

CHAPTER 183**(HB 452)**

AN ACT relating to monetary penalties in criminal cases.

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

Section 1. KRS 23A.205 is amended to read as follows:

- (1) Court costs for a criminal case in the Circuit Court shall be *one hundred dollars (\$100)*~~eighty-two dollars (\$82), which shall include the fee mandated in KRS 346.185].~~
- (2) *The taxation of court costs against a defendant, upon conviction in a case, shall be mandatory and shall not be subject to probation, suspension, proration, deduction, or other form of nonimposition in the terms of a plea bargain or otherwise, unless the court finds that the defendant is a poor person as defined by KRS 453.190(2) and that he or she is unable to pay court costs and will be unable to pay the court costs in the foreseeable future*~~[Except as provided in KRS 346.185, taxation of costs against a defendant, upon conviction, may be probated or suspended at the discretion of the court].~~
- (3) *If the court finds that the defendant does not meet the standard articulated in subsection (2) of this section and that the defendant is nonetheless unable to pay the full amount of the court costs and fees at the time of sentencing, then the court shall establish a show cause date by which time the court costs, fees, and fines shall be paid and may establish an installment payment plan whereby the defendant pays the full amount of the court costs, fees, and fines to the circuit clerk in installments as established by the court. All court costs and fees under the installment plan shall be paid within one (1) year of the date of sentencing notwithstanding any remaining restitution or other monetary penalty owed by the defendant and arising out of the conviction. Installment payments will be applied first to court costs, then to restitution, then to fees, and then to fines*~~[Additional fees shall be charged in Circuit Court criminal matters as follows:~~
 - ~~(a) Preparing a certification \$1.00~~
 - ~~(b) Preparing a copy of a document (per page) \$0.15~~
- ~~(4) The additional fees required by subsection (3) of this section shall be paid to the clerk at the time the service is requested.~~
- ~~(5) The circuit clerk shall monthly pay twelve dollars (\$12) from each court cost collected pursuant to subsection (1) of this section to the sheriff for the payment of bailiffs for court security as provided for in KRS 64.092. The clerk shall include among his reports to the Administrative Office of the Courts the amounts paid to the sheriff].~~

SECTION 2. A NEW SECTION OF KRS CHAPTER 23A IS CREATED TO READ AS FOLLOWS:

In criminal cases, the following fees shall be charged by the circuit clerk and paid to the clerk at the time the corresponding services are requested:

- (1) *Preparing an attestation \$0.50*
- (2) *Preparing a certification \$5.00*
- (3) *Preparing a copy of a document (per page) \$0.25*

Section 3. KRS 23A.215 is amended to read as follows:

- (1) Except as provided in ***subsection***~~[subsections]~~ (2) ~~and (3)~~ of this section, all fees and costs collected pursuant to KRS 23A.200(1) shall be deposited in the general fund of the State Treasury.
- (2) Fees consisting of reimbursement for incidental direct outlays, including, but not limited to, postage and legal advertising, may be retained by the clerk and expended for these purposes in accordance with relevant directives of the Administrative Office of the Courts.
- (3) ***Additional costs in Circuit Court civil cases authorized by subsection (2) of KRS 23A.200 shall be paid to the sheriff or other officer serving the process***~~[The moneys authorized by subsection (5) of KRS 23A.205 shall be paid monthly to the sheriff for use by the sheriff for providing security services and related activities to the court as provided for in KRS 64.092].~~
- (4) Filing fees in civil actions shall be recoverable as costs.
- (5) ***No later than the seventh working day of each month the circuit clerk shall pay the funds collected from each court cost collected under Section 1 of this Act to the court cost distribution fund established in Section 9 of this Act and report to the Finance and Administration Cabinet and the Administrative Office of the Courts the amounts deposited into the court cost distribution fund.***

Section 4. KRS 24A.175 is amended to read as follows:

- (1) Court costs for a criminal case in the District Court shall be ***one hundred dollars (\$100), regardless of whether the offense is one for which prepayment is permitted***~~;~~
 - (a) ~~For an offense for which prepayment is permitted~~
~~and for which prepayment has been made prior to~~
~~trial as required by law~~ \$49.00
 - (b) ~~For an offense for which prepayment is not permitted or~~
~~has not been made~~ \$74.00
 - (c) ~~Court costs designated in paragraph (b) of this subsection shall include the fee mandated by KRS 346.185].~~
- (2) There shall be no court costs for a parking citation when:
 - (a) The fine is paid to the clerk before the trial date in the same manner as provided for speeding citations under KRS 189.394(3); and
 - (b) The citation does not involve parking in a fire lane or blocking the traveled portion of the highway.
- (3) ~~Additional costs shall be assessed in District Court criminal matters as follows:~~
 - (a) ~~Preparing an attestation~~ \$0.50
 - (b) ~~Preparing a certification~~ \$1.00
 - (c) ~~Preparing a copy of a document (per page)~~ \$0.25
- (4) ~~The taxation of court costs against a defendant, upon conviction in a case, including persons sentenced to state traffic school as provided under KRS 186.574, shall be mandatory and shall not be subject to probation, suspension, proration, deduction, or other form of nonimposition in the terms of a plea bargain or otherwise, unless the court finds that the~~

defendant is a poor person as defined by KRS 453.190(2) and that he or she is unable to pay court costs and will be unable to pay the court costs in the foreseeable future~~[probated or suspended]~~.

- (4)~~[(5)]~~ *If the court finds that the defendant does not meet the standard articulated in subsection (3) of this section and that the defendant is nonetheless unable to pay the full amount of the court costs, fees, and fines at the time of sentencing, then the court shall establish a show cause date by which time court costs, fees, and fines shall be paid and may establish an installment payment plan whereby the defendant pays the full amount of the court costs, fees, and fines to the circuit clerk in installments as established by the court. The court costs, fees, and fines under the installment plan shall be paid within one (1) year of the date of sentencing notwithstanding any remaining restitution or other monetary penalty owed by the defendant and arising out of the conviction. Installment payments will be applied first to court costs, then to restitution, then to fees, and then to fines*~~[The circuit clerk shall, at the time fines and costs are paid over to the state, pay five dollars (\$5) from each court cost collected pursuant to subsection (1) of this section to the county treasurer for use by the fiscal court for the sole purpose of defraying the costs of operation of the county jail and the transportation of prisoners and shall include among his reports to the Administrative Office of the Courts the amounts paid to the county.~~
- (6)~~The circuit clerk shall, at the time fines and costs are paid over to the state, pay ten dollars (\$10) from each court cost collected pursuant to subsection (1) of this section to the State Treasury for the benefit and use of the Kentucky Local Correctional Facilities Construction Authority pursuant to KRS 441.625 to 441.695.~~
- (7)~~The circuit clerk shall monthly pay twelve dollars (\$12) from each court cost collected pursuant to subsection (1) of this section to the sheriff for use by the sheriff for providing security services and related activities to the court as provided for in KRS 64.092. The clerk shall include among his reports to the Administrative Office of the Courts the amounts paid to the sheriff].~~

SECTION 5. A NEW SECTION OF KRS CHAPTER 24A IS CREATED TO READ AS FOLLOWS:

In criminal cases, the following fees shall be charged by the circuit clerk and paid to the clerk at the time the corresponding services are requested:

- (1) *Preparing an attestation* \$0.50
- (2) *Preparing a certification* \$5.00
- (3) *Preparing a copy of a document (per page)* \$0.25.

Section 6. KRS 24A.180 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section all fees and costs collected pursuant to KRS 24A.170(1) shall be deposited in the general fund of the State Treasury.
- (2) Fees consisting of reimbursement for incidental direct outlays, including, but not limited to, postage and legal advertising, may be retained by the clerk and expended for these purposes in accordance with relevant directives of the Administrative Office of the Courts.
- (3) Additional costs in District Court civil cases authorized by subsection (2) of KRS 24A.170 shall be paid to the sheriff or other officer serving the process.

- (4) ~~Costs and additional costs authorized by subsections (1), (2), (3), (4), (5) and (6) of KRS 24A.175 shall be placed in the general fund of the State Treasury and may be appropriated as provided by law.~~
- (5) ~~The moneys authorized by subsection (7) of KRS 24A.175 shall be paid monthly to the sheriff for use by the sheriff for providing security services and related activities to the court as provided for in KRS 64.092.~~
- (6) ~~Filing fees in civil actions shall be recoverable as costs.~~
- (5) *No later than the seventh working day of each month the circuit clerk shall pay the funds from each court cost collected under Section 4 of this Act to the court cost distribution fund established in Section 9 of this Act and report to the Finance and Administration Cabinet and the Administrative Office of the Courts the amounts deposited into the court cost distribution fund.*

Section 7. KRS 30A.200 is amended to read as follows:

All moneys which are deposited with the clerk and which are payable to a third person, not the Commonwealth, or which may become payable to such third person as a result of court action or otherwise shall ~~be~~:

- (1) *Be* logged in the appropriate record of the clerk and the person paying or depositing the money shall be given a receipt;
- (2) *Be* deposited daily in a bank approved as a state depository bank in a special escrow account or accounts subject to the clerk's withdrawal as required in the daily course of the clerk's business or as may be ordered by a court; *and*
- (3) Not *be* subject to the provisions of KRS Chapter 41 relating to the deposit of money in the State Treasury until by action of a court, such as forfeiture of a bond, the money is due and owing to the Commonwealth; *and*
- (4) ~~In a criminal proceeding or in a proceeding under KRS Chapter 186 to KRS Chapter 189A, assessed a fee of five percent (5%) of the total value of the deposit, which shall be paid by the depositor at the time of making the deposit and which shall be in addition to the amount deposited. The fee shall be deposited by the clerk into a trust and agency account with the Administrative Office of the Courts and is to be used by the circuit clerk to hire additional deputy clerks and for enhancement of deputy clerk salaries to compensate for the additional duties necessitated by this section].~~

Section 8. KRS 31.051 is amended to read as follows:

~~[(1) With the exception of the administrative fee contained in subsection (2) of this section,]~~All moneys received by the public advocate from indigent defendants pursuant to KRS Chapter 31 or which are collected by the public advocate pursuant to KRS Chapter 431 shall be credited to the public advocate fund of the county in which the trial is held and shall not be credited to any general account maintained by or for the public advocate. Moneys credited to a county public advocate fund may be used only to support the public advocate program of that county.

~~[(2) Any person provided counsel under the provisions of this chapter shall be assessed at the time of appointment, a nonrefundable fifty dollar (\$50) administrative fee, payable, at the court's discretion, in a lump sum or in installments. The first payment shall be accompanied by a handling fee of two dollars and fifty cents (\$2.50) to be paid directly to the Circuit Clerk and deposited in a trust and agency account to the credit of the Administrative Office~~

~~of the Courts. The account shall be used to assist the circuit clerks in hiring additional employees and providing salary adjustments for deputy clerks. The court shall reduce or waive the fee if the person does not have the financial resources to pay the fee. In any case or legal action a needy person shall be assessed a total administrative fee of no more than fifty dollars (\$50), regardless of the stages of the matter at which the needy person is provided appointed counsel. In the event the defendant fails to pay the fee, the fee shall be deducted from any posted cash bond or shall constitute a lien upon any property which secures the person's bail, regardless of whether the bond is posted by the needy person or another. The failure to pay the fee shall not reduce or in any way affect the rendering of public defender services to the person.~~

- ~~(3) The administrative fee shall be in addition to any other contribution or recoupment assessed by the court pursuant to KRS 31.120 and shall be collected in accordance with that section.~~
- ~~(4) The administrative fees collected pursuant to this subsection (2) shall be placed in a special trust and agency account for the Department of Public Advocacy, and the funds shall not lapse.~~
- ~~(5) If the administrative fee, or any portion thereof, is not paid by the due date, the court's order is a civil judgment subject to collection under Civil Rule 69.03 and KRS Chapter 426.]~~

SECTION 9. A NEW SECTION OF KRS CHAPTER 42 IS CREATED 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 subsection (1) of Section 1 of this Act and subsection (1) of Section 4 of this Act, 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 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.*

Section 10. KRS 64.092 is amended to read as follows:

Compensation of sheriffs and other law enforcement officers or agencies for attending court shall be as follows:

- (1) Compensation shall be provided only for the actual time for which the sheriff or other officer is ordered to be physically present in the courtroom or is ordered to be physically present to discharge a duty ordered by the Chief Circuit Judge, Chief District Judge, or Judge of the Court of Appeals, as appropriate.
- (2) Compensation shall not be provided for more than one (1) sheriff or other officer per courtroom unless the need for additional personnel is certified in writing by the Chief Circuit Judge, Chief District Judge, or Judge of the Court of Appeals, as appropriate, and the utilization of additional personnel is approved by the Chief Justice, or his designee. In the event of an emergency of such nature precluding contacting the Chief Justice or his designee, the Chief Circuit Judge, Chief District Judge, or Judge of the Court of Appeals may authorize such assignment of additional personnel for a period not to exceed twenty-four (24) hours.
- (3) Where a single sheriff or other law enforcement officer serves more than one (1) court or courtroom during a single day, he shall be paid as if he had served only one (1) courtroom during that day. Dual compensation for service during a single day shall not be permitted.
- (4) Time, for compensation purposes, shall be computed as the actual time spent in the courtroom pursuant to court direction or order and the actual time spent in other service to the court as directed or ordered by the appropriate judge.
- (5) Time spent in court service by a sheriff or other law enforcement officer shall be certified by the judge of the court which the officer attended and by the Chief Judge of the Circuit Court,

if the service was to the Circuit Court, or by the Chief Judge of the District Court, if the service was to the District Court.

- (6) The sheriff or other law enforcement officer serving a Circuit or District Court shall be compensated at the rate of eight dollars (\$8) per hour of service. If service is for a part of an hour, then compensation for such service shall be prorated for the actual number of minutes' service within a given hour.
- (7) The sheriff shall receive ***the disbursements provided for in paragraph (i) of subsection (2) of Section 9 of this Act*** ~~twelve dollars (\$12) from each court cost collected pursuant to KRS 23A.205, 23A.215, 24A.175, and 24A.180~~ to help defray the cost of providing security services and related activities to the court. The moneys received by the sheriff under this subsection are authorized official expenses to be considered operating expenses of the sheriff's office and shall not be considered as part of his compensation.

Section 11. KRS 149.180 is amended to read as follows:

Whenever possible, the secretary for natural resources and environmental protection shall collect the costs of firefighting done and approved as provided in KRS 149.160, from the person responsible for the origin of the fire by his negligence or intent. The recovered costs shall be deposited in a special fund in the Natural Resources and Environmental Protection Cabinet. The recovered costs shall be repaid to the county in which the costs were incurred, if such county has fully paid its annual assessment to the statewide system as provided for in KRS 149.540 for the year in which the fire suppression costs were incurred. If a county is not eligible to receive the recovered costs, the money shall be used by the Division of Forestry to improve fire protection services. The funds so repaid to the county shall be placed in the county forest fire protection fund provided for in KRS 149.590. Any money in the Natural Resources and Environmental Protection Cabinet's special fund upon July 15, 1998, that were not repaid to a county for having failed to fully pay its annual assessment, shall be used by the Division of Forestry to improve fire protection services. In the event the suppression cost is not collected, the Commonwealth's attorney of the county in which the fire occurred shall institute and prosecute the necessary proceedings. ***Costs recovered under this section shall be ordered to be paid directly to the Natural Resources and Environmental Protection Cabinet. The court shall not direct that the costs be paid through the circuit clerk.***

Section 12. KRS 149.430 is amended to read as follows:

- (1) If any forest fire shall originate as a result of the violation by any person of any provision of KRS 149.360 to 149.430, such person shall be, in addition to the penalty prescribed under KRS 149.991, liable to the state and to each county for the full amount of all expenses incurred by the state and county respectively in suppressing each fire, such amounts to be recoverable by action brought by the secretary for natural resources and environmental protection in the name of the Commonwealth on behalf of the Commonwealth and by the county attorney on behalf of the county.
- (2) In addition to any penalty pursuant to KRS 149.991, any person violating any of the provisions of KRS 149.360 to 149.430 shall be answerable in damages to any persons suffering such damage for the cost incurred in the suppression of any fire resulting from such violation and for damage to property resulting from such fires.
- (3) ***Damages assessed under this section shall be ordered to be paid directly to the Natural Resources and Environmental Protection Cabinet or to any other injured person or***

organization specified by written order of the court. The court shall not direct that the damages be paid through the circuit clerk.

Section 13. KRS 150.990 is amended to read as follows:

- (1) Each bird, fish, or animal taken, possessed, bought, sold, or transported and each device used or possessed contrary to the provisions of this chapter or any administrative regulation promulgated by the commission thereunder shall constitute a separate offense. The penalties prescribed in this section shall be for each offense.
- (2) Any person who violates any of the provisions of this chapter or any administrative regulations promulgated by the commission thereunder may, in addition to the penalties provided in subsections (3), (4), (5), (6), (7), and (8) of this section, forfeit his license, or if that person is license exempt, may forfeit the privilege to perform the acts authorized by the license and shall not be permitted to purchase another license or exercise the privileges granted by a license during the same license year. No fines, penalty, or judgment assessed or rendered under this chapter shall be suspended, reduced, or remitted otherwise than expressly provided by law. Any person who violates any administrative regulation which has been or may be promulgated by the commission under any provisions of this chapter shall be subject to the same penalty as is provided for the violation of any provisions of this chapter under which the administrative regulation is promulgated.
- (3) Any person who violates any of the provisions of KRS 150.120, 150.170, 150.280, 150.320, 150.355, 150.362, 150.400, 150.410, 150.415, 150.416, 150.445, 150.450, 150.470, 150.603, 150.235(1), 150.330(2), or 150.470, or any of the provisions of this chapter or any administrative regulation promulgated by the commission for which no definite fine or imprisonment is fixed shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200).
- (4) Any person who violates any of the provisions of KRS 150.290, 150.300, 150.340, 150.360, 150.362(1), 150.485, 150.600, 150.630, 150.660, the provisions of KRS 150.195(5) to (8), or KRS 150.660(3) shall be fined not less than twenty-five dollars (\$25) nor more than two hundred dollars (\$200) or be imprisoned for not more than six (6) months, or both. Also, any person violating the provisions of KRS 150.300 shall be assessed treble damages as provided in KRS 150.690 or 150.700. ***Damages assessed under this subsection shall be ordered to be paid directly to the department. The court shall not direct that the damages be paid through the circuit clerk.***
- (5) Any person who violates any of the provisions of KRS 150.411, 150.412, or 150.417 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (6) Any person who violates any of the provisions of KRS 150.183, 150.305, 150.365, 150.370, 150.330(1), or 150.235(2), (3), or (4) shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (7) Any person who violates any of the provisions of KRS 150.460 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both, and in addition to these penalties shall be liable to the department in an amount not to exceed the replacement value of the fish and wildlife which has been killed or destroyed. ***Costs assessed for the restoration of wildlife under this subsection shall be ordered to be paid directly to the department. The court shall not direct that the costs be paid through the circuit clerk.***

- (8) Any person who violates the provisions of KRS 150.180, 150.520, 150.525, or administrative regulations issued thereunder shall for the first offense be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000); and shall for a second offense be fined not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1,500); and for any subsequent offense, be fined two thousand dollars (\$2,000).
- (9) Any person who violates the provisions of KRS 150.520 or administrative regulations issued thereunder shall, if the violation relates to methods of taking mussels, for a first offense be imprisoned in the county jail for no more than thirty (30) days; for a second offense be imprisoned in the county jail for no more than six (6) months; and for any subsequent offense be imprisoned in the county jail for no more than one (1) year. The penalties for violation of *this* subsection~~[(9)]~~ shall be in addition to the penalties for violation of subsection (8).
- (10) Any person who violates any of the provisions of KRS 150.4111, 150.640, or subsections (2) or (3) of KRS 150.450 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (11) Any person who violates any of the provisions of KRS 150.390 or KRS 150.092(4) shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned for not less than thirty (30) days nor more than one (1) year, or both. In addition to the penalties prescribed above, he shall forfeit his license or, if license exempt, the privilege to perform the acts authorized by the license for a period of one (1) to three (3) years and shall be liable to the department in an amount reasonably necessary to replace any deer, wild turkey, or bear taken in violation of KRS 150.390 and for violations of subsection (4) of KRS 150.092 shall be liable to the landowner or occupant for reasonable compensation for damages. ***Wildlife replacement costs assessed under this subsection shall be ordered to be paid directly to the department. The court shall not direct that the damages be paid through the circuit clerk. Damages assessed under this subsection shall be ordered to be paid directly to the landowner or occupant. The court shall not direct that the damages be paid through the circuit clerk.*** Any person who possesses, takes, or molests a wild elk in violation of KRS 150.390 or administrative regulations adopted under authority of that section shall be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) or imprisoned for up to six (6) months, or both. In addition to these penalties, the person shall pay to the department an amount not to exceed the greater of the replacement cost of the wild elk or double any monetary gain realized from the illegal activity and shall forfeit his or her license, or if license exempt, the privilege to perform the acts authorized by the license for a period of one (1) to three (3) years.
- (12) Any person who violates any of the provisions of KRS 150.090 other than a criminal homicide or an assault against an officer enforcing the provisions of this chapter, KRS Chapter 235, or the administrative regulations issued thereunder shall be guilty of a Class A misdemeanor.
- (13) Any person who commits a criminal homicide or an assault against an officer enforcing the provisions of this chapter, KRS Chapter 235, or the administrative regulations issued thereunder shall be subject to the penalties specified for the offense under KRS Chapter 507 or 508, as appropriate.

- (14) A person shall be guilty of a Class B misdemeanor upon the first conviction for a violation of KRS 150.710. A subsequent conviction shall be a Class A misdemeanor.
- (15) Any person who violates the provisions of KRS 150.092 or the administrative regulations promulgated thereunder for which no other penalty is specified elsewhere in this section shall for the first offense be fined not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300); for the second offense, be fined not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000); and for subsequent offenses, shall forfeit the license, or if license-exempt, the privilege to perform the acts authorized by the license, for one (1) year and shall be fined not less than one thousand dollars (\$1,000) or be imprisoned in the county jail for up to one (1) year, or both. In addition to the penalties prescribed in this subsection, the violator shall be liable to the landowner or tenant for the replacement cost of any property which was damaged or destroyed by his actions. ***Damages assessed under this subsection shall be ordered to be paid directly to the landowner or the tenant. The court shall not direct that the damages be paid through the circuit clerk.***

Section 14. KRS 177.978 is amended to read as follows:

- (1) All revenues generated ***from the purchase of decals*** pursuant to KRS 177.990~~[(4) and]~~(5) and KRS 177.9771(4) and no other taxes or fees normally assessed on motor carriers shall be credited to a special account within the road fund called the "energy recovery road fund" and any additional funds obtained through state appropriation, gifts, grants and federal funds may be credited to the special account, and shall be used, in addition to those road funds normally used for said highways, exclusively by the Transportation Cabinet for those costs attendant to highway purposes for roads designated as part of the extended weight coal haul road system. All funds in the account shall be carried forward at the end of each year.
- (2) All funds credited to the "coal recovery road fund" shall be transferred to the "energy recovery road fund."

Section 15. 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(27)~~((28))~~, 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(27)~~((28))~~, 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(27)~~((28))~~, 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.

Section 16. KRS 189.2329 is amended to read as follows:

- (1) A person shall not intentionally destroy, remove, injure, or deface a temporary traffic control device erected for the purpose of enhancing traffic safety or worker safety in a highway work zone. A temporary traffic control device shall include, but not be limited to, a cone, tubular marker, delineator, warning light, drum, barricade, sign, sign truck, arrow board, or other device specified in an approved traffic control plan or by an administrative regulation promulgated by the cabinet pursuant to KRS Chapter 13A.
- (2) A person who violates the provisions of this section shall, upon conviction, in addition to any other penalty established by statute, be sentenced to pay fifty dollars (\$50) for each temporary traffic control device that the person destroyed, removed, injured, or defaced, and

the person shall make restitution to the owner of the temporary traffic control device. ~~[All funds collected pursuant to this subsection shall be deposited in the highway work zone safety fund established pursuant to KRS 189.394.]~~

- (3) ***Restitution payments to owners of temporary traffic control devices required to be made under subsection (2) of this section shall be paid directly to the owner of the device as specified by written order of the court. The court shall not direct that the payments be made through the circuit clerk.***

Section 17. KRS 189.394 is amended to read as follows:

- (1) The fines for speeding in violation of KRS 189.390 shall be:

Mph.	Prima Facie or Maximum Speed												
Over													
Limit	15	20	25	30	35	40	45	50	55	60	65	Fine	
1		16	21	26	31	36	41	46	51	56	61	66	\$1
2		17	22	27	32	37	42	47	52	57	62	67	2
3		18	23	28	33	38	43	48	53	58	63	68	3
4		19	24	29	34	39	44	49	54	59	64	69	4
5		20	25	30	35	40	45	50	55	60	65	70	5
6		21	26	31	36	41	46	51	56	61	66	71	16
7		22	27	32	37	42	47	52	57	62	67	72	17
8		23	28	33	38	43	48	53	58	63	68	73	18
9		24	29	34	39	44	49	54	59	64	69	74	19
10		25	30	35	40	45	50	55	60	65	70	75	20
11		26	31	36	41	46	51	56	61	66	71	76	22
12		27	32	37	42	47	52	57	62	67	72	77	24
13		28	33	38	43	48	53	58	63	68	73	78	26
14		29	34	39	44	49	54	59	64	69	74	79	28
15		30	35	40	45	50	55	60	65	70	75	80	30
16		31	36	41	46	51	56	61	66	71	76	81	32
17		32	37	42	47	52	57	62	67	72	77	82	34
18		33	38	43	48	53	58	63	68	73	78	83	36
19		34	39	44	49	54	59	64	69	74	79	84	38
20		35	40	45	50	55	60	65	70	75	80	85	40
21		36	41	46	51	56	61	66	71				43
22		37	42	47	52	57	62	67	72				46
23		38	43	48	53	58	63	68	73				49

24	39	44	49	54	59	64	69	74	52
25	40	45	50	55	60	65	70	75	55

- (2) For speeding in excess of the speeds shown on the specific fine schedule the fine shall be not less than sixty dollars (\$60) nor more than one hundred dollars (\$100).
- (3) For any violation shown on the chart for which a specific fine is prescribed, the defendant may elect to pay the fine and court costs to the circuit clerk before the date of his trial or to be tried in the normal manner. Payment of the fine and court costs to the clerk shall be considered as a plea of guilty for all purposes.
- (4) If the offense charged shows a speed in excess of the speeds shown on the specific fine schedule the defendant shall appear for trial and may not pay the fine to the clerk before the trial date.
- ~~(5) Twelve dollars and fifty cents (\$12.50) shall be assessed for violations of KRS 189.390 in addition to the penalties set forth in subsections (1) and (2) of this section. Funds collected pursuant to this subsection shall be deposited in the spinal cord and head injury research trust fund, created pursuant to KRS 211.504, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in KRS 211.502.~~
- ~~(6) Ten dollars (\$10) shall be assessed for violations of KRS 189.390 in addition to the penalties set forth in subsections (1) and (2) and the additional fee established in subsection (3) of this section. Funds collected pursuant to this subsection shall be deposited in the traumatic brain injury trust fund created pursuant to KRS 211.476, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in KRS 211.470 to 211.475.~~
- ~~(7)~~ If the offense occurred in a highway work zone, the fine established by subsection (1) or (2) of this section shall be doubled.
- ~~(6)~~~~(8)~~ All fines collected for speeding in a highway work zone in violation of KRS 189.390 shall be deposited into a separate trust and agency account within the Transportation Cabinet known as the "Highway Work Zone Safety Fund." The highway work zone safety fund shall be used exclusively by the Transportation Cabinet to hire or pay for enhanced law enforcement of traffic laws within highway work zones.

Section 18. 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 fifty dollars (\$50).
- (25) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars (\$25).
- (26) ~~Any person who violates any of the provisions of KRS 189.125(3), KRS 189.290, KRS 189.300, KRS 189.340, KRS 189.345, KRS 189.370, KRS 189.393, or KRS 189.505, shall, in addition to any other fine imposed by this chapter, pay an additional fee of ten dollars (\$10). Funds collected pursuant to this subsection shall be deposited in the traumatic brain injury trust fund, created pursuant to KRS 211.476, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in KRS 211.470 to 211.478.~~
- (27) 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) ~~(28)~~ 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 19. KRS 189A.010 is amended to read as follows:

- (1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state:
 - (a) Having an alcohol concentration of 0.08 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle;
 - (b) While under the influence of alcohol;
 - (c) While under the influence of any other substance or combination of substances which impairs one's driving ability;

- (d) While under the combined influence of alcohol and any other substance which impairs one's driving ability; or
 - (e) Having an alcohol concentration of 0.02 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle, if the person is under the age of twenty-one (21).
- (2) With the exception of the results of the tests administered pursuant to KRS 189A.103(7), if the sample of the person's blood or breath that is used to determine the alcohol concentration thereof was obtained more than two (2) hours after cessation of operation or physical control of a motor vehicle, the results of the test or tests shall be inadmissible as evidence in a prosecution under subsection (1)(a) or (e) of this section. The results of the test or tests, however, may be admissible in a prosecution under subsection (1)(b) or (d) of this section.
- (3) In any prosecution for a violation of subsection (1)(b) or (d) of this section in which the defendant is charged with having operated or been in physical control of a motor vehicle while under the influence of alcohol, the alcohol concentration in the defendant's blood as determined at the time of making analysis of his blood or breath shall give rise to the following presumptions:
- (a) If there was an alcohol concentration of less than 0.05 based upon the definition of alcohol concentration in KRS 189A.005, it shall be presumed that the defendant was not under the influence of alcohol; and
 - (b) If there was an alcohol concentration of 0.05 or greater but less than 0.08 based upon the definition of alcohol concentration in KRS 189A.005, that fact shall not constitute a presumption that the defendant either was or was not under the influence of alcohol, but that fact may be considered, together with other competent evidence, in determining the guilt or innocence of the defendant.

The provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the questions of whether the defendant was under the influence of alcohol or other substances, in any prosecution for a violation of subsection (1)(b) or (d) of this section.

- (4) The fact that any person charged with violation of subsection (1) of this section is legally entitled to use any substance, including alcohol, shall not constitute a defense against any charge of violation of subsection (1) of this section.
- (5) Any person who violates the provisions of paragraph (a), (b), (c), or (d) of subsection (1) of this section shall:
- (a) For the first offense within a five (5) year period, be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or be imprisoned in the county jail for not less than forty-eight (48) hours nor more than thirty (30) days, or both. Following sentencing, the defendant may apply to the judge for permission to enter a community labor program for not less than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or imprisonment, or both. If any of the aggravating circumstances listed in subsection (11) of this section are present while the person was operating or in physical control of a motor vehicle, the mandatory minimum term of imprisonment shall be four (4) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.

- (b) For the second offense within a five (5) year period, be fined not less than three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500) and shall be imprisoned in the county jail for not less than seven (7) days nor more than six (6) months and, in addition to fine and imprisonment, may be sentenced to community labor for not less than ten (10) days nor more than six (6) months. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be fourteen (14) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.
 - (c) For a third offense within a five (5) year period, be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and shall be imprisoned in the county jail for not less than thirty (30) days nor more than twelve (12) months and may, in addition to fine and imprisonment, be sentenced to community labor for not less than ten (10) days nor more than twelve (12) months. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be sixty (60) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.
 - (d) For a fourth or subsequent offense within a five (5) year period, be guilty of a Class D felony. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be two hundred forty (240) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of release.
 - (e) For purposes of this subsection, prior offenses shall include all convictions in this state, and any other state or jurisdiction, for operating or being in control of a motor vehicle while under the influence of alcohol or other substances that impair one's driving ability, or any combination of alcohol and such substances, or while having an unlawful alcohol concentration, or driving while intoxicated, but shall not include convictions for violating subsection (1)(e) of this section. A court shall receive as proof of a prior conviction a copy of that conviction, certified by the court ordering the conviction.
- (6) Any person who violates the provisions of subsection (1)(e) of this section shall have his driving privilege or operator's license suspended by the court for a period of no less than thirty (30) days but no longer than six (6) months, and the person shall be fined no less than one hundred dollars (\$100) and no more than five hundred dollars (\$500), or sentenced to twenty (20) hours of community service in lieu of a fine. A person subject to the penalties of this subsection shall not be subject to the penalties established in subsection (5) of this section or any other penalty established pursuant to KRS Chapter 189A, except those established in KRS 189A.040(1).
 - (7) If the person is under the age of twenty-one (21) and there was an alcohol concentration of 0.08 or greater based on the definition of alcohol concentration in KRS 189A.005, the person shall be subject to the penalties established pursuant to subsection (5) of this section.
 - (8) For a second or third offense within a five (5) year period, the minimum sentence of imprisonment or community labor shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a fourth or subsequent offense

under this section, the minimum term of imprisonment shall be one hundred twenty (120) days, and this term shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a second or subsequent offense, at least forty-eight (48) hours of the mandatory sentence shall be served consecutively.

- (9) When sentencing persons under subsection (5)(a) of this section, at least one (1) of the penalties shall be assessed and that penalty shall not be suspended, probated, or subject to conditional discharge or other form of early release.
- (10) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.
- (11) For purposes of this section, aggravating circumstances are any one (1) or more of the following:
 - (a) Operating a motor vehicle in excess of thirty (30) miles per hour above the speed limit;
 - (b) Operating a motor vehicle in the wrong direction on a limited access highway;
 - (c) Operating a motor vehicle that causes an accident resulting in death or serious physical injury as defined in KRS 500.080;
 - (d) Operating a motor vehicle while the alcohol concentration in the operator's blood or breath is 0.18 or more as measured by a test or tests of a sample of the operator's blood or breath taken within two (2) hours of cessation of operation of the motor vehicle;
 - (e) Refusing to submit to any test or tests of one's blood, breath, or urine requested by an officer having reasonable grounds to believe the person was operating or in physical control of a motor vehicle in violation of subsection (1) of this section; and
 - (f) Operating a motor vehicle that is transporting a passenger under the age of twelve (12) years old.

~~[(12) Any person who violates the provisions of subsection (1) of this section shall be assessed twenty dollars (\$20) in addition to the fines imposed by subsections (5) and (6) of this section. Funds collected pursuant to this subsection shall be deposited in the traumatic brain injury trust fund, created pursuant to KRS 211.476, within fourteen (14) days after the end of each quarter, to be used for the purposes set forth in KRS 211.470 to 211.478.]~~

Section 20. KRS 211.476 is amended to read as follows:

- (1) The traumatic brain injury trust fund is created as a separate revolving fund.~~[The trust fund shall consist of moneys collected from an additional assessment of twenty dollars (\$20) imposed on driving under the influence offenses, an additional assessment of ten dollars (\$10) imposed against selected speeding offenses, and an additional fine of ten dollars (\$10) imposed against selected moving violations.]~~
- (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.

Section 21. KRS 211.500 is amended to read as follows:

- (1) The Kentucky Spinal Cord and Head Injury Research Board is hereby created for the purpose of administering the spinal cord and head injury research trust fund created pursuant to KRS 211.504. The board shall be composed of seven (7) members appointed by the Governor as follows:
 - (a) Two (2) members representing the University of Kentucky College of Medicine;
 - (b) Two (2) members representing the University of Louisville School of Medicine;
 - (c) One (1) member who has a spinal cord or head injury or who has a family member with a spinal cord or head injury;
 - (d) One (1) member representing the Kentucky Medical Association; and
 - (e) One (1) at-large member.
- (2) Board members shall be reimbursed for ordinary travel expenses, including meals and lodging, incurred in the performance of duties incident to the provisions of KRS 211.500 to 211.504.
- (3) The terms of board members shall be four (4) years, except that of the members appointed after July 15, 1998, two (2) members appointed to fill the terms ending on June 30, 1999, shall serve until January 31, 2000; two (2) members appointed to fill the terms expiring on June 30, 2000, shall serve until January 31, 2001; two (2) members appointed to fill the terms expiring on June 30, 2001, shall serve until January 31, 2002; and one (1) member appointed to fill the term expiring June 30, 2002, shall serve until January 31, 2003; and subsequent appointments shall be for four (4) year terms ending on January 31.
- (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 may serve two (2) or more consecutive full four (4) year terms at the discretion of the Governor.]~~
- (5) A majority of the full authorized membership of the board shall constitute a quorum.
- (6) The board shall elect, by a majority vote, a chairman who shall be the presiding officer of the board, preside at all meetings, and coordinate the functions and activities of the board. The chairman shall be elected or reelected for each calendar year. The board shall have such other organization as deemed necessary and approved by the board.
- (7) 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 chairman or by request of a majority of the board members. Board meetings shall concern, among other things, policy matters relating to spinal cord and head injury research projects and programs, research progress reports, authorization of projects and financial plans, and other matters necessary to carry out the intent of KRS 211.500 to 211.504.
- (8) No member of the board shall be subject to any personal liability or accountability for any loss sustained or damage suffered on account of any action or inaction of the board.

- (9) The board shall be attached to the Cabinet for Health Services for administrative purposes.

Section 22. KRS 211.504 is amended to read as follows:

- (1) The revenues received from the *disbursements provided under paragraph (c) of subsection (2) of Section 9 of this Act*~~{additional penalties imposed by KRS 189.394(5) and the penalties imposed for violations of KRS 189.125}~~ shall be credited to the spinal cord and head injury research trust fund which is hereby created.
- (2) Federal funds or other funds which may be made available to supplement or match state funds for spinal cord and head injury research programs provided for by KRS 211.500 to 211.504 shall be credited to the trust fund created in subsection (1) of this section.
- (3) Funds deposited to the credit of the spinal cord and head injury research trust fund shall be used to finance the spinal cord and head injury research programs authorized under the provisions of KRS 211.500 to 211.504 and for the operation of the Kentucky Spinal Cord and Head Injury Research Board. Funds for research shall only be used for spinal cord and head injury research undertaken by the University of Kentucky or University of Louisville.
- (4) Funds unexpended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year or biennium, but any surplus shall be included in the budget considered and approved by the board for the ensuing period.

Section 23. KRS 346.040 is amended to read as follows:

The board shall have the following powers and duties:

- (1) To establish and maintain necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation.
- (2) To promulgate, amend, and repeal suitable administrative regulations to carry out the provisions and purposes of this chapter, including administrative regulations for the approval of attorney's fees for representation before the board or upon judicial review as provided for in KRS 346.110.
- (3) To hear and determine all matters relating to claims for compensation, and the power to reinvestigate or reopen claims without regard to statutes of limitations.
- (4) To request from prosecuting attorneys and law enforcement officers investigations and data to enable the board to determine whether, and the extent to which, a claimant qualifies for compensation. The statute providing confidentiality for juvenile session of District Court records does not apply to proceedings under this chapter.
- (5) To hold hearings in accordance with the provisions of KRS Chapter 13B. The powers provided in this subsection may be delegated by the board to any member or employee thereof. If necessary to carry out any of its powers and duties, the board may petition any Circuit Court for an order.
- (6) To take or cause to be taken affidavits or depositions within or without the state.
- (7) To make available for public inspection all board decisions and opinions, administrative regulations, written statements of policy, and interpretations formulated, promulgated, or used by it in discharging its functions.
- (8) To publicize widely the availability of reparations and information regarding the claims therefor.

- (9) *To make an annual report, by January 1 of each year, of its activities for the preceding fiscal year to the Office of the State Budget Director and to the Interim Joint Committee on Appropriations and Revenue. Each such report shall set forth a complete operating and financial statement covering its operations during the year.*

Section 24. KRS 346.185 is amended to read as follows:

- (1) There is established in the State Treasury the "Crime Victims' Compensation Fund," hereinafter referred to as the "fund," to be administered by the Crime Victims' Compensation Board. ~~[In all cases in which defendants plead or are found guilty of a crime as defined in KRS 500.080(2), there shall be imposed as an additional cost the sum of twenty dollars (\$20). This sum shall not be suspended or probated. This sum shall be collected in its entirety and shall not be prorated. The clerk of the court shall collect the cost and forward it monthly to the State Treasurer, to be deposited in the fund.]~~ Nothing herein shall be construed to limit the power of the court to order additional forms of restitution including public or charitable work or reparation to the victim, to the fund, or otherwise as authorized by law.
- (2) The fund shall consist of moneys from the following: appropriations by the General Assembly; the federal government; *disbursements provided under paragraph (g) of subsection (2) of Section 9 of this Act*; ~~[payments by the defendant pursuant to subsection (1) of this section]~~ and any other public or private source. Any unexpended balance remaining in the fund at the end of the biennium shall not lapse and be transferred to the general fund, but shall remain in the crime victims' compensation fund. Any funds not utilized by the board shall be used to provide assistance to programs for victims and the board shall allocate such funds to any agency providing services to victims. In the event there are insufficient funds in the fund to pay all claims in full, all claims shall be paid at seventy percent (70%). If there are no moneys in the fund, then no claim shall be paid until moneys have again accumulated. In addition to payment of claims, moneys in the fund shall be used to pay all the necessary and proper expenses of the Crime Victims' Compensation Board.
- ~~[(3) When judgment is entered against a defendant as provided in this section and each sum, or any part thereof, remains unpaid, there shall be withheld from any disbursement, payment, benefit, compensation, salary, or other transfer of money from the State of Kentucky to such defendant an amount equal to the unpaid amount of the judgment. The amount shall be paid to the crime victims' compensation fund and satisfaction of the judgment shall be entered on the court record. Under no circumstances shall the general revenue fund be used to reimburse court costs or pay for judgment.]~~

Section 25. KRS 431.100 is amended to read as follows:

- (1) *When a money judgment is entered against a defendant in a criminal proceeding and each sum, or any part thereof, remains unpaid, there shall be withheld from any disbursement, payment, benefit, compensation, salary, or other transfer of money from the Commonwealth of Kentucky to such defendant an amount equal to the unpaid amount of the judgment. Under no circumstances shall the general fund be used to reimburse court costs or pay for judgment.*
- (2) Except as provided in this section, all fines and forfeitures imposed by law or ordinance shall inure to and vest in the Commonwealth.

- (3)~~[(2)]~~ Fines and forfeitures imposed by law for violation of KRS 222.202 or ordinances relating to similar subject matter shall inure to and vest in the Commonwealth and shall be placed in a special fund in the State Treasury, which shall not lapse, and which, effective July 1, 1987, shall be used solely by the Cabinet for Health Services for the provision of treatment and counseling programs for alcoholics.
- ~~[(3) Fines for violation of KRS 512.070 shall be transferred by the circuit clerk to the county treasurer for inclusion in the general fund of the county in which the offense occurs.]~~
- ~~[(4) Court costs assessed pursuant to KRS 610.360 shall be placed in a trust and agency account in the State Treasury which shall be subject to appropriation by the General Assembly for the purposes of providing services and programs and for matching funds for grants for providing services and programs to juvenile public offenders.]~~
- (5)~~]~~ The court shall not order a fine, forfeiture, service fee, cost, or any other money due the *Commonwealth*~~[state]~~ or any other public officer paid to any person or organization other than one specifically required by *the Kentucky Revised Statutes*,~~[statute]~~ nor shall a court suspend payment of a fine, forfeiture, service fee, cost, or any other money due the *Commonwealth*~~[state]~~ if the defendant makes a payment to another person or organization, *unless so authorized by the court and the Kentucky Revised Statutes.*
- (5) *When, as authorized in the Kentucky Revised Statutes, a court does order a fine, forfeiture, service fee, cost, or any other monetary penalty to be paid to a person other than the circuit clerk, notice of this order will be served on the defendant and a copy of the order will be delivered to the person. Such an order constitutes a judgment of the court and carries with it all lawful means of enforcement and collection.*

Section 26. KRS 439.179 is amended to read as follows:

- (1) Any person sentenced to a jail for a misdemeanor, nonpayment of a fine or forfeiture, or contempt of court, may be granted the privilege of leaving the jail during necessary and reasonable hours for any of the following purposes:
 - (a) Seeking employment; or
 - (b) Working at his employment; or
 - (c) Conducting his own business or other self-employment occupation including, in the case of a woman, housekeeping and attending the needs of her family; or
 - (d) Attendance at an educational institution; or
 - (e) Medical treatment.
- (2) Unless the privilege is expressly granted by the court, the prisoner shall be sentenced to ordinary confinement. The prisoner may petition the sentencing court for the privilege at the time of sentence or thereafter, and, in the discretion of the sentencing court, may renew his petition. The sentencing court may withdraw the privilege at any time by order entered with or without notice. The jailer shall advise the court in establishing criteria in determining a prisoner's eligibility for work release.
- (3) The jailer shall notify the Department for Employment Services, Cabinet for Workforce Development which shall endeavor to secure employment for unemployed prisoners under this section. If a prisoner is employed for wages or salary, they shall, by wage assignment, be turned over to the District Court which shall deposit the same in a trust checking account and shall keep a ledger showing the status of the account of each prisoner. The wages or

salary shall not be subject to garnishment of either the employer or the District Court during the prisoner's term, and shall be disbursed only as provided in this section. For tax purposes they shall be the income of the prisoner.

- (4) Every prisoner gainfully employed shall be liable for the cost of his board in the jail, for an amount up to twenty-five percent (25%) of the prisoner's gross daily wages, not to exceed forty dollars (\$40) per day, but not less than twelve dollars (\$12) per day, established by the fiscal court of a county or the urban-county council if an urban-county government. If he defaults, his privilege under this section shall be automatically forfeited. All moneys shall be ***paid directly to the jailer***~~collected by the District Court~~ and paid to the county treasury for use on the jail as provided in KRS 441.206. The fiscal court of a county or the urban-county council if an urban-county government may, by ordinance, provide that the county furnish or pay for the transportation of prisoners employed under this section to and from the place of employment and require that the costs be repaid by the prisoner.
- (5) ***The sentencing court may order the defendant's employer to deduct from the defendant's wages or salary payments for the following purposes***~~Unless otherwise ordered by the sentencing court, the wages or salaries of employed prisoners shall be disbursed by the District Court on a monthly basis for the following purposes and in the order stated:~~
 - (a) The board of the prisoner and transportation costs incurred by the county;
 - (b) Support of the prisoner's dependents, if any;
 - (c) Payment, either in full or ratably, of the prisoner's obligations acknowledged by him in writing or which have been reduced to judgment;
 - (d) The balance, if any, to the prisoner upon his discharge.
- (6) The sentencing court ***shall not direct that any payment authorized under this section be paid through the circuit clerk***~~may direct that its functions under subsections (3) or (5) or both be performed by any bonded public official. The order shall remain in force until rescinded by the District Court~~.
- (7) The Department of Corrections shall, at the request of the District Judge, investigate and report on the amount necessary for the support of the prisoner's dependents, and periodically review the prisoner's progress while on leave from the jail and report its findings to the District Judge.
- (8) The jailer may refuse to permit the prisoner to exercise his privilege to leave the jail as provided in subsection (1) for any breach of discipline or other violation of jail regulations for a period not to exceed five (5) days.
- (9) In counties containing an urban-county form of government, the duties, responsibilities, and obligations vested herein in the Department of Corrections shall be performed by the adult misdemeanor probation and work release agency of the urban-county government.

Section 27. KRS 439.575 is amended to read as follows:

- (1) There is hereby created a program for prerelease probation of inmates confined in correctional facilities under the jurisdiction of or under contract to the Department of Corrections.

- (2) Any inmate who is in a prerelease program or eligible for a prerelease program as specified by administrative regulations of the Department of Corrections may apply to the sentencing court for prerelease probation.
- (3) The court, upon favorable recommendation of the Department of Corrections, may place the inmate on probation under those terms and conditions the court deems necessary, which may include but not need to be limited to those specified in KRS 533.030.
- (4) In particular, the court may require that an inmate placed on prerelease probation remain in a half-way house approved by the Department of Corrections and that the probationer pay the cost of his or her lodging in the half-way house and the costs of probation supervision in accordance with applicable statutes for probation supervision and persons granted work release from jail. ***Costs for lodging in a half-way house or other facility approved, but not operated, by the Department of Corrections shall be paid by the defendant directly to the half-way house or other facility at the rate specified by court order or by the Department of Corrections.***
- (5) An inmate placed on prerelease probation shall no longer be considered as an inmate of the Department of Corrections but shall be considered as a defendant placed on probation, subject to supervision by the Division of Probation and Parole, or other agency approved by the court, and the orders of the court.
- (6) A person placed on prerelease probation by the court who violates the conditions of his or her probation may be dealt with by the court in the same manner as any other person who violates the conditions of probation.
- (7) The period of probation under this section shall not exceed the maximum expiration date of the inmate applying for the probation.

Section 28. KRS 441.685 is amended to read as follows:

- (1) There is created and established a Kentucky Local Correctional Facilities Construction Authority fund which shall consist of the following:
 - (a) Rentals received under leases made by the authority pursuant to KRS 441.625 to 441.695;
 - (b) Appropriations by the General Assembly;
 - (c) Contributions, grants and gifts from any source, both public and private, which may be used by the authority for any project or projects;
 - (d) ***Disbursements***~~[Moneys collected and deposited in the State Treasury as]~~ provided ***under paragraph (b) of subsection (2) of Section 9 of this Act***~~[by KRS 24A.175(6)]~~; and
 - (e) All interest earned on investments made by the state from moneys deposited in this fund.
- (2) Moneys accruing to this fund shall be deposited by the State Treasurer in the fund's trust and agency account, and shall be invested by the state for the benefit and use of the authority, pending their application to the expenses of the authority and to payments of interest and principal of bonds, notes and other obligations of the authority. Notwithstanding the provisions of the foregoing sentence, at such time or times as the moneys contained in the fund are sufficient to pay the principal on all bonds, notes and obligations of the authority

that would become due in the next ensuing twelve (12) month period, the authority may use moneys in the fund in excess thereof for such purposes as provided for in KRS 441.625 to 441.695.

Section 29. KRS 441.695 is amended to read as follows:

By January 1 each year the authority shall make an annual report of its activities for the preceding fiscal year to the *Office of the State Budget Director*~~[Governor]~~ and to the *Interim Joint Committee on Appropriations and Revenue*~~[General Assembly]~~. Each such report shall set forth a complete operating and financial statement covering its operations during the year. The authority shall provide for an audit of its books and accounts to be made within ninety (90) days after the close of each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction of the project. Such audits shall be public records within the meaning of KRS 61.870 to 61.884.

Section 30. KRS 532.032 is amended to read as follows:

- (1) Restitution to a named victim, if there is a named victim, shall be ordered in a manner consistent, insofar as possible, with the provisions of this section and KRS 439.563, 532.033, 533.020, and 533.030 in addition to any other part of the penalty for any offense under this chapter. The provisions of this section shall not be subject to suspension or nonimposition.
- (2) If pretrial diversion is granted, restitution shall be a part of the diversion agreement.
- (3) If probation, shock probation, conditional discharge, or other alternative sentence is granted, restitution shall be a condition of the sentence.
- (4) If a person is sentenced to incarceration and paroled, restitution shall be made a condition of parole.
- (5) *Restitution payments ordered under this section shall be paid by the defendant to the clerk or a court-authorized program run by the county attorney or the Commonwealth's attorney of the county.*

Section 31. KRS 532.160 is amended to read as follows:

- (1) *If a convicted person is unable to pay all court costs, fees, fines, and other monetary penalties at the time of sentencing, then* the sentencing court may, *consistent with Sections 1, 4, and 38 of this Act and KRS 534.060*, issue a criminal garnishment order for all fines under KRS Chapter 534 or KRS 346.185 and for court costs, restitution, and reimbursement charges in this chapter.
- (2) A criminal garnishment applies to any of the following:
 - (a) A convicted person's earnings as defined in KRS 427.005;
 - (b) Indebtedness that is owed to a convicted person by a garnishee for amounts that are not earnings;
 - (c) Money that is held by a garnishee on behalf of a convicted person;
 - (d) The convicted person's personal property that is in the possession of a garnishee; or
 - (e) If the garnishee is a corporation, shares or securities of a corporation or a proprietary interest in a corporation that belongs to a convicted person.

- (3) The debt associated with a criminal garnishment shall constitute a charge against the estate of any decedent owing moneys under this chapter.
- (4) The sentencing court shall combine all fines, court costs, restitution, and reimbursement charges in a single order of garnishment.
- (5) The sentencing court shall require payment of restitution to the victim of the offense before payments of any moneys to the government or a government agency.
- (6) ***The court shall order payments made under this section to be paid by the defendant directly to the person or organization specified by written order of the court. The court shall not order payments of an order of criminal garnishment to be made through the circuit clerk, except for those payments due from a person under the supervision of the Department of Corrections.***

Section 32. KRS 532.220 is amended to read as follows:

The conditions of home incarceration shall include the following:

- (1) The home incarcerated shall be confined to his home at all times except when:
 - (a) Working at approved employment or traveling directly to and from such employment;
 - (b) Seeking employment;
 - (c) Undergoing available medical, psychiatric, or mental health treatment or approved counseling and after care programs;
 - (d) Attending an approved educational institution or program;
 - (e) Attending a regularly scheduled religious service at a place of worship; and
 - (f) Participating in an approved community work service program;
- (2) Violation of subsection (1) of this section may subject the home incarcerated to prosecution under KRS 520.030 (escape);
- (3) The home incarcerated shall conform to a schedule prepared by a designated officer of the supervising authority specifically setting forth the times when he may be absent from the home and the locations where he may be during those times;
- (4) The home incarcerated shall not commit another offense during the period of time for which he is subject to the conditions of home incarceration;
- (5) The home incarcerated shall not change the place of home incarceration or the schedule without prior approval of the supervising authority;
- (6) The home incarcerated shall maintain a telephone or other approved monitoring device in the home or on his person at all times;
- (7) Any other reasonable conditions set by the court or the supervising authority including:
 - (a) Restitution under KRS 533.030;
 - (b) Supervision fees under KRS 439.315; and
 - (c) Any of the conditions imposed on persons on probation or conditional discharge under KRS 533.030(2); and
- (8) A written and notarized consent agreement shall be filed with the court by every adult who will share the offender's home during the term of home incarceration.

- (9) ***Any supervision fee or other monetary condition, except restitution, shall be paid by the defendant directly to the person or organization specified by the court in a written order, except that any such fees or monetary conditions owed to the Department of Corrections shall be paid through the circuit clerk.***

Section 33. KRS 532.352 is amended to read as follows:

- (1) The sentencing court may order a person who is sentenced to a term of incarceration for any nonstatus juvenile offense, moving traffic violation, criminal violation, misdemeanor, or Class D felony offense to reimburse the state or local government for the costs of his incarceration. The reimbursements paid under this subsection shall be credited to the local government sinking fund.
- (2) The sentencing court shall determine the amount of incarceration costs to be paid based on the following factors:
 - (a) The actual per diem, per person, cost of incarceration;
 - (b) The cost of medical services provided to a prisoner less any copayment paid by the prisoner; and
 - (c) The prisoner's ability to pay all or part of his incarceration costs.
- (3) ***Reimbursement of incarceration costs shall be paid by the defendant directly to the jailer in the amount specified by written order of the court. Incarceration costs owed to the Department of Corrections shall be paid through the circuit clerk.***

Section 34. KRS 532.356 is amended to read as follows:

- (1) Upon a person's conviction and sentencing for any nonstatus juvenile offense, moving traffic violation, criminal violation, misdemeanor, or Class D felony offense, the court shall impose the following sanctions in addition to any imprisonment, fine, court cost, or community service:
 - (a) Reimbursement to the state or local government for the person's incarceration, determined by the per person, per diem, expenses of each prisoner incarcerated by the respective local government, times the number of days he has spent or shall spend in confinement, plus any medical services received by the prisoner, less copayments paid by the prisoner. The convicted person's ability to pay all or part of the reimbursement shall be considered by the sentencing court in imposing the sanction; and
 - (b) Restitution to the crime victim as set out in KRS 439.563, 532.032, and 532.033.
- (2) In addition to any other penalty allowed by law, a court may declare the defendant ineligible to operate a motor vehicle for a period of up to sixty (60) days where the defendant is being sentenced for a conviction of KRS 514.030 involving the theft of gasoline or special fuels from a retail establishment and the defendant has been previously convicted of KRS 514.030 for a theft of gasoline or special fuels from a retail establishment. A retail establishment may post a sign at the location where the fuel is dispensed apprising the public of the sanctions available under this subsection.
- (3) Sanctions imposed by the sentencing court shall become a judgment of the court. ***Reimbursement of incarceration costs shall be paid by the defendant directly to the jailer in the amount specified by written order of the court. Incarceration costs owed to the Department of Corrections shall be paid through the circuit clerk.***

Section 35. KRS 533.010 is amended to read as follows:

- (1) Any person who has been convicted of a crime and who has not been sentenced to death may be sentenced to probation, probation with an alternative sentencing plan, or conditional discharge as provided in this chapter.
- (2) Before imposition of a sentence of imprisonment, the court shall consider probation, probation with an alternative sentencing plan, or conditional discharge. Unless the defendant is a violent felon as defined in KRS 439.3401 or a statute prohibits probation, shock probation, or conditional discharge, after due consideration of the nature and circumstances of the crime and the history, character, and condition of the defendant, probation or conditional discharge shall be granted, unless the court is of the opinion that imprisonment is necessary for protection of the public because:
 - (a) There is substantial risk that during a period of probation or conditional discharge the defendant will commit another crime;
 - (b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution; or
 - (c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.
- (3) In the event the court determines that probation is not appropriate after due consideration of the nature and circumstances of the crime, and the history, character, and condition of the defendant, probation with an alternative sentencing plan shall be granted unless the court is of the opinion that imprisonment is necessary for the protection of the public because:
 - (a) There is a likelihood that during a period of probation with an alternative sentencing plan or conditional discharge the defendant will commit a Class D or Class C felony or a substantial risk that the defendant will commit a Class B or Class A felony;
 - (b) The defendant is in need of correctional treatment that can be provided most effectively by commitment to a correctional institution; or
 - (c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.
- (4) The court shall not determine that there is a likelihood that the defendant will commit a Class C or Class D felony based upon the fact that:
 - (a) The defendant has never been convicted of, pled guilty to, or entered an Alford plea to a felony offense;
 - (b) If convicted of, having pled guilty to, or entered an Alford plea to a felony offense, the defendant successfully completed probation more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period; or
 - (c) The defendant has been released from incarceration for the commission of a felony offense more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period.

- (5) In making a determination under subsection (4) of this section, the court may determine that the greater weight of the evidence indicates that there is a likelihood that the defendant will commit a Class C or Class D felony.
- (6) Upon initial sentencing of a defendant or upon modification or revocation of probation, when the court deems it in the best interest of the public and the defendant, the court may order probation with the defendant to serve one (1) of the following alternative sentences:
 - (a) To a halfway house for no more than twelve (12) months;
 - (b) To home incarceration with or without work release for no more than twelve (12) months;
 - (c) To jail for a period not to exceed twelve (12) months with or without work release, community service and other programs as required by the court;
 - (d) To a residential treatment program for the abuse of alcohol or controlled substances; or
 - (e) To any other specified counseling program, rehabilitation or treatment program, or facility.
- (7) If during the term of the alternative sentence the defendant fails to adhere to and complete the conditions of the alternative sentence, the court may modify the terms of the alternative sentence or may modify or revoke probation and alternative sentence and commit the defendant to an institution.
- (8) In addition to those conditions that the court may impose, the conditions of alternative sentence shall include the following and, if the court determines that the defendant cannot comply with them, then they shall not be made available:
 - (a) A defendant sentenced to a halfway house shall:
 - 1. Be working or pursuing his or her education or be enrolled in a full-time treatment program;
 - 2. Pay restitution during the term of probation; and
 - 3. Have no contact with the victim of the defendant's crime;
 - (b) A defendant sentenced to home incarceration shall:
 - 1. Be employed by another person or self-employed at the time of sentencing to home incarceration and continue the employment throughout the period of home incarceration, unless the court determines that there is a compelling reason to allow home incarceration while the defendant is unemployed;
 - 2. Pay restitution during the term of home incarceration;
 - 3. Enter a treatment program, if appropriate;
 - 4. Pay all or some portion of the cost of home incarceration as determined by the court;
 - 5. Comply with other conditions as specified; and
 - 6. Have no contact with the victim of the defendant's crime;
 - (c) A defendant sentenced to jail with community service shall:

1. Pay restitution during all or some part of the defendant's term of probation; and
 2. Have no contact with the victim of the defendant's crime; or
- (d) A defendant sentenced to a residential treatment program for drug and alcohol abuse shall:
1. Undergo mandatory drug screening during term of probation;
 2. Be subject to active, supervised probation for a term of five (5) years;
 3. Undergo aftercare as required by the treatment program;
 4. Pay restitution during the term of probation; and
 5. Have no contact with the victim of the defendant's crime.
- (9) When the court deems it in the best interest of the defendant and the public, the court may order the person to work at community service related projects under the terms and conditions specified in KRS 533.070. Work at community service related projects shall be considered as a form of conditional discharge.
- (10) Probation with alternative sentence shall not be available as set out in KRS 532.045 and 533.060, except as provided in KRS 533.030~~(5)~~~~(6)~~.
- (11) The court may utilize a community corrections program authorized or funded under KRS Chapter 196 to provide services to any person released under this section.
- (12) When the court deems it in the best interest of the defendant and the public, the court may order the defendant to placement for probation monitoring by a private agency. The private agency shall report to the court on the defendant's compliance with his terms of probation or conditional discharge. The defendant shall be responsible for any reasonable charges which the private agency charges.
- (13) The jailer in each county incarcerating Class D felons may deny work release privileges to any defendant for violating standards of discipline or other jail regulations. The jailer shall report the action taken and the details of the violation on which the action was based to the court of jurisdiction within five (5) days of the violation.
- (14) The Department of Corrections shall, by administrative regulation, develop written criteria for work release privileges granted under this section.
- (15) ***Reimbursement of incarceration costs shall be paid directly to the jailer in the amount specified by written order of the court. Incarceration costs owed to the Department of Corrections shall be paid through the circuit clerk.***
- (16) The court shall enter into the record written findings of fact and conclusions of law when considering implementation of any sentence under this section.

Section 36. KRS 533.020 is amended to read as follows:

- (1) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court shall place him on probation if he is in need of the supervision, guidance, assistance, or direction that the probation service can provide. Conditions of probation shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of probation. ***When setting conditions under this subsection, the***

court shall not order any defendant to pay incarceration costs or any other cost permitted to be ordered under Section 35 of this Act, or other statute, except restitution and any costs owed to the Department of Corrections, through the circuit clerk.

- (2) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him to probation with an alternative sentence if it is of the opinion that the defendant should conduct himself according to conditions determined by the court and that probationary supervision alone is insufficient. The court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the alternative sentence.
- (3) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him to conditional discharge if it is of the opinion that the defendant should conduct himself according to conditions determined by the court but that probationary supervision is inappropriate. Conditions of conditional discharge shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of conditional discharge.
- (4) The period of probation, probation with an alternative sentence, or conditional discharge shall be fixed by the court and at any time may be extended or shortened by duly entered court order. Such period, with extensions thereof, shall not exceed five (5) years, or the time necessary to complete restitution, whichever is longer, upon conviction of a felony nor two (2) years, or the time necessary to complete restitution, whichever is longer, upon conviction of a misdemeanor. Upon completion of the probationary period, probation with an alternative sentence, or the period of conditional discharge, the defendant shall be deemed finally discharged, provided no warrant issued by the court is pending against him, and probation, probation with an alternative sentence, or conditional discharge has not been revoked.
- (5) Notwithstanding the fact that a sentence to probation, probation with an alternative sentence, or conditional discharge can subsequently be modified or revoked, a judgment which includes such a sentence shall constitute a final judgment for purposes of appeal.

Section 37. KRS 533.030 is amended to read as follows:

- (1) The conditions of probation and conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation or conditional discharge that the defendant not commit another offense during the period for which the sentence remains subject to revocation.
- (2) When imposing a sentence of probation or conditional discharge, the court may, in addition to any other reasonable condition, require that the defendant:
 - (a) Avoid injurious or vicious habits;
 - (b) Avoid persons or places of disreputable or harmful character;
 - (c) Work faithfully at suitable employment as far as possible;

- (d) Undergo available medical or psychiatric treatment and remain in a specific institution as required for that purpose;
 - (e) Post a bond, without surety, conditioned on performance of any of the prescribed conditions;
 - (f) Support his dependents and meet other family responsibilities;
 - (g) Pay the cost of the proceeding as set by the court;
 - (h) Remain within a specified area;
 - (i) Report to the probation officer as directed;
 - (j) Permit the probation officer to visit him at his home or elsewhere;
 - (k) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment; and
 - (l) ~~If the defendant's record indicates a controlled substance or alcohol problem,~~ Submit to periodic testing for **the** use of controlled substances or alcohol, **if the defendant's record indicates a controlled substance or alcohol problem**, and to pay a reasonable fee, **as determined by the court, which fee shall** not ~~to~~ exceed the actual cost of the test and analysis **and shall**, ~~as determined by the court, said fee to~~ be **paid directly**~~collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely~~ to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis, **as specified by written order of the court**, performed under this subsection. For good cause shown, the testing fee may be waived by the court.
- (3) When imposing a sentence of probation or conditional discharge in a case where a victim of a crime has suffered monetary damage as a result of the crime due to his property having been converted, stolen, or unlawfully obtained, or its value substantially decreased as a result of the crime, or where the victim suffered actual medical expenses, direct out-of-pocket losses, or loss of earning as a direct result of the crime, or if as a direct result of the crime the victim incurred medical expenses that were paid by the Cabinet for Health Services, the Crime Victims Compensation Board, or any other governmental entity, the court shall order the defendant to make restitution in addition to any other penalty provided for the commission of the offense. Payment of restitution to the victim shall have priority over payment of restitution to any government agency. Restitution shall be ordered in the full amount of the damages, unless the damages exceed one hundred thousand dollars (\$100,000) or twice the amount of the gain from the commission of the offense, whichever is greater, in which case the higher of these two (2) amounts shall be awarded. The court may, in lieu of ordering monetary restitution, order the defendant to make restitution by working for or on behalf of the victim. The court shall determine the number of hours of work necessary by applying the then-prevailing federal minimum wage to the total amount of monetary damage caused by or incidental to the commission of the crime. The court may, with the consent of the agency, order the defendant to work as specified in KRS 533.070. Any work ordered pursuant to this section shall not be deemed employment for any purpose, nor shall the person performing the work be deemed an employee for any purpose. Where there is more than one (1) defendant or more than one (1) victim, restitution may be apportioned. Restitution shall be subject to the following additional terms and conditions:

- (a) Where property which is unlawfully in the possession of the defendant is in substantially undamaged condition from its condition at the time of the taking, return of the property shall be ordered in lieu of monetary restitution;
 - (b) The circuit clerk shall assess an additional fee of five percent (5%) to defray the administrative costs of collection of payments or property. This fee shall be paid by the defendant and shall inure to a trust and agency account which shall not lapse and which shall be used to hire additional deputy clerks and office personnel or increase deputy clerk or office personnel salaries, or combination thereof;
 - (c) When a defendant fails to make restitution ordered to be paid through the circuit clerk *or a court-authorized program run by the county attorney or the Commonwealth's attorney*, the circuit clerk *or court-authorized program* shall notify the court; and
 - (d) An order of restitution shall not preclude the owner of property or the victim who suffered personal physical or mental injury or out-of-pocket loss of earnings or support or other damages from proceeding in a civil action to recover damages from the defendant. A civil verdict shall be reduced by the amount paid under the criminal restitution order.
- (4) *When requiring fees for controlled substances or alcohol tests, or other fees and payments authorized by this section or other statute, except restitution, to be paid by the defendant, the court shall not order the payments to be paid through the circuit clerk.*~~In addition to any other terms and conditions imposed under this section, the court may require the probationer, as a condition of his probation, to make one (1) payment to a crime stoppers organization in an amount not to exceed the amount of the reward paid by a crime stoppers organization, as defined by KRS 431.570, relative to the probationer.~~
- ~~(5) In addition to any other terms and conditions imposed under this section, the court may require the probationer, as a condition of probation or conditional discharge of a sentence of detention or imprisonment for a drug or alcohol related offense, to make one (1) payment either to Drug Abuse Resistance Education (D.A.R.E.) or to any treatment or prevention program for drug or alcohol abuse that a local government administers, refers individuals to, or contracts to administer, in an amount not to exceed the amount of any fine which also could have been imposed for the offense].~~
- ~~(5) [(6)]~~ When a defendant is sentenced to probation or conditional discharge, he shall be given a written statement explicitly setting forth the conditions under which he is being released.
- ~~(6) [(7)]~~ When imposing a sentence of probation or conditional discharge, the court, in addition to conditions imposed under this section, may require as a condition of the sentence that the defendant submit to a period of imprisonment in the county jail or to a period of home incarceration at whatever time or intervals, consecutive or nonconsecutive, the court shall determine. The time actually spent in confinement or home incarceration pursuant to this provision shall not exceed twelve (12) months or the maximum term of imprisonment assessed pursuant to KRS Chapter 532, whichever is the shorter. Time spent in confinement or home incarceration under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to KRS Chapter 532, if probation or conditional discharge is revoked and the defendant is sentenced to imprisonment. Any prohibitions against probation, shock probation, or conditional discharge under KRS 533.060(2) or 532.045 shall not apply to persons convicted of a misdemeanor or Class D felony and sentenced to a period of confinement or home incarceration under this section.

Section 38. KRS 534.020 is amended to read as follows:

- (1) When a defendant is sentenced to pay a fine, the court may provide for payment to be made within a specified period of time or in specified installments. If no such provision is made a part of the sentence, ***then*** the fine shall be payable forthwith.
- (2) When a defendant is sentenced to pay a fine, an alternative sentence of imprisonment that is to be served in the event the fine is not paid shall not be imposed at the same time. The response of a court to nonpayment of a fine shall be determined only after the fine has not been paid, and ~~only~~ as provided in ***Section 4 of this Act or*** KRS 534.060.

Section 39. KRS 534.045 is amended to read as follows:

- (1) Pursuant to a conviction of a misdemeanor, including traffic offenses, where a person is sentenced to incarceration in the county jail, the District Court may assess a reimbursement fee to help defray the expenses of the prisoner's room and board. The reimbursement fee shall not exceed twenty-five percent (25%) of the prisoner's gross daily wages or forty dollars (\$40) per day, whichever is less. All moneys shall be ***paid directly to the jailer***~~collected by the District Court and paid to the county, urban county, or charter county treasury for use on the jail as provided in KRS 441.206~~.
- (2) In determining whether a reimbursement fee as described in subsection (1) of this section is to be assessed, and in establishing the amount of the fee, the court shall consider evidence relevant to the prisoner's ability to pay the fee but shall not consider as evidence the following:
 - (a) Joint ownership, if any, that the prisoner may have in real property;
 - (b) Joint ownership, if any, that the prisoner may have in any assets, earnings, or other sources of income; and
 - (c) The income, assets, earnings, or other property, both real and personal, that might be owned by the prisoner's spouse or family.
- (3) After considering all relevant evidence to the issue of the prisoner's ability to pay, the court shall enter as part of its judgment the amount of the reimbursement fee, if any, that shall be paid by the prisoner during his period of incarceration in the county jail. The fee shall bear a reasonable relationship to the person's income. Upon petition by the prisoner affected by the order, the amount may be modified to reflect any changes in the financial status of the prisoner. In any appeal that might be taken from the conviction, the amount of the reimbursement fee may be challenged.
- (4) If the person sentenced to jail is released in accordance with the provisions of KRS 439.179 and is subject to the provisions of KRS 439.179(4), the payment of the reimbursement fee shall be suspended so long as the person is gainfully employed.
- (5) ***When imposing any payment authorized by this section, the court shall order the defendant to make the payment to the named officer, person, or organization. The court shall not order any payment authorized by this section to be made through the circuit clerk.***

Section 40. KRS 635.085 is amended to read as follows:

- (1) In lieu of commitment to the Department of Juvenile Justice, if a child is adjudicated a public offender, the court may in its discretion impose a fine. The imposition of a fine for an

offense committed by a child shall be based upon a determination that such disposition is in the best interest of the child and to aid in his rehabilitation. Any such order shall include a finding that the child is financially able to pay the fine. Fines shall be levied consistent with the schedule set forth below:

- (a) For a felony, not to exceed five hundred dollars (\$500);
 - (b) For a misdemeanor, not to exceed two hundred fifty dollars (\$250); and
 - (c) For a violation, not to exceed one hundred dollars (\$100).
- (2) When a child is directed by the court to pay a fine, the court may provide for payment to be made within a specified period of time or in specified installments. If such provision is not made a part of the court's disposition, the fine shall be payable immediately. Nothing contained herein shall be construed as limiting the court's inherent contempt powers.
- (3) Any public offender detained for failure to comply with the court order shall not be scheduled for a time that would interfere with the educational, occupational, or religious obligations of the child, and shall be in a secure juvenile detention facility or juvenile holding facility. Any portion of a day a child is detained pursuant to the court's exercising its contempt powers shall be deemed as one (1) day for purposes of serving a detention term.
- ~~[(4) Fines imposed and collected pursuant to this section shall be paid by the circuit clerk to the fund specified in KRS 431.100.]~~

Section 41. The following KRS sections are repealed:

26A.150 Collection and forwarding of crime victim compensation fee.

431.102 Service fee on certain misdemeanor convictions.

Section 42. This Act takes effect August 1, 2002, and all court costs, fees, fines, and other monetary penalties assessed before this date but not collected or paid by this date shall be thereafter dispensed of in accordance with this Act.

Approved April 2, 2002