inmate commences, intervenes, or becomes a party to an action ***or an appeal of a judgment in a civil action or proceeding*** without paying the fees and court costs imposed by law, the inmate shall prepare an affidavit with a certified copy of the inmate's prison account statement ***showing the total deposits*** for the six (6) months immediately preceding the inmate's commencement, intervention, or joining of the action, ***or an appeal of a judgment in a civil action or proceeding***, if available. If the records are not available for the preceding six (6) months, all inmate account records that are available shall be filed with the affidavit.
- (2) When an inmate commences, intervenes, or joins an action ***or an appeal of a judgment in a civil action or proceeding***, the inmate shall pay at least partial court fees and costs. At a minimum, the inmate shall pay a five dollar (\$5) filing fee unless the court determines the inmate is unable to pay a fee and waives all fees and costs. If the inmate has the ability to pay a higher amount, the court shall order the inmate to pay the higher amount. However, the fees and costs imposed shall not exceed the full amount otherwise imposed by law.
- ~~(3) If the inmate claims exceptional circumstances that render the inmate unable to pay at least the partial fees and costs required by this section, the inmate shall submit, in addition to the statement of account required by this section, an affidavit of special circumstances setting forth the reasons and circumstances that justify relief from the partial fees and costs requirement.~~
- ~~(4) If the court approves the application to waive all fees and costs, the court shall give written notice to the inmate that all fees and costs relating to the action will be waived. If the court denies the motion to waive all fees, the court shall give written notice to the inmate that the inmate's case will be dismissed if the partial fees and costs are not paid within forty-five (45) days after the date of the order, or within an additional period that the court may, upon request, allow. Process concerning the inmate's case shall not be served until the ***filing fee and the*** fee relating to service of process is paid.~~
- (4) ***If the inmate claims exceptional circumstances that render the inmate unable to pay at least the partial fees and costs ordered by the court, then the inmate shall submit, in addition to the statement of account required by this section, a copy of the detailed canteen expenditure sheet, and an affidavit of special circumstances setting forth the reasons and circumstances that justify relief from the partial fees and costs requirement.***
- (5) ***In no event shall an inmate bring a civil action or appeal a judgment in a civil action or proceeding under this section if the inmate has, on three (3) or more occasions within a five (5) year period, while incarcerated or detained in any facility, brought an action or appeal in any court that was dismissed on the grounds that it is frivolous, malicious, or***

harassing, unless the prisoner is under imminent danger of serious physical injury, without paying the entire filing fee in full.

Section 5. KRS 532.110 is amended to read as follows:

- (1) When multiple sentences of imprisonment are imposed on a defendant for more than one (1) crime, including a crime for which a previous sentence of probation or conditional discharge has been revoked, the multiple sentences shall run concurrently or consecutively as the court shall determine at the time of sentence, except that:
 - (a) A definite and an indeterminate term shall run concurrently and both sentences shall be satisfied by service of the indeterminate term;
 - (b) The aggregate of consecutive definite terms shall not exceed one (1) year; and
 - (c) The aggregate of consecutive indeterminate terms shall not exceed in maximum length the longest extended term which would be authorized by KRS 532.080 for the highest class of crime for which any of the sentences is imposed. In no event shall the aggregate of consecutive indeterminate terms exceed seventy (70) years.
- (2) If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run concurrently with any other sentence which the defendant must serve *unless the sentence is required by subsection (3) of this section or KRS 533.060 to run consecutively.*
- ~~(3) When a defendant is sentenced to imprisonment for a crime committed while on parole in this state, the term of imprisonment and any period of reimprisonment that the board of parole may require the defendant to serve upon the revocation of his parole shall run concurrently, unless the court orders them to run consecutively.~~
- ~~(4)~~ Notwithstanding any provision in this section to the contrary, if a person is convicted of an offense that is committed while he is imprisoned in a penal or reformatory institution, during an escape from imprisonment, or while he awaits imprisonment, the sentence imposed for that offense may be added to the portion of the term which remained unserved at the time of the commission of the offense. The sentence imposed upon any person convicted of an escape or attempted escape offense shall run consecutively with any other sentence which the defendant must serve.
- ~~(4)~~~~(5)~~ Notwithstanding any provision in this chapter to the contrary, if a person is convicted of an offense that is committed while he is imprisoned in a penal or reformatory institution, the sentence imposed for that offense may, upon order of the trial court, be served in that institution. The person may be transferred to another institution pursuant to administrative regulations of the Department of Corrections.

SECTION 6. A NEW SECTION OF KRS CHAPTER 422 IS CREATED TO READ AS FOLLOWS:

- (1) *No officer or employee of the Department of Corrections shall be required to give personal attendance as a witness in any civil suit, arising from that person's employment, out of the county in which his or her official workstation is situated, but his or her deposition shall be taken in lieu thereof; however, in the court in which the civil action is pending, if the court finds that the witness is a necessary witness for trial the court may order the personal attendance of the witness at trial.*

- (2) *Subject to the approval of the court, the Department of Corrections records which relate to supervision, custody, or confinement of an offender or which constitute an offender's medical charts or records that are susceptible to photostatic reproduction may be proved as to foundation, identity, and authenticity, without any preliminary testimony, by use of legible and durable copies certified by the employee of the department charged with the responsibility of being the custodian of the originals thereof. The certification shall be signed before a notary public by the employee and shall include the full name of the offender and, for medical charts or records, the offender's medical record number and the number of pages in the medical record. The certification shall also include a legend substantially to the following effect: "The copies of records for which this certification is made are true and complete reproductions of the original or microfilmed records which are housed at (provide the office, address, and phone number). The original records were made in the regular course of business, and it was the regular course of the Department of Corrections to make the records at or near the time of the matter recorded. This certification is given by the custodian of the records in lieu of the custodian's personal appearance."*
- (3) *Nothing in this section shall be construed as a waiver of any privilege the department may have relating to the records.*

Section 7. KRS 317.420 is amended to read as follows:

- (1) No person shall engage in the practice of "barbering" for other than cosmetic purposes nor shall any person engage in barbering for the treatment of physical or mental ailments, except that the provisions of this chapter shall not apply to:
- (a) Persons authorized by the law of this state to practice medicine, chiropody, optometry, dentistry, chiropractic, nursing or embalming when incidental practices of barbering are performed by them in the normal course of the practice of their profession;
 - (b) Commissioned medical or surgical personnel of the United States Army, Navy, Air Force or Marine Hospital Service performing incidental practices of barbering in the course of their duties; *or*
 - (c) ***Barbering services performed at an institution operated by or under contract to the Department of Corrections.***
- (2) Except as provided in subsection (1) of this section no person shall engage in the practice of barbering for the public generally or for consideration without the appropriate license required by this chapter;
- (3) No person unless duly and properly licensed pursuant to this chapter shall:
- (a) Teach barbering;
 - (b) Operate a barber shop;
 - (c) Engage in a barber apprenticeship;
 - (d) Conduct or operate a school for barbers.
- (4) No person shall aid or abet any person in violating the provisions of this section, nor shall any person engage or employ for consideration any person for the performance of any practice licensed by this chapter unless the person to perform such practice holds and displays the appropriate license therefor.

Section 8. KRS 17.552 is amended to read as follows:

No person shall conduct comprehensive sex offender presentence evaluations or treatment without first obtaining approval from the Sex Offender Risk Assessment Advisory Board, *except that the Department of Corrections sex offender treatment program shall be regulated under KRS 197.400 to 197.440 and excluded from the application of this statute.*

Approved March 01, 2002