

## CHAPTER 2

( HB 463 )

AN ACT relating to the criminal justice system, making an appropriation therefor, and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

*It is the sentencing policy of the Commonwealth of Kentucky that:*

- (1) *The primary objective of sentencing shall be to maintain public safety and hold offenders accountable while reducing recidivism and criminal behavior and improving outcomes for those offenders who are sentenced;*
- (2) *Reduction of recidivism and criminal behavior is a key measure of the performance of the criminal justice system;*
- (3) *Sentencing judges shall consider:*
  - (a) *Beginning July 1, 2013, the results of a defendant's risk and needs assessment included in the presentence investigation; and*
  - (b) *The likely impact of a potential sentence on the reduction of the defendant's potential future criminal behavior;*
- (4) *All supervision and treatment programs provided for defendants shall utilize evidence-based practices to reduce the likelihood of future criminal behavior; and*
- (5) *All supervision and treatment programs shall be evaluated at regular intervals to measure and ensure reduction of criminal behavior by defendants in the criminal justice system.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

*The primary objectives of the department shall be to maintain public safety and hold offenders accountable while reducing recidivism and criminal behavior and improving outcomes for offenders under its supervision. The department shall create and implement policies and programs to achieve these objectives.*

➔Section 3. KRS 446.010 is amended to read as follows:

As used in the statute laws of this state, unless the context requires otherwise:

- (1) "Action" includes all proceedings in any court of this state;
- (2) "Animal" includes every warm-blooded living creature except a human being;
- (3) "Attorney" means attorney-at-law;
- (4) "Bequeath" and "devise" mean the same thing;
- (5) "Bequest" and "legacy" mean the same thing, and embrace either real or personal estate, or both;
- (6) *"Case plan" means an individualized accountability and behavior change strategy for supervised individuals that:*
  - (a) *Targets and prioritizes the specific criminal risk factors of the individual based upon his or her assessment results;*
  - (b) *Matches the type and intensity of supervision and treatment conditions to the individual's level of risk, criminal risk factors, and individual characteristics, such as gender, culture, motivational stage, developmental stage, and learning style;*
  - (c) *Establishes a timetable for achieving specific behavioral goals, including a schedule for payment of victim restitution, child support, and other financial obligations; and*
  - (d) *Specifies positive and negative actions that will be taken in response to the supervised individual's behaviors;*
- (7) "Cattle" includes horse, mule, ass, cow, ox, sheep, hog, or goat of any age or sex;

- (8)~~(7)~~ "Company" may extend and be applied to any corporation, company, person, partnership, joint stock company, or association;
- (9)~~(8)~~ "Corporation" may extend and be applied to any corporation, company, partnership, joint stock company, or association;
- (10)~~(9)~~ **"Criminal risk factors" are characteristics and behaviors that, when addressed or changed, affect a person's risk for committing crimes. The characteristics may include but are not limited to the following risk and criminogenic need factors: antisocial behavior; antisocial personality; criminal thinking; criminal associates; dysfunctional family; low levels of employment or education; poor use of leisure and recreation; and substance abuse;**
- (11) "Cruelty" as applied to animals includes every act or omission whereby unjustifiable physical pain, suffering, or death is caused or permitted;
- (12)~~(10)~~ "Directors," when applied to corporations, includes managers or trustees;
- (13)~~(11)~~ "Domestic," when applied to a corporation, partnership, business trust, or limited liability company, means all those incorporated or formed by authority of this state;
- (14)~~(12)~~ "Domestic animal" means any animal converted to domestic habitat;
- (15)~~(13)~~ **"Evidence-based practices" means policies, procedures, programs and practices proven by scientific research to reliably produce reductions in recidivism when implemented competently;**
- (16) "Federal" refers to the United States;
- (17)~~(14)~~ "Foreign," when applied to a corporation, partnership, business trust, or limited liability company, includes all those incorporated or formed by authority of any other state;
- (18)~~(15)~~ "Generally accepted accounting principles" are those uniform minimum standards of and guidelines to financial accounting and reporting as adopted by the National Council on Governmental Accounting, under the auspices of the Municipal Finance Officers Association and by the Financial Accounting Standards Board, under the auspices of the American Institute of Certified Public Accountants;
- (19)~~(16)~~ **"Graduated sanction" means any of a wide range of accountability measures and programs for supervised individuals, including but not limited to electronic monitoring; drug and alcohol testing or monitoring; day or evening reporting centers; restitution centers; disallowance of future earned compliance credits; rehabilitative interventions such as substance abuse or mental health treatment; reporting requirements to probation and parole officers; community service or work crews; secure or unsecure residential treatment facilities or halfway houses; and short-term or intermittent incarceration;**
- (20) "Humane society," "society," or "Society for the Prevention of Cruelty to Animals," means any nonprofit corporation, organized under the laws of this state and having as its primary purpose the prevention of cruelty to animals;
- (21)~~(17)~~ "Issue," as applied to the descent of real estate, includes all the lawful lineal descendants of the ancestors;
- (22)~~(18)~~ "Land" or "real estate" includes lands, tenements, and hereditaments and all rights thereto and interest therein, other than a chattel interest;
- (23)~~(19)~~ "Legatee" and "devisee" convey the same idea;
- (24)~~(20)~~ "May" is permissive;
- (25)~~(21)~~ "Month" means calendar month;
- (26)~~(22)~~ "Oath" includes "affirmation" in all cases in which an affirmation may be substituted for an oath;
- (27)~~(23)~~ "Owner" when applied to any animal, means any person having a property interest in such animal;
- (28)~~(24)~~ "Partnership" includes both general and limited partnerships;
- (29)~~(25)~~ "Peace officer" includes sheriffs, constables, coroners, jailers, metropolitan and urban-county government correctional officers, marshals, policemen, and other persons with similar authority to make arrests;
- (30)~~(26)~~ "Penitentiary" includes all of the state penal institutions except the houses of reform;

- (31)~~(27)~~ "Person" may extend and be applied to bodies-politic and corporate, societies, communities, the public generally, individuals, partnerships, joint stock companies, and limited liability companies;
- (32)~~(28)~~ "Personal estate" includes chattels, real and other estate that passes to the personal representative upon the owner dying intestate;
- (33) ***"Pretrial risk assessment" means an objective, research based, validated assessment tool that measures a defendant's risk of flight and risk of anticipated criminal conduct while on pretrial release pending adjudication;***
- (34)~~(29)~~ "Regular election" means the election in even-numbered years at which members of Congress are elected and the election in odd-numbered years at which state officers are elected;
- (35)~~(30)~~ ***"Risk and needs assessment" or "validated risk and needs assessment" means an actuarial tool scientifically proven to determine a person's risk to reoffend and criminal risk factors, that when properly addressed, can reduce that person's likelihood of committing future criminal behavior;***
- (36) "Shall" is mandatory;
- (37)~~(31)~~ "State" when applied to a part of the United States, includes territories, outlying possessions, and the District of Columbia; "any other state" includes any state, territory, outlying possession, the District of Columbia, and any foreign government or country;
- (38)~~(32)~~ "State funds" or "public funds" means sums actually received in cash or negotiable instruments from all sources unless otherwise described by any state agency, state-owned corporation, university, department, cabinet, fiduciary for the benefit of any form of state organization, authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization whether or not the money has ever been paid into the Treasury and whether or not the money is still in the Treasury if the money is controlled by any form of state organization, except for those funds the management of which is to be reported to the Legislative Research Commission pursuant to KRS 42.600, 42.605, and 42.615;
- (39) ***"Supervised individual" means an individual placed on probation by a court or serving a period of parole or post-release supervision from prison or jail;***
- (40)~~(33)~~ "Sworn" includes "affirmed" in all cases in which an affirmation may be substituted for an oath;
- (41) ***"Treatment" when used in a criminal justice context, means targeted interventions that focus on criminal risk factors in order to reduce the likelihood of criminal behavior. Treatment options may include, but shall not be limited to, community-based programs that are consistent with evidence-based practices; cognitive-behavioral programs; faith-based programs; inpatient and outpatient substance abuse or mental health programs; and other available prevention and intervention programs that have been scientifically proven to produce reductions in recidivism when implemented competently. "Treatment" does not include medical services;***
- (42)~~(34)~~ "United States" includes territories, outlying possessions, and the District of Columbia;
- (43)~~(35)~~ "Vacancy in office," or any equivalent phrase, means such as exists when there is an unexpired part of a term of office without a lawful incumbent therein, or when the person elected or appointed to an office fails to qualify according to law, or when there has been no election to fill the office at the time appointed by law; it applies whether the vacancy is occasioned by death, resignation, removal from the state, county or district, or otherwise;
- (44)~~(36)~~ "Violate" includes failure to comply with;
- (45)~~(37)~~ "Will" includes codicils; "last will" means last will and testament;
- (46)~~(38)~~ "Year" means calendar year;
- (47)~~(39)~~ "City" includes town;
- (48)~~(40)~~ Appropriation-related terms are defined as follows:
- (a) "Appropriation" means an authorization by the General Assembly to expend, from public funds, a sum of money not in excess of the sum specified, for the purposes specified in the authorization and under the procedure prescribed in KRS Chapter 48;

- (b) "Appropriation provision" means a section of any enactment by the General Assembly which is not provided for by KRS Chapter 48 and which authorizes the expenditure of public funds other than by a general appropriation bill;
- (c) "General appropriation bill" means an enactment by the General Assembly that authorizes the expenditure of public funds in a branch budget bill as provided for in KRS Chapter 48;
- ~~(49)~~~~(41)~~ "Mediation" means a nonadversarial process in which a neutral third party encourages and helps disputing parties reach a mutually acceptable agreement. Recommendations by mediators are not binding on the parties unless the parties enter into a settlement agreement incorporating the recommendations;
- ~~(50)~~~~(42)~~ "Biennium" means the two (2) year period commencing on July 1 in each even-numbered year and ending on June 30 in the ensuing even-numbered year;
- ~~(51)~~~~(43)~~ "Branch budget bill" or "branch budget" means an enactment by the General Assembly which provides appropriations and establishes fiscal policies and conditions for the biennial financial plan for the judicial branch, the legislative branch, and the executive branch, which shall include a separate budget bill for the Transportation Cabinet; and
- ~~(52)~~~~(44)~~ "AVIS" means the automated vehicle information system established and maintained by the Transportation Cabinet to collect titling and registration information on vehicles and boats and information on holders of motor vehicle operator's licenses and personal identification cards.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

*The General Assembly hereby finds, determines, and declares that:*

- (1) *The regulation of controlled substances in this Commonwealth is important and necessary for the preservation of public safety and public health; and*
- (2) *Successful, community-based treatment can be used as an effective tool in the effort to reduce criminal risk factors. Therapeutic intervention and ongoing individualized treatment plans prepared through the use of meaningful and validated research-based assessment tools and professional evaluations offer a potential alternative to incarceration in appropriate circumstances and shall be used accordingly.*

➔Section 5. KRS 218A.010 is amended to read as follows:

As used in this chapter:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
  - (a) A practitioner or by his *or her* authorized agent under his *or her* immediate supervision and pursuant to his *or her* order; or
  - (b) The patient or research subject at the direction and in the presence of the practitioner;
- (2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids;
- (3) "Cabinet" means the Cabinet for Health and Family Services;
- (4) "Child" means any person under the age of majority as specified in KRS 2.015;
- (5) *"Cocaine" means a substance containing any quantity of cocaine, its salts, optical and geometric isomers, and salts of isomers;*
- (6) "Controlled substance" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue;
- ~~(7)~~~~(6)~~ (a) "Controlled substance analogue," except as provided in ~~paragraph~~~~(subparagraph)~~ (b) of this subsection, means a substance:
  - 1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and
  - 2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or

3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.
- (b) Such term does not include:
1. Any substance for which there is an approved new drug application;
  2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or
  3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance;
- ~~(8)(7)~~ "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance;
- ~~(9)(8)~~ "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;
- ~~(10)(9)~~ "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V controlled substance to or for the use of an ultimate user;
- ~~(11)(10)~~ "Distribute" means to deliver other than by administering or dispensing a controlled substance;
- ~~(12)(11)~~ ***"Dosage unit" means a single pill, capsule, ampule, liquid, or other form of administration available as a single unit;***
- (13) "Drug" means:
- (a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
  - (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;
  - (c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
  - (d) Substances intended for use as a component of any article specified in this subsection.
- It does not include devices or their components, parts, or accessories;
- ~~(14)(12)~~ "Good faith prior examination," as used in KRS Chapter 218A and for criminal prosecution only, means an in-person medical examination of the patient conducted by the prescribing practitioner or other health-care professional routinely relied upon in the ordinary course of his or her practice, at which time the patient is physically examined and a medical history of the patient is obtained. "In-person" includes telehealth examinations. This subsection shall not be applicable to hospice providers licensed pursuant to KRS Chapter 216B;
- ~~(15)(13)~~ "Hazardous chemical substance" includes any chemical substance used or intended for use in the illegal manufacture of a controlled substance as defined in this section or the illegal manufacture of methamphetamine as defined in KRS 218A.1431, which:
- (a) Poses an explosion hazard;
  - (b) Poses a fire hazard; or
  - (c) Is poisonous or injurious if handled, swallowed, or inhaled;
- (16) ***"Heroin" means a substance containing any quantity of heroin, or any of its salts, isomers, or salts of isomers;***
- ~~(17)(14)~~ "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the

manufacture of a controlled substance or methamphetamine, the control of which is necessary to prevent, curtail, or limit manufacture;

- ~~(18)~~~~(15)~~ "Intent to manufacture" means any evidence which demonstrates a person's conscious objective to manufacture a controlled substance or methamphetamine. Such evidence includes but is not limited to statements and a chemical substance's usage, quantity, manner of storage, or proximity to other chemical substances or equipment used to manufacture a controlled substance or methamphetamine;
- ~~(19)~~~~(16)~~ "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer;
- ~~(20)~~~~(17)~~ "Manufacture," except as provided in KRS 218A.1431, means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:
- (a) By a practitioner as an incident to his *or her* administering or dispensing of a controlled substance in the course of his *or her* professional practice;
  - (b) By a practitioner, or by his *or her* authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
  - (c) By a pharmacist as an incident to his *or her* dispensing of a controlled substance in the course of his *or her* professional practice;
- ~~(21)~~~~(18)~~ "Marijuana" means all parts of the plant *Cannabis* sp., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances;
- ~~(22)~~~~(19)~~ "Medical history," as used in KRS Chapter 218A and for criminal prosecution only, means an accounting of a patient's medical background, including but not limited to prior medical conditions, prescriptions, and family background;
- ~~(23)~~~~(20)~~ "Medical order," as used in KRS Chapter 218A and for criminal prosecution only, means a lawful order of a specifically identified practitioner for a specifically identified patient for the patient's health-care needs. "Medical order" may or may not include a prescription drug order;
- ~~(24)~~~~(21)~~ "Medical record," as used in KRS Chapter 218A and for criminal prosecution only, means a record, other than for financial or billing purposes, relating to a patient, kept by a practitioner as a result of the practitioner-patient relationship;
- ~~(25)~~~~(22)~~ "Methamphetamine" means any substance that contains any quantity of methamphetamine, or any of its salts, isomers, or salts of isomers;
- ~~(26)~~~~(23)~~ "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
  - (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;
  - (c) Opium poppy and poppy straw;
  - (d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
  - (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
  - (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and
  - (g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) of this subsection;

- (27)~~(24)~~ "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms;
- (28)~~(25)~~ "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds;
- (29)~~(26)~~ "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;
- (30)~~(27)~~ "Physical injury" has the same meaning it has in KRS 500.080;
- (31)~~(28)~~ "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- (32)~~(29)~~ "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;
- (33)~~(30)~~ "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, advanced practice registered nurse as authorized under KRS 314.011, or other person licensed, registered, or otherwise permitted by state or federal law to acquire, distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state. "Practitioner" also includes a physician, dentist, podiatrist, veterinarian, or advanced practice registered nurse authorized under KRS 314.011 who is a resident of and actively practicing in a state other than Kentucky and who is licensed and has prescriptive authority for controlled substances under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail;
- (34)~~(31)~~ "Practitioner-patient relationship," as used in KRS Chapter 218A and for criminal prosecution only, means a medical relationship that exists between a patient and a practitioner or the practitioner's designee, after the practitioner or his *or her* designee has conducted at least one (1) good faith prior examination;
- (35)~~(32)~~ "Prescription" means a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, optometric practitioner, or advanced practice registered nurse, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
- (36)~~(33)~~ "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of KRS 218A.204 and 217.216;
- (37)~~(34)~~ ***"Presumptive probation" means a sentence of probation not to exceed the maximum term specified for the offense, subject to conditions otherwise authorized by law, that is presumed to be the appropriate sentence for certain offenses designated in this chapter, notwithstanding contrary provisions of KRS Chapter 533. That presumption shall only be overcome by a finding on the record by the sentencing court of substantial and compelling reasons why the defendant cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety;***
- (38) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;
- (39) ***"Recovery program" means an evidence-based, nonclinical service that assists individuals and families working toward sustained recovery from substance use and other criminal risk factors. This can be done through an array of support programs and services that are delivered through residential and nonresidential means;***
- (40)~~(35)~~ "Salvia" means *Salvia divinorum* or Salvinorin A and includes all parts of the plant presently classified botanically as *Salvia divinorum*, whether growing or not, the seeds thereof, any extract from any part of that plant, and every compound, manufacture, derivative, mixture, or preparation of that plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation of that plant, its seeds, or extracts. The term shall not include any other species in the genus *salvia*;
- (41)~~(36)~~ "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his *or her* conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking

offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter;

- (42)~~(37)~~ "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution;
- (43)~~(38)~~ "Serious physical injury" has the same meaning it has in KRS 500.080;
- (44)~~(39)~~ "Synthetic cannabinoid agonists or piperazines" means any chemical compound that contains Benzylpiperazine; Trifluoromethylphenylpiperazine; 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol; 1-Butyl-3-(1-naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexanabinol; or 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol). The term shall not include synthetic cannabinoids that require a prescription, are approved by the United States Food and Drug Administration, and are dispensed in accordance with state and federal law;
- (45)~~(40)~~ "Telehealth" has the same meaning it has in KRS 311.550;
- (46)~~(41)~~ "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
  2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
  3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;
- (47)~~(42)~~ "Traffic," except as provided in KRS 218A.1431, means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance;
- (48)~~(43)~~ "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution; and
- (49)~~(44)~~ "Ultimate user" means a person who lawfully possesses a controlled substance for his *or her* own use or for the use of a member of his *or her* household or for administering to an animal owned by him *or her* or by a member of his *or her* household.

➔Section 6. KRS 218A.140 is amended to read as follows:

- (1) (a) No person shall obtain or attempt to obtain a prescription for a controlled substance by knowingly misrepresenting to, or knowingly withholding information from, a practitioner.
- (b) No person shall procure or attempt to procure the administration of a controlled substance by knowingly misrepresenting to, or withholding information from, a practitioner.
- (c) No person shall obtain or attempt to obtain a controlled substance or procure or attempt to procure the administration of a controlled substance by the use of a false name or the giving of a false address.
- (d) No person shall knowingly make a false statement regarding any prescription, order, report, or record required by this chapter.
- (e) No person shall, for the purpose of obtaining a controlled substance, falsely assume the title of or represent himself *or herself* to be a manufacturer, wholesaler, distributor, repacker, pharmacist, practitioner, or other authorized person.
- (f) In order to obtain a controlled substance, no person shall present a prescription for a controlled substance that was obtained in violation of this chapter.
- (g) No person shall affix any false or forged label to a package or receptacle containing any controlled substance.
- (2) No person shall possess, manufacture, sell, dispense, prescribe, distribute, or administer any counterfeit substance.
- (3) No person shall knowingly obtain or attempt to obtain a prescription for a controlled substance without having formed a valid practitioner-patient relationship with the practitioner or his or her designee from whom the person seeks to obtain the prescription.
- (4) No person shall knowingly assist a person in obtaining or attempting to obtain a prescription in violation of this chapter.



- (5) Any person who violates any subsection of this section shall be guilty of a Class D felony ~~for a first offense and a Class C felony for subsequent offenses~~.

➔Section 7. KRS 218A.1404 is amended to read as follows:

- (1) No person shall traffic in any controlled substance except as authorized by law.
- (2) No person shall possess any controlled substance except as authorized by law.
- (3) No person shall dispense, prescribe, distribute, or administer any controlled substance except as authorized by law.
- (4) Unless another specific penalty is provided in this chapter, any person who violates the provisions of subsection (1) or (3) of this section shall be guilty of a Class D felony for the first offense and a Class C felony for subsequent offenses and any person who violates the provisions of subsection (2) of this section shall be guilty of a Class A misdemeanor ~~for the first offense and a Class D felony for subsequent offenses~~.

➔Section 8. KRS 218A.1411 is amended to read as follows:

- (1) Any person who unlawfully traffics in a controlled substance classified in Schedules I, II, III, IV or V, or a controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) ~~feet~~ ~~yards~~ of any school building used primarily for classroom instruction shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply. The measurement shall be taken in a straight line from the nearest wall of the school to the place of violation.
- (2) The provisions of subsection (1) of this section shall not apply to any misdemeanor offense relating to synthetic cannabinoid agonists or piperazines or salvia.

➔Section 9. KRS 218A.1412 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the first degree when he *or she* knowingly and unlawfully traffics in:
  - (a) **Four (4) grams or more of cocaine;**
  - (b) **Two (2) grams or more of heroin or methamphetamine;**
  - (c) **Ten (10) or more dosage units of** a controlled substance ~~;~~ that is classified in Schedules I or II ~~and~~ ~~which~~ is a narcotic drug, ~~or~~ ~~;~~ a controlled substance analogue;
  - (d) **Any quantity of** lysergic acid diethylamide; phencyclidine; ~~a controlled substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;~~ gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers, and analogues; or flunitrazepam, including its salts, isomers, and salts of isomers; **or**
  - (e) **Any quantity of a controlled substance specified in paragraph (a), (b), or (c) of this subsection in an amount less than the amounts specified in those paragraphs.**
- (2) **The amounts specified in subsection (1) of this section may occur in a single transaction or may occur in a series of transactions over a period of time not to exceed ninety (90) days that cumulatively result in the quantities specified in this section.**
- (3)
  - (a) **Except as provided in paragraph (b) of this subsection,** any person who violates the provisions of ~~subsection (1) of~~ this section shall **be guilty of a Class C felony for the first offense and a Class B felony for a second or subsequent offense.**
  - (b) **Any person who violates the provisions of subsection (1)(e) of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second offense or subsequent offense**;
    - (a) ~~For the first offense be guilty of a Class C felony.~~
    - (b) ~~For a second or subsequent offense be guilty of a Class B felony.~~

➔Section 10. KRS 218A.1413 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the second degree when:
  - (a) He *or she* knowingly and unlawfully traffics in:

1. **Ten (10) or more dosage units of** a controlled substance classified in Schedules I and II ~~that~~~~which~~ is not a narcotic drug; or specified in KRS 218A.1412; or
  2. **Twenty (20) or more dosage units of** a controlled substance classified in Schedule III; but not ~~lysergic acid diethylamide, phenylethylamine,~~ synthetic cannabinoid agonists or piperazines, salvia, or marijuana; ~~or~~
- (b) He *or she* knowingly and unlawfully prescribes ~~or orders~~, distributes, supplies, or sells an anabolic steroid for:
1. Enhancing *human* performance in an exercise, sport, or game; or
  2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity; *or*
- (c) **Any quantity of a controlled substance specified in paragraph (a) of this subsection in an amount less than the amounts specified in that paragraph.**
- (2) (a) **Except as provided in paragraph (b) of this subsection, any person who violates the provisions of subsection (1) of this section shall be guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.**
- (b) **Any person who violates the provisions of subsection (1)(c) of this section shall be guilty of:**
1. **A Class D felony for the first offense, except that KRS Chapter 532 to the contrary notwithstanding, the maximum sentence to be imposed shall be no greater than three (3) years; and**
  2. **A Class D felony for a second offense or subsequent offense**~~;~~
- ~~(a) For the first offense be guilty of a Class D felony.~~
- ~~(b) For a second or subsequent offense be guilty of a Class C felony.~~

➔Section 11. KRS 218A.1414 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the third degree when he *or she* knowingly and unlawfully traffics in:
- (a) **Twenty (20) or more dosage units of** a controlled substance classified in Schedules IV or V; *or*
  - (b) **Any quantity of a controlled substance specified in paragraph (a) of this subsection in an amount less than the amount specified in that paragraph.**
- (2) (a) Any person who violates the provisions of subsection (1)(a) of this section shall **be guilty of a Class A misdemeanor for the first offense and a Class D felony for a second or subsequent offense.**
- (b) **Any person who violates the provisions of subsection (1)(b) of this section shall be guilty of:**
1. **A Class A misdemeanor for the first offense, subject to the imposition of presumptive probation; and**
  2. **A Class D felony for a second or subsequent offense, except that KRS Chapter 532 to the contrary notwithstanding, the maximum sentence to be imposed shall be no greater than three (3) years**~~;~~
- ~~(a) For the first offense be guilty of a Class A misdemeanor.~~
- ~~(b) For a second or subsequent offense be guilty of a Class D felony.~~

➔Section 12. KRS 218A.1415 is amended to read as follows:

- (1) A person is guilty of possession of a controlled substance in the first degree when he *or she* knowingly and unlawfully possesses:
- (a) A controlled substance ~~that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers or,~~ that is classified in Schedules I or II **and**~~which~~ is a narcotic drug;
  - (b) A controlled substance analogue;
  - (c) **Methamphetamine;**

- (d) Lysergic acid diethylamide;
- (e) Phencyclidine;
- (f) Gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers, and analogues; or
- (g) Flunitrazepam, including its salts, isomers, and salts of isomers.

(2) Possession of a controlled substance in the first degree is~~[-~~

~~(a) For a first offense} a Class D felony *subject to the following provisions:*~~

~~(a) *The maximum term of incarceration shall be no greater than three (3) years, notwithstanding KRS Chapter 532;*~~

~~(b) *For a person's first or second offense under this section, he or she may be subject to a period of:*~~

~~1. *Deferred prosecution pursuant to Section 20 of this Act; or*~~

~~2. *Presumptive probation;*~~

~~(c) *Deferred prosecution under paragraph (b) of this subsection shall be the preferred alternative for a first offense; and*~~

~~(d) *If a person does not enter a deferred prosecution program for his or her first or second offense, he or she shall be subject to a period of presumptive probation, unless a court determines the defendant is not eligible for presumptive probation as defined in Section 5 of this Act.*~~

~~{(b) For a second or subsequent offense a Class C felony.}~~

➔Section 13. KRS 218A.1416 is amended to read as follows:

(1) A person is guilty of possession of a controlled substance in the second degree when he *or she* knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; or specified in KRS 218A.1415; or, a controlled substance classified in Schedule III; but not~~[-~~ lysergic acid diethylamide, phencyclidine,] synthetic cannabinoid agonists or piperazines, salvia, or marijuana.

(2) Possession of a controlled substance in the second degree is~~[-~~

~~(a) For a first offense} a Class A misdemeanor.~~

~~{(b) For a second or subsequent offense a Class D felony.}~~

➔Section 14. KRS 218A.1417 is amended to read as follows:

(1) A person is guilty of possession of a controlled substance in the third degree when he *or she* knowingly and unlawfully possesses a controlled substance classified in Schedules IV or V.

(2) Possession of a controlled substance in the third degree is~~[-~~

~~(a) For a first offense} a Class A misdemeanor.~~

~~{(b) For a second or subsequent offense a Class D felony.}~~

➔Section 15. KRS 218A.1418 is amended to read as follows:

(1) A person is guilty of theft of a controlled substance when he *or she* unlawfully takes or exercises control over a controlled substance belonging to another person with the intent to deprive him thereof.

(2) Theft of a controlled substance is~~[-~~

~~(a) for a first offense} a Class D felony~~[-~~ if the controlled substance has a value of three hundred dollars (\$300) or less.~~

~~(b) For a second or subsequent offense, or value greater than three hundred dollars (\$300), a Class C felony.~~

(3) *The acts specified in this section shall not constitute theft under KRS Chapter 514.*

➔Section 16. KRS 218A.1422 is amended to read as follows:

(1) A person is guilty of possession of marijuana when he *or she* knowingly and unlawfully possesses marijuana.

- (2) Possession of marijuana is a Class ~~B~~**A** misdemeanor, *except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than forty-five (45) days.*

➔Section 17. KRS 218A.1427 is amended to read as follows:

- (1) A person is guilty of possession of synthetic cannabinoid agonists or piperazines when he or she knowingly and unlawfully possesses synthetic cannabinoid agonists or piperazines.
- (2) Possession of synthetic cannabinoid agonists or piperazines is a Class B misdemeanor, *except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than thirty (30) days.*

➔Section 18. KRS 218A.1451 is amended to read as follows:

- (1) A person is guilty of possession of salvia when he or she knowingly and unlawfully possesses salvia for human consumption.
- (2) Possession of salvia is a Class B misdemeanor, *except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than thirty (30) days.*

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *Any statute to the contrary notwithstanding, a defendant charged with an offense under this chapter for which a conviction may result in presumptive probation shall be placed on pretrial release on his or her own recognizance or on unsecured bond by the court subject to any conditions, other than bail, specified in KRS 431.515 to 431.550.*
- (2) *The provisions of this section shall not apply to a defendant who is found by the court to present a flight risk, or to be a danger to himself or herself or a danger to others.*
- (3) *If a court determines that a defendant shall not be released pursuant to subsection (2) of this section, the court shall document the reasons for denying the release in a written order.*

➔SECTION 20. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A defendant charged with his or her first or second offense under Section 12 of this Act may enter a deferred prosecution program subject to the following provisions:*
- (a) *The defendant requests deferred prosecution in writing on an application created under Section 100 of this Act, and the prosecutor agrees;*
- (b) *The defendant shall not be required to plead guilty or enter an Alford plea as a condition of applying for participation in the deferred prosecution program;*
- (c) *The defendant agrees to the terms and conditions set forth by the Commonwealth's attorney and approved by the court, which may include any provision authorized for pretrial diversion pursuant to KRS 533.250(1)(h) and (2); and*
- (d) *The maximum length of participation in the program shall be two (2) years.*
- (2) *If a prosecutor denies a defendant's request to enter a deferred prosecution program, the prosecutor shall state on the record the substantial and compelling reasons why the defendant cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety.*
- (3) *If the defendant successfully completes the deferred prosecution program, the charges against the defendant shall be dismissed, and all records relating to the case, including but not limited to arrest records and records relating to the charges, shall be sealed, except as provided in Section 100 of this Act. The offense shall be deemed never to have occurred, except for the purposes of determining the defendant's eligibility for deferred prosecution, and the defendant shall not be required to disclose the arrest or other information relating to the charges or participation in the program unless required to do so by state or federal law.*
- (4) *If the defendant is charged with violating the conditions of the program, the court, upon motion of the Commonwealth's attorney, shall hold a hearing to determine whether the defendant violated the conditions of the program.*
- (5) *If the court finds that the defendant violated the conditions of the program, the court may, with the approval of the prosecutor:*

- (a) *Continue the defendant's participation in the program;*
- (b) *Change the terms and conditions of the defendant's participation in the program; or*
- (c) *Order the defendant removed from the program and proceed with ordinary prosecution for the offense charged.*

➔Section 21. KRS 218A.275 is amended to read as follows:

- (1) *A court may request the Division of Probation and Parole to perform a risk and needs assessment for any person found guilty of possession of a controlled substance pursuant to Section 12, 13, or 14 of this Act. The assessor shall make a recommendation to the court as to whether treatment is indicated by the assessment, and, if so, the most appropriate treatment or recovery program environment. If treatment is indicated for the person, the court may order him or her*~~[KRS 218A.1416 or 218A.1417 may for a first offense, be ordered]~~ *to the appropriate treatment or recovery program that will effectively respond to the person's level of risk, criminal risk factors, and individual characteristics as*~~[a facility]~~ *designated by the secretary of the Cabinet for Health and Family Services where a program of treatment or recovery*~~[and rehabilitation]~~ *not to exceed one (1) year in duration may be prescribed. The person ordered to the designated treatment or recovery program*~~[facility]~~ *shall present himself or herself for registration and initiation of the*~~[a]~~ *treatment or recovery program within five (5) days of the date of sentencing. If, without good cause, the person fails to appear at the designated treatment or recovery program*~~[facility]~~ *within the specified time, or if at any time during the program of treatment or recovery prescribed, the authorized*~~[clinical]~~ *director of the treatment or recovery program*~~[facility]~~ *finds that the person is unwilling to participate in his or her treatment*~~[and rehabilitation]~~, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment~~[and rehabilitation]~~, or may **rescind the treatment order and impose a sentence for the possession offense** ~~[order confinement in the county jail for not more than one (1) year or a fine of not more than five hundred dollars (\$500), or both].~~ Upon discharge of the person from the **treatment or recovery program**~~[facility]~~ by the secretary of the Cabinet for Health and Family Services, or his or her designee, prior to the expiration of the one (1) year period or upon satisfactory completion of one (1) year of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his or her designee, shall notify the sentencing court of the date of such discharge from the **treatment or recovery program**~~[facility]~~.
- (2) The secretary of the Cabinet for Health and Family Services, or his or her designee, shall inform each court of the identity and location of the **treatment or recovery program**~~[facility]~~ to which ~~the~~~~[such]~~ person is sentenced.
- (3) Transportation to **an inpatient**~~[the]~~ facility shall be provided by order of the court when the court finds the person unable to convey himself or herself to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.
- (4) The sentencing court shall immediately notify the designated **treatment or recovery program**~~[facility]~~ of the sentence and its effective date.
- (5) The secretary for health and family services, or his or her designee, may authorize transfer of the person from the initially designated **treatment or recovery program**~~[facility]~~ to another **treatment or recovery program**~~[facility]~~ for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating **treatment or recovery program and shall be notified by the secretary of the new treatment or recovery program to which the person was transferred**~~[facility]~~.
- (6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment of patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the **treatment or recovery program**~~[facility]~~ shall arrange otherwise.
- (7) ~~[Prior to the imposition of sentence upon conviction of a second or subsequent offense, the court shall obtain a report of case progress and recommendations regarding further treatment from any facility at which the person was treated following his first conviction. If such material is not available, the court shall notify the secretary of the Cabinet for Health and Family Services, and the secretary shall cause the person to be examined by a psychiatrist employed by the cabinet to evaluate his mental condition and to make recommendations regarding treatment and rehabilitation. The psychiatrist making the examination shall submit a written report of his findings and recommendations regarding treatment and rehabilitation to the court which shall make the report available to the prosecuting attorney and the attorney for the defendant. The court shall take such reports into consideration in determining sentence. The secretary may decline to cause such examination to be made if the number of psychiatrists on duty in the cabinet is insufficient to spare one from his regular duties or if no such~~

service may be purchased at regular cabinet rates; in such event the secretary shall notify the clerk of the court to that effect within three (3) days after receipt of notification by the court.

- (8) ~~None of the provisions of this section shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional discharge.~~
- (8)(9) In the case of any person who has been convicted for the first time of *a misdemeanor* possession of controlled substances, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Voiding of a conviction under ~~this~~ subsection and dismissal may occur only once with respect to any person.
- (9) *If the court voids a conviction under this section, the court shall order the sealing of all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, except as provided in Section 100 of this Act. The court shall order the sealing on a form provided by the Administrative Office of the Courts. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or charge that is ordered to seal records, shall certify to the court within sixty (60) days of the entry of the order that the required sealing action has been completed.*
- (10) *After the sealing of the record, the proceedings in the matter shall not be used against the defendant except for the purposes of determining the person's eligibility to have his or her conviction voided under subsection (8) of this section. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record has been sealed shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.*
- (11) *Inspection of the sealed records may thereafter be permitted by the court pursuant to Section 100 of this Act or upon a motion by the person who is the subject of the records and only to those persons named in the motion or upon a motion of the prosecutor to verify a defendant's eligibility to have his or her conviction voided under subsection (8) of this section.*

➔Section 22. KRS 218A.276 is amended to read as follows:

- (1) *A court may request the Division of Probation and Parole to perform a risk and needs assessment for any person found guilty of possession of marijuana pursuant to KRS 218A.1422 or possession of synthetic cannabinoid agonists or piperazines pursuant to KRS 218A.1427 or salvia pursuant to KRS 218A.1451. The assessor shall make a recommendation to the court as to whether treatment is indicated by the assessment, and, if so, the most appropriate treatment or recovery program environment. If treatment is indicated for the person, the court may order him or her ~~may be ordered to~~ the appropriate treatment or recovery program as indicated by the assessment that will effectively respond to the person's level of risk, criminal risk factors, and individual characteristics as ~~a facility~~ designated by the secretary of the Cabinet for Health and Family Services where a program of ~~education,~~ treatment *or recovery* ~~and rehabilitation~~ not to exceed ninety (90) days in duration may be prescribed. The person ordered to the designated *treatment or recovery program* ~~facility~~ shall present himself *or herself* for registration and initiation of ~~the~~ *treatment or recovery program* within five (5) days of the date of sentencing. If without good cause, the person fails to appear at the designated *treatment or recovery program* ~~facility~~ within the specified time, or if any time during the program of treatment *or recovery* prescribed, the authorized ~~clinical~~ director of the *treatment or recovery program* ~~facility~~ finds that the person is unwilling to participate in his *or her* treatment ~~and rehabilitation~~, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment ~~and rehabilitation~~, or may *rescind the treatment order and impose a sentence for the possession offense* ~~order confinement in the county jail for not more than ninety (90) days or a fine of not more than two hundred fifty dollars (\$250), or both~~. Upon discharge of the person from the *treatment or recovery program* ~~facility~~ by the secretary of the Cabinet for Health and Family Services, or his *or her* designee, prior to the expiration of the ninety (90) day period or upon satisfactory completion of ninety (90) days of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his *or her* designee, shall notify the sentencing court of the date of such discharge from the *treatment or recovery program* ~~facility~~.*
- (2) The secretary of the Cabinet for Health and Family Services, or his *or her* designee, shall inform each court of the identity and location of the *treatment or recovery program* ~~facility~~ to which a person sentenced by that court under this chapter shall be initially ordered.

- (3) In the case of a person ordered to *an inpatient*<sup>[a]</sup> facility for treatment ~~and rehabilitation~~ pursuant to this chapter, transportation to the facility shall be provided by order of the court when the court finds the person unable to convey himself *or herself* to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.
- (4) The sentencing court shall immediately notify the designated *treatment or recovery program*<sup>[facility]</sup> of the sentence and its effective date.
- (5) The secretary of the Cabinet for Health and Family Services, or his *or her* designee, may authorize transfer of the person from the initially designated *treatment or recovery program*<sup>[facility]</sup> to another *treatment or recovery program*<sup>[facility]</sup> for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating *treatment or recovery program and shall be notified by the secretary or his or her designee of the new treatment or recovery program to which the person was transferred*<sup>[facility]</sup>.
- (6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment by patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the *treatment or recovery program*<sup>[facility]</sup> shall arrange otherwise.
- (7) None of the provisions of this *section* ~~chapter~~ shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation, *presumptive probation*, or conditional discharge.
- (8) In the case of any person who has been convicted of possession of marijuana or possession of synthetic cannabinoid agonists or piperazines or salvia, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.
- (9) *If the court voids a conviction under this section, the court shall order the sealing of all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, except as provided in Section 100 of this Act. The court shall order the sealing on a form provided by the Administrative Office of the Courts. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or charge that is ordered to seal records, shall certify to the court within sixty (60) days of the entry of the order that the required sealing action has been completed.*
- (10) *After the sealing of the record, the proceedings in the matter shall not be used against the defendant. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is sealed shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application.*
- (11) *Inspection of the sealed records may thereafter be permitted by the court or upon a motion by the person who is the subject of the records and only to those persons named in the motion.*

➔SECTION 23. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall measure and document cost savings resulting from amendments to or creation of statutes in KRS Chapter 218A contained in Sections 5 to 22 of this Act. Measured and documented savings shall be reinvested or distributed as provided in this section.*
- (2) *The Department of Corrections shall establish a baseline for measurement using the average number of inmates incarcerated at each type of penitentiary as defined in KRS 197.010 and at local jails in fiscal year 2010-2011.*
- (3) *The department shall determine the average cost of incarceration for each type of penitentiary as defined in KRS 197.010 and for local jails, including health care costs, transportation costs, and other related costs, for one (1) inmate for one (1) year for the immediately preceding fiscal year.*
- (4) *Beginning with the budget request for the 2012-2014 fiscal biennium, savings shall be estimated using the baseline established in subsection (2) of this section to determine the estimated average reduction of inmates due to the implementation of amendments to or creation of statutes in KRS Chapter 218A contained in Sections 5 to 22 of this Act and multiplied by the appropriate average cost determined in subsection (3) of this section.*

- (5) *The estimated amount of savings shall be used solely for expanding and enhancing treatment programs that employ evidence-based or promising practices designed to reduce the likelihood of future criminal behavior, which shall include treatment programs at existing facilities as outlined in Section 24 of this Act.*
- (6) *The amount of savings shall be estimated each year of the 2012-2014 fiscal biennium, and for each year of each fiscal biennium thereafter, as specified in subsection (4) of this section.*
- (7) *In submitting its budget request for the 2012-2014 fiscal biennium and each fiscal biennium thereafter, the department shall estimate the amount of savings measured under this section, and shall request the amount necessary to distribute or allocate those savings as provided in subsection (5) of this section.*
- (8) *In enacting the budget for the department, beginning in the 2012-2014 fiscal biennium and each fiscal biennium thereafter, the General Assembly shall determine the estimated amount necessary for reinvestment in programs and initiatives as provided by subsection (5) of this section, based upon projected savings as measured by this section, and shall ensure that appropriations to the department are sufficient to meet the funding requirements of this section.*

➔SECTION 24. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

*The department shall use a portion of the savings identified in Section 23 of this Act to expand treatment programs at its existing state penal institutions, including the expansion or creation of treatment programs at facilities that are currently being underutilized if those facilities are appropriate locations for treatment programs or could be modified easily to accommodate treatment programs.*

➔SECTION 25. A NEW SECTION OF KRS CHAPTER 26A IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, unless the context otherwise requires, "drug court program" means any drug court program authorized and administered by the Kentucky Supreme Court.*
- (2) *The Supreme Court of Kentucky shall administer the drug court program to:*
  - (a) *Develop standards, establish program eligibility, and provide oversight for operation for drug court programs;*
  - (b) *Define, develop, and gather outcome measures for drug court programs;*
  - (c) *Collect, report, and disseminate drug court data;*
  - (d) *Sponsor and coordinate state drug court training; and*
  - (e) *Apply for, administer, and evaluate state drug court grants.*
- (3) *Nothing contained in this section shall confer a right or an expectation of a right to treatment for an offender within the criminal justice system or the juvenile justice system.*
- (4) *If a defendant has been accepted into the drug court program and is supervised by that program as a condition of probation, the defendant shall not be subject to the supervision of the Division of Probation and Parole during his or her participation in the drug court program.*

➔Section 26. KRS 532.080 is amended to read as follows:

- (1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the sentence of imprisonment assessed under KRS 532.060 for the crime of which such person presently stands convicted, shall fix a sentence of imprisonment as authorized by subsection (5) or (6) of this section. When a defendant is charged with being a persistent felony offender, the determination of whether or not he is such an offender and the punishment to be imposed pursuant to subsection (5) or (6) of this section shall be determined in a separate proceeding from that proceeding which resulted in his last conviction. Such proceeding shall be conducted before the court sitting with the jury that found the defendant guilty of his most recent offense unless the court for good cause discharges that jury and impanels a new jury for that purpose.
- (2) A persistent felony offender in the second degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of one (1) previous felony. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:
  - (a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and
  - (b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and



- (c) That the offender:
1. Completed service of the sentence imposed on the previous felony conviction within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
  2. Was on probation, parole, *postincarceration supervision*, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
  3. Was discharged from probation, parole, *postincarceration supervision*, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
  4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or
  5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.
- (3) A persistent felony offender in the first degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of two (2) or more felonies, or one (1) or more felony sex crimes against a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more felonies. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:
- (a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and
  - (b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and
  - (c) That the offender:
    1. Completed service of the sentence imposed on any of the previous felony convictions within five (5) years prior to the date of the commission of the felony for which he now stands convicted; or
    2. Was on probation, parole, *postincarceration supervision*, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
    3. Was discharged from probation, parole, *postincarceration supervision*, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
    4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or
    5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.
- (4) For the purpose of determining whether a person has two (2) or more previous felony convictions, two (2) or more convictions of crime for which that person served concurrent or uninterrupted consecutive terms of imprisonment shall be deemed to be only one (1) conviction, unless one (1) of the convictions was for an offense committed while that person was imprisoned.
- (5) A person who is found to be a persistent felony offender in the second degree shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing provisions of KRS 532.060(2) for the next highest degree than the offense for which convicted. A person who is found to be a persistent felony offender in the second degree shall not be eligible for probation, shock probation, or conditional discharge, unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person, in which case probation, shock probation, or conditional discharge may be granted. A violent offender who is found to be a persistent felony offender in the second degree shall not be eligible for parole except as provided in KRS 439.3401.
- (6) A person who is found to be a persistent felony offender in the first degree shall be sentenced to imprisonment as follows:

- (a) If the offense for which he presently stands convicted is a Class A or Class B felony, or if the person was previously convicted of one (1) or more sex crimes committed against a minor as defined in KRS 17.500 and presently stands convicted of a subsequent sex crime, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than twenty (20) years nor more than fifty (50) years, or life imprisonment, or life imprisonment without parole for twenty-five (25) years for a sex crime committed against a minor;
  - (b) If the offense for which he presently stands convicted is a Class C or Class D felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten (10) years nor more than twenty (20) years.
- (7) A person who is found to be a persistent felony offender in the first degree shall not be eligible for probation, shock probation, or conditional discharge, unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person or a sex crime as that term is defined in KRS 17.500, in which case, probation, shock probation, or conditional discharge may be granted. If the offense the person presently stands convicted of is a Class A, B, or C felony, the person shall not be eligible for parole until the person has served a minimum term of incarceration of not less than ten (10) years, unless another sentencing scheme applies. A violent offender who is found to be a persistent felony offender in the first degree shall not be eligible for parole except as provided in KRS 439.3401.
- (8) (a) No conviction, plea of guilty, or Alford plea to a violation of KRS 218A.500 shall bring a defendant within the purview of or be used as a conviction eligible for making a person a persistent felony offender under this section.
- (b) *A conviction, plea of guilty, or Alford plea under Section 12 of this Act shall not trigger the application of this section, regardless of the number or type of prior felony convictions that may have been entered against the defendant. A conviction, plea of guilty, or Alford plea under Section 12 of this Act may be used as a prior felony offense allowing this section to be applied if he or she is subsequently convicted of a different felony offense.*
- (9) The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be retroactive.
- (10) (a) *Except as provided in paragraph (b) of this subsection, this section shall not apply to a person convicted of a criminal offense if the penalty for that offense was increased from a misdemeanor to a felony, or from a lower felony classification to a higher felony classification, because the conviction constituted a second or subsequent violation of that offense.*
- (b) *This subsection shall not prohibit the application of this section to a person convicted of:*
1. *A felony offense arising out of KRS 189A.010, 189A.090, 506.140, 508.032, 508.140, or 510.015; or*
  2. *Any other felony offense if the penalty was not enhanced to a higher level because the Commonwealth elected to prosecute the person as a first-time violator of that offense.*

➔Section 27. KRS 197.020 is amended to read as follows:

- (1) The Department of Corrections shall:
- (a) Promulgate administrative regulations for the government and discipline of the penitentiary, for the government and official conduct of all officials connected with the penitentiary, and for the government of the prisoners in their department and conduct;
  - (b) Promulgate administrative regulations for the character of food and diet of the prisoners; the preservation of the health of the prisoners; the daily cleansing of the penitentiary; the cleanliness of the persons of the prisoners; the general sanitary government of the penitentiary and prisoners; the character of the labor; the quantity of food and clothing; and the length of time during which the prisoners shall be employed daily;
  - (c) Promulgate administrative regulations, as the department deems necessary, for the disposition of abandoned, lost, or confiscated property of prisoners; ~~and~~
  - (d) *Promulgate administrative regulations for the administration of a validated risk and needs assessment to assess the criminal risk factors and correctional needs of all inmates upon commitment to the department; and*

- (e) Cause the administrative regulations promulgated by the department, together with the law allowing commutation of time to prisoners for good conduct, to be printed and posted in conspicuous places in the cell houses and workshops.
- (2) The department may impose a reasonable fee for the use of medical facilities by a prisoner who has the ability to pay for the medical and dental care. These funds may be deducted from the prisoner's inmate account. A prisoner shall not be denied medical or dental treatment because he has insufficient funds in his inmate account.
- (3) The department may promulgate administrative regulations in accordance with KRS Chapter 13A to implement a program that provides for reimbursement of telehealth consultations.
- (4) Fees for the use of medical facilities by a state prisoner who is confined in a county jail pursuant to KRS 532.100 or other statute shall be governed by KRS 441.045.

➔Section 28. 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(11), 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, *disease*, 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 *or she* is *substantially*~~[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 *medical director of the Department of Corrections*~~[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 *or her* 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 *medical director's*~~[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 ~~or~~ B ~~or C~~ felony, *or of a Class C felony involving violence or a sexual offense* 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 *or she* 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 29. KRS 439.250 is amended to read as follows:

As used in KRS 439.250 to 439.560, unless the context requires otherwise:

- (1) "Secretary" means the secretary of the Justice and Public Safety Cabinet;
- (2) "Commissioner" means the commissioner of the Department of Corrections;
- (3) "Department" means the Department of Corrections;
- (4) "Deputy commissioner" means the deputy commissioner of the Office of Adult Institutions or the deputy commissioner of the Office of Community Services and Facilities of the Department of Corrections;~~and~~
- (5) "Board" means the Parole Board created by KRS 439.320;
- (6) **"Community supervision" means:**
  - (a) ***The placement of a defendant under supervision with conditions imposed by a court for a specified period during which:***
    1. ***Criminal proceedings are deferred without an adjudication of guilt; or***
    2. ***A sentence of imprisonment or confinement, imprisonment and fine, or confinement and fine, is probated and the imposition of sentence is suspended in whole or in part; or***
  - (b) ***The placement of an individual under supervision after release from prison or jail, with conditions imposed by the board for a specified period;***
- (7) ***"Compliance credit" means a credit on a paroled individual's sentence for program credit, work-for-time credit, educational accomplishment, or meritorious service and shall be calculated pursuant to the applicable provisions in Section 36 of this Act and KRS 197.047;***
- (8) ***"Positive reinforcement" means any of a wide range of rewards and incentives, including but not limited to awarding certificates of achievement, reducing reporting requirements, deferring a monthly supervision fee payment, removing supervision conditions such as home detention or curfew, or asking the supervised individual to be a mentor to others;***
- (9) ***"Probation and parole district supervisor" means the highest ranking field probation or parole administrator in each district; and***
- (10) ***"Supervised individual" means an individual placed on probation by a court or serving a period of parole or post-release supervision from prison or jail.***

➔SECTION 30. A NEW SECTION OF KRS 439.250 TO 439.560 IS CREATED TO READ AS FOLLOWS:

***The department shall:***

- (1) ***Administer a validated risk and needs assessment to assess the criminal risk factors of all inmates who are eligible for parole, or a reassessment of a previously administered risk and needs assessment, before the case is considered by the board.***
- (2) ***Provide the results of the most recent risk and needs assessment to the board before an inmate appears before the board; and***
- (3) ***Incorporate information from an inmate's criminal risk and needs assessment into the development of his or her case plan.***

➔Section 31. KRS 439.335 is amended to read as follows:

In considering the granting of~~a~~ parole ***and the terms of parole***, the parole board ~~shall~~~~is authorized to~~ use ***the results from an inmate's validated risk and needs assessment***~~[computer voice stress analysis, the polygraph, truth serum,]~~ and any other scientific means for personality analysis that may hereafter be developed, ***to define the terms and intensity of supervision*** before granting~~a~~ parole. ***The terms and intensity of supervision shall be based on an individual's level of risk to public safety, criminal risk factors, and the need for treatment and other interventions.***

➔Section 32. KRS 439.340 is amended 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 *the results of his or her most recent risk and needs assessment*, 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, *the results of his or her most recent risk and needs assessment*, 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, *including the results of his or her most recent risk and needs assessment*, 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 *this section* ~~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 *and risk and needs assessment information*; 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 *all* sentenced felons *who have longer than ninety (90) days to serve* ~~confined~~ *in state penal institutions, halfway houses, and* county jails are considered for parole *not less than sixty (60)* ~~within thirty (30)~~ days *prior to* ~~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 the board grants parole contingent upon completion of a program, the commissioner, or his or her designee, shall determine the most appropriate placement in a program operated by the department or a residential or nonresidential program within the community approved by the department. If the department releases a parolee to a nonresidential program, the department shall release the parolee only if he or she will have appropriate community housing pursuant to Section 41 of this Act.***
- (14) ***If the parole board does not grant parole to a prisoner, the maximum deferment for a prisoner convicted of a non-violent, non-sexual Class C or Class D felony shall be twenty-four (24) months. For all other prisoners who are eligible for parole:***
  - (a) ***No parole deferment greater than five (5) years shall be ordered unless approved by a majority vote of the full board; and***
  - (b) ***No deferment shall exceed ten (10) years, except for life sentences.***
- (15) When an order for parole is issued, it shall recite the conditions thereof.

➔SECTION 33. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsection (2) of this section, the board shall reconsider the parole of any prisoner as of the effective date of this Act who was given a deferment or serve-out of longer than sixty (60) months at the prisoner's most recent parole hearing.*
- (2) *No reconsideration shall be required under this section for any prisoner who has received a deferment or serve-out of longer than sixty (60) months if:*
  - (a) *The deferment or serve-out was approved by a majority vote of the full board; or*
  - (b) *The prisoner stands convicted of a criminal offense currently defined as a violent offense in KRS 439.3401 or as a sex crime in KRS 17.500, regardless of the date the crime was committed or the date of conviction.*
- (3) *The board shall schedule parole hearings for prisoners eligible for reconsideration of parole under this section according to the following schedule:*
  - (a) *For a prisoner who has served less than sixty (60) months of his or her sentence as of the effective date of this Act, the board shall schedule and conduct a parole hearing during the month the prisoner has served sixty (60) months of his or her sentence; and*
  - (b) *For a prisoner who has served more than sixty (60) months of his or her sentence as of the effective date of this Act, the board shall schedule and conduct a parole hearing within twelve (12) months of the effective date of this Act.*
- (4) *The department shall provide all necessary assistance and information to the board in accordance with Section 32 of this Act in order for the board to conduct timely hearings under subsection (1) of this section.*
- (5) *Parole hearings required under subsection (1) of this section shall be conducted in accordance with and subject to the provisions of KRS 439.250 to 439.560, including but not limited to the requirements relating to notification of victims, the authority of the board to conduct hearings by panels of the board, and the requirement to keep records relating to the hearings.*

➔SECTION 34. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall order mandatory reentry supervision and the terms of supervision, which may include electronic monitoring, for an inmate who has not been granted discretionary parole six (6) months prior to the inmate's minimum expiration of sentence.*
- (2) *The provisions of subsection (1) of this section shall not apply to an inmate who:*
  - (a) *Is not eligible for parole by statute;*
  - (b) *Has been convicted of a capital offense or a Class A felony;*
  - (c) *Has a maximum or close security classification as defined by administrative regulations promulgated by the department;*
  - (d) *Has been sentenced to two (2) years or less of incarceration;*
  - (e) *Is subject to the provisions of Section 91 of this Act; or*
  - (f) *Has six (6) months or less to be served after his or her sentencing by a court or recommitment to prison for a violation of probation, shock probation, parole, or conditional discharge.*
- (3) *An inmate granted mandatory reentry supervision pursuant to this section may be returned by the board to prison for violation of the conditions of supervision and shall not again be eligible for mandatory reentry supervision during the same period of incarceration.*
- (4) *An inmate released to mandatory reentry supervision shall be considered to be released on parole.*
- (5) *Mandatory reentry supervision is not a commutation of sentence or any other form of clemency.*
- (6) *The board shall consider an inmate's risk and needs assessment results when setting the terms and conditions of mandatory reentry supervision.*
- (7) *Subject to subsection (3) of this section, the period of mandatory reentry supervision shall conclude upon completion of the individual's minimum expiration of sentence.*

- (8) *The department shall report the results of the mandatory reentry supervision program to the Interim Joint Committee on Judiciary by February 1, 2015.*

➔SECTION 35. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

- (1) *In addition to the penalties authorized by law, any person who:*

- (a) *Is convicted of a capital offense or a Class A felony;*
- (b) *Has a maximum or close security classification as defined by administrative regulations promulgated by the department; or*
- (c) *Is not eligible for parole by statute;*

*shall be subject to a period of postincarceration supervision following release from incarceration upon expiration of sentence or completion of parole.*

- (2) *The period of postincarceration supervision shall be one (1) year.*
- (3) *During the period of postincarceration supervision, the defendant shall:*
  - (a) *Be subject to all orders specified by the Department of Corrections; and*
  - (b) *Comply with all education, treatment, testing, or combination thereof required by the Department of Corrections.*
- (4) *Persons under postincarceration supervision pursuant to this section shall be subject to the supervision of the Division of Probation and Parole and under the authority of the Parole Board.*
- (5) *If a person violates a provision specified in subsection (3) of this section, the violation shall be reported in writing by the Division of Probation and Parole. Notice of the violation shall be sent to the Parole Board to determine whether probable cause exists to revoke the defendant's postincarceration supervision and reincarcerate the defendant as set forth in Section 38 of this Act.*
- (6) *The provisions of this section shall not apply to a person who is subject to the provisions of Section 91 of this Act.*
- (7) *The provisions of this section shall apply only to persons convicted, pleading guilty, or entering an Alford plea for an offense committed after the effective date of this Act.*

➔Section 36. KRS 197.045 is amended to read as follows:

- (1) Any person convicted and sentenced to a state penal institution:

- (a) *Shall receive a credit on his or her sentence for:*

- 1. *Prior confinement as specified in Section 98 of this Act;*
- 2. *Successfully receiving a general equivalency diploma or a high school diploma, a two (2) or four (4) year college degree, a two (2) year or four (4) year certification in applied sciences, a technical education diploma as provided and defined by the department, or a civics education program that requires passing a final exam, in the amount of ninety (90) days per diploma, degree, or certification received; and*
- 3. *Successfully completing a drug treatment program or other program as defined by the department that requires participation for a minimum of six (6) months, in the amount of ninety (90) days for each program completed; and*

- (b) May receive a credit on his *or her* sentence for:

- 1. *Good behavior in an amount [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;*
- 2. *Performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs, awarded at the discretion of the commissioner in an amount not to exceed seven (7) days per month; and*
- 3. *Acts of exceptional service during times of emergency, awarded at the discretion of the commissioner in an amount not to exceed seven (7) days per month.*



~~In addition, the department shall provide an educational good time credit of ninety (90) days to any prisoner who successfully receives a general equivalency diploma or a high school diploma, a two (2) or four (4) year college degree, a two (2) year or four (4) year certification in applied sciences, or 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.~~

(2) **Except for a sentencing credit awarded for prior confinement**, the department may forfeit any **sentencing credit awarded under subsection (1) of this section**~~{good time}~~ previously earned by the prisoner or deny the prisoner the right to earn **future sentencing credit**~~{good time}~~ in any amount if during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.

~~(3)~~~~(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 **sentencing**~~{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) 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 **sentencing credit**~~{good time}~~. However, the **sentencing credit**~~{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 **sentencing credit**~~{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 **sentencing credit**~~{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 **sentencing credit**~~{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 **sentencing credit**~~{good time}~~ and the ability to earn **sentencing credit**~~{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 **sentencing credit**~~{good time}~~ forfeited as well as any prohibition imposed on the future earning of **sentencing credit**~~{good time}~~.

➔Section 37. KRS 532.050 is amended to read as follows:

(1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody.

(2) The report shall be prepared and presented by a probation officer and shall include:

(a) **The results of the defendant's risk and needs assessment;**

(b) An analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, **and** personal habits;~~{;}~~

(c) **A preliminary calculation of the credit allowed the defendant for time spent in custody prior to the commencement of a sentence under Section 98 of this Act;** and

- (d) Any other matters that the court directs to be included.
- (3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.
- (4) If the defendant has been convicted of a sex crime, as defined in KRS 17.500, prior to determining the sentence or prior to final sentencing for youthful offenders, the court shall order a comprehensive sex offender presentence evaluation of the defendant to be conducted by an approved provider, as defined in KRS 17.500, the Department of Corrections, or the Department of Juvenile Justice if the defendant is a youthful offender. The comprehensive sex offender presentence evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment and shall be considered by the court in determining the appropriate sentence. A copy of the comprehensive sex offender presentence evaluation shall be furnished to the court, the Commonwealth's attorney, and to counsel for the defendant. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the comprehensive sex offender presentence evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any comprehensive sex offender presentence evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.
- (5) The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based and correctional-institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.
- (6) Before imposing sentence, the court shall advise the defendant or his or her counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

➔Section 38. KRS 532.060 is amended to read as follows:

- (1) A sentence of imprisonment for a felony shall be an indeterminate sentence, the maximum of which shall be fixed within the limits provided by subsection (2), and subject to modification by the trial judge pursuant to KRS 532.070.
- (2) ***Unless otherwise provided by law***, the authorized maximum terms of imprisonment for felonies are:
- For a Class A felony, not less than twenty (20) years nor more than fifty (50) years, or life imprisonment;
  - For a Class B felony, not less than ten (10) years nor more than twenty (20) years;
  - For a Class C felony, not less than five (5) years nor more than ten (10) years; and
  - For a Class D felony, not less than one (1) year nor more than five (5) years.
- (3) For any felony specified in KRS Chapter 510, KRS 530.020, 530.064(1)(a), or 531.310, the sentence shall include an additional five (5) year period of ***postincarceration supervision***~~conditional discharge~~ which shall be added to the maximum sentence rendered for the offense. During this period of ***postincarceration supervision***~~conditional discharge~~, if a defendant violates the provisions of ***postincarceration supervision***~~conditional discharge~~, the defendant may be reincarcerated for:
- The remaining period of his initial sentence, if any is remaining; and
  - The entire period of ***postincarceration supervision***~~conditional discharge~~, or if the initial sentence has been served, for the remaining period of ***postincarceration supervision***~~conditional discharge~~.
- (4) ***In addition to the penalties provided in this section, for any person subject to a period of postincarceration supervision pursuant to Section 35 of this Act his or her sentence shall include an additional one (1) year period of postincarceration supervision following release from incarceration upon expiration of sentence if the offender is not otherwise subject to another form of postincarceration supervision. During this period of***

*postincarceration supervision, if an offender violates the provisions of supervision, the offender may be reincarcerated for the remaining period of his or her postincarceration supervision.*

- (5) The actual time of release within the maximum established by subsection (1), or as modified pursuant to KRS 532.070, shall be determined under procedures established elsewhere by law.

➔SECTION 39. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *The department may promulgate administrative regulations to implement conditional parole of state inmates incarcerated in state corrections institutions or local correctional facilities or county jails to place those individuals closer to their communities prior to release. A parolee placed on conditional parole shall serve that term in a local correctional facility or county jail in a county in which the fiscal court has agreed to house parolees if beds are available in the local correctional facility or county jail.*
- (2) *The department may authorize parolees on conditional parole to be placed on work release. If a person placed in a county jail on conditional parole under subsection (1) of this section is granted work release, he or she shall pay the work release fees required by law to the jailer. The amount of work release fees paid by a parolee shall be deducted from the amount which the Department of Corrections shall pay for the placement of that parolee.*
- (3) *Local correctional facilities or county jails housing parolees under subsection (1) of this section shall have the same rights and obligations as county jails housing felons pursuant to KRS 532.100.*
- (4) *Administrative regulations promulgated pursuant to subsection (1) of this section relating to eligibility of an individual for conditional parole shall take into consideration, at a minimum, the following information about the individual:*
- (a) *The offense for which the individual was convicted and his or her rehabilitation efforts while incarcerated;*
  - (b) *The security classification while incarcerated in the state correctional institution;*
  - (c) *Conduct while incarcerated in the state correctional institution;*
  - (d) *Ability to find employment in the community; and*
  - (e) *The availability of additional applicable education, treatment or intervention, and training for employment in the local correctional facility or county jail, if needed by the individual.*

➔Section 40. KRS 532.100 is amended to read as follows:

- (1) When an indeterminate term of imprisonment is imposed, the court shall commit the defendant to the custody of the Department of Corrections for the term of his sentence and until released in accordance with the law.
- (2) When a definite term of imprisonment is imposed, the court shall commit the defendant to the county or city correctional institution or to a regional correctional institution for the term of his sentence and until released in accordance with the law.
- (3) When a sentence of death is imposed, the court shall commit the defendant to the custody of the Department of Corrections with directions that the sentence be carried out according to law.
- (4) (a) The provisions of KRS 500.080(5) notwithstanding, if a Class D felon is sentenced to an indeterminate term of imprisonment of five (5) years or less, he shall serve that term in a county jail in a county in which the fiscal court has agreed to house state prisoners; except that, when an indeterminate sentence of two (2) years or more is imposed on a Class D felon convicted of a sexual offense enumerated in KRS 197.410(1), or a crime under KRS 17.510(11) or (12), the sentence shall be served in a state institution. Counties choosing not to comply with the provisions of this paragraph shall be granted a waiver by the commissioner of the Department of Corrections.
- (b) *The provisions of KRS 500.080(5) notwithstanding, a Class D felon who received a sentence of more than five (5) years for nonviolent, nonsexual offenses, but who currently has less than five (5) years remaining to be served, may serve the remainder of his or her term in a county jail in a county in which the fiscal court has agreed to house state prisoners.*
- (c) 1. The provisions of KRS 500.080(5) notwithstanding, and except as provided in subparagraph 2. of this paragraph, a Class C or D felon with a sentence of more than five (5) years who is classified by the Department of Corrections as community custody shall serve that term in a county jail in a county in which the fiscal court has agreed to house state prisoners if:

- a. Beds are available in the county jail;
  - b. State facilities are at capacity; and
  - c. Halfway house beds are being utilized at the contract level as of July 15, 2000.
2. When an indeterminate sentence of two (2) years or more is imposed on a felon convicted of a sex crime, as defined in KRS 17.500, or any similar offense in another jurisdiction, the sentence shall be served in a state institution.
  3. Counties choosing not to comply with the provisions of this paragraph shall be granted a waiver by the commissioner of the Department of Corrections.
- (d)~~(e)~~ Any jail that houses state inmates under ~~paragraph (a) or (b) of~~ this subsection shall offer programs as recommended by the Jail Standards Commission. The Department of Corrections shall adopt the recommendations of the Jail Standards Commission and promulgate administrative regulations establishing required programs for a jail that houses state inmates under ~~paragraph (a) or (b) of~~ this subsection.
- (5) The jailer of a county in which a Class D felon or a Class C felon is incarcerated may request the commissioner of the Department of Corrections to incarcerate the felon in a state corrections institution if the jailer has reasons to believe that the felon is an escape risk, a danger to himself or other inmates, an extreme security risk, or needs protective custody beyond that which can be provided in a county jail. The commissioner of the Department of Corrections shall evaluate the request and transfer the inmate if he deems it necessary. If the commissioner refuses to accept the felon inmate, and the Circuit Judge of the county that has jurisdiction of the offense charged is of the opinion that the felon cannot be safely kept in a county jail, the Circuit Judge, with the consent of the Governor, may order the felon transferred to the custody of the Department of Corrections.
  - (6) Class D felons and Class C felons serving their time in a local jail shall be considered state prisoners, and the Department of Corrections shall pay the jail in which the prisoner is incarcerated a per diem amount determined according to KRS 431.215(2). For other state prisoners and parole violator prisoners, the per diem payments shall also begin on the date prescribed in KRS 431.215(2).
  - (7) State prisoners, excluding the Class D felons and Class C felons qualifying to serve time in county jails, shall be transferred to the state institution within forty-five (45) days of final sentencing.

➔SECTION 41. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

*When considering appropriate housing options for a person considered for parole or a person who is being paroled, the department shall approve any form of acceptable housing, including but not limited to apartments, shelters for homeless or other persons, county jails or restricted custody facilities which a county approves for parolees, educational institutions with dormitories if the parolee is enrolled or accepted for enrollment at an educational institution, halfway houses, residential treatment or other programs in which the parolee is enrolled or accepted for enrollment, and other forms of transitional housing meeting the requirements of applicable statutes.*

➔SECTION 42. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

*When considering appropriate housing for a prisoner who is considered for or who is granted conditional release pursuant to Section 43 of this Act, the Department of Corrections shall approve any form of acceptable housing, including but not limited to apartments, shelters for the homeless or other persons, county jails or restricted custody facilities that a county approves for persons granted conditional release, educational institutions with dormitories if the releasee is enrolled or accepted for enrollment at an educational institution, halfway houses, residential treatment or other programs in which the releasee is enrolled or accepted for enrollment, and other forms of transitional housing meeting the requirements of applicable statutes.*

➔Section 43. 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 **or conditional release to an appropriate housing alternative specified by Section 42 of this Act** 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 **nine (9) months**~~one hundred eighty (180) 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
  - 4. **Criminal risk factors; 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 44. A NEW SECTION OF KRS CHAPTER 27A IS CREATED TO READ AS FOLLOWS:

- (1) ***The Supreme Court shall establish recommended guidelines for judges to use when ordering pretrial release and monitored conditional release for defendants whose pretrial risk assessments indicate that they are moderate or high risk and would otherwise be ordered to a local correctional facility while waiting for trial.***
- (2) ***The Supreme Court shall establish recommended guidelines for judges to use to determine whether defendants whose pretrial risk assessments indicate that they are moderate or high risk and are eligible for pretrial supervision.***
- (3) ***Judges shall consider the guidelines established by the Supreme Court pursuant to this section when setting terms of pretrial supervision.***

➔SECTION 45. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

***When considering the pretrial release of a person whose pretrial risk assessment indicates he or she is a moderate or high risk defendant, the court considering the release may order as a condition of pretrial release that the person participate in a global positioning monitoring system program under the same terms and conditions provided in KRS 431.517 during all or part of the person's period of pretrial release.***

➔Section 46. KRS 431.015 is amended to read as follows:

- (1) (a) ***KRS 431.005 to the contrary notwithstanding, and except as provided in paragraphs (b) and (c) of this subsection, a peace officer shall***~~may~~ issue a citation instead of making an arrest for a misdemeanor committed in his ***or her*** presence, if there are reasonable grounds to believe that the person being cited will appear to answer the charge. The citation shall provide that the defendant shall appear within a designated time.
- (b) ***A peace officer may make an arrest instead of issuing a citation for a misdemeanor committed in his or her presence if the misdemeanor is:***
  - 1. ***A violation of KRS Chapter 508, 510, or 527, or KRS 189A.010;***
  - 2. ***An offense in which the defendant poses a risk of danger to himself, herself, or another person; or***
  - 3. ***An offense in which the defendant refuses to follow the peace officer's reasonable instructions.***
- (c) ***A peace officer shall make an arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785.***

- (2) A peace officer may issue a citation instead of making an arrest for a violation committed in his presence but may not make a physical arrest unless there are reasonable grounds to believe that the defendant, if a citation is issued, will not appear at the designated time or unless the offense charged is a violation of KRS 189.223, 189.290, 189.393, 189.520, 189.580, 235.240, 281.600, 511.080, or 525.070 committed in his presence or a violation of KRS 189A.010, not committed in his presence, for which an arrest without a warrant is permitted under KRS 431.005(1)(e).
- (3) If the defendant fails to appear in response to the citation, or if there are reasonable grounds to believe that he will not appear, a complaint may be made before a judge and a warrant shall issue.
- (4) When a physical arrest is made and a citation is issued in relation to the same offense the officer shall mark on the citation, in the place specified for court appearance date, the word "ARRESTED" in lieu of the date of court appearance.

➔Section 47. KRS 431.525 is amended to read as follows:

- (1) The amount of the bail shall be:
  - (a) Sufficient to insure compliance with the conditions of release set by the court;
  - (b) Not oppressive;
  - (c) Commensurate with the nature of the offense charged;
  - (d) Considerate of the past criminal acts and the reasonably anticipated conduct of the defendant if released; and
  - (e) Considerate of the financial ability of the defendant.
- (2) When a person is charged with an offense punishable by fine only, the amount of the bail bond set shall not exceed the amount of the maximum penalty and costs.
- (3) When a person has been convicted of an offense and only a fine has been imposed, the amount of the bail shall not exceed~~double~~ the amount of the fine.
- (4) ***When a person has been charged with one (1) or more misdemeanors, the amount of the bail for all charges shall be encompassed by a single amount of bail that shall not exceed the amount of the fine and court costs for the one (1) highest misdemeanor charged. This subsection shall apply only to misdemeanor offenses not involving physical injury or sexual contact.***
- (5) ***When a person has been convicted of a misdemeanor offense and a sentence of jail, probation, conditional discharge, or sentence other than a fine only has been imposed, the amount of bail for release on appeal shall not exceed double the amount of the maximum fine that could have been imposed for the one (1) highest misdemeanor offense for which the person was convicted. This subsection shall apply only to misdemeanors not involving physical injury or sexual contact.***
- (6) ***The provisions of this section shall not apply to a defendant who is found by the court to present a flight risk or to be a danger to others.***
- (7) ***If a court determines that a defendant shall not be released pursuant to subsection (6) of this section, the court shall document the reasons for denying the release in a written order.***
- (8) The Administrative Office of the Courts shall establish pilot projects to implement controlled substance or alcohol abuse testing as specified under this subsection. If the person's record indicates a history of controlled substance or alcohol abuse, the court may order the person to submit to periodic testing for use of controlled substances or alcohol and to pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court, with the fee to be 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 performed under this subsection. If the person is declared indigent, the testing fee may be waived by the court. If the court finds the conditions of release have not been complied with, the court may change the conditions imposed or forfeit the bail bond or any portion thereof and enter a judgment for the Commonwealth against the person and his surety or sureties for the amount of the bail bond or any portion thereof and the cost of the proceedings.

➔SECTION 48. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

- (1) *When a court considers pretrial release and bail for an arrested defendant, the court shall consider whether the defendant constitutes a flight risk, is unlikely to appear for trial, or is likely to be a danger to the public if released.*
- (2) *If the defendant poses low risk of flight, is likely to appear for trial and is not likely to be a danger to others, the court shall order the defendant released on unsecured bond or on the defendant's own recognizance subject to such other conditions as the court may order.*
- (3) *If the defendant poses a moderate risk of flight, has a moderate risk of not appearing for trial, or poses a moderate risk of danger to others, the court shall release the defendant under the same conditions as in subsection (2) of this section but shall consider ordering the defendant to participate in global positioning system monitoring, controlled substance testing, increased supervision, or such other conditions as the court may order.*
- (4) (a) *Except as provided in paragraph (b) of this subsection, regardless of the amount of the bail set, the court shall permit the defendant a credit of one hundred dollars (\$100) per day as a payment toward the amount of the bail set for each day or portion of a day that the defendant remains in jail prior to trial. Upon the service of sufficient days in jail to have sufficient credit to satisfy the bail, the court shall order the defendant released from jail on the conditions specified in this section or in this chapter.*
  - (b) *The provisions of paragraph (a) of this subsection shall not apply to:*
    1. *Any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510, 529.100 involving commercial sexual activity, 530.020, 530.064(1)(a), 531.310, or 531.320, or who is a violent offender as defined in KRS 439.3401; or*
    2. *A defendant who is found by the court to present a flight risk or to be a danger to others.*
- (5) *If a court determines that a defendant shall not be released pursuant to subsection (4) of this section, the court shall document the reasons for denying the release in a written order.*
- (6) *The jailer shall be responsible for tracking the credit earned by a defendant pursuant to subsection (4) of this section.*

➔SECTION 49. A NEW SECTION OF KRS CHAPTER 27A IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "evidence-based practices" means intervention programs and supervision policies, procedures, programs, and practices that scientific research demonstrates reduce instances of a defendant's failure to appear in court and criminal activity among pretrial defendants when implemented competently.*
- (2) *In order to increase the effectiveness of supervision and intervention programs funded by the state and provided to pretrial defendants, the Supreme Court shall require that a vendor or contractor providing supervision and intervention programs for adult criminal defendants use evidence-based practices.*
- (3) *The Supreme Court shall measure the effectiveness of supervision and intervention programs provided by vendors or contractors and demonstrate that the programs have a documented evidence base and have been evaluated for effectiveness in reducing a defendant's failure to appear in court and criminal activity.*
- (4) *The Supreme Court shall require, at a minimum, the following:*
  - (a) *A process for reviewing the objective criteria for evidence-based practices established by the vendor or contractor providing the program;*
  - (b) *A process for auditing the effectiveness of the program;*
  - (c) *An opportunity for programs that do not meet the criteria based on the audit results to improve performance; and*
  - (d) *A mechanism to defund any program provided by a vendor or contractor that does not meet the criteria upon a second audit.*
- (5) *Beginning July 1, 2012, twenty-five percent (25%) of state moneys expended on supervision and intervention programs for pretrial defendants shall be for programs that are in accordance with evidence-based practices. Beginning July 1, 2014, fifty percent (50%) of state moneys expended on supervision and intervention programs shall be for programs that are in accordance with evidence-based practices.*

*Beginning July 1, 2016 and thereafter, seventy-five percent (75%) of state moneys expended on supervision and intervention programs shall be for programs that are in accordance with evidence-based practices.*

➔SECTION 50. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "evidence-based practices" means supervision policies, procedures, treatment and intervention programs, and practices that scientific research demonstrates reduce recidivism among inmates and individuals on probation, parole, or other form of post-release supervision when implemented competently.*
- (2) *In order to increase the effectiveness of treatment and intervention programs funded by the state and provided by the department for inmates, probationers, and parolees, the department shall require that such programs use evidence-based practices.*
- (3) *The department shall measure the effectiveness of each treatment and intervention program and demonstrate that the program has a documented evidence base and has been evaluated for effectiveness in reducing recidivism.*
- (4) *The department shall promulgate administrative regulations to provide, at a minimum:*
  - (a) *A process for reviewing the objective criteria for evidence-based practices established by the agency providing the program;*
  - (b) *A process for auditing the effectiveness of the program;*
  - (c) *An opportunity for programs that do not meet the criteria based on the audit results to improve performance; and*
  - (d) *A mechanism to defund any program that does not meet the criteria upon a second audit.*
- (5) *Beginning July 1, 2012, twenty-five percent (25%) of state moneys expended on programs shall be for programs that are in accordance with evidence-based practices. Beginning July 1, 2014, fifty percent (50%) of state moneys expended on programs shall be for programs that are in accordance with evidence-based practices. Beginning July 1, 2016 and thereafter, seventy-five percent (75%) of state moneys expended on programs shall be for programs that are in accordance with evidence-based practices.*
- (6) *By fiscal year 2015-2016, the department shall eliminate supervision policies, procedures, programs, and practices intended to reduce recidivism that scientific research demonstrates do not reduce recidivism. However, the department may utilize a new supervision policy, procedure, program, or practice if the department determines that the new supervision policy, procedure, program, or practice has the potential for qualifying as an evidence-based practice after more scientific research is conducted.*

➔SECTION 51. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall promulgate administrative regulations that require the supervision and treatment of supervised individuals in accordance with evidence-based practices.*
- (2) *The administrative regulations shall, at a minimum, include:*
  - (a) *The administration of a validated risk and needs assessment on all supervised individuals at regular intervals to determine their criminal risk factors and to identify intervention targets;*
  - (b) *Use of assessment scores and other objective criteria throughout the period of community supervision to determine the risk level and program needs of each supervised individual;*
  - (c) *Caseload size guidelines that are based on supervised individuals' risk levels and take into account department resources and employee workload and prioritization of supervision and program resources for supervised individuals who are at higher risk to reoffend;*
  - (d) *Definitions of various risk levels to apply to supervised individuals during the period of community supervision;*
  - (e) *Development of a case plan for each individual who is assessed to be moderate-to-high risk based on the risk and needs assessment, that targets the criminal risk factors identified in the assessment, is responsive to individual characteristics, and provides supervision of offenders according to that case plan;*
  - (f) *Implementation of swift, certain, proportionate, and graduated sanctions that a probation and parole officer shall apply in response to a supervised individual's noncompliant behaviors; and*



- (g) *Establishment of protocols and standards that assess the degree to which policies, procedures, programs, interventions, and practices relating to offender recidivism reduction, whether utilized by the department or contract or referral agencies, are evidence-based.*

➔SECTION 52. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall provide its employees with intensive initial and on-going training and professional development services to support the implementation of evidence-based practices.*
- (2) *The training and professional development services shall include assessment techniques, case planning, risk reduction and intervention strategies, effective communication skills, cognitive-behavioral treatment, substance abuse, and other topics identified by the department or its employees.*

➔SECTION 53. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *By December 1 of each year, beginning in 2012, the department shall submit to the Governor, the General Assembly, and the Chief Justice a comprehensive report on its efforts to implement evidence-based practices to reduce recidivism. The report shall include at a minimum:*
- (a) *The percentage of supervised individuals being supervised in accordance with evidence-based practices;*
- (b) *The percentage of state moneys expended by the department for programs that are evidence based, and a list of all programs with identification of which are evidence based;*
- (c) *Specification of supervision policies, procedures, programs, and practices that were created, modified, or eliminated; and*
- (d) *The department's recommendations for resource allocation, and any additional collaboration with other state, regional, or local public agencies, private entities, or faith-based and community organizations.*
- (2) *The department shall make the full report and an executive summary available to the general public on its Web site.*

➔SECTION 54. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

*The department shall:*

- (1) *Conduct an initial administration of a validated risk and needs assessment instrument on an individual upon intake to community supervision, unless an initial assessment has been previously conducted within a reasonable time period as specified in department regulations;*
- (2) *While the individual is on community supervision, readminister the risk and needs assessment at regular intervals as determined by administrative regulations promulgated pursuant to Section 51 of this Act;*
- (3) *Apply the results of the risk and needs assessment to:*
- (a) *Establish an appropriate level of supervision;*
- (b) *Determine the content of a case plan that addresses the supervised individual's criminal needs; and*
- (c) *Respond to compliant and noncompliant behavior; and*
- (4) *Promulgate administrative regulations to determine appropriate levels of supervision, guidelines for case planning, and guidelines for responses to specified behavior by supervised individuals.*

➔SECTION 55. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *A supervised individual on parole shall receive compliance credits to be applied toward the individual's sentence, if the paroled individual does all of the following:*
- (a) *Fulfills the terms of his or her case plan;*
- (b) *Has no new arrests; and*
- (c) *Makes scheduled monthly payments for restitution.*
- (2) *The department shall promulgate administrative regulations for the awarding of earned compliance credits to a supervised individual who is on parole.*

➔SECTION 56. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall promulgate administrative regulations to develop a system of graduated sanctions for responding to technical violations of probation. The department shall consult with the Supreme Court when promulgating these administrative regulations.*
- (2) *The administrative regulations shall create a system of graduated sanctions with the following objectives:*
- (a) *Responding quickly and consistently to violations of probation, based on the nature of the violation and the risk level of the supervised individual;*
  - (b) *Reducing the time and resources expended by the department and the courts to respond to violations; and*
  - (c) *Reducing the commission of new crimes and revocation rates.*

➔SECTION 57. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall promulgate administrative regulations in consultation with the Supreme Court to establish procedures to:*
- (a) *Recommend to the court the early termination of probation for a supervised individual who has:*
    - 1. *Fulfilled the terms of his or her case plan;*
    - 2. *No new arrests;*
    - 3. *Demonstrated a reduction in criminal risk factors upon reassessment; and*
    - 4. *Fulfilled all restitution and substantially fulfilled all other financial obligations to the court; and*
  - (b) *Review the compliance of the supervised individual on probation with the requirements in paragraph (a) of this subsection. This review for compliance shall occur at the same time as the regular reassessment pursuant to Sections 51 and 54 of this Act.*
- (2) *The department shall petition the court with a request for early termination if the supervised individual on probation has:*
- (a) *Complied with the requirements in subsection (1)(a) of this section;*
  - (b) *Has completed at least eighteen (18) months of his or her term of supervision; and*
  - (c) *Has not violated the terms of his or her supervision in the last twelve (12) months.*
- (3) *The department may establish by administrative regulation conditions for overriding the recommendation of early termination of probation.*

➔SECTION 58. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS

- (1) *The department shall promulgate administrative regulations in accordance with the provisions of this section to establish an administrative caseload supervision program for supervised individuals whose results from a risk and needs assessment indicate that they are low-risk offenders.*
- (2) *The administrative caseload supervision program shall consist of monitoring supervised individuals to ensure that they have not engaged in new criminal activity and are fulfilling financial obligations to the court.*
- (3) *If a supervised individual on administrative caseload supervision:*
- (a) *Does not fulfill his or her restitution or other financial obligations to the court, he or she may be placed on a higher level of supervision at the discretion of the department; or*
  - (b) *Engages in criminal activity, he or she may be prosecuted, revoked, or placed on a higher level of supervision; or*
  - (c) *Exhibits signs or symptoms of a substance abuse disorder, he or she may be assessed by the Administrative Office of the Courts drug court personnel for consideration of admission into drug court.*
- (4) *A supervised individual on a higher level of supervision who demonstrates a reduction in criminal risk factors upon reassessment and who has achieved the goals established in his or her case plan may be placed on administrative caseload supervision at the discretion of the department.*

- (5) *A supervised individual on a higher level of supervision shall presumptively be placed on administrative supervision if he or she has:*
- (a) *Completed twelve (12) months of community supervision;*
  - (b) *Not violated the terms of his or her community supervision in the previous twelve (12) months;*
  - (c) *Fulfilled all restitution and other financial obligations to the court;*
  - (d) *Demonstrated a reduction in criminal risk factors upon reassessment; and*
  - (e) *Achieved the goals established in his or her case plan.*
- (6) *If the conditions or level of community supervision of a probationer are modified under this section, the probation and parole officer shall file a copy of the modified conditions or level with the sentencing court.*
- (7) *The department may establish by administrative regulation conditions for overriding presumptive administrative supervision.*

➔SECTION 59. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

*Supervised individuals shall be subject to:*

- (1) *Violation revocation proceedings and possible incarceration for failure to comply with the conditions of supervision when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large, and cannot be appropriately managed in the community; or*
- (2) *Sanctions other than revocation and incarceration as appropriate to the severity of the violation behavior, the risk of future criminal behavior by the offender, and the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community.*

➔SECTION 60. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall, by January 1, 2012, adopt a system of graduated sanctions for violations of conditions of community supervision. Notwithstanding KRS Chapter 533, the system shall set forth a menu of presumptive sanctions for the most common types of supervision violations, including but not limited to: failure to report; failure to pay fines, fees, and victim restitution; failure to participate in a required program or service; failure to complete community service; violation of a protective or no contact order; and failure to refrain from the use of alcohol or controlled substances. The system of sanctions shall take into account factors such as the severity of the current violation, the supervised individual's previous criminal record, the number and severity of any previous supervision violations, the supervised individual's assessed risk level, and the extent to which graduated sanctions were imposed for previous violations. The system also shall define positive reinforcements that supervised individuals may receive for compliance with conditions of supervision.*
- (2) *The department shall establish by administrative regulation an administrative process to review and approve or reject, prior to imposition, graduated sanctions that deviate from those prescribed.*
- (3) *The department shall establish by administrative regulation an administrative process to review graduated sanctions contested by supervised individuals under Section 62 of this Act.*

➔SECTION 61. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

*For supervised individuals on probation, the court having jurisdiction of the case shall determine the conditions of community supervision and may impose as a condition of community supervision that the department supervising the individual shall, in accordance with Section 62 of this Act, impose graduated sanctions adopted by the department for violations of the conditions of community supervision.*

➔SECTION 62. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any administrative regulation or law to the contrary, including KRS 439.340(3)(b), the department or board may:*
  - (a) *Modify the conditions of community supervision for the limited purpose of imposing graduated sanctions; and*
  - (b) *Place a supervised individual who violates the conditions of community supervision in a state or local correctional or detention facility or residential center for a period of not more than ten (10) days consecutively, and not more than thirty (30) days in any one (1) calendar year. The department shall*

*reimburse the local correctional or detention facility or residential center for the costs of incarcerating a person confined under this paragraph at the rate specified in KRS 532.100.*

- (2) *A probation and parole officer intending to modify the conditions of community supervision by imposing a graduated sanction shall issue to the supervised individual a notice of the intended sanction. The notice shall inform the supervised individual of the technical violation or violations alleged, the date or dates of the violation or violations, and the graduated sanction to be imposed.*
- (3) *The imposition of a graduated sanction or sanctions by a probation and parole officer shall comport with the system of graduated sanctions adopted by the department under Section 60 of this Act. Upon receipt of the notice, the supervised individual shall immediately accept or object to the sanction or sanctions proposed by the officer. The failure of the supervised individual to comply with a sanction shall constitute a violation of community supervision.*
- (4) *If the supervised individual objects to the imposition of the sanction or sanctions, then:*
  - (a) *If the supervised individual is serving a period of parole or post-release supervision from prison or jail, then the administrative process promulgated under subsection (3) of Section 60 of this Act shall apply; or*
  - (b) *If the supervised individual is on probation, then the provisions of KRS 533.050 shall apply.*
- (5) *If the graduated sanction involves confinement in a correctional or detention facility, confinement shall be approved by the probation and parole district supervisor, but the supervised individual may be taken into custody for up to four (4) hours while such approval is obtained. If the supervised individual is employed, the probation and parole officer shall, to the extent feasible, impose this sanction on weekend days or other days and times when the supervised individual is not working.*
- (6) *A sanction that confines a supervised individual in a correctional or detention facility for a period of more than ten (10) consecutive days, or extends the term of community supervision, shall not be imposed as a graduated sanction, except pursuant to an order of the court or the board.*
- (7) *Upon successful completion of a graduated sanction or sanctions, a court may not revoke the term of community supervision or impose additional sanctions for the same violation.*
- (8) *If a probation and parole officer modifies the conditions of community supervision by imposing a graduated sanction, the officer shall:*
  - (a) *Deliver a copy of the modified conditions to the supervised individual;*
  - (b) *File a copy of the modified conditions with the sentencing court or releasing authority; and*
  - (c) *Note the date of delivery of the copy in the supervised individual's file or case management system.*

➔SECTION 63. A NEW SECTION OF KRS 439.250 to 439.560 IS CREATED TO READ AS FOLLOWS:

*The probation and parole district supervisor shall review confinement sanctions recommended by probation and parole officers on a quarterly basis to assess any disparities that may exist among officers, evaluate the effectiveness of the sanction as measured by the supervised individuals' subsequent conduct, and monitor the impact on the department's number and type of revocations for violations of the conditions of supervision.*

➔SECTION 64. A NEW SECTION OF KRS CHAPTER 27A IS CREATED TO READ AS FOLLOWS:

*The Chief Justice shall submit an annual report to the Interim Joint Committee on Judiciary by November 1 of each year that provides information on state-funded crime reduction and recidivism reduction efforts, including participation in intervention programming, public safety outcomes, and cost effectiveness. The report shall, at a minimum, include:*

- (1) *The percentage of defendants on pretrial supervision who appear for court and do not commit a new crime;*
- (2) *The percentage of drug court clients who successfully complete drug court;*
- (3) *The percentage of drug court clients who are arrested, convicted, and incarcerated within six (6) months, one (1) year, and three (3) years of successful completion of drug court; and*
- (4) *The amount of restitution paid while in drug court.*

➔Section 65. KRS 196.031 is amended to read as follows:

- (1) The cabinet shall employ the personnel and operate and maintain data collection and processing systems necessary to comply with the provisions of this section.
- (2) The cabinet shall annually on July 1 of each year report to the Governor, the Legislative Research Commission, and the Kentucky State Corrections Commission on:
  - (a) The placement of prisoners within the Commonwealth's correctional system by institution, whether imprisoned in a state prison or other institution, including county jails, on probation, paroled, housed in halfway houses, sentenced to community service or otherwise;
  - (b) Numbers of prisoners by type of offense;
  - (c) Numbers of prisoners by number and type of prior convictions;
  - (d) Numbers of prisoners paroled by type of offense and by length of time served;
  - (e) Numbers of prisoners released through shock probation by type of offense and by length of time served;~~and~~
  - (f) Numbers of prisoners serving their full sentence by type of offense;
  - (g) *The percentage of felony offenders on parole or some form of post-release supervision who are participating or completing treatment consistent with assessment results, in prison and in the community;*
  - (h) *The percentage of felony offenders whose reassessment results demonstrate reductions in criminal risk factors;*
  - (i) *The percentage of programs that demonstrate their effectiveness in reducing recidivism;*
  - (j) *The percentage of felony offenders on parole or some form of post-release supervision, by supervision type, who:*
    1. *Are employed or in school within thirty (30) days, six (6) months, and one (1) year of the start of supervision;*
    2. *Have had part-time employment for a minimum of six (6) months, and the percentage of offenders who have had full-time employment for a minimum of six (6) months;*
    3. *Have housing upon release from incarceration;*
    4. *Had stable housing for at least six (6) months; and*
    5. *Are arrested, convicted, or incarcerated within six (6) months, one (1) year, and three (3) years;*
  - (k) *The percentage of admissions to prison by offenders under supervision at the time of admission, including information regarding whether the violations were criminal or technical; and*
  - (l) *Any other data that provides information on state-funded crime reduction and recidivism reduction efforts, including caseload sizes by risk level, participation in treatment and intervention programming, public safety outcomes, and cost effectiveness.*
- (3) The cabinet shall annually report to the Governor and to the Legislative Research Commission on:
  - (a) Numbers and types of prison beds necessary to meet current population needs and six (6) year projections of those needs;
  - (b) Current personnel needs of the cabinet and five (5) year projections of the needs; and
  - (c) A six (6) year projection of needed capital construction, program development, and anticipated requests for appropriations.

➔Section 66. KRS 27A.470 is amended to read as follows:

The Administrative Office of the Courts may combine its annual report *in KRS 27A.460* with the Kentucky Uniform Crime Report.

➔SECTION 67. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

*The department shall develop an online system based on state statistics of actual offenders to provide courts, attorneys, probation and parole officers, and victims with objective information for use in plea negotiations and sentencing. The system shall include but not be limited to the following information:*

- (1) *Sentencing information for all felonies, including the amount of time likely to be served for particular offenses;*
- (2) *The offender's risk assessment rating;*
- (3) *The offender's expected time to serve, including but not limited to parole eligibility date, good time release date, maximum expiration of sentence date, and the historic percentage of time served for similar offenders;*
- (4) *The costs for various sentencing options and costs for various alternatives to incarceration; and*
- (5) *The offender's likelihood of being reincarcerated within two (2) years under the different sentencing options and alternatives, taking into account the offender's risk assessment rating.*

➔SECTION 68. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall measure and document cost savings resulting from amendments to or creation of statutes in KRS Chapters 27A, 196, 197, 431, 439, 532, 533, and 534 contained in the provisions of this Act. Measured and documented savings shall be reinvested or distributed as provided in this section.*
- (2) *The department shall establish a baseline for measurement using the average number of inmates incarcerated at each type of penitentiary as defined in KRS 197.010 and at local jails in fiscal year 2010-2011.*
- (3) *The department shall determine the average cost of:*
  - (a) *Incarceration for each type of penitentiary as defined in KRS 197.010 and for local jails, including health care costs, transportation costs, and other related costs, for one (1) inmate for one (1) year for the immediately preceding fiscal year; and*
  - (b) *Providing probation and parole services for one (1) parolee for one (1) year for the immediately preceding fiscal year.*
- (4) *Beginning with the budget request for the 2012-2014 fiscal biennium, savings shall be estimated from the baseline established in subsection (2) of this section as follows:*
  - (a) *The estimated average reduction of inmates due to mandatory reentry supervision as required by Section 34 of this Act multiplied by the appropriate average cost as determined in paragraph (a) of subsection (3) of this section;*
  - (b) *The estimated average reduction of inmates due to accelerated parole hearings as required by Section 32 of this Act multiplied by the appropriate average cost as determined in paragraph (a) of subsection (3) of this section;*
  - (c) *The estimated average increase of parolees due to paragraphs (a) and (b) of this subsection multiplied by the average cost as determined in paragraph (b) of subsection (3) of this section; and*
  - (d) *The estimated average reduction of parolees due to parole credit for good behavior as provided in Section 55 of this Act multiplied by the average cost as determined in paragraph (b) of subsection (3) of this section.*
- (5) *The following amounts shall be allocated or distributed from the estimated amount of savings that would otherwise remain in the general fund:*
  - (a) *Twenty-five percent (25%) shall be distributed to the local corrections assistance fund established by Section 69 of this Act; and*
  - (b) *In enacting the budget for the department and the judicial branch, beginning in the 2012-2014 fiscal biennium and each fiscal biennium thereafter, the General Assembly shall:*
    1. *Determine the estimated amount necessary for reinvestment in:*
      - a. *Expanded treatment programs and expanded probation and parole services provided by or through the department; and*
      - b. *Additional pretrial services and drug court case specialists provided by or through the Administrative Office of the Courts; and*

2. *Shall allocate and appropriate sufficient amounts to fully fund these reinvestment programs.*

- (6) *The amount of savings shall be estimated each year of the 2012-2014 fiscal biennium, and for each year of each fiscal biennium thereafter, as specified in subsection (4) of this section.*
- (7) (a) *In submitting its budget request for the 2012-2014 fiscal biennium and each fiscal biennium thereafter, the department shall estimate the amount of savings measured under this section, and shall request the amount necessary to distribute or allocate those savings as provided in subsection (5) of this section.*
- (b) *In submitting its budget request for the 2012-2014 fiscal biennium and each fiscal biennium thereafter, the judicial branch shall request the amount necessary to distribute or allocate those savings as provided in subsection (5) of this section.*

➔SECTION 69. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

- (1) *The local corrections assistance fund is created as a separate revolving fund to be administered by the department. The fund shall consist of amounts transferred to the fund pursuant to the provisions of Section 68 of this Act, along with any other proceeds from grants, contributions, appropriations, or other moneys made available for purposes of the fund.*
- (2) *Notwithstanding KRS 45.229, amounts not expended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year.*
- (3) *Any interest earnings from the fund shall become a part of the fund and shall not lapse.*
- (4) *Moneys in the fund shall accrue to the fund and shall be retained in the fund until the General Assembly establishes a statutory process and method for distributing the funds to local correctional facilities and programs.*

➔Section 70. KRS 196.700 is amended to read as follows:

As used in KRS 196.700 to 196.735, unless the context otherwise requires:

- (1) "Commission" means the Kentucky State Corrections Commission created in KRS 196.701;
- (2) "Community corrections program" means a local government agency, private nonprofit, or charitable organization within the judicial circuit which shall perform one (1) or more of the following:
- (a) Prepare community penalties plans;
- (b) Directly provide, arrange, or contract with public and private agencies for sentencing services for offenders; and
- (c) Monitor the progress of offenders placed on community penalty plans or who receive sentencing services through provisions of KRS 196.700 to 196.735;
- (3) "Community corrections programs plan" means a written plan for the development, implementation, operation, and improvement of a community corrections program;
- (4) "Community penalties plan" means a plan presented in writing to the sentencing judge which provides a detailed description of and rationale for the targeted offender's proposed sentence to a community corrections program or to one (1) or more special programs, conditions of probation, community punishments, or sanctions in lieu of lengthy incarceration;
- (5) *"Conditions of supervision" means conditions of probation, parole, mandatory reentry supervision, or other form of post-prison supervision;*
- (6) "Judicial circuit" means the circuits prescribed by KRS 23A.020;~~and~~
- (7) *"Supervised individual" means an individual placed on probation by a court or serving a period of parole or other form of post-release supervision; and*
- (8)~~(6)~~ "Targeted offenders" means persons charged with or convicted of one (1) or more felonies who under application of law are eligible for probation or suspension of sentence~~or a minimum period of incarceration not to exceed one (1) year~~.

➔SECTION 71. A NEW SECTION OF KRS 196.700 to 196.735 IS CREATED TO READ AS FOLLOWS:

- (1) *The commission may:*

- (a) *Approve up to five (5) pilot projects to grant performance incentive funding to community corrections programs in judicial circuits with high rates of targeted offenders who are ordered to serve a term of imprisonment; and*
- (b) *Approve up to five (5) pilot projects to grant performance incentive funding to community corrections programs in judicial circuits with high rates of supervised individuals who are revoked for violations of their conditions of supervision and ordered to serve a term of imprisonment.*
- (2) *Upon development of an approved pilot project described in subsection (1)(a) of this section, the commission shall annually calculate:*
  - (a) *The percentage of targeted offenders in the judicial circuit for that pilot project who are convicted of a felony offense and sentenced to a term of imprisonment. This calculation shall be based on the fiscal year prior to the fiscal year in which the report is required pursuant to Section 73 of this Act. The baseline shall be the percentage of targeted offenders convicted and imprisoned for that judicial circuit in the fiscal year prior to the implementation of the pilot project; and*
  - (b) *Any state expenditures that have been avoided by reductions in the baseline percentage as calculated in paragraph (a) of this subsection.*
- (3) *Upon development of an approved pilot project described in subsection (1)(b) of this section, the commission shall annually calculate:*
  - (a) *The percentage of supervised individuals in the judicial circuit for that pilot project who are revoked for violations of their conditions of supervision and ordered to serve a term of imprisonment. This calculation shall be based on the fiscal year prior to the fiscal year in which the report is required pursuant to Section 73 of this Act. The baseline revocation percentage shall be the percentage of revocations for that judicial circuit in the fiscal year prior to the implementation of the pilot project; and*
  - (b) *Any state expenditures that have been avoided by reductions in the revocation percentage as calculated in paragraph (a) of this subsection.*

➔SECTION 72. A NEW SECTION OF KRS 196.700 to 196.735 IS CREATED TO READ AS FOLLOWS:

- (1) *Beginning in the fiscal year after a pilot project has been implemented pursuant to Section 71 of this Act, fifty percent (50%) of any state expenditures that are avoided as calculated in Section 71 of this Act shall be deposited by the department in the community corrections fund, which shall be a separate, interest-bearing account within the State Treasury. The remaining fifty percent (50%) shall be deposited in the general fund. Amounts deposited in the community corrections fund, including interest, are hereby appropriated to the commission for the following purposes:*
  - (a) *Fifty percent (50%) to the community corrections program responsible for those savings; and*
  - (b) *Fifty percent (50%) to the Division of Probation and Parole.*
- (2) *Notwithstanding KRS 45.229, any moneys remaining in the community corrections fund at the close of the fiscal year shall not lapse but shall carry forward into the next fiscal year to be used for the purposes outlined in this subsection.*
- (3) *None of the calculated savings shall be appropriated to the commission for distribution if:*
  - (a) *In a pilot project developed pursuant to subsection (1)(a) of Section 71 of this Act, there is an increase in the percentage of targeted offenders on probation who are convicted of a new felony offense and sentenced to a term of imprisonment; or*
  - (b) *In a pilot project developed pursuant to subsection (1)(b) of Section 71 of this Act, there is an increase in the percentage of supervised individuals who are convicted of a new felony offense.*
- (4) *The moneys appropriated pursuant to this section shall be used to supplement, not supplant, any other state or county appropriations for probation, parole or other post-prison supervision services, or community corrections programs.*
- (5) *Moneys received through appropriations pursuant to this section and Section 71 of this Act shall be used for the following purposes:*
  - (a) *Implementing evidence-based practices;*



- (b) *Creating, increasing, or improving the availability of risk reduction and treatment programs and interventions, including substance abuse treatment programs, for supervised individuals;*
- (c) *Paying the costs of global positioning monitoring system for offenders of at least medium risk; and*
- (d) *Increasing the number of probation and parole staff, including equipment and office space the officers and staff may need.*

➔SECTION 73. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

*The Kentucky State Corrections Commission shall submit an annual report on the implementation and results of any pilot projects developed pursuant to Section 71 of this Act to the Legislative Research Commission, the Chief Justice, and the Governor on or before September 1 of each year. The report shall also include the calculations made pursuant to Section 71 of this Act and the resulting performance incentive funding appropriated, if any.*

➔SECTION 74. A NEW SECTION OF KRS CHAPTER 6 IS CREATED TO READ AS FOLLOWS:

- (1) *Any bill, amendment, or committee substitute that creates a new crime, increases the penalty for an existing crime, decreases the penalty for an existing crime, changes the elements of the offense for an existing crime, repeals an existing crime, or proposes to increase, decrease, or otherwise impact incarceration shall be identified by the drafter as having a corrections impact on a "Corrections Impact Statement" form specified by the Legislative Research Commission.*
- (2) *Any bill, amendment, or committee substitute which permits a state agency to do any of the acts specified in subsection (1) of this section, even if the action is termed a regulatory offense by administrative regulation, shall be identified by the drafter as having a corrections impact in the manner specified in subsection (1) of this section.*
- (3) *Any bill, amendment, or committee substitute that permits a city, county, urban-county, charter county, consolidated local government, special district, or any other subdivision of local government to do any of the acts specified in subsection (1) of this section by ordinance or any other form of action shall be identified by the drafter as having a corrections impact in the manner specified in subsection (1) of this section.*
- (4) *The drafter of any bill, amendment, or committee substitute identified as having a corrections impact under subsections (1) to (3) of this section shall notify the sponsor of the bill, amendment, or committee substitute that a corrections impact is required.*
- (5) *If a bill, amendment, or committee substitute is identified as having a corrections impact, a "Corrections Impact Statement" shall be prepared by the staff of the Department of Corrections with the assistance of the Department of Kentucky State Police, Administrative Office of the Courts, Parole Board, and other persons, agencies, or organizations deemed necessary by the Department of Corrections staff assigned to prepare the corrections impact statement. The Department of Kentucky State Police, Administrative Office of the Courts, Parole Board, and other persons, agencies, and organizations that have been requested to provide information for the corrections impact statement shall do so within the period of time specified by the Department of Corrections staff person requesting the information, which in no case shall exceed two (2) business days unless an extension is granted by the requesting staff person.*
- (6) *The corrections impact statement shall contain the estimated costs, estimated savings, and necessary appropriations based upon:*
  - (a) *Incarceration in jail prior to trial and during trial based on the available information about persons granted bail or other form of pretrial release and the length of time spent in jail prior to release;*
  - (b) *Supervision of a person who has been granted bail or pretrial release based on the average time spent between the time of release until the time of trial for the offense;*
  - (c) *Incarceration in jail for a misdemeanor following conviction based on the maximum time of incarceration authorized for the offense;*
  - (d) *Incarceration in a state correctional facility for a capital offense, or felony offense based on the maximum and minimum length of incarceration authorized for the offense, except for offenses in which incarceration in a county jail for a Class D felony is required;*
  - (e) *Incarceration in a county jail for a Class D felony for which incarceration in a county jail is authorized based on the maximum and minimum sentence of incarceration authorized for a Class D felony;*

- (f) *Probation or conditional discharge supervision based on the maximum time of probation or conditional discharge authorized for the offense;*
  - (g) *Parole supervision based on the average length of parole supervision authorized for the offense assuming full parole supervision; and*
  - (h) *Mandated treatment, education, and other programs which are to be paid by the state, unit of local government, or public agency based on the number of persons anticipated to be required to complete the program if the education, treatment, or other program is not normally offered as a part of a defendant's incarceration and is required to be completed outside of a correctional facility.*
- (7) *Insofar as possible, costs and savings for a change to an existing crime shall be calculated using:*
- (a) *Arrest data for the crime from the Department of Kentucky State Police;*
  - (b) *Pretrial incarceration data from the Administrative Office of the Courts;*
  - (c) *Preconviction jail data from the Administrative Office of the Courts;*
  - (d) *Conviction data from the Administrative Office of the Courts;*
  - (e) *Postconviction jail and imprisonment data from the Department of Corrections;*
  - (f) *Probation and parole data from the Department of Corrections; and*
  - (g) *Data from applicable agencies or organizations providing treatment, education, or other mandated programs.*
- (8) *Insofar as possible, costs or savings for a new crime shall be calculated in the same manner as specified in subsection (7) of this section using data for similar crimes unless that is determined by the Department of Corrections staff person to be impractical or impossible in which case the estimate for a new crime may be prepared using:*
- (a) *The maximum and minimum length of incarceration for the offense;*
  - (b) *An estimate of cost based on ten (10) persons being charged with the offense, and based on one hundred (100) persons being charged with the offense;*
  - (c) *An estimate of cost based on ten (10) persons and one hundred (100) persons being convicted of the offense and sent to jail if the offense is a misdemeanor using the criteria specified in subsection (9) of this section; and*
  - (d) *An estimate of cost based on ten (10) persons and one hundred (100) persons being convicted of a felony offense requiring imprisonment in a state-operated correctional facility unless the offense is a Class D felony for which imprisonment in a county jail is required in which case the cost shall be based on the amount paid by the Department of Corrections for a person incarcerated in a county jail for a Class D felony.*
- (9) *Costs or savings shall be based on the average costs actually paid by the Department of Corrections during the previous fiscal year for incarceration of a person in a state correctional facility, the average cost for supervision of a person placed on probation without electronic monitoring, the average cost of a person placed on probation with electronic monitoring, the average cost of parole supervision without electronic monitoring, and the average cost of parole supervision with electronic monitoring.*
- (10) *The sponsor of any bill or amendment or sponsor of a proposed committee substitute adopted by a committee that is identified as having a corrections impact shall identify in writing where the funds to pay for additional costs of the proposal will come from either by reducing other expenditures, additional revenues, or otherwise. The sponsor's statement shall be included with the corrections impact.*
- (11) *If an amendment to a bill is combined into a committee substitute or a GA version of the bill is created incorporating a floor amendment, a new corrections impact statement shall be prepared combining the information in the original bill as modified by the amendment.*
- (12) *A bill, amendment, or committee substitute shall not be considered for final passage unless the corrections impact and latest revised corrections impact, if required, has been made available to the members of the House of Representatives or the Senate, as appropriate, on the day prior to the day the bill, amendment, or committee substitute is to be voted on for final passage.*

➔Section 75. KRS 441.045 is amended to read as follows:

- (1) The county governing body shall prescribe rules for the government, security, safety, and cleanliness of the jail and the comfort and treatment of prisoners, provided such rules are consistent with state law. The county judge/executive may inspect the jail at any reasonable time.
- (2) Willful violation of the rules promulgated pursuant to subsection (1) of this section shall be deemed a violation.
- (3) Except as provided in subsections (4) and (5) of this section, the cost of providing necessary medical, dental, and psychological care for indigent prisoners in the jail shall be paid from the jail budget.
- (4) The cost of providing necessary medical, dental, or psychological care for prisoners of the United States government shall be paid as provided by contract between the United States government and the county or as may otherwise be provided by federal law.
- (5) The cost of providing necessary medical, dental, or psychological care, beyond routine care and diagnostic services, for prisoners held pursuant to a contractual agreement with the state shall be paid as provided by contract between the state and county. The costs of necessary medical, dental, or psychological care, beyond routine care and diagnostic services, of prisoners held in the jail for which the county receives a per diem payment shall be paid by the state.
- (6) The cost of providing necessary medical, dental, or psychological care for prisoners held pursuant to a contractual agreement with another county or a city shall be paid as provided by contract between the county or city and county.
- (7) (a) When the cost of necessary medical, dental, or psychological care for a prisoner exceeds ~~one~~~~{two}~~ thousand dollars (~~\$1,000~~)(~~(\$2,000)~~), as calculated by using the maximum allowable costs to similar persons or facilities for the same or similar services under the Kentucky Medical Assistance Program, the state shall reimburse the county for that portion of the costs that exceeds ~~one~~ ~~{two}~~ thousand dollars (~~\$1,000~~)(~~(\$2,000)~~). The reimbursement shall be subject to the following terms and conditions:
  - 1.~~{a)}~~ The care is necessary as defined in subsection (10) of this section;
  - 2.~~{b)}~~ The prisoner is indigent as defined in subsection (8) of this section, or is uninsured; and
  - 3.~~{c)}~~ No state reimbursement to the county for care provided by physicians, hospitals, laboratories, or other health care providers shall exceed the maximum payments allowed to similar persons or facilities for the same or similar services under the Kentucky Medical Assistance Program, except as provided in subsection (11) of this section.

(b) *A county may assign its ability to receive payment from the state under this subsection to the person providing the medical, dental, or psychological care to the prisoner, which assignment shall be accepted by the provider for the purposes of submitting billing directly to the state. The state shall pay or deny a claim submitted to it within ninety (90) days of receiving the claim. The county shall include with the assignment the information required by subsection (8) of this section necessary to qualify the prisoner as indigent. The provider shall bill for any other public or private health benefit plan or health insurance benefits available to the prisoner prior to billing the state under this subsection, and shall bill the state prior to billing the county. The county shall retain ultimate payment responsibility as established under subsection (3) of this section, and the provider may bill the county for payment after the expiration of ninety (90) days from the date the provider submitted the claim to the state for payment if the claim remains unpaid at that time.*
- (8) (a) The determination of whether a prisoner is indigent shall be made pursuant to KRS 31.120, **and may be evidenced by the affidavit of indigency required by that statute or the appointment of a public defender under that statute.** The prisoner shall not be considered indigent, in the case of prisoner medical care, if:
  1. The prisoner has funds on his inmate account to cover all or a portion of his medical expenses;
  2. The prisoner's medical expenses are covered on a medical insurance policy; or
  3. The prisoner has the private resources to pay for the use of the medical facilities.

(b) Prisoners who are later determined not to have been indigent, or who at a time following treatment are no longer indigent, shall be required to repay the costs of payments made pursuant to this section to the unit of government which made the payment.

- (9) The terms and conditions relating to any determination of nonindigency and demands for repayment shall be under the same terms and conditions as are provided under KRS Chapters 31 and 431 relating to similar circumstances in the program for defense of indigents by the public advocate.
- (10) For the purposes of this section, "necessary care" means care of a nonelective nature that cannot be postponed until after the period of confinement without hazard to the life or health of the prisoner. ~~[-The physician attending the prisoner shall certify, under oath, that the care was necessary.-]~~
- (11) Any money appropriated for a given fiscal year to fund the state's obligation under subsection (7) of this section which remains unspent at the end of the year shall not lapse but shall be made available to satisfy, to the maximum extent possible, that portion of each catastrophic claim made during said year above the threshold amount for which the county did not receive state assistance pursuant to subsection (7) of this section. In the event there is an insufficient surplus to satisfy said balance of all such catastrophic claims which are made during that year, the state shall pay to those qualified counties, on a per claim basis, an amount equal to each claim's percentage of the total surplus. Should the surplus be sufficient to satisfy all such catastrophic claims, the amount remaining, if any, shall not lapse but shall be carried forward to the next fiscal year to be made available for future catastrophic claims.
- (12) Notwithstanding other provisions of this section to the contrary, a jail may impose a reasonable fee for the use of jail medical facilities by a prisoner who has the ability to pay for the medical care. These funds may be deducted from the prisoner's inmate account. A prisoner shall not be denied medical treatment because he has insufficient funds on his inmate account. This subsection shall not preclude other recovery of funds as provided in this section.
- (13) (a) Notwithstanding any other provision of this section to the contrary, a jail may impose a reasonable fee for the use of jail medical facilities by a state prisoner who has been placed in a local jail pursuant to a contract with the Department of Corrections under KRS 532.100 or other statute, and who has the ability to pay for medical care.
- (b) Funds may be deducted from the state prisoner's inmate account at the jail.
- (c) A state prisoner shall not be denied medical treatment because he or she has insufficient funds in his or her inmate account.
- (d) This subsection shall not preclude other recovery of funds as provided in this section.
- (e) This subsection does not authorize recovery of funds from a prisoner for medical care which has been paid or reimbursed by the state pursuant to this section.
- (14) ***Except as provided in subsection (4), (5), or (8) of this section, all payments for necessary medical, dental, or psychological care for jail, regional jail, or holdover prisoners shall be made at a rate not to exceed the Medicaid rate for the same or similar services, which shall be paid within thirty (30) days under the provisions of KRS 65.140 of receiving a claim from the health facility or provider for the item or service. This subsection shall not obligate the Medicaid program to pay for services provided to a prisoner.***
- (15) (a) ***A peace officer or correctional officer having custody of a person shall not release the person from custody so that the person may receive treatment from a health care facility or health care provider, except pursuant to an order issued by a court of competent jurisdiction which specifically names the person to receive treatment.***
- (b) ***A peace officer or correctional officer having custody of a person may take the person to a health care facility or health care provider for the purpose of receiving treatment if a correctional officer remains with the person during the time the person is on the premises of the health care facility or health care provider, unless the facility or provider consents to the absence of the officer.***
- (c) ***A county, urban-county, consolidated local government, charter county, unified local government, jail, regional jail, holdover, local detention center, or other local correctional facility shall not be responsible for paying for the medical or other health care costs of a person who is released by a court of competent jurisdiction, except where the release is for the purpose of receiving medical or other health care services as evidenced by an order requiring the person to return to custody upon completion of treatment.***
- (d) ***When a county, urban-county, consolidated local government, charter county, unified local government, jail, regional jail, holdover, local detention center, or other local correctional facility is***

*responsible for paying for medical or other health care costs under paragraph (c) of this subsection, payment shall be made only at the Medicaid rate for same or similar services.*

(e) *For the purposes of this subsection, "correctional officer" includes a:*

1. *Jailer or deputy jailer;*
2. *Director or other person in charge of a local detention center, local correctional facility, or regional jail; and*
3. *Correctional officer employed by a local detention center, local correctional facility, or regional jail.*

➔Section 76. KRS 441.053 is amended 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) (a) Except as provided in paragraph (b) of this subsection, the Department of Corrections shall, 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:
  1. 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
  2. The cost of the prescription plan is equal to or less in total cost, including the product cost and all other costs associated with the delivery of the drugs, than the Department of Corrections' contract pharmacy plan.
- (b) If a unit of local government, combination of units of local government, or regional jail authority contracts with a private provider of comprehensive health services for inmates, then that private provider may elect not to use the Department of Corrections' contract pharmacy plan and a waiver under this subsection shall not be required.
- (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 2007 Ky. Acts ch. 128, sec. 5.
- (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 *equal to or* less in cost than the Department of Corrections' contract medical, dental, and psychological care access plan.
- (5) An entity, corporation, or organization of any kind that assists the Department of Corrections in managing claims or evaluating an application for a waiver under subsection (2) or (4) of this section shall not seek or be awarded a contract to provide medical care, dental care, psychological care, pharmaceutical products, or any other health care service to inmates housed in any jail operated by any unit of local government, combination of units of local government, or regional jail authority. The prohibition in this subsection shall also apply to the entity's, corporation's, or organization of any kind's:
  - (a) Owners;
  - (b) Incorporators;
  - (c) Officers;

- (d) Employees; or
- (e) Other person who has a financial interest in the organization.

Nothing in this subsection shall be construed to prohibit or limit the ability of the University of Kentucky to provide health care services to prison populations.

- (6) 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 and public safety.
- (7) *No program specified in this section shall require or permit reimbursement at a rate in excess of the Kentucky Medicaid program for the same or similar services or products but may permit a lesser rate of reimbursement.*

➔SECTION 77. A NEW SECTION OF KRS 441.420 to 441.450 IS CREATED TO READ AS FOLLOWS:

*As used in KRS 441.420 to 441.450:*

- (1) (a) *"Local correctional facility" means a jail as defined in KRS 441.005, and any other facility by whatever name known that is operated by a unit of local government, combination of units of local governments, or regional jail authority for the involuntary confinement of persons arrested for or charged with the commission of a crime and of persons convicted of a crime.*
- (b) *The definition in paragraph (a) of this subsection shall not include a hospital licensed pursuant to KRS Chapter 216B unless the hospital is operated solely for the purpose of incarcerating persons specified in paragraph (a) of this subsection; and*
- (2) *"Construction authority" means the Local Correctional Facilities Construction Authority established under KRS 441.615.*

➔Section 78. KRS 441.420 is amended to read as follows:

- (1) No political subdivision of this Commonwealth, ~~or no~~ combination of subdivisions, *or regional jail authority* shall build a new *local correctional facility* ~~jail~~ unless the facility meets the approval or complies with the standards and *administrative* regulations of the department promulgated pursuant to KRS 441.055 *and construction of the local correctional facility is approved by the construction authority.*
- (2) Final authority for approval of plans for the construction of a *local correctional facility* ~~jail~~, or an addition ~~to or renovation of~~ a *local correctional facility* ~~jail~~ shall rest with the *construction authority* ~~department's jail consultants~~.
- (3) *The department shall provide at no cost to a county, counties, or regional jail authority standard local correctional facility plans for the construction of local correctional facilities of one hundred (100), three hundred (300), and five hundred (500) bed capacity. The department shall provide plans for larger local correctional facilities in five hundred (500) bed increments at no cost to a regional jail authority, county, or counties.*

➔Section 79. KRS 441.430 is amended to read as follows:

- (1) Any political subdivision, or combination of subdivisions, desiring to build a *local correctional facility* ~~jail~~ shall make application, in writing, *to the department and the construction authority* for approval of the plans for *the local correctional facility* ~~such jail~~ not less than ninety (90) days before the advertising for bids for construction of the facility, or if bids are not to be let, ninety (90) days before the construction commences.
- (2) The department's jail consultants shall review the plans and within thirty (30) days *of the department's receipt of the application, make a recommendation to the construction authority* ~~render a decision~~ as to whether the plans *should be* ~~are~~ approved. *The construction authority shall make a decision within sixty (60) days after the department's jail consultants make their recommendation. The construction authority may delay a final decision on the construction of any new local correctional facility if the construction authority determines that it has insufficient information upon which to base a decision. If the construction authority determines that it has insufficient information upon which to base a decision, a final decision shall be delayed but shall be made within sixty (60) days after receipt of the information required by the construction authority.* ~~If the plans are not approved,~~ Construction shall not commence until the requisite approval is obtained.
- (3) *The construction authority shall not approve the construction of a new local correctional facility unless the proposed local correctional facility is built using plans supplied by the department. All local correctional*

*facilities of the same inmate bed capacity shall be built using the same set of plans, which shall be suited to the type of facility being constructed pursuant to Section 78 of this Act.*

- (4) *The construction authority shall not approve the construction of a local correctional facility unless the political subdivision or combination of subdivisions desiring to build a local correctional facility proves to the satisfaction of the construction authority that:*
- (a) *The construction of a new local correctional facility is necessary;*
  - (b) *The construction of a new local correctional facility with the number of beds proposed is necessary;*
  - (c) *The political subdivision or combination of political subdivisions has sufficient bonding and revenue sources to pay the bonded indebtedness of the proposed local correctional facility;*
  - (d) *The number and sources of prisoners for the local correctional facility is sufficient to maintain the financial viability of the local correctional facility;*
  - (e) *The projected operating costs for the local correctional facility are appropriate to maintain the financial viability of the local correctional facility;*
  - (f) *The sources of revenue are sufficient to pay, in addition to the bonded indebtedness, the operation costs and maintenance for the local correctional facility;*
  - (g) *If applicable, there are contracts or interlocal cooperation agreements specifying details for sharing the liability for the costs of paying the bonded indebtedness and the operation costs for the local correctional facility;*
  - (h) *If applicable, there are contracts or interlocal cooperation agreements specifying details for the management and operation of the local correctional facility; and*
  - (i) *All information has been provided that the construction authority required pursuant to administrative regulation.*

➔Section 80. KRS 441.440 is amended to read as follows:

*Except as provided in Section 81 of this Act, all construction of local correctional facilities~~[jails]~~ pursuant to approved plans shall be done as provided under those plans and no alterations to the plans or construction shall be made unless prior approval is obtained from the construction authority upon recommendation of the department's jail consultants.*

➔Section 81. KRS 441.450 is amended to read as follows:

- (1) Any political subdivision,~~[or]~~ combination of subdivisions, **or regional jail authority** desiring to remodel or reconstruct an existing **local correctional~~[jail]~~ facility** wherein the construction will involve physical change of the structure shall obtain the requisite approvals required by KRS 441.420 to 441.440 and shall reconstruct or modify the said **local correctional facility~~[jail]~~** in accordance with the approval.
- (2) *Except as provided in subsection (3) of this section, existing local correctional facilities may be renovated without the approval of the construction authority. However, if the renovation includes an increase in the number of square footage of the local correctional facility to add prisoner bed space, that renovation shall be deemed an expansion which shall require the approval of the construction authority as provided in KRS 441.420 to 441.450.*
- (3) *When an application is made to the construction authority to renovate an existing local correctional facility by increasing the number of square feet in the local correctional facility, the authority shall not approve the application unless the resulting renovation of the local correctional facility results in a facility with a bed capacity of one hundred (100) inmate beds or more.*

➔Section 82. KRS 441.620 is amended to read as follows:

- (1) If any of the officers of the authority whose signatures or facsimiles thereof appear on any bonds of the authority or on any other instruments or documents pertaining to the functions of the authority, shall cease to be such officers before delivery of the bonds, or before the effective date or occasion of such instruments or documents, the signatures, and facsimiles thereof, shall nevertheless be valid for all purposes the same as if the officers had remained in office until such delivery or effective date or occasion.
- (2) Any six (6) members of the authority shall constitute a quorum.

- (3) The authority shall meet not less than every six (6) months ~~beginning no later than sixty (60) days after KRS 441.605 to 441.695 shall become effective,~~ and **as often as necessary to comply with the provisions of KRS 441.420 to 441.450 when** ~~at such other times as it may be~~ called as provided in this section. Special meetings of the authority may be called by the chairman, and upon written request of two (2) members the chairman shall call a special meeting of the authority to be held not later than twenty (20) days following receipt of the written request. The chairman shall give notice through the secretary by certified mail, return receipt requested, to each member of the authority at least ten (10) days prior to the time of any meeting, unless all members of the authority waive notice in writing. The offices of the authority shall be at the seat of state government.
- (4) The authority may adopt bylaws relating to its organization and internal management, and may alter the same at will. Through its bylaws, or by resolution, it shall establish stated times and places for regular meetings; and may adjourn the same from time to time. If a quorum be present at any special meeting, and it shall appear from the minutes that reasonable notice was given to absent members, or waived by them, or the minutes subsequently consented to by them, any business transacted or action taken thereat shall be as fully regular and official as if transacted or taken at a regular meeting or an adjournment thereof.
- (5) The authority may adopt rules and regulations for the conducting of its business and affairs, subject to the provisions of KRS Chapter 13A.

➔Section 83. 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 **defendant's risk and needs assessment**, 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:
- There is substantial risk that during a period of probation or conditional discharge the defendant will commit another crime;
  - The defendant is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution; or
  - 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 **defendant's risk and needs assessment**, 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:
- 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;
  - The defendant is in need of correctional treatment that can be provided most effectively by commitment to a correctional institution; or
  - 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 **defendant's risk and needs assessment and the** fact that:
- The defendant has never been convicted of, pled guilty to, or entered an Alford plea to a felony offense;
  - 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
  - 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(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 *or her* 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 *C or 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 84. KRS 533.015 is amended to read as follows:

Whenever a statute mentions *probation, shock probation, conditional discharge, home incarceration, or other form of* ~~an~~ alternative to incarceration, that alternative may include a community-based, faith-based, charitable, church-sponsored, or nonprofit residential or nonresidential counseling and treatment program *or drug court*, and, upon petition by the defendant, the court may sentence or permit the defendant to attend that program. This program may also be used for *pretrial release and* pretrial diversion.

➔Section 85. KRS 533.050 is amended to read as follows:

- (1) At any time before the discharge of the defendant or the termination of the sentence of probation or conditional discharge:
  - (a) The court may summon the defendant to appear before it or may issue a warrant for his arrest upon a finding of probable cause to believe that he has failed to comply with a condition of the sentence; or
  - (b) A probation officer, or peace officer acting at the direction of a probation officer, who sees the defendant violate the terms of his probation or conditional discharge may arrest the defendant without a warrant.
- (2) *Except as provided in Section 62 of this Act*, the court may not revoke or modify the conditions of a sentence of probation or conditional discharge except after a hearing with defendant represented by counsel and following a written notice of the grounds for revocation or modification.

➔SECTION 86. A NEW SECTION OF KRS CHAPTER 534 IS CREATED TO READ AS FOLLOWS:

- (1) *A defendant who has been sentenced to jail for failure to pay a fine or court costs or for failure to appear in court on a date set for the sole purpose of addressing nonpayment of a fine or court costs shall receive credit against the fine and costs owed for each day the defendant spends in jail at the following rates:*
  - (a) *Fifty dollars (\$50) per day if the defendant does not work at a community service or community labor program; or*
  - (b) *One hundred dollars (\$100) per day if the defendant works eight (8) hours per day at a community service or community labor program. If the defendant works less than eight (8) hours in a community service or community labor program, the defendant shall be allowed an amount of one eighth (1/8) of the one hundred dollars (\$100) for each hour worked in a community service or community labor program.*

- (2) ***Credit against a fine or court costs earned by a defendant pursuant to this section shall prohibit the collection of any part of a fine or costs which has been credited pursuant to this section, and that portion of the fine or costs shall be considered paid.***
- (3) ***The jailer shall be responsible for monitoring a defendant's community service and tracking the number of days to be served to pay any outstanding fine or court costs.***

➔Section 87. KRS 439.330 is amended to read as follows:

- (1) The board shall:
  - (a) Study the case histories of persons eligible for parole, and deliberate on that record;
  - (b) Conduct reviews and hearings on the desirability of granting parole;
  - (c) Impose upon the parolee or conditional releasee such conditions as it sees fit;
  - (d) Order the granting of parole;
  - (e) Issue warrants for persons charged with violations of parole ***and postincarceration supervision*** and conduct hearings on such charges, subject to the provisions of KRS 439.341 ***and Section 91 of this Act***;
  - (f) Determine the period of supervision for parolees, which period may be subject to extension or reduction after recommendation of the cabinet is received and considered; and
  - (g) Grant final discharge to parolees.
- (2) The board shall adopt an official seal of which the courts shall take judicial notice.
- (3) The orders of the board shall not be reviewable except as to compliance with the terms of KRS 439.250 to 439.560.
- (4) The board shall keep a record of its acts, an electronic record of its meetings, a written record of the votes of individual members, and the reasons for denying parole to inmates. These records shall be public records in accordance with KRS 61.870 to 61.884. The board shall notify each institution of its decisions relating to the persons who are or have been confined therein, and shall submit to the Governor a report with statistical and other data of its work at the close of each fiscal year.

➔Section 88. KRS 439.341 is amended to read as follows:

Preliminary revocation hearings of probation, ~~and~~ parole, ***and postincarceration supervision*** violators shall be conducted by hearing officers. These hearing officers shall be attorneys, appointed by the board and admitted to practice in Kentucky, who shall perform the aforementioned duties and any others assigned by the board.

➔Section 89. KRS 439.346 is amended to read as follows:

During the period of his ***or her*** parole ***or postincarceration supervision***, the prisoner shall be amenable to the orders of the board and the department.

➔Section 90. KRS 439.430 is amended to read as follows:

- (1) Any parole officer having reason to believe that a parolee ***or a person on postincarceration supervision pursuant to Section 91 of this Act*** has violated the terms of his ***or her*** release may arrest the parolee ***or offender on postincarceration supervision*** without a warrant or may deputize any other peace officer to do so by giving him ***or her*** a written statement setting forth that the parolee ***or offender on postincarceration supervision***, in the judgment of the parole officer, has violated the conditions of his ***or her*** release. The written statement delivered with the parolee ***or offender on postincarceration supervision*** by the arresting officer to the official in charge of the station house, jail, workhouse, or other place of detention, shall be sufficient warrant for the detention of the parolee ***or offender on postincarceration supervision***. The parole officer who arrests or causes the arrest of the prisoner shall notify the commissioner or his ***or her*** designee at once of the arrest and detention of the parolee ***or offender on postincarceration supervision***, and shall submit in writing a report showing in what manner there has been a violation of the conditions of release. Thereupon, if the commissioner or his ***or her*** designee believes the parolee ***or offender on postincarceration supervision*** should be returned to prison, the commissioner or his ***or her*** designee at once shall submit his ***or her*** recommendations to the board, and, if the board approves, it shall issue a warrant upon which the releasee shall be returned to prison; otherwise the prisoner shall be released upon the order of the commissioner or his ***or her*** designee.

- (2) A written statement, approved by the commissioner or his *or her* designee, by a parole officer, and filed with the board setting forth that the parolee *or offender on postincarceration supervision* in the judgment of the officer has violated the condition of his *or her* release, shall be sufficient cause for the board, in its discretion, to issue a warrant for the arrest of the parolee ~~or offender on postincarceration supervision~~ or for his *or her* return to prison.
- (3) A prisoner for whose return a warrant has been issued by the board, shall be deemed a fugitive from justice or to have fled from justice. If it shall appear he *or she* has violated the provisions of his *or her* release, the time from the issuing of the warrant to the date of his *or her* arrest shall not be counted as any part of the time to be served in determining his *or her* final discharge eligibility date from parole if the board in its discretion so orders.
- (4) The Parole Board may at its discretion issue a warrant for any parolee *or offender on postincarceration supervision* when in its judgment the condition of release has been violated.

➔Section 91. KRS 532.043 is amended to read as follows:

- (1) In addition to the penalties authorized by law, any person convicted of, pleading guilty to, or entering an Alford plea to a felony offense under KRS Chapter 510, 529.100 involving commercial sexual activity, 530.020, 530.064(1)(a), 531.310, or 531.320 shall be subject to a period of *postincarceration supervision* ~~conditional discharge~~ following release from:
  - (a) Incarceration upon expiration of sentence; or
  - (b) Completion of parole.
- (2) The period of *postincarceration supervision* ~~conditional discharge~~ shall be five (5) years.
- (3) During the period of *postincarceration supervision* ~~conditional discharge~~, the defendant shall:
  - (a) Be subject to all orders specified by the Department of Corrections; and
  - (b) Comply with all education, treatment, testing, or combination thereof required by the Department of Corrections.
- (4) Persons under *postincarceration supervision* ~~conditional discharge~~ pursuant to this section shall be subject to the supervision of the Division of Probation and Parole *and under the authority of the Parole Board*.
- (5) If a person violates a provision specified in subsection (3) of this section, the violation shall be reported in writing *by the Division of Probation and Parole. Notice of the violation shall be sent to the Parole Board to determine whether probable cause exists* ~~to the Commonwealth's attorney in the county of conviction. The Commonwealth's attorney may petition the court~~ to revoke the defendant's *postincarceration supervision* ~~conditional discharge~~ and reincarcerate the defendant as set forth in KRS 532.060.
- (6) The provisions of this section shall apply only to persons convicted, pleading guilty, or entering an Alford plea after July 15, 1998.

➔Section 92. KRS 17.510 is amended to read as follows:

- (1) The cabinet shall develop and implement a registration system for registrants which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.
- (2) A registrant shall, on or before the date of his or her release by the court, the parole board, the cabinet, or any detention facility, register with the appropriate local probation and parole office in the county in which he or she intends to reside. The person in charge of the release shall facilitate the registration process.
- (3) Any person required to register pursuant to subsection (2) of this section shall be informed of the duty to register by the court at the time of sentencing if the court grants probation or conditional discharge or does not impose a penalty of incarceration, or if incarcerated, by the official in charge of the place of confinement upon release. The court and the official shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register has been explained to the person. The court and the official in charge of the place of confinement shall require the releasee to complete the acknowledgment form and the court or the official shall retain the original completed form. The official shall then send the form to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.
- (4) The court or the official shall order the person to register with the appropriate local probation and parole office which shall obtain the person's fingerprints, DNA sample, and photograph. Thereafter, the registrant shall return to the appropriate local probation and parole office not less than one (1) time every two (2) years in

order for a new photograph to be obtained, and the registrant shall pay the cost of updating the photo for registration purposes. Any registrant who has not provided a DNA sample as of July 1, 2009, shall provide a DNA sample to the appropriate local probation and parole office when the registrant appears for a new photograph to be obtained. Failure to comply with this requirement shall be punished as set forth in subsection (11) of this section.

- (5) (a) The appropriate probation and parole office shall send the registration form containing the registrant information, fingerprint card, and photograph, and any special conditions imposed by the court or the Parole Board, to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601. The appropriate probation and parole office shall send the DNA sample to the Department of Kentucky State Police forensic laboratory in accordance with administrative regulations promulgated by the cabinet.
  - (b) The Information Services Center, upon request by a state or local law enforcement agency, shall make available to that agency registrant information, including a person's fingerprints and photograph, where available, as well as any special conditions imposed by the court or the Parole Board.
  - (c) Any employee of the Justice and Public Safety Cabinet who disseminates, or does not disseminate, registrant information in good faith compliance with the requirements of this subsection shall be immune from criminal and civil liability for the dissemination or lack thereof.
- (6) Any person who has been convicted in a court of any state or territory, a court of the United States, or a similar conviction from a court of competent jurisdiction in any other country, or a court martial of the United States Armed Forces of a sex crime or criminal offense against a victim who is a minor and who has been notified of the duty to register by that state, territory, or court, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws, or has a similar conviction from a court of competent jurisdiction in any other country, shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register with the appropriate local probation and parole office in the county of residence within five (5) working days of relocation. No additional notice of the duty to register shall be required of any official charged with a duty of enforcing the laws of this Commonwealth.
  - (7) If a person is required to register under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register within five (5) working days with the appropriate local probation and parole office in the county of residence, employment, vocation, or schooling. A person required to register under federal law or the laws of another state or territory shall be presumed to know of the duty to register in the Commonwealth. As used in this subsection, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.
  - (8) The registration form shall be a written statement signed by the person which shall include registrant information, including an up-to-date photograph of the registrant for public dissemination.
  - (9) For purposes of KRS 17.500 to 17.580 and 17.991, a post office box number shall not be considered an address.
  - (10) (a) If the residence address of any registrant changes, but the registrant remains in the same county, the person shall register, on or before the date of the change of address, with the appropriate local probation and parole office in the county in which he or she resides.
  - (b)
    1. If the registrant changes his or her residence to a new county, the person shall notify his or her current local probation and parole office of the new residence address on or before the date of the change of address.
    2. The registrant shall also register with the appropriate local probation and parole office in the county of his or her new residence no later than five (5) working days after the date of the change of address.

- (c) If the electronic mail address or any instant messaging, chat, or other Internet communication name identities of any registrant changes, or if the registrant creates or uses any new Internet communication name identities, the registrant shall register the change or new identity, on or before the date of the change or use or creation of the new identity, with the appropriate local probation and parole office in the county in which he or she resides.
- (d)
  1. As soon as a probation and parole office learns of the person's new address under paragraph (b)1. of this subsection, that probation and parole office shall notify the appropriate local probation and parole office in the county of the new address of the effective date of the new address.
  2. As soon as a probation and parole office learns of the person's new address under paragraph (b)2. of this subsection or learns of the registrant's new or changed electronic mail address or instant messaging, chat, or other Internet communication name identities under paragraph (c) of this subsection, that office shall forward this information as set forth under subsection (5) of this section.
- (11) Any person required to register under this section who knowingly violates any of the provisions of this section or prior law is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (12) Any person required to register under this section or prior law who knowingly provides false, misleading, or incomplete information is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (13)
  - (a) The cabinet shall verify the addresses and the electronic mail address and any instant messaging, chat, or other Internet communication name identities of individuals required to register under this section. Verification shall occur at least once every ninety (90) days for a person required to register under KRS 17.520(2) and at least once every calendar year for a person required to register under KRS 17.520(3). If the cabinet determines that a person has moved or has created or changed any electronic mail address or any instant messaging, chat, or other Internet communication name identities used by the person without providing his or her new address, electronic mail address, or instant messaging, chat, or other Internet communication name identity to the appropriate local probation and parole office or offices as required under subsection (10)(a), (b), and (c) of this section, the cabinet shall notify the appropriate local probation and parole office of the new address or electronic mail address or any instant messaging, chat, or other Internet communication name identities used by the person. The office shall then forward this information as set forth under subsection (5) of this section. The cabinet shall also notify the appropriate court, Parole Board, and appropriate Commonwealth's attorney, sheriff's office, probation and parole office, corrections agency, and law enforcement agency responsible for the investigation of the report of noncompliance.
  - (b) An agency that receives notice of the noncompliance from the cabinet under paragraph (a) of this subsection:
    1. Shall consider revocation of the parole, probation, *postincarceration supervision*, or conditional discharge of any person released under its authority; and
    2. Shall notify the appropriate county or Commonwealth's Attorney for prosecution.

➔Section 93. KRS 17.520 is amended to read as follows:

- (1) A registrant, upon his or her release by the court, the Parole Board, the cabinet, or any detention facility, shall be required to register for a period of time required under this section.
- (2)
  - (a) Lifetime registration is required for:
    1. Any person who has been convicted of kidnapping, as set forth in KRS 509.040, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;
    2. Any person who has been convicted of unlawful confinement, as set forth in KRS 509.020, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;
    3. Any person convicted of a sex crime:
      - a. Who has one (1) or more prior convictions of a felony criminal offense against a victim who is a minor; or

- b. Who has one (1) or more prior sex crime convictions;
  - 4. Any person who has been convicted of two (2) or more felony criminal offenses against a victim who is a minor;
  - 5. Any person who has been convicted of:
    - a. Rape in the first degree under KRS 510.040; or
    - b. Sodomy in the first degree under KRS 510.070; and
  - 6. Any sexually violent predator.
- (3) All other registrants are required to register for twenty (20) years following discharge from confinement or twenty (20) years following the maximum discharge date on probation, shock probation, conditional discharge, parole, or other form of early release, whichever period is greater.
- (4) If a person required to register under this section is reincarcerated for another offense or as the result of having violated the terms of probation, parole, *postincarceration supervision*, or conditional discharge, the registration requirements and the remaining period of time for which the registrant shall register are tolled during the reincarceration.
- (5) A person who has pled guilty, entered an Alford plea, or been convicted in a court of another state or territory, in a court of the United States, or in a court-martial of the United States Armed Forces who is required to register in Kentucky shall be subject to registration in Kentucky based on the conviction in the foreign jurisdiction. The Justice and Public Safety Cabinet shall promulgate administrative regulations to carry out the provisions of this subsection.
- (6) The court shall designate the registration period as mandated by this section in its judgment and shall cause a copy of its judgment to be mailed to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.

➔Section 94. KRS 532.045 is amended to read as follows:

- (1) As used in this section:
- (a) "Position of authority" means but is not limited to the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff, or volunteer who is an adult, adult athletic manager, adult coach, teacher, classified school employee, certified school employee, counselor, staff, or volunteer for either a residential treatment facility, a holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health-care provider, or employer;
  - (b) "Position of special trust" means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor; and
  - (c) "Substantial sexual conduct" means penetration of the vagina or rectum by the penis of the offender or the victim, by any foreign object; oral copulation; or masturbation of either the minor or the offender.
- (2) Notwithstanding other provisions of applicable law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within the provision of this section be stricken for a person convicted of violating KRS 510.050, 510.080, 529.040, 529.070, 529.100 where the offense involves commercial sexual activity, 530.020, 531.310, 531.320, or 531.370, or criminal attempt to commit any of these offenses under KRS 506.010, and, who meets one (1) or more of the following criteria:
- (a) A person who commits any of the offenses enumerated in this subsection against a minor by the use of force, violence, duress, menace, or threat of bodily harm;
  - (b) A person who, in committing any of the offenses enumerated in this subsection, caused bodily injury to the minor;
  - (c) A person convicted of any of the offenses enumerated in this subsection and who was a stranger to the minor or made friends with the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection, unless the defendant honestly and reasonably believed the minor was eighteen (18) years old or older;

- (d) A person who used a dangerous instrument or deadly weapon against a minor during the commission of any of the offenses enumerated in this subsection;
- (e) A person convicted of any of the offenses enumerated in this subsection and who has had a prior conviction of assaulting a minor, with intent to commit an act constituting any of the offenses enumerated in this subsection;
- (f) A person convicted of kidnapping a minor in violation of the Kentucky Penal Code and who kidnapped the minor for the purpose of committing an act constituting any of the offenses enumerated in this subsection;
- (g) A person who is convicted of committing any of the offenses enumerated in this subsection on more than one (1) minor at the same time or in the same course of conduct;
- (h) A person who in committing any of the offenses enumerated in this subsection has substantial sexual conduct with a minor under the age of fourteen (14) years; or
- (i) A person who occupies a position of special trust and commits an act of substantial sexual conduct.

Nothing in this section shall be construed to prohibit the additional period of five (5) years' *postincarceration supervision* ~~conditional discharge~~ required by KRS 532.043.

- (3) If a person is not otherwise prohibited from obtaining probation or conditional discharge under subsection (2), the court may impose on the person a period of probation or conditional discharge. Probation or conditional discharge shall not be granted until the court is in receipt of the comprehensive sex offender presentence evaluation of the offender performed by an approved provider, as defined in KRS 17.500 or the Department of Corrections. The court shall use the comprehensive sex offender presentence evaluation in determining the appropriateness of probation or conditional discharge.
- (4) If the court grants probation or conditional discharge, the offender shall be required, as a condition of probation or conditional discharge, to successfully complete a community-based sexual offender treatment program operated or approved by the Department of Corrections or the Sex Offender Risk Assessment Advisory Board.
- (5) The offender shall pay for any evaluation or treatment required pursuant to this section up to the offender's ability to pay but not more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.
- (6) Failure to successfully complete the sexual offender treatment program constitutes grounds for the revocation of probation or conditional discharge.
- (7) The comprehensive sex offender presentence evaluation and all communications relative to the comprehensive sex offender presentence evaluation and treatment of a sexual offender shall fall under the provisions of KRS 197.440. The comprehensive sex offender presentence evaluation shall be filed under seal and shall not be made a part of the court record subject to review in appellate proceedings and shall not be made available to the public.
- (8) Before imposing sentence, the court shall advise the defendant or his counsel of the contents and conclusions of any comprehensive sex offender presentence evaluation performed pursuant to this section and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel and the Commonwealth's attorney a copy of the comprehensive sex offender presentence evaluation. It shall not be necessary to disclose the sources of confidential information.
- (9) To the extent that this section conflicts with KRS 533.010, this section shall take precedence.

➔Section 95. KRS 532.055 is amended to read as follows:

- (1) In all felony cases, the jury in its initial verdict will make a determination of not guilty, guilty, guilty but mentally ill, or not guilty by virtue of insanity, and no more.
- (2) Upon return of a verdict of guilty or guilty but mentally ill against a defendant, the court shall conduct a sentencing hearing before the jury, if such case was tried before a jury. In the hearing the jury will determine the punishment to be imposed within the range provided elsewhere by law. The jury shall recommend whether the sentences shall be served concurrently or consecutively.
  - (a) Evidence may be offered by the Commonwealth relevant to sentencing including:
    - 1. Minimum parole eligibility, prior convictions of the defendant, both felony and misdemeanor;



2. The nature of prior offenses for which he was convicted;
  3. The date of the commission, date of sentencing, and date of release from confinement or supervision from all prior offenses;
  4. The maximum expiration of sentence as determined by the division of probation and parole for all such current and prior offenses;
  5. The defendant's status if on probation, parole, *postincarceration supervision*, conditional discharge, or any other form of legal release;
  6. Juvenile court records of adjudications of guilt of a child for an offense that would be a felony if committed by an adult. Subject to the Kentucky Rules of Evidence, these records shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial and may be used during the sentencing phase of a criminal trial; however, the fact that a juvenile has been adjudicated delinquent of an offense that would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the federal Social Security Act is also prohibited; and
  7. The impact of the crime upon the victim or victims, as defined in KRS 421.500, including a description of the nature and extent of any physical, psychological, or financial harm suffered by the victim or victims;
- (b) The defendant may introduce evidence in mitigation or in support of leniency; and
  - (c) Upon conclusion of the proof, the court shall instruct the jury on the range of punishment and counsel for the defendant may present arguments followed by the counsel for the Commonwealth. The jury shall then retire and recommend a sentence for the defendant.
- (3) All hearings held pursuant to this section shall be combined with any hearing provided for by KRS 532.080.
  - (4) In the event that the jury is unable to agree as to the sentence or any portion thereof and so reports to the judge, the judge shall impose the sentence within the range provided elsewhere by law.

➔Section 96. KRS 532.240 is amended to read as follows:

Any person serving his sentence under conditions of home incarceration shall be responsible for his food, housing, clothing, and medical care expenses, and shall be eligible for government benefits to the same extent as a person on probation, parole, *postincarceration supervision*, or conditional discharge.

➔Section 97. KRS 431.078 is amended to read as follows:

- (1) Any person who has been convicted of a misdemeanor or a violation, or a series of misdemeanors or violations arising from a single incident, may petition the court in which he was convicted for expungement of his misdemeanor or violation record, ***including a record of any charges for misdemeanors or violations that were dismissed or amended in the criminal action.*** The person shall be informed of the right at the time of adjudication.
- (2) ***Except as provided in subsection (8) of Section 21 and subsection (8) of Section 22 of this Act,*** the petition shall be filed no sooner than five (5) years after the completion of the person's sentence or five (5) years after the successful completion of the person's probation, whichever occurs later.
- (3) Upon the filing of a petition, the court shall set a date for a hearing and shall notify the county attorney; the victim of the crime, if there was an identified victim; and any other person whom the person filing the petition has reason to believe may have relevant information related to the expungement of the record. Inability to locate the victim shall not delay the proceedings in the case or preclude the holding of a hearing or the issuance of an order of expungement.
- (4) The court shall order sealed all records in the custody of the court and any records in the custody of any other agency or official, including law enforcement records, if at the hearing the court finds that:
  - (a) The offense was not a sex offense or an offense committed against a child;

- (b) The person had no previous felony conviction;
  - (c) The person had not been convicted of any other misdemeanor or violation offense in the five (5) years prior to the conviction sought to be expunged;
  - (d) The person had not since the time of the conviction sought to be expunged been convicted of a felony, a misdemeanor, or a violation;
  - (e) No proceeding concerning a felony, misdemeanor, or violation is pending or being instituted against him; and
  - (f) The offense was an offense against the Commonwealth of Kentucky.
- (5) Upon the entry of an order to seal the records, and payment to the circuit clerk of one hundred dollars (\$100), the proceedings in the case shall be deemed never to have occurred; all index references shall be deleted; the persons and the court may properly reply that no record exists with respect to the persons upon any inquiry in the matter; and the person whose record is expunged shall not have to disclose the fact of the record or any matter relating thereto on an application for employment, credit, or other type of application. The first fifty dollars (\$50) of each fee collected pursuant to this subsection shall be deposited into the general fund, and the remainder shall be deposited into a trust and agency account for deputy clerks.
- (6) Copies of the order shall be sent to each agency or official named therein.
- (7) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of the records and only to those persons named in the petition.
- (8) This section shall be deemed to be retroactive, and any person who has been convicted of a misdemeanor prior to July 14, 1992, may petition the court in which he was convicted, or if he was convicted prior to the inception of the District Court to the District Court in the county where he now resides, for expungement of the record of one (1) misdemeanor offense or violation or a series of misdemeanor offenses or violations arising from a single incident, provided that the offense was not one specified in subsection (4) and that the offense was not the precursor offense of a felony offense for which he was subsequently convicted. This section shall apply only to offenses against the Commonwealth of Kentucky.

➔Section 98. KRS 532.120 is amended to read as follows:

- (1) An indeterminate sentence of imprisonment commences when the prisoner is received in an institution under the jurisdiction of the Department of Corrections. When a person is under more than one (1) indeterminate sentence, the sentences shall be calculated as follows:
- (a) If the sentences run concurrently, the maximum terms merge in and are satisfied by discharge of the term which has the longest unexpired time to run; or
  - (b) If the sentences run consecutively, the maximum terms are added to arrive at an aggregate maximum term equal to the sum of all the maximum terms.
- (2) A definite sentence of imprisonment commences when the prisoner is received in the institution named in the commitment. When a person is under more than one (1) definite sentence, the sentences shall be calculated as follows:
- (a) If the sentences run concurrently, the terms merge in and are satisfied by discharge of the term which has the longest unexpired time to run; or
  - (b) If the sentences run consecutively, the terms are added to arrive at an aggregate term and are satisfied by discharge of the aggregate term.
- (3) Time spent in custody prior to the commencement of a sentence as a result of the charge that culminated in the sentence shall be credited by the *Department of Corrections* ~~court imposing sentence~~ toward service of the maximum term of imprisonment *in cases involving a felony sentence and by the sentencing court in all other cases*. If the sentence is to an indeterminate term of imprisonment, the time spent in custody prior to the commencement of the sentence shall be considered for all purposes as time served in prison.
- (4) If a person has been in custody due to a charge that culminated in a dismissal, acquittal, or other disposition not amounting to a conviction, the amount of time that would have been credited under subsection (3) of this section if the defendant had been convicted of that charge shall be credited as provided in subsection (3) of this section against any sentence based on a charge for which a warrant or commitment was lodged during the pendency of that custody.

- (5) If a person serving a sentence of imprisonment escapes from custody, the escape shall interrupt the sentence. The interruption shall continue until the person is returned to the institution from which he escaped or to an institution administered by the Department of Corrections. Time spent in actual custody prior to return under this subsection shall be credited against the sentence if custody rested solely on an arrest or surrender for the escape itself.
- (6) As used in subsections (3) and (4) of this section, time spent in custody shall include time spent in the intensive secured substance abuse recovery program developed under KRS 196.285 and may include, at the discretion of the sentencing court, time spent in a different residential substance abuse treatment or recovery facility pursuant to KRS 431.518 or 533.251, if under each option allowed by this subsection, the person has successfully completed the program offered by the intensive secured substance abuse recovery program or the residential substance abuse treatment or recovery facility. If the defendant fails to complete a program, the court may still award full or partial sentence credit if the defendant demonstrates that good cause existed for the failure to complete the program.
- (7) ***In lieu of an award by the Department of Corrections in felony cases, if a presentence report indicates that a defendant has accumulated sufficient sentencing credits under this section to allow for an immediate discharge from confinement upon pronouncement of sentence, the court may confirm the amount of the credit and award the credit at pronouncement.***
- (8) ***An inmate may challenge a failure of the Department of Corrections to award a sentencing credit under this section or the amount of credit awarded by motion made in the sentencing court no later than thirty (30) days after the inmate has exhausted his or her administrative remedies.***

➔Section 99. KRS 439.3401 is amended to read as follows:

- (1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of:
  - (a) A capital offense;
  - (b) A Class A felony;
  - (c) A Class B felony involving the death of the victim or serious physical injury to a victim;
  - (d) The commission or attempted commission of a felony sexual offense described in KRS Chapter 510;
  - (e) Use of a minor in a sexual performance as described in KRS 531.310;
  - (f) Promoting a sexual performance by a minor as described in KRS 531.320;
  - (g) Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a);
  - (h) Human trafficking under KRS 529.100 involving commercial sexual activity where the victim is a minor;
  - (i) Criminal abuse in the first degree as described in KRS 508.100;
  - (j) Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;
  - (k) Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or
  - (l) Robbery in the first degree.

The court shall designate in its judgment if the victim suffered death or serious physical injury.

- (2) A violent offender who has been convicted of a capital offense and who has received a life sentence (and has not been sentenced to twenty-five (25) years without parole or imprisonment for life without benefit of probation or parole), or a Class A felony and receives a life sentence, or to death and his sentence is commuted to a life sentence shall not be released on probation or parole until he has served at least twenty (20) years in the penitentiary. Violent offenders may have a greater minimum parole eligibility date than other offenders who receive longer sentences, including a sentence of life imprisonment.
- (3) A violent offender who has been convicted of a capital offense or Class A felony with a sentence of a term of years or Class B felony who is a violent offender shall not be released on probation or parole until he has served at least eighty-five percent (85%) of the sentence imposed.

- (4) A violent offender ~~shall~~~~may~~ not be awarded any credit on his sentence authorized by KRS 197.045(1)(b) ~~I.~~ ~~except the educational credit. A violent offender may, at the discretion of the commissioner, receive credit on his sentence authorized by KRS 197.045(3).~~ In no event shall a violent offender be given credit on his sentence if the credit reduces the term of imprisonment to less than eighty-five percent (85%) of the sentence.
- (5) This section shall not apply to a person who has been determined by a court to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or serious physical injury to the victim. The provisions of this subsection shall not extend to rape in the first degree or sodomy in the first degree by the defendant.
- (6) This section shall apply only to those persons who commit offenses after July 15, 1998.
- (7) For offenses committed prior to July 15, 1998, the version of this statute in effect immediately prior to that date shall continue to apply.
- (8) The provisions of subsection (1) of this section extending the definition of "violent offender" to persons convicted of or pleading guilty to robbery in the first degree shall apply only to persons whose crime was committed after July 15, 2002.

➔SECTION 100. A NEW SECTION OF KRS 27A IS CREATED TO READ AS FOLLOWS:

- (1) *The Administrative Office of the Courts shall create an application for use by a defendant requesting deferred prosecution under Section 20 of this Act which shall include a space for the defendant to indicate all prior convictions and expungements.*
- (2) *The Chief Justice may authorize the Administrative Office of the Courts to develop, collect, and maintain a listing of persons who have had their records sealed under Sections 20, 21, and 22 of this Act. The list may be utilized by the courts and attorneys practicing in the courts to determine whether the person is eligible to participate in a deferred prosecution under Section 20 of this Act or a treatment or recovery program under Sections 21 or 22 of this Act.*

➔Section 101. KRS 439.330 is amended to read as follows:

- (1) The board shall:
- (a) Study the case histories of persons eligible for parole, and deliberate on that record;
  - (b) Conduct reviews and hearings on the desirability of granting parole;
  - (c) Impose upon the parolee or conditional releasee such conditions as it sees fit;
  - (d) Order the granting of parole;
  - (e) Issue warrants for persons charged with violations of parole and conduct hearings on such charges, subject to the provisions of KRS 439.341 *and Section 35 of this Act*;
  - (f) Determine the period of supervision for parolees, which period may be subject to extension or reduction after recommendation of the cabinet is received and considered; and
  - (g) Grant final discharge to parolees.
- (2) The board shall adopt an official seal of which the courts shall take judicial notice.
- (3) The orders of the board shall not be reviewable except as to compliance with the terms of KRS 439.250 to 439.560.
- (4) The board shall keep a record of its acts, an electronic record of its meetings, a written record of the votes of individual members, and the reasons for denying parole to inmates. These records shall be public records in accordance with KRS 61.870 to 61.884. The board shall notify each institution of its decisions relating to the persons who are or have been confined therein, and shall submit to the Governor a report with statistical and other data of its work at the close of each fiscal year.

➔Section 102. KRS 439.430 is amended to read as follows:

- (1) Any parole officer having reason to believe that a parolee *or a person on postincarceration supervision pursuant to Section 35 of this Act* has violated the terms of his release may arrest the parolee without a warrant or may deputize any other peace officer to do so by giving him a written statement setting forth that the parolee, in the judgment of the parole officer, has violated the conditions of his release. The written statement delivered with the parolee by the arresting officer to the official in charge of the station house, jail,

workhouse, or other place of detention, shall be sufficient warrant for the detention of the parolee. The parole officer who arrests or causes the arrest of the prisoner shall notify the commissioner or his designee at once of the arrest and detention of the parolee, and shall submit in writing a report showing in what manner there has been a violation of the conditions of release. Thereupon, if the commissioner or his designee believes the parolee should be returned to prison, the commissioner or his designee at once shall submit his recommendations to the board, and, if the board approves, it shall issue a warrant upon which the releasee shall be returned to prison; otherwise the prisoner shall be released upon the order of the commissioner or his designee.

- (2) A written statement, approved by the commissioner or his designee, by a parole officer, and filed with the board setting forth that the parolee in the judgment of the officer has violated the condition of his release, shall be sufficient cause for the board, in its discretion, to issue a warrant for the arrest of the parolee, or for his return to prison.
- (3) A prisoner for whose return a warrant has been issued by the board, shall be deemed a fugitive from justice or to have fled from justice. If it shall appear he has violated the provisions of his release, the time from the issuing of the warrant to the date of his arrest shall not be counted as any part of the time to be served in determining his final discharge eligibility date from parole if the board in its discretion so orders.
- (4) The Parole Board may at its discretion issue a warrant for any parolee when in its judgment the condition of release has been violated.

➔Section 103. (1) In an effort to improve public safety and reduce failure rates of individuals on probation, the Department of Corrections may partner with the Court of Justice and two local courts, one urban circuit court and one rural circuit court to be chosen by the Chief Justice of the Kentucky Supreme Court, to implement a 12-month pilot project similar to the Hawaii Opportunity Probation and Enforcement (HOPE) model to establish a program that:

- (a) Identifies for enrollment in the program through a validated risk assessment instrument individuals who are serving a term of probation and who are at high risk of failing to observe the conditions of supervision and of being returned to incarceration as a result of such failure;
  - (b) Identifies the key partners that will be included in the program, including the Chief Judges of the participating judicial circuits and other participating judges in such jurisdiction, Executive Director of the Administrative Office of the Courts, probation and parole administrators, jail and prison administrators, prosecutors, public defenders and defense attorneys, and sheriff or police administrators;
  - (c) Notifies probationers of the rules of the pilot project and consequences for violating such rules;
  - (d) Monitors probationers for illicit drug use with regular and rapid-result drug screening;
  - (e) Monitors probationers for violations of other rules and probation terms, including failure to pay court-ordered financial obligations such as child support or victim restitution;
  - (f) Responds to violations of such rules with immediate arrest of the violating probationer, and swift and certain modification of the conditions of probation, including imposition of short jail stays (which may gradually become longer with each additional violation and modification);
  - (g) Immediately responds to probationers who have absconded from supervision with service of bench warrants and immediate sanctions;
  - (h) Provides rewards to probationers who comply with such rules;
  - (i) Targets treatment resources to offenders who request treatment and those who are repeat violators;
  - (j) Establishes procedures to terminate program participation by, and initiates revocation to a term of incarceration for, probationers who habitually fail to abide by program rules and pose a threat to public safety;
  - (k) Includes regular coordination meetings for the key partners of the pilot project, including the partners identified in paragraph (b) of this subsection; and
  - (l) Reduces violation behavior and new crimes, and reduces revocations to prison.
- (2) If a pilot project is implemented by the Department of Corrections, the Court of Justice, and two local courts, these entities shall submit an annual report on the results of the pilot project to the Interim Joint Committee on Judiciary one year after implementation of the pilot project. The results shall include at a minimum:

(a) Key process measures, including the number of individuals enrolled in the program, the frequency of drug testing of such individuals, the certainty of sanctions for a violation of the terms of probation, the average period of time from detection of a violation to issuance of a sanction for such violation, and sanction severity;

(b) An unbiased comparison of the outcomes between program participants and similarly situated probationers not in the program, including the positive and negative drug test rates, probation and substance abuse treatment appearance rates, probation term modifications, revocations, arrests, time spent in jail or prison, and total correctional costs incurred; and

(c) The amount of cost savings, if any, resulting from the reduced incarceration achieved through the pilot project.

➔Section 104. KRS 44.065 is amended to read as follows:

- (1) Notwithstanding any other provision of the Kentucky Revised Statutes, and pursuant to the provisions of 31 U.S.C. sec. 3716(b) and (h)(1), the Finance and Administration Cabinet, at the request of any executive, judicial, or legislative agency of the Commonwealth, may enter into a reciprocal agreement with the United States government to offset the claim of any person against the Commonwealth to any debt of that person owed to the United States government which has been certified by the United States government as final, due, and owing, with all appeals and legal actions having been waived or exhausted, and to offset any nontax claim of any person against the United States government to any liquidated debt of that person owed to the Commonwealth.
- (2) Notwithstanding any other provision of the Kentucky Revised Statutes, the Finance and Administration Cabinet, at the request of any executive, judicial, or legislative agency of the Commonwealth, may enter into a reciprocal agreement with any state, as defined in KRS 446.010~~{31}~~, to offset the claim of any person against the Commonwealth to any debt of that person owed to any state which has certified the debt as final, due, and owing, with all appeals and legal actions having been waived or exhausted, and to offset any claim of any person against any state to any liquidated debt of that person owed to the Commonwealth.
- (3) In the case of multiple creditors who have certified liquidated debt against the same person on a claim against the Commonwealth, pursuant to this section and KRS 44.030, the debts of the Commonwealth, counties, cities, urban-county governments, consolidated local governments, and charter county governments shall be credited first in the priority established in KRS 44.030, and if there is any balance due the claimant after settling the whole demands of the Commonwealth, counties, cities, urban-county governments, consolidated local governments, and charter county governments, the balance shall be credited to the liquidated debts certified by the United States government and any other state, as defined in KRS 446.010~~{31}~~, in the order that the claims were filed with the Treasury. If there is a balance due the claimant after satisfaction of all liquidated debts as itemized in this section or any court-ordered payments, the balance shall be paid to the claimant.

➔Section 105. KRS 610.340 is amended to read as follows:

- (1)
  - (a) Unless a specific provision of KRS Chapters 600 to 645 specifies otherwise, all juvenile court records of any nature generated pursuant to KRS Chapters 600 to 645 by any agency or instrumentality, public or private, shall be deemed to be confidential and shall not be disclosed except to the child, parent, victims, or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070 unless ordered by the court for good cause.
  - (b) Juvenile court records which contain information pertaining to arrests, petitions, adjudications, and dispositions of a child may be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.
  - (c) Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act shall not be disclosed to victims or other persons authorized to attend a juvenile court hearing pursuant to KRS 610.070.
  - (d) Victim access under this subsection to juvenile court records shall include access to records of adjudications that occurred prior to July 15, 1998.
- (2) The provisions of this section shall not apply to public officers or employees engaged in the investigation of and in the prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes. Any record obtained pursuant to this subsection shall be used for official use only, shall not be disclosed publicly, and shall be exempt from disclosure under the Open Records Act, KRS 61.870 to 61.884.

- (3) The provisions of this section shall not apply to any peace officer, as defined in KRS 446.010~~(25)~~, who is engaged in the investigation or prosecution of cases under KRS Chapters 600 to 645 or other portions of the Kentucky Revised Statutes. Any record obtained pursuant to this subsection shall be used for official use only, shall not be disclosed publicly, and shall be exempt from disclosure under the Open Records Act, KRS 61.870 to 61.884.
- (4) The provisions of this section shall not apply to employees of the Department of Juvenile Justice or cabinet or its designees responsible for any services under KRS Chapters 600 to 645 or to attorneys for parties involved in actions relating to KRS Chapters 600 to 645 or other prosecutions authorized by the Kentucky Revised Statutes.
- (5) The provisions of this section shall not apply to records disclosed pursuant to KRS 610.320 or to public or private elementary and secondary school administrative, transportation, and counseling personnel, to any teacher or school employee with whom the student may come in contact, or to persons entitled to have juvenile records under KRS 610.345, if the possession and use of the records is in compliance with the provisions of KRS 610.345 and this section.
- (6) No person, including school personnel, shall disclose any confidential record or any information contained therein except as permitted by this section or other specific section of KRS Chapters 600 to 645, or except as permitted by specific order of the court.
- (7) No person, including school personnel, authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain confidential records to which he is not entitled or for purposes for which he is not permitted to obtain them pursuant to KRS Chapters 600 to 645.
- (8) No person, including school personnel, not authorized to obtain records pursuant to KRS Chapters 600 to 645 shall obtain or attempt to obtain records which are made confidential pursuant to KRS Chapters 600 to 645 except upon proper motion to a court of competent jurisdiction.
- (9) No person shall destroy or attempt to destroy any record required to be kept pursuant to KRS Chapters 600 to 645 unless the destruction is permitted pursuant to KRS Chapters 600 to 645 and is authorized by the court upon proper motion and good cause for the destruction being shown.
- (10) As used in this section the term "KRS Chapters 600 to 645" includes any administrative regulations which are lawfully promulgated pursuant to KRS Chapters 600 to 645.

➔Section 106. KRS 441.206 is amended to read as follows:

- (1) For the care and maintenance of prisoners charged with or convicted of violations of state law, each county shall receive a contribution from the State Treasury in an amount equal to that paid to the county pursuant to this section in fiscal year 1983-84 or the amount that should have been paid to the county in fiscal year 1983-84 under the conditions set forth in subsection (5) of this section. Any additional moneys appropriated for county jails shall be allocated on the basis of a formula comprised of the following factors:
  - (a) Sixty percent (60%) of the allocation shall be based on the amount of the 1983-84 funding formula each county received, or should have received under the conditions set forth in subsection (5) of this section;
  - (b) Ten percent (10%) of the allocation shall be based on each county's comparative ranking of median household income in inverse order, as determined by the 1980 federal census of population; and
  - (c) Thirty percent (30%) of the allocation shall be based on the proportion of each county's age at risk population (18-34) to the state total, as determined by the 1980 federal census of population.
- (2) Payments of the state contribution for jail operating expenses shall be made **annually, no later than July 31 of each year,**~~monthly~~ by the Department of Corrections to the county treasurer. The election by a county to close its jail and to contract with another county for the incarceration of prisoners, as permitted by KRS 441.025, shall not affect the state contribution provided for in subsection (1) of this section.
- (3) All state funds paid to a county under this section, any funds paid to a county by the United States government, a city, or another county for the incarceration of prisoners and any interest earned on the funds shall be expended on the incarceration of prisoners, as provided in KRS 441.025. Any funds paid under subsection (1) of this section and any interest earned on the funds shall be expended on the incarceration of prisoners, in accordance with regulations promulgated pursuant to KRS 441.055, within twelve (12) months of the close of the fiscal year in which the funds were received. Any funds received by a county under subsection (1) of this section that are not expended for this purpose shall be returned to the State Treasury.

- (4) A county shall not receive less than twenty-four thousand dollars (\$24,000) pursuant to this section from the State Treasury for the care and maintenance of prisoners charged with or convicted of violations of state law.
- (5) If the capacity of a jail was substantially increased during the years 1980 through 1982 due to construction or renovation, and if, as a result, the amount paid to the county in fiscal year 1983-84 pursuant to this section and to 1982 Ky. Acts ch. 385, sec. 3, was not representative of the true jail population, then the commissioner of the Department of Corrections may, upon proper documentation by the county, permit an estimate of the current capacity of the jail to be used as a basis for calculating the amount that should have been paid to the county in fiscal year 1983-84. The estimate of current capacity shall be used to calculate payments made pursuant to subsection (1) of this section after July 14, 1992, but shall not be used to recalculate past payments.

➔Section 107. KRS 532.050 is amended to read as follows:

- (1) No court shall impose sentence for conviction of a felony, other than a capital offense, without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody.
- (2) The report shall be prepared and presented by a probation officer and shall include:
  - (a) An analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, **and** personal habits;~~;~~
  - (b) *A preliminary calculation of the credit allowed the defendant for time spent in custody prior to the commencement of a sentence under Section 98 of this Act;* and
  - (c) Any other matters that the court directs to be included.
- (3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.
- (4) If the defendant has been convicted of a sex crime, as defined in KRS 17.500, prior to determining the sentence or prior to final sentencing for youthful offenders, the court shall order a comprehensive sex offender presentence evaluation of the defendant to be conducted by an approved provider, as defined in KRS 17.500, the Department of Corrections, or the Department of Juvenile Justice if the defendant is a youthful offender. The comprehensive sex offender presentence evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment and shall be considered by the court in determining the appropriate sentence. A copy of the comprehensive sex offender presentence evaluation shall be furnished to the court, the Commonwealth's attorney, and to counsel for the defendant. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the comprehensive sex offender presentence evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any comprehensive sex offender presentence evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.
- (5) The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based and correctional-institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.
- (6) Before imposing sentence, the court shall advise the defendant or his or her counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

➔Section 108. The Department of Corrections shall immediately begin the process of promulgating an administrative regulation implementing the ability of a person providing medical, dental, or psychological care to a prisoner to bill the state for the costs of that care as allowed under subsection (7) of Section 75 of this Act. The regulation shall be designed to minimize the amount of paperwork and time needed to make a completed application



for payment, shall require the utilization of standardized forms on a statewide basis for the submittal of claims, and shall be promulgated in consultation with the Kentucky Association of Counties, the Kentucky County Judge/Executive Association, the Kentucky Hospital Association, the Kentucky Jailers Association, and the Kentucky Medical Association.

➔Section 109. There is hereby appropriated to the Department of Corrections' Corrections Management budget unit \$1,200,000 of General Fund moneys in fiscal year 2011-2012 for a capital project, Expand the Kentucky Offender Management System. There is hereby authorized a transfer of \$1,200,000 of General Fund moneys in fiscal year 2011-2012 from the Department of Corrections' Community Services and Local Facilities budget unit to the Department of Corrections' Corrections Management budget unit for the capital project authorized in this section.

➔Section 110. (1) The 2011 Task Force on the Penal Code and Controlled Substances Act is hereby created for the purposes of monitoring the implementation of the provisions this Act and recommending further needful changes in Kentucky's criminal justice system that protect public safety in a fiscally responsible manner.

- (2) The task force shall consist of:
- (a) The Chair of the Senate Judiciary Committee who shall be a co-chair of the task force;
  - (b) The Chair of the House of Representatives Judiciary Committee who shall be a co-chair of the task force;
  - (c) The Chief Justice of the Supreme Court of Kentucky or a person designated by the Chief Justice and approved by the Legislative Research Commission;
  - (d) The Secretary of the Justice and Public Safety Cabinet or a person designated by the Secretary and approved by the Legislative Research Commission;
  - (e) A former Commonwealth's attorney designated by the co-chairs and approved by the Legislative Research Commission;
  - (f) A former Department of Public Advocacy attorney designated by the co-chairs and approved by the Legislative Research Commission; and
  - (g) A member of the public designated by the co-chairs and approved by the Legislative Research Commission.
- (3) The task force shall report its findings and recommendations to the Interim Joint Committee on Judiciary and to the Legislative Research Commission no later than November 30, 2011.
- (4) Final membership of the task force shall be subject to the consideration and approval of the Legislative Research Commission.
- (5) Provisions of this section to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof and to designate a study completion date.

➔Section 111. This Act may be cited as the Public Safety and Offender Accountability Act.

➔Section 112. Section 34 of this Act takes effect January 1, 2012.

➔Section 113. Sections 37 and 49 of this Act take effect July 1, 2013.

➔Section 114. Section 64 of this Act takes effect November 1, 2013.

➔Section 115. Section 67 of this Act takes effect July 1, 2013.

➔Section 116. Whereas the Kentucky Supreme Court declared the statutory procedure for revoking sex offenders on conditional discharge to be unconstitutional, and the effective and efficient protection of the public from crime is a fundamental duty of government and a needless delay in the implementation of this Act impedes that protection, an emergency is declared to exist, and Sections 87 to 91 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming law.

**Signed by Governor March 3, 2011.**