

CHAPTER 128**(HB 191)**

AN ACT relating to crimes and punishments.

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

Section 1. KRS 439.3405 is amended to read as follows:

- (1) Notwithstanding any statute eliminating parole or establishing minimum time for parole eligibility for a certain class or status of offender, including KRS 439.340(1)(10), 439.3401, 532.080(7), and 533.060, the board, with the written consent of a majority of the full board, may review the case of any prisoner and release that prisoner on parole despite any elimination of or minimum time for parole eligibility, when the prisoner has a documented terminal medical condition likely to result in death within one (1) year or severe chronic lung disease, end-stage heart disease, severe neuro-muscular disease such as multiple sclerosis; or has severely limited mobility due to paralysis as a result of stroke or trauma; or is dependent on external life support systems and would not pose a threat to society if paroled.
- (2) Medical information considered under this section shall be limited to the medical findings supplied by Department of Corrections medical staff. The medical staff shall provide in writing the prisoner's diagnosis and prognosis in support of the conclusion that the prisoner suffers from a terminal medical condition likely to result in death within one (1) year or because of the conditions set forth in subsection (1) of this section he is totally dependent on others for the activities of daily living.
- (3) The medical information prepared by the Department of Corrections medical staff under this section shall be forwarded to the warden of the institution who shall submit that information and a recommendation for or against parole review under this section to the commissioner of the Department of Corrections or his designee. With the approval of the commissioner of the Department of Corrections, a request for parole review under this section, along with the medical information and warden's recommendation, shall be submitted to the board.
- (4) Medical information presented under this section shall be considered along with other information relevant to a decision regarding the granting of parole and shall not constitute the only reason for granting parole.
- (5) *Notwithstanding KRS 439.340(5), in addition to or in conjunction with each review conducted under subsection (1) of this section for any prisoner convicted of a Class A, B, or C felony and prior to the granting of parole to any such prisoner, the Parole Board shall conduct a hearing of which the following persons shall receive not less than fifteen (15) nor more than thirty (30) days' notice:*
 - (a) *The Commonwealth's attorney, who shall notify the sheriff of every county and the chief of police of every city and county in which the prisoner committed any Class A, B, or C felony for which he is imprisoned; and*
 - (b) *All identified victims of the crimes or the next of kin of any victim who is deceased.*

Notice to the Commonwealth's attorney shall be by mail, fax, or electronic means at the discretion of the board, and shall be in a manner that ensures receipt at the Commonwealth Attorney's business office. Notices received by chiefs of police and sheriffs shall be posted in a conspicuous location where police employed by the department may see it. Notices shall be posted in a manner and at a time that will allow officers to make comment thereon to the Parole Board. Notice to victims or their next of kin shall be made by mail, fax, or electronic means at the discretion of the board, to their last known address or telephone number as provided by the Commonwealth's attorney to the Parole Board at the time of incarceration of the prisoner. Notice to the victim or the next of kin of subsequent considerations for parole after the initial consideration shall not be sent if the victim or the next of kin gives notice to the board that he or she no longer wants to receive such notices. The notice shall include the time, date, and place of the hearing provided for in this subsection, and the name and address of a person to write if the recipient of the notice desires to attend the hearing or to submit written comments.

SECTION 2. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

- (1) *When a prisoner in a jail, regional jail, or holdover is injured, is or becomes sick or ill, or requires specialized medical care or long-term medical care which is not available at the local jail, the jailer or other person in charge of the jail, regional jail, or holdover may request that the commissioner of the department, or the commissioner's designee in writing, transfer the prisoner to a facility operated by the department or under contract to the department for the provision of necessary medical treatment and care.*

- (2) *The commissioner, or the commissioner's designee in writing, may authorize the transfer of the prisoner to a facility operated by the department or under contract to the department for the length of time necessary to secure medical treatment and care for the prisoner. Following medical care and treatment the prisoner shall be returned to the jail, regional jail, or holdover.*
- (3) *If the commissioner, or the commissioner's designee in writing, authorizes the transfer of the prisoner to a facility operated by the department or under contract to the department, then the department shall pay:*
 - (a) *The costs of transfer to and from the department's facilities;*
 - (b) *The room, board, and related costs for the prisoner while the prisoner is in the custody of the department; and*
 - (c) *The costs for medical care, treatment, medicines, and supplies for the prisoner while the prisoner is in the custody of the department.*
- (4) *The department shall have no legal duty to transfer any prisoner to the department for medical treatment and care. The decision of the commissioner or the commissioner's designee in writing whether or not to accept a prisoner for transfer to the department shall be subject to appeal to the Secretary of Justice.*
- (5) *The department shall promulgate administrative regulations relating to the transfer of prisoners to the department for medical treatment and care.*
- (6) *When a prisoner is transferred to the department for medical care and treatment, the jailer or other person in charge of the jail, regional jail, or holdover shall notify the following persons of the reason for the transfer, the fact of the transfer, and the general reasons for the transfer:*
 - (a) *The prisoner's next of kin;*
 - (b) *The prisoner's attorney of record;*
 - (c) *The Commonwealth's attorney or county attorney, as appropriate; and*
 - (d) *The chief Circuit Judge or chief District Judge, as appropriate.*
- (7) *When a prisoner is returned to the jail, regional jail, or holdover by the department, the jailer or other person in charge of the jail, regional jail, or holdover shall notify the persons specified in subsection (6) of this section of the prisoner's return.*
- (8) *The department's costs of providing care, drugs, medications, travel, and all other expenses authorized by this section shall be a necessary governmental expense.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

- (1) *When a unit of local government, or regional jail authority facilitates medical care for a prisoner confined in the jail, holdover, or regional jail who has not been convicted as a felon and who holds a policy, contract, or certificate of insurance coverage in any form, the insurer shall be primary for payment of medically necessary health care benefit claims provided the following conditions are met:*
 - (a) *The reimbursement shall be for medical, dental, or psychological claims that are covered benefits under the terms and conditions of the health benefit plan held by the prisoner;*
 - (b) *The reimbursement shall be applied under the terms and conditions of the health benefit plan and in the same manner as though the insured were not a prisoner; and*
 - (c) *All premiums for the health benefit plan are current.*
- (2) *If the unit of local government, combination of units of local government, or regional jail authority has contracted with the Department of Corrections under the Department of Corrections' contract for medical, dental, or psychological care access, or drugs, medicines, or pharmaceutical services, then the rights of the local government, combination of local governments, or regional jail authority shall be subrogated to the contract provider of such services to the Department of Corrections.*
- (3) *If the unit of local government, combination of units of local government, or regional jail authority has, with the approval of the Department of Corrections, contracted with another pharmaceutical services provider, then the rights of the local government, combination of local governments, or regional jail authority shall be subrogated to the contract provider of medical, dental, or psychological care to the local*

jail, for access to drugs, medicines, or pharmaceutical services to the unit of local government, combination of units of local government, or regional jail authority.

- (4) *If a prisoner has been transferred from a local jail, regional jail, or holdover to the Department of Corrections for medical care pursuant to Section 2 of this Act, then the contract provider of drugs and pharmaceutical services or the contract provider of medical, dental, or psychological care shall be subrogated to the provider of such services to the Department of Corrections.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsection (2) of this section, each jail, regional jail, holdover, or other correctional facility owned or operated by a unit of local government, combination of units of local government, or regional jail authority shall utilize the Department of Corrections' contract pharmacy plan.*
- (2) *The Department of Corrections may, on a yearly basis, waive the requirement of subsection (1) of this section if the unit of local government, combination of units of local government, or regional jail authority proves to the Department of Corrections that the unit of local government, combination of units of local government or regional jail authority has contracted with another vendor and that:*
- (a) *The prescription plan covers pharmacy services, drugs, and medicine in a manner which is equal to or superior to the Department of Corrections contract pharmacy plan; and*
- (b) *The cost of the prescription plan is less in cost than the Department of Corrections contract pharmacy plan.*
- (3) *Except as provided in subsection (4) of this section, each jail, regional jail, holdover, or other correctional facility owned or operated by a unit of local government, combination of units of local government, or regional jail authority shall utilize the Department of Corrections' contract medical, dental, and psychological care access plan and the administrative service fee for the plan shall be paid by the Department of Corrections subject to the limits of Section 5 of this Act.*
- (4) *The Department of Corrections may, on a yearly basis, waive the requirement of subsection (3) of this section if the unit of local government, combination of units of local government, or regional jail authority proves to the Department of Corrections that the unit of local government, combination of units of local government, or regional jail authority has contracted with another vendor and that:*
- (a) *The medical, dental, and psychological care access plan provides services and access which is equal to or superior to the Department of Corrections contract medical, dental, and psychological care access plan; and*
- (b) *The cost of the medical, dental, and psychological care access plan is less in cost than the Department of Corrections contract medical, dental, and psychological care access plan.*
- (5) *A unit of local government, combination of units of local government, or regional jail authority may appeal a decision of the Department of Corrections denying a waiver under subsection (2) or (4) of this section to the Secretary of Justice.*

Section 5. (1) The Secretary of the Justice Cabinet shall have the authority to declare a state of extraordinary circumstances upon a finding that the appropriations to the Department of Corrections for the provision of medical care of prisoners in county jails pursuant to Sections 2,3, and 4 of this Act, for the provision of drugs, medications, and similar items for prisoners in county jails pursuant to Sections 2, 3, and 4 of this Act and KRS 441.045, and for the medical care of county jail prisoners who are transferred to the Department of Corrections pursuant to Section 2 of this Act, are insufficient to pay the expenses authorized by either section. Upon certification and notwithstanding 2006 Ky. Acts Chapter 252, Part III, General Provisions, 5. Appropriations Expenditure Purpose and Transfer Restrictions, the secretary shall be authorized to transfer general fund moneys, restricted funds, or federal funds, with the approval of the State Budget Director, to the extent funds are available and not otherwise obligated to carry out the provisions of KRS Chapters 196, 197, and 441 in the 2006-2008 fiscal biennium from other budget units within the cabinet to the Department of Corrections to address the immediate needs of a program authorized by Section 2, 3, or 4 and KRS 441.045 of this Act. The transfer of any funds pursuant to this section shall be subject to the provisions and notification requirements of KRS 48.630. Moneys transferred pursuant to this paragraph shall be placed in a trust and agency account to be used for the purpose set forth in this paragraph.

(2) If, after transferring funds within the cabinet, the secretary finds that extraordinary needs relating to medical care of county jail prisoners still exist, the secretary may then request approval from the Governor for any amount of expenditures not covered by funds transferred from other agencies within the cabinet, not to exceed

\$1,500,000, for catastrophic, medical care, and medical care pursuant to Section 2 of this Act and KRS 441.045 to request that expenditures be deemed a necessary governmental expense. Upon approval by the Governor, funds not to exceed \$1,500,000 shall be transferred from the General Fund Surplus (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 84.705). These funds shall be transferred only upon certification of need by the Secretary of the Justice Cabinet to the Secretary of the Finance and Administration Cabinet and upon approval by the Governor. Moneys appropriated pursuant to this paragraph shall be placed in a trust and agency account to be used for the purpose set forth in this paragraph.

(3) If, after transferring funds within the cabinet, the secretary finds that extraordinary needs relating to medical care of county jail prisoners relating to the Department of Corrections medical, dental, and psychological care access plan pursuant to Section 4 of this Act still exist, the secretary may then request approval from the Governor for any amount of expenditures not covered by funds transferred from other agencies within the cabinet, not to exceed \$1,000,000, and to request that expenditures be deemed a necessary governmental expense. Upon approval by the Governor, funds not to exceed \$1,000,000 shall be transferred from the General Fund Surplus (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 84.705). These funds shall be transferred only upon certification of need by the Secretary of the Justice Cabinet to the Secretary of the Finance and Administration Cabinet and upon approval by the Governor. Moneys appropriated pursuant to this paragraph shall be placed in a trust and agency account to be used for the purpose set forth in this paragraph.

(4) The cabinet shall submit monthly updates to the Interim Joint Committees on Appropriations and Revenue and Judiciary on expenditures made pursuant to these paragraphs.

Approved April 5, 2007.