

**CHAPTER 115****( SB 133 )**

AN ACT relating to crimes and punishments.

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

➔Section 1. KRS 441.055 is amended to read as follows:

- (1) The Department of Corrections shall for those counties which elect to house state prisoners in their jail:
  - (a) Adopt the recommendations of the Jail Standards Commission created pursuant to Executive Order Number 81-1026 and promulgate regulations pursuant to KRS Chapter 13A establishing minimum standards for jails. These standards shall include, but not be limited to, rules governing the following areas:
    1. Health and safety conditions;
    2. Fire safety;
    3. Jail operations, recordkeeping, and administration;
    4. Curriculum of basic and continuing annual training for jailers and jail personnel;
    5. Custody, care, and treatment of prisoners;
    6. Medical care; and
    7. Jail equipment, renovation, and construction;
  - (b) Develop a jail standards review process, which shall include the participation of persons knowledgeable of jail operations to review and amend the standards as necessary. The jail standards shall be reviewed no later than December 31, 1992, and at least every two (2) years thereafter. Fifty percent (50%) of the participants in the review process shall be appointed from persons representing county interests and fifty percent (50%) shall be appointed from persons representing state interests; and
  - (c) Provide technical assistance and consultation to local governments in order to facilitate compliance with standards.
- (2) The department shall, for those counties that elect not to hold state prisoners in their jails, adopt the recommendations of the Jail Standards Commission and promulgate administrative regulations pursuant to KRS Chapter 13A to establish minimum standards for those jails. These standards shall be limited to health and life safety.
- (3) *All minimum standards promulgated by the department applying to jails shall include requirements for adequate nutrition for pregnant prisoners, an adequate number of hygiene products for female prisoners, and an appropriate number of undergarments for female prisoners.*
- (4) The department may establish classifications of jails based on the maximum permissible period of incarceration or other criteria and promulgate standards for each class of jail.

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

- (1) *Except as provided in subsection (2) of this section, an inmate housed in a jail, penitentiary, or local or state correctional or detention facility, residential center, or reentry center who is known to be pregnant shall be restrained solely with handcuffs in front of her body unless further restraint is required to protect herself or others.*
- (2) (a) *Except in an extraordinary circumstance, no inmate who is known to be pregnant shall be restrained during labor, during transport to a medical facility or birthing center for delivery, or during postpartum recovery.*
  - (b) *As used in this subsection, "extraordinary circumstance" means that reasonable grounds exist to believe the inmate presents an immediate and credible:*
    1. *Serious threat of hurting herself, staff, or others; or*

2. ***Risk of escape that cannot be reasonably minimized through any method other than restraints.***

➔Section 3. 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;
  - (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;
  - (e) ***Promulgate administrative regulations to create a certification process for county jails that may house female state inmates. The administrative regulations shall include a requirement of a physical barrier between male and female inmates;*** and
  - ~~(f)~~ 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 4. 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:
- Beds are available in the county jail;
  - State facilities are at capacity; and
  - 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) Any jail that houses state inmates under 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 this subsection.
- (e) ***Before housing any female state inmate, a county jail shall be certified pursuant to Section 3 of this Act.***
- (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.
- (8) (a) Class D felons eligible for placement in a local jail may be permitted by the warden or jailer to participate in any approved community work program or other form of work release with the approval of the commissioner of the Department of Corrections.
- (b) The authority to release an inmate to work under this subsection may be exercised at any time during the inmate's sentence, including the period when the court has concurrent authority to permit work release pursuant to KRS 439.265.
- (c) The warden or jailer may require an inmate participating in the program to pay a fee to reimburse the warden or jailer for the cost of operating the community work program or any other work release program. The fee shall not exceed the lesser of fifty-five dollars (\$55) per week or twenty percent (20%) of the prisoner's weekly net pay earned from the community work program or work release participation. In addition, the inmate may be required to pay for any drug testing performed on the inmate as a requirement of the community work program or work release participation.
- (d) This subsection shall not apply to an inmate who:
- Is not eligible for work release pursuant to KRS 197.140;
  - Has a maximum or close security classification as defined by administrative regulations promulgated by the Department of Corrections;

3. Is subject to the provisions of KRS 532.043; or
4. Is in a reentry center as defined in KRS 441.005.

➔Section 5. Section 4 of this Act takes effect January 1, 2019.

➔Section 6. KRS 403.725 is amended to read as follows:

- (1) A petition for an order of protection may be filed by:
  - (a) A victim of domestic violence and abuse; or
  - (b) An adult on behalf of a victim who is a minor otherwise qualifying for relief under this subsection.
- (2) The petition may be filed in the victim's county of residence or a county where the victim has fled to escape domestic violence and abuse.
- (3) The petition shall be verified and contain:
  - (a) The name, age, address, occupation, residence, and school or postsecondary institution of the petitioner;
  - (b) The name, age, address, occupation, residence, and school or postsecondary institution of the person or persons who have engaged in the alleged act or acts complained of in the petition;
  - (c) The facts and circumstances which constitute the basis for the petition;
  - (d) The date and place of the marriage of the parties, if applicable; and
  - (e) The names, ages, and addresses of the petitioner's minor children, if applicable.
- (4) The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers, ~~and~~ Commonwealth's or county attorneys, **and regional rape crisis centers or domestic violence shelters.**
- (5) All petitions requested, completed, and signed by persons seeking protection under this chapter shall be accepted and filed with the court.
- (6)
  - (a) Jurisdiction over petitions filed under this chapter shall be concurrent between the District Court and Circuit Court and a petition may be filed by a petitioner in either court, except that a petition shall be filed in a family court if one has been established in the county where the petition is filed.
  - (b) The Court of Justice shall provide a protocol for twenty-four (24) hour access to orders of protection in each county with any protocol, whether statewide or local, being subject to Supreme Court review and approval of the initial protocol and any subsequent amendments. This protocol may allow for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.
  - (c) The Court of Justice may authorize by rule that petitions in a specific county be filed in accordance with a supplemental jurisdictional protocol adopted for that county. This protocol may provide for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.
  - (d)
    1. ***In addition to the protocols for twenty-four (24) hour access established under paragraphs (b) and (c) of this subsection, before January 1, 2019, the Court of Justice shall provide protocols for filing, including electronic filing, of petitions for orders of protection at those regional rape crisis centers designated under KRS 211.600, or regional domestic violence shelters designated under KRS 209A.045, that elect to participate in any county's twenty-four (24) hour access protocol.***
    2. ***These protocols shall be subject to Supreme Court review for approval of the initial protocol and any subsequent amendments.***
- (7) Any judge to whom a petition is referred under subsection (6) of this section shall have full authority to review and hear a petition and subsequently grant and enforce an order of protection.
- (8) If the judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is unavailable or unable to act within a reasonable time, the proceedings may be conducted by any judge of the county in accordance with court rules.

➔Section 7. KRS 456.030 is amended to read as follows:

- (1) A petition for an interpersonal protective order may be filed by:

- (a) A victim of dating violence and abuse;
  - (b) A victim of stalking;
  - (c) A victim of sexual assault; or
  - (d) An adult on behalf of a victim who is a minor otherwise qualifying for relief under this subsection.
- (2) The petition may be filed in the victim's county of residence or a county where the victim has fled to escape dating violence and abuse, stalking, or sexual assault.
- (3) The petition shall be verified and contain:
- (a) The name, age, address, occupation, residence, and school or postsecondary institution of the petitioner;
  - (b) The name, age, address, occupation, residence, and school or postsecondary institution of the person or persons who have engaged in the alleged act or acts complained of in the petition;
  - (c) The facts and circumstances which constitute the basis for the petition; and
  - (d) The names, ages, and addresses of the petitioner's minor children, if applicable.
- (4) The petition shall be filed on forms prescribed by the Administrative Office of the Courts and provided to the person seeking relief by the circuit clerk or by another individual authorized by the court to provide and verify petitions in emergency situations, such as law enforcement officers, ~~and~~ Commonwealth's or county attorneys, **and regional rape crisis centers or domestic violence shelters.**
- (5) All petitions requested, completed, and signed by persons seeking protection under this chapter shall be accepted and filed with the court.
- (6) (a) Jurisdiction over petitions filed under this chapter shall be concurrent between the District Court and Circuit Court.
- (b) The Court of Justice shall provide a protocol for twenty-four (24) hour access to interpersonal protective orders in each county with any protocol, whether statewide or local, being subject to Supreme Court review and approval of the initial protocol and any subsequent amendments. This protocol may allow for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.
- (c) The Court of Justice may authorize by rule that petitions in a specific county be filed in accordance with a supplemental jurisdictional protocol adopted for that county. This protocol may provide for petitions to be filed in or transferred to a court other than those specified in paragraph (a) of this subsection.
- (d) **1. In addition to the protocols for twenty-four (24) hour access established under paragraphs (b) and (c) of this subsection, before January 1, 2019, the Court of Justice shall provide protocols for filing, including electronic filing, of petitions for orders of protection at those regional rape crisis centers designated under KRS 211.600, or regional domestic violence shelters designated under KRS 209A.045, that elect to participate in any county's twenty-four (24) hour access protocol.**
- 2. These protocols shall be subject to Supreme Court review for approval of the initial protocol and any subsequent amendments.**
- (7) Any judge to whom a petition is referred under subsection (6) of this section shall have full authority to review and hear a petition and subsequently grant and enforce an interpersonal protective order.
- (8) If the judge of a court in which there is a pending request for modification or enforcement of an existing order of protection is unavailable or unable to act within a reasonable time, the proceedings may be conducted by any judge of the county in accordance with court rules.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 439 IS CREATED TO READ AS FOLLOWS:

(1) **As used in this section:**

- (a) **"Eligible person" means a person who is:**
  - 1. **A pregnant woman;**
  - 2. **Reasonably believed by a court or the department to have a substance use disorder;**

3. *Not charged or convicted of an offense that would qualify the person as a violent offender under KRS 439.3401; and*
  4. *Not charged or convicted of an offense under KRS Chapter 510, KRS 529.100 involving commercial sexual activity, KRS 530.020, 530.064(1)(a), 531.310, or 531.320; and*
- (b) *"Pregnancy release conditions" means conditions of release set by a court or the department for eligible persons which shall include:*
1. *Completing inpatient residential treatment for substance use disorders;*
  2. *Not being charged with a new local, state, or federal misdemeanor or felony offense;*
  3. *If not yet sentenced, appearing for all required court appearances;*
  4. *If not yet sentenced, avoiding all contact with any alleged victim and any potential witness who may testify concerning the charge, unless or until the court removes this condition; and*
  5. *If not yet sentenced, maintaining a current address with the court.*
- (2) *Except as provided in subsection (3) of this section and notwithstanding any other statute to the contrary, when an eligible person is charged or convicted of any violation of KRS Chapter 218A, the person shall be released from custody upon her own recognizance so long as the person successfully meets the pregnancy release conditions. If the pregnancy release conditions are violated, the eligible person shall be returned to custody to await sentencing or to serve the sentence for the original conviction under KRS Chapter 218A as well as the sentence for any subsequent charges or convictions, if any.*
- (3) *If an eligible person is housed in a jail that provides treatment for substance use disorders or in a jail that transports prisoners for treatment, this section shall not apply.*
- ➔Section 9. KRS 431.517 is amended to read as follows:
- (1) Except as provided in this section, home incarceration may be ordered as a form of pretrial release, subject to the conditions imposed by the provisions of KRS 532.200 to 532.250.
  - (2) *No defendant charged with an offense under KRS Chapter 507 may be released on home incarceration unless the court makes a finding that the defendant would not pose a threat to society.*
  - (3) A court ordering home incarceration as a form of pretrial release pursuant to this section may order the defendant to participate in a global positioning monitoring system program during all or part of the time of pretrial release through the use of a county-operated program pursuant to KRS 67.372 and 67.374 and not a program operated by the Department of Corrections pursuant to KRS 532.210 to 532.250.
  - (4)~~(3)~~ A court ordering global positioning monitoring system program participation for a defendant pursuant to this section shall:
    - (a) Require the defendant to pay all or the part of the monitoring costs based on the sliding scale adopted by the Supreme Court of Kentucky as specified in KRS 403.761 and administrative costs for participating in the system;
    - (b) Provide the monitoring system with a written or electronic copy of the conditions of release; and
    - (c) Provide the monitoring system with a contact at the office of the circuit clerk, Commonwealth's attorney, or county attorney, as appropriate, or pretrial release services for reporting violations of the monitoring order.
  - (5)~~(4)~~ A person, county, or other organization may voluntarily agree to pay all or a portion of a defendant's monitoring costs specified in KRS 403.761.
- ➔Section 10. 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) An offense described in KRS 507.040 or 507.050 where the offense involves the killing of a peace officer or firefighter while the officer or firefighter was acting in the line of duty;
- (e) ***A Class B felony involving criminal attempt to commit murder under KRS 506.010 if the victim of the offense is a clearly identifiable peace officer or firefighter acting in the line of duty, regardless of whether an injury results;***
- (f) The commission or attempted commission of a felony sexual offense described in KRS Chapter 510;
- ~~(g)(f)~~ Use of a minor in a sexual performance as described in KRS 531.310;
- ~~(h)(g)~~ Promoting a sexual performance by a minor as described in KRS 531.320;
- ~~(i)(h)~~ Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a);
- ~~(j)(i)~~ Human trafficking under KRS 529.100 involving commercial sexual activity where the victim is a minor;
- ~~(k)(j)~~ Criminal abuse in the first degree as described in KRS 508.100;
- ~~(l)(k)~~ 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;
- ~~(m)(l)~~ Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or
- ~~(n)(m)~~ 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 or her sentence is commuted to a life sentence shall not be released on probation or parole until he or she 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) 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 shall not be released on probation or parole until he has served at least eighty-five percent (85%) of the sentence imposed.
  - (b) A violent offender who has been convicted of a violation of KRS 507.040 where the victim of the offense was clearly identifiable as a peace officer or a firefighter and the victim was acting in the line of duty shall not be released on probation or parole until he or she has served at least eighty-five percent (85%) of the sentence imposed.
  - (c) A violent offender who has been convicted of a violation of KRS 507.040 or 507.050 where the victim of the offense was a peace officer or a firefighter and the victim was acting in the line of duty shall not be released on probation or parole until he or she has served at least fifty percent (50%) of the sentence imposed.
  - (d) Any offender who has been convicted of a homicide or fetal homicide offense under KRS Chapter 507 or 507A in which the victim of the offense died as the result of an overdose of a Schedule I controlled substance and who is not otherwise subject to paragraph (a), (b), or (c) of this subsection shall not be released on probation, shock probation, parole, conditional discharge, or other form of early release until he or she has served at least fifty percent (50%) of the sentence imposed.
- (4) A violent offender shall not be awarded any credit on his sentence authorized by KRS 197.045(1)(b)1. In no event shall a violent offender be given credit on his or her 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 11. KRS 441.127 is amended to read as follows:

- (1) The jailer or correctional services department shall grant sentence credits to inmates confined in the county jail on conviction of misdemeanor charges.
- (2) Credit, if granted, shall be uniform and shall be based on the following:
- (a) For labor performed without the jail in a community service program or within the jail for the maintenance of the jail or for the operation of jail services such as food service:
    1. For every eight (8) full hours of work, one (1) sentence credit shall be earned; and
    2. For every five (5) of sentence credits earned, one (1) day of the sentence to be served by the inmate shall be deducted;
  - (b) For successfully receiving a general equivalency diploma or a high school diploma, a service credit of **ninety (90)**~~thirty (30)~~ days shall be earned;
  - (c) ***For each day an inmate participates in a drug treatment program or other evidence-based program approved by the department, a service credit of one (1) day shall be earned;***
  - (d) ***For performing exceptionally meritorious service, performing duties of outstanding importance in connection with the jail's operations and programs, or performing acts of exceptional service during times of emergency, an amount not to exceed seven (7) days per act shall be earned, to be determined by the jailer or chief executive of the jail for the conduct of the inmate;*** and
  - (e)~~(e)~~ For good behavior, an amount not to exceed **ten (10)**~~five (5)~~ days shall be earned for each month served, to be determined by the jailer or chief executive of the jail for the conduct of the inmate.
- (3) Sentence credits shall be deducted from the maximum expiration date of the sentence.
- ~~(4)~~~~(3)~~ If an inmate violates the rules of the jail or engages in other misconduct the jailer or correctional services department may withdraw sentence credits earned by the inmate. The jailer or correctional services department shall maintain a list of offenses and penalties for the ten (10) most common offenses and rule violations.

➔Section 12. This Act shall be known as the Women's Dignity in the Justice System Act.

**Signed by Governor April 10, 2018.**