

**635.020 Criteria for determining how child is to be tried.**

- (1) If, prior to an adjudicatory hearing, there is a reasonable cause to believe that a child before the court has committed a felony other than those described in subsections (2) and (3) of this section, a misdemeanor, or a violation, the court shall initially proceed in accordance with the provisions of this chapter.
- (2) If a child charged with a capital offense, Class A felony, or Class B felony, had attained age fourteen (14) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (3) If a child charged with a Class C or Class D felony has on one (1) prior separate occasion been adjudicated a public offender for a felony offense and had attained the age of sixteen (16) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (4)
  - (a) If a child charged with a felony had attained the age of fourteen (14) years at the time of the commission of the alleged offense in which a firearm, whether functional or not, was used by the child in the commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with KRS 640.010.
  - (b)
    1. Any other provision of KRS Chapters 610 to 645 to the contrary notwithstanding, if a child charged with a Class A, B, or C felony had attained the age of fifteen (15) years at the time of the commission of the alleged offense in which a firearm, whether functional or not, was used by the child in the commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication and after consultation with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with subparagraph 2. of this paragraph.
    2. The child shall be transferred to the Circuit Court for trial as an adult if, following a preliminary hearing, the District Court finds probable cause to believe that:
      - a. The child committed a Class A, B, or C felony;
      - b. A firearm was used by the child in the commission of that felony; and
      - c. The child was fifteen (15) years of age or older at the time of the commission of the alleged felony.
    3.
      - a. After consulting with the county attorney, the Commonwealth's attorney may transfer the child back to District Court if the

Commonwealth's attorney determines that it is in the best interest of the public and the child to do so.

- b. After considering the factors in KRS 640.010(2)(c), the Circuit Court may transfer the child back to District Court if the Circuit Court finds that less than two (2) factors specified in KRS 640.010(2)(c) favor keeping the child in Circuit Court.
  4. If convicted in the Circuit Court, he or she shall be subject to the same penalties as an adult offender, except that until he or she reaches the age of eighteen (18) years, he or she shall be confined in a facility for juveniles or for youthful offenders, unless the provisions of KRS 635.025 apply or unless he or she is released pursuant to expiration of sentence or parole, and at age eighteen (18) he or she shall be returned to the sentencing Circuit Court for proceedings consistent with KRS 640.030(2).
  5. If convicted in the Circuit Court and he or she is returned to the sentencing Circuit Court for proceedings consistent with KRS 640.030(2), he or she shall not be eligible for probation or conditional discharge.
- (5) If a child previously convicted as a youthful offender under the provisions of KRS Chapter 640 is charged with a felony allegedly committed prior to his or her eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
  - (6) A child who is charged as is provided in subsection (2) of this section and is also charged with a Class C or D felony, a misdemeanor, or a violation arising from the same course of conduct shall have all charges included in the same proceedings; and the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
  - (7) If a person who is eighteen (18) or older and before the court is charged with a felony that occurred prior to his or her eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
  - (8) All offenses arising out of the same course of conduct shall be tried with the felony arising from that course of conduct, whether the charges are adjudicated under this chapter or under KRS Chapter 640 and transferred to Circuit Court.

**Effective:** July 15, 2024

**History:** Amended 2024 Ky. Acts ch. 160, sec. 1, effective July 15, 2024. -- Amended 2021 Ky. Acts ch. 132, sec. 2, effective June 29, 2021. -- Amended 2002 Ky. Acts ch. 257, sec. 15, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 534, sec. 11, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 538, sec. 17, effective April

13, 1998; and ch. 606, sec. 85, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 358, sec. 40, effective July 15, 1997. -- Amended 1994 Ky. Acts ch. 396, sec. 12, effective July 15, 1994. -- Amended 1988 Ky. Acts ch. 350, sec. 95, effective April 10, 1988. -- Created 1986 Ky. Acts ch. 423, sec. 125, effective July 1, 1987.