

CHAPTER 107**(HB 564)**

AN ACT relating to the justice system and declaring an emergency.

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

➔Section 1. KRS 31.015 is amended to read as follows:

- (1) (a) The Public Advocacy Commission shall consist of the following members, none of whom shall be a prosecutor, law enforcement official, or judge, who shall serve terms of four (4) years, except the initial terms shall be established as hereafter provided:
 1. Two (2) members appointed by the Governor;
 2. One (1) member appointed by the Governor. This member shall be a child advocate or a person with substantial experience in the representation of children;
 3. ~~One (1) member who is the executive director of the Office of Legislative and Intergovernmental Services of the Justice and Public Safety Cabinet;~~
 4. ~~Two (2) members appointed by the Kentucky Supreme Court;~~
 4. **Three (3)**~~Five (5) Two (2)~~ members, who are licensed to practice law in Kentucky and have substantial experience in the representation of persons accused of crime, appointed by the Governor from a list of three (3) persons submitted to him **or her** for each individual vacancy by the board of governors of the Kentucky Bar Association;
 5. ~~6.~~ The dean, ex officio, of each of the law schools in Kentucky or his **or her** designee; and
 6. ~~7.~~ One (1) member appointed by the Governor from a list of three (3) persons submitted to him or her by the joint advisory boards of the Protection and Advocacy Division of the Department for Public Advocacy.
- (b) Any member of the commission serving prior to July 15, 2002, shall serve until the expiration of his or her current term of office. Subsequent appointments shall be for a term of four (4) years from the date of expiration of the term for which his or her predecessor was appointed.
- (2) At the first meeting of the commission, a drawing by lot shall be conducted to determine the length of each original member's term. Initially there shall be four (4) two (2) year terms, four (4) three (3) year terms, and four (4) four (4) year terms. Vacancies in the membership of the commission shall be filled in the same manner as original appointments. Appointments to fill vacancies occurring before the expiration of a term shall be for the remainder of the unexpired term.
- (3) The commission shall first meet at the call of the Governor and thereafter as the commission shall determine on a regular basis, but at least quarterly, and shall be presided over by a chairperson elected by its members for a one (1) year term. A majority of commission members shall constitute a quorum, and decisions shall require the majority vote of those present; except that a recommendation to the Governor pertaining to the appointment, renewal of the appointment, or removal of the public advocate shall require a majority vote of the commission. Each member of the commission shall have one (1) vote, and voting by proxy shall be prohibited.
- (4) The public advocate shall, upon appointment or renewal, be an ex officio member of the commission without the power to vote, shall serve as secretary of the commission, and shall be entitled to attend and participate in all meetings of the commission except discussions relating to renewal of his **or her** term or his **or her** removal.
- (5) Commission members shall be reimbursed for reasonable and necessary expenses incurred while engaged in carrying out the duties of the commission and shall receive one hundred dollars (\$100) per day for each meeting attended unless prohibited by law from receiving such compensation.
- (6) The commission shall:
 - (a) Receive applications, interview, and recommend to the Governor three (3) attorneys as nominees for appointment as the public advocate;
 - (b) Assist the public advocate in drawing up procedures for the selection of his **or her** staff;

- (c) Review the performance of the public advocacy system and provide general supervision of the public advocate;
 - (d) Assist the Department for Public Advocacy in ensuring its independence through public education regarding the purposes of the public advocacy system; and
 - (e) Review and adopt an annual budget prepared by the public advocate for the system and provide support for budgetary requests to the General Assembly.
- (7) In no event shall the commission or its members interfere with the discretion, judgment, or advocacy of employees of the Department for Public Advocacy in their handling of individual cases.

➔Section 2. KRS 196.180 is amended to read as follows:

- (1) The warden shall have the general management of the institution, and the inmates thereof, subject to the administrative regulations of the Department of Corrections, and he *or she* shall devote his *or her* entire time to the duties of his *or her* office.
- (2) The warden of each institution shall be held responsible for the management of his *or her* institution and shall be subject to removal at any time by the commissioner.
- (3) ***The warden of each Department of Corrections institution shall expunge inmate prison disciplinary reports that have been dismissed or otherwise ordered void, and shall further remove any reference to dismissed or voided disciplinary reports from inmate records.***

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

- (1) Any person convicted and sentenced to a state penal institution may receive a credit on his sentence of not exceeding ten (10) days for each month served, except as otherwise provided in this section, to be determined by the department from the conduct of the prisoner. In addition, the department shall provide an educational good time credit of ***ninety (90)***~~sixty (60)~~ days to any prisoner who successfully receives a ***general***~~graduate~~ equivalency diploma or a high school diploma, a two (2) or four (4) year college degree,~~or~~ a two (2) year or four (4) year certification in applied sciences,~~or who receives~~ a technical education diploma as provided and defined by the department, ***or who completes a drug treatment program or other program as defined by the department that requires participation in the program for a minimum of six (6) months***; prisoners may earn additional credit for each program completed. The department may forfeit any good time previously earned by the prisoner or deny the prisoner the right to earn good time in any amount if during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.
- (2) When two (2) or more consecutive sentences are to be served, the several sentences shall be merged and served in the aggregate for the purposes of the good time credit computation or in computing dates of expiration of sentence.
- (3) An inmate may, at the discretion of the commissioner, be allowed a deduction from a sentence not to exceed ***seven (7)***~~five (5)~~ days per month for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs, ***and may be allowed an additional seven (7) days per month served for acts of exceptional service during times of emergency.*** The allowance shall be an addition to commutation of time for good conduct and under the same terms and conditions and without regard to length of sentence.
- (4) Until successful completion of the sex offender treatment program, an eligible sexual offender may earn good time. However, the good time shall not be credited to the eligible sexual offender's sentence. Upon the successful completion of the sex offender treatment program, as determined by the program director, the offender shall be eligible for all good time earned but not otherwise forfeited under administrative regulations promulgated by the Department of Corrections. After successful completion of the sex offender treatment program, an eligible sexual offender may continue to earn good time in the manner provided by administrative regulations promulgated by the Department of Corrections. Any eligible sexual offender, as defined in KRS 197.410, who has not successfully completed the sex offender treatment program as determined by the program director shall not be entitled to the benefit of any credit on his *or her* sentence. A sexual offender who does not complete the sex offender treatment program for any reason shall serve his *or her* entire sentence without benefit of good time, parole, or other form of early release. The provisions of this section shall not apply to any sexual offender convicted before July 15, 1998, or to any mentally retarded sexual offender.

- (5) (a) The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of good time and the ability to earn good time in the future for those inmates who have civil actions dismissed because the court found the action to be malicious, harassing, or factually frivolous.
- (b) Penalties set by administrative regulation pursuant to this subsection shall be as uniform as practicable throughout all institutions operated by, under contract to, or under the control of the department and shall specify a specific number of days or months of good time forfeited as well as any prohibition imposed on the future earning of good time.

➔Section 4. KRS 439.320 is repealed, reenacted, and amended to read as follows:

- (1) The Governor shall appoint a Parole Board consisting of nine (9) full-time members ~~and two (2) part-time members, as described in subsection (7) of this section,~~ to be confirmed by the Senate in accordance with KRS 11.160. ~~Each of the two (2) part-time members shall be from a different political party.~~ The Governor shall make each appointment ~~for full-time and part-time members~~ from a list of three (3) names given to him *or her* by the Kentucky State Corrections Commission. Each member appointed to the board shall have had at least five (5) years of actual experience in the field of penology, correction work, law enforcement, sociology, law, education, social work, medicine, or a combination thereof, or have served at least five (5) years previously on the Parole Board. No more than six (6) board members shall be of the same political party. The board shall be attached to the Justice and Public Safety Cabinet for administrative purposes only. The Department of Corrections shall provide any clerical, stenographic, administrative, and expert staff assistance the board deems necessary to carry out its duties.
- (2) The Governor shall *designate* ~~name~~ one (1) ~~full-time~~ member as *chairperson* ~~chairman~~ of the board. *The member designated as chairperson shall serve in that capacity at the pleasure of the Governor or until his or her term expires.*
- (3) The ~~full-time~~ members of the board shall give full time to the duties of their office and shall receive necessary traveling expenses and a salary to be determined pursuant to KRS 64.640(2), except the *chairperson* ~~chairman~~ of the board shall receive additional compensation of one thousand dollars (\$1,000) per year for his or her services. Their terms of office shall be four (4) years and until their successors are appointed and have qualified. Their successors shall be appointed thereafter as provided in this section for terms of four (4) years, and a vacancy occurring before expiration of the term of office shall be similarly filled for the unexpired term. ~~The chairman of the board shall serve as such until the expiration of his or her term at which time the Governor shall name his or her successor and designate the chairman of the board. If a vacancy occurs in the chairmanship of the board before the expiration of the term, the Governor may name a successor to serve for the remainder of the unexpired term.~~
- (4) The organization of the board shall be determined by the *chairperson* ~~chairman~~ and shall be consistent with administrative regulations promulgated pursuant to KRS 439.340. For policy and procedural matters, five (5) members shall constitute a quorum. Parole and final parole revocation hearings may be done by panels of the board, subject to the following requirements:
- (a) If a two (2) member panel is utilized, both members of the panel shall agree on the decision or the matter shall be referred to the full board;
- (b) If a three (3) member panel is utilized, two (2) of the three (3) members of the panel shall agree on a decision or the matter shall be referred to the full board; and
- (c) If a panel of four (4) or more members is utilized, a majority of the panel shall agree on a decision or the matter shall be referred to the full board.
- (5) The Governor may not remove any member of the board except for disability, inefficiency, neglect of duty, or malfeasance in office. Before removal, he or she shall give the member a written copy of the charges against him or her and shall fix the time when he or she can be heard in his or her defense, which shall not be less than ten (10) days thereafter. Upon removal, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the member and the findings thereupon with a record of the proceedings.
- (6) Upon the expiration of the terms of office of the two (2) full-time board members whose terms expire May 23, 1994, the Governor shall appoint two (2) full-time members to serve terms which will expire June 30, 1995. Thereafter, appointments to these two (2) full-time terms shall be for four (4) years and shall be filled as

provided for in subsection (3) of this section. The Governor may reappoint present members if they meet the qualifications set forth in subsection (1) of this section.

- (7) The part-time members *of the board, whose terms have not expired upon the effective date of this Act, shall serve until their terms expire and* may participate in considering the grant or revocation of parole at the request of the *chairperson*~~chairman~~. No more than one (1) part-time Parole Board member shall serve on any panel of the board as set forth in subsection (4) of this section. The part-time Parole Board member called upon to serve shall be paid at a per diem rate equal to the per diem rate for the salary of a newly appointed full-time member and shall receive necessary travel expenses.~~[- The part-time Parole Board member shall serve for a period of four (4) years from the date of appointment and may be reappointed.]~~
- (8) The Office of Executive Director of the Parole Board is created. The office shall be headed by an executive director who shall be appointed by and directly responsible to the secretary of the Justice and Public Safety Cabinet in matters relating to administration. The executive director shall be responsible for the support services to the Parole Board in the area of financial, personnel, and facilities management; shall provide recommendations on administrative issues affecting the board to the secretary of the Justice and Public Safety Cabinet, the *chairperson*~~chairman~~ of the Parole Board, and Parole Board members; shall review and draft legislation and promulgate administrative regulations for the board; and shall review parole data and conduct long-range planning as relevant to the planning needs of the board.

➔Section 5. KRS 439.340 is repealed and reenacted to read as follows:

- (1) The board may release on parole persons confined in any adult state penal or correctional institution of Kentucky or sentenced felons incarcerated in county jails eligible for parole. All paroles shall issue upon order of the board duly adopted. As soon as practicable after his or her admission to an adult state penal or correctional institution or county jail if he or she is a sentenced felon, and at such intervals thereafter as it may determine, the Department of Corrections shall obtain all pertinent information regarding each prisoner, except those not eligible for parole. The information shall include his or her criminal record, his or her conduct, employment, and attitude in prison, and the reports of physical and mental examinations that have been made. The Department of Corrections shall furnish the circumstances of his or her offense and his or her previous social history to the institution and the board. The Department of Corrections shall prepare a report on any information it obtains. It shall be the duty of the Department of Corrections to supplement this report with any material the board may request and submit the report to the board.
- (2) Before granting the parole of any prisoner, the board shall consider the pertinent information regarding the prisoner and shall have him or her appear before it for interview and hearing. The board in its discretion may hold interviews and hearings for prisoners convicted of Class C felonies not included within the definition of "violent offender" in KRS 439.3401 and Class D felonies. The board in its discretion may request the parole board of another state confining prisoners pursuant to KRS 196.610 to interview eligible prisoners and make a parole recommendation to the board. A parole shall be ordered only for the best interest of society and not as an award of clemency, and it shall not be considered a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his or her proper employment or for his or her maintenance and care, and when the board believes he or she is able and willing to fulfill the obligations of a law abiding citizen. Notwithstanding any statute to the contrary, including KRS 440.330, when a prisoner is otherwise eligible for parole and the board has recommended parole for that prisoner for the reasons set forth in this subsection, the board may grant parole to any prisoner wanted as a fugitive by any other jurisdiction, and the prisoner shall be released to the detainer from that jurisdiction. Such parole shall not constitute a relinquishment of jurisdiction over the prisoner, and the board in all cases expressly reserves the right to return the prisoner to confinement in a correctional institution of the Commonwealth if the prisoner violates the terms of his or her parole.
- (3) (a) A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years who is confined to a state penal institution or county jail shall have his or her case reviewed by the Parole Board after serving fifteen percent (15%) or two (2) months of the original sentence, whichever is longer.
- (b) Except as provided in paragraph (a) of this subsection, the board shall adopt administrative regulations with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings and all other matters that come before it, or conditions to be imposed upon parolees. Regulations governing the eligibility of prisoners for parole shall be in accordance with professionally accepted ideas of correction and reform and may utilize in part objective, performance-based criteria;

however, nothing herein contained shall preclude the board from utilizing its present regulations in conjunction with other factors involved that would relate to the inmate's needs and the safety of the public.

- (4) The board shall insure that sentenced felons confined in county jails are considered for parole within thirty (30) days of their parole eligibility date and the Department of Corrections shall provide the necessary assistance and information to the board in order for it to conduct timely parole reviews.
- (5) In addition to or in conjunction with each hearing conducted under subsection (2) of this section for any prisoner convicted of a Class A, B, or C felony and prior to the granting of a parole to any such prisoner, the parole board shall conduct a hearing of which the following persons shall receive not less than forty-five (45) nor more than ninety (90) days' notice: 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 or she is imprisoned, and 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, for prisoners incarcerated prior to July 15, 1986, by mail, fax, or electronic means at the discretion of the board, and shall be in a manner that ensures receipt by the Commonwealth's attorney, who shall forward the notice promptly to the victims or their next of kin at their last known address. For prisoners incarcerated on or after July 15, 1986, notice to the victims or their next of kin shall be by mail from the Parole Board to their last known address 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.
- (6) Persons receiving notice as provided for in subsection (5) of this section may submit comments, in person or in writing, to the board upon all issues relating to the parole of the prisoner. The board shall read and consider all comments prior to making its parole decision, if they are received by the board not less than seven (7) days before the date for the hearing. The board shall retain all comments in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decisions affecting the prisoner. In addition to officers listed in subsection (5) of this section, the crime victims or the next of kin of any victim who is deceased or who is disabled and cannot attend the hearing or the parent or legal guardian of any victim who is a minor may attend the hearing provided for in subsection (5) of this section and present oral and written comments upon all issues relating to the parole of the prisoner, if they have advised the board, in writing received by the board not less than seven (7) days prior to the date set for the hearing, of their intention to attend the hearing. The board shall receive and consider all comments, shall make a record of them which it shall retain in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decision affecting the prisoner. Persons appearing before the Parole Board pursuant to this subsection may elect to make their presentations outside of the presence of the prisoner.
- (7) Victims of Class D felonies may submit comments in person or in writing to the board upon all issues relating to the parole of a prisoner.
- (8) Any hearing provided for in subsections (5), (6), and (7) of this section shall be open to the public unless the persons having a right to appear before the board as specified in those subsections request closure of hearing for reasons of personal safety, in which event the hearing shall be closed. The time, date, and location of closed hearings shall not be disclosed to the public.
- (9) Except as specifically set forth in this section, nothing in this section shall be deemed to expand or abridge any existing rights of persons to contact and communicate with the Parole Board or any of its members, agents, or employees.
- (10) The unintentional failure by the Parole Board, sheriff, chief of police, or any of its members, agents, or employees or by a Commonwealth's attorney or any of his or her agents or employees to comply with any of

the provisions of subsections (5), (6), and (8) of this section shall not affect the validity of any parole decision or give rise to any right or cause of action by the crime victim, the prisoner, or any other person.

- (11) No eligible sexual offender within the meaning of KRS 197.400 to 197.440 shall be granted parole unless he or she has successfully completed the Sexual Offender Treatment Program.
- (12) Any prisoner who is granted parole after completion of the Sexual Offender Treatment Program shall be required, as a condition of his or her parole, to participate in regular treatment in a mental health program approved or operated by the Department of Corrections.
- (13) When an order for parole is issued, it shall recite the conditions thereof.

➔Section 6. KRS 439.344 is amended to read as follows:

The period of time spent on parole shall count as a part of the prisoner's sentence, except when a parolee is:

- (1) Returned to prison as a parole violator for a new felony conviction;
- (2) *Returned to prison as a parole violator after charges have been filed or an indictment has been returned for a felony offense committed while on parole and the prisoner is subsequently convicted of that offense;*
- (3) *Returned to prison as a parole violator and is subsequently convicted of a felony offense committed while on parole;*
- (4) *Returned to prison as a parole violator for absconding from parole supervision, except that the time spent on parole prior to absconding shall count as part of the prisoner's sentence;*
- (5) *Returned to prison as a parole violator and it is subsequently determined that he or she owes restitution pursuant to KRS 439.563 and has an arrearage on that restitution. Any credit withheld pursuant to this subsection shall be reinstated when the arrearage is paid in full;*
- (6) Classified as a violent offender pursuant to KRS 439.3401; or
- (7)~~(3)~~ A registered sex offender pursuant to KRS 17.500 to 17.580.

➔Section 7. KRS 441.064 is amended to read as follows:

- (1) The department shall employ the jail consultants, inspectors, and other employees necessary to administer and enforce the provisions of KRS 441.055 to 441.075.
- (2) The department shall inspect each jail biannually and may inspect jails more frequently.
- (3) The department shall be granted access at any reasonable time to any jail facility or part of any jail facility and shall be granted access to all books, records, and data pertaining to any jail which the department deems necessary for the administration and enforcement of the provisions of KRS 441.055 to 441.075.
- (4) Following an inspection of a jail, the department shall notify the jailer and the fiscal court by certified *or electronic* mail of any deficiencies which are discovered and documented. If the deficiencies are related to health or safety, the notification shall be sent within ten (10) working days, excluding weekends and holidays. The department shall submit an annual written report of the findings of its inspections and the condition of the jail to the jailer and the fiscal court.

➔Section 8. KRS 441.075 is amended to read as follows:

- (1) If the department finds that a violation of its regulations, or the laws or other state regulations pertaining to the protection of persons and property, exists in any jail which holds state prisoners, the commissioner of the department, or his *or her* designee, shall order that the violation be corrected immediately. In order to enforce an order made pursuant to this subsection, the commissioner may order the jail to cease housing state prisoners.
- (2) If the department finds a violation of the health and life safety regulations in KRS 441.055 pertaining to the protection of persons or property, exists in any jail, the commissioner of the department, or his *or her* designee, shall order that the violations be corrected immediately. In order to enforce an order made pursuant to this subsection, the commissioner may order the jail closed until the violations are corrected.
- (3) No jail that was ordered by the Department of Corrections prior to July 15, 1996, to be closed or to operate other than as a full-service facility shall operate as a full-service facility to hold state prisoners unless it is granted a certificate of occupancy by the Department of Corrections. In order to enforce an order made pursuant to subsection (1) of this section, the commissioner may:

- (a) Order the jail or portions thereof to be vacated and closed until the violation is eliminated.
 - (b) Order the jail to cease to house certain classes of prisoners or limit the length of time prisoners or certain classes of prisoners may be housed in the jail.
 - (c) Order the state contribution made pursuant to KRS 441.206 to be used, in whole or in part, to contract with another county for the incarceration of prisoners.
- (4) An order issued under this section shall be in writing, incorporating the findings of the department and other agencies, if appropriate, and shall be delivered, ***electronically mailed***, or mailed by certified mail, return receipt requested, to the county jailer and county judge/executive within twenty-four (24) hours of the issuance of the order. The county jailer or county judge/executive may, within seventy-two (72) hours of receipt of the notification, request in writing a public hearing before the commissioner of the department or his ***or her*** designee on the matters covered by the order. Upon the hearing, the commissioner of the department or his ***or her*** designee may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. The commissioner of the department or his ***or her*** designee may issue, modify, or repeal the order at the conclusion of the hearing.

➔Section 9. KRS 441.105 is amended to read as follows:

The jailer shall:

- (1) Submit a quarterly report to the fiscal court concerning the physical condition of the jail, the number of jail personnel and personnel needs, and other matters requested by the fiscal court.
- (2) Submit a monthly report to the department ***in electronic format***, on forms supplied by the department, containing, but not limited to, the following information on each prisoner:
 - (a) The unit of government whose law the prisoner is charged with violating, the statute or ordinance the prisoner is charged with violating, and whether the charge is a felony or misdemeanor;
 - (b) The status of the prisoner, whether pending trial or post conviction;
 - (c) The age and sex of the prisoner; and
 - (d) The county responsible for the incarceration of the prisoner.

➔Section 10. KRS 532.200 is repealed and reenacted to read as follows:

As used in KRS 532.210 to 532.250, unless the context otherwise requires:

- (1) "Home" means the temporary or permanent residence of a defendant consisting of the actual living area. If more than one (1) residence or family is located on a single piece of property, "home" does not include the residence of any other person who is not part of the social unit formed by the defendant's immediate family. A hospital, nursing care facility, hospice, half-way house, group home, residential treatment facility, or boarding house may serve as a "home" under this section;
- (2) "Home incarceration" means the use of a monitoring device approved by the commissioner of the Department of Corrections to facilitate a prisoner's ability to maintain gainful employment or to participate in programs approved as a condition of his or her incarceration, or both, using the person's home for purposes of confinement;
- (3) "Violent felony offense" means an offense defined in KRS 507.020 (murder), 507.030 (manslaughter in the first degree), 508.010 (assault in the first degree), 508.020 (assault in the second degree), 509.040 (kidnapping), 510.040 (rape in the first degree), 510.070 (sodomy in the first degree), 510.110 (sexual abuse in the first degree), 511.020 (burglary in the first degree), 513.020 (arson in the first degree), 513.030 (arson in the second degree), 513.040 (arson in the third degree), 515.020 (robbery in the first degree), 515.030 (robbery in the second degree), 520.020 (escape in the first degree), any criminal attempt to commit the offense (KRS 506.010), or conviction as a persistent felony offender (KRS 532.080) when the offender has a felony conviction for any of the above-listed offenses within the five (5) year period preceding the date of the latest conviction;
- (4) "Terminal illness" means a medically recognized disease for which the prognosis is death within six (6) months to a reasonable degree of medical certainty; and

- (5) "Approved monitoring device" means an electronic device or apparatus which is capable of recording, tracking, or transmitting information as to the prisoner's location or verifying the prisoner's presence or non-presence in the home, or both. The devices shall be minimally intrusive. Devices shall not be used without the prisoner's knowledge to record or transmit:
- (a) Visual images other than the defendant's face;
 - (b) Oral or wire communications or any auditory sound other than the defendant's voice; or
 - (c) Information as to the prisoner's activities while inside the home.

➔Section 11. KRS 532.260 is amended to read as follows:

- (1) Any Class C or Class D felon who is serving a sentence in a state-operated prison, contract facility, or county jail shall, at the discretion of the commissioner, be eligible to serve the remainder of his or her sentence outside the walls of the detention facility under terms of home incarceration using an approved monitoring device as defined in KRS 532.200, if the felon:
- (a)
 1. Has not been convicted of, pled guilty to, or entered an Alford plea to a violent felony as defined by the Department of Corrections classification system; or
 2. Has not been convicted of, pled guilty to, or entered an Alford plea to a sex crime as defined in KRS 17.500;
 - (b) Has ***one hundred eighty (180)***~~ninety (90)~~ days or less to serve on his or her sentence;
 - (c) Has voluntarily participated in a discharge planning process with the department to address his or her:
 1. Education;
 2. Employment, technical, and vocational skills; and
 3. Housing, medical, and mental health needs; and
 - (d) Has needs that may be adequately met in the community where he or she will reside upon release.
- (2) A person who is placed under terms of home incarceration pursuant to subsection (1) of this section shall remain in the custody of the Department of Corrections. Any unauthorized departure from the terms of home incarceration may be prosecuted as an escape pursuant to KRS Chapter 520 and shall result in the person being returned to prison.
- (3) The Department of Corrections shall promulgate administrative regulations to implement the provisions of this section.

➔Section 12. The intent of the General Assembly in repealing and reenacting KRS 439.320, 439.340, and 532.200 in Sections 4, 5, and 10 of this Act is to affirm the amendments made to these sections in 2008 Ky. Acts. ch. 158. The specific textual provisions of Sections 4, 5, and 10 of this Act which reflect amendments made to those sections by 2008 Ky. Acts. ch. 158 shall be deemed effective as of April 24, 2008, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text from those sections being unaffected by the provisions of this section.

➔Section 13. To the extent that any provision included in this Act is considered new language, the provisions of KRS 446.145 requiring such new language to be underlined are notwithstanding.

➔Section 14. Whereas the effective and efficient protection of the public from crime is a fundamental duty of government and a needless delay in the implementation of Section 6 of this Act impedes that protection, an emergency is declared to exist, and Section 6 of this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by Governor April 12, 2010.