AN ACT relating to crimes and punishments.

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

➔Section 1. KRS 500.080 is amended to read as follows:

As used in the Kentucky Penal Code, unless the context otherwise requires:

(1) "Actor" means any natural person and, where relevant, a corporation or an unincorporated association;

(2) "Crime" means a misdemeanor or a felony;

(3) "Dangerous instrument" means any instrument, including parts of the human body when a serious physical injury is a direct result of the use of that part of the human body, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury;

(4) "Deadly weapon" means any of the following:

(a) A weapon of mass destruction;

(b) Any weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged;

(c) Any knife other than an ordinary pocket knife or hunting knife;

(d) Billy, nightstick, or club;

(e) Blackjack or slapjack;

(f) Nunchaku karate sticks;

(g) Shuriken or death star; or

(h) Artificial knuckles made from metal, plastic, or other similar hard material;

(5) "Felony" means an offense for which a sentence to a term of imprisonment of at least one (1) year in the custody of the Department of Corrections may be imposed;

(6) "Government" means the United States, any state, county, municipality, or other political unit, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government;

(7) "He" means any natural person and, where relevant, a corporation or an unincorporated association;

(8) "Law" includes statutes, ordinances, and properly adopted regulatory provisions. Unless the context otherwise clearly requires, "law" also includes the common law;

(9) "Minor" means any person who has not reached the age of majority as defined in KRS 2.015;

(10) "Misdemeanor" means an offense, other than a traffic infraction, for which a sentence to a term of imprisonment of not more than ***twenty-four (24)***~~[twelve (12)]~~ months can be imposed;

(11) "Offense" means conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law, local law, or ordinance of a political subdivision of this state or by any law, order, rule, or regulation of any governmental instrumentality authorized by law to adopt the same;

(12) "Person" means a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government, or a governmental authority;

(13) "Physical injury" means substantial physical pain or any impairment of physical condition;

(14) "Possession" means to have actual physical possession or otherwise to exercise actual dominion or control over a tangible object;

(15) "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ;

(16) "Unlawful" means contrary to law or, where the context so requires, not permitted by law. It does not mean wrongful or immoral;

(17) "Violation" means an offense, other than a traffic infraction, for which a sentence to a fine only can be imposed; and

(18) "Weapon of mass destruction" means:

(a) Any destructive device as defined in KRS 237.030, but not fireworks as defined in KRS 227.700;

(b) Any weapon that is designed or intended to cause death or serious physical injury through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;

(c) Any weapon involving a disease organism; or

(d) Any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

➔Section 2. KRS 530.050 is amended to read as follows:

(1) A person is guilty of nonsupport:

(a) When he ***or she*** persistently fails to provide support which he ***or she*** can reasonably provide and which he ***or she*** knows he ***or she*** has a duty to provide to a minor or to a child adjudged mentally disabled, indigent spouse or indigent parent; or

(b) Upon a finding that a defendant obligor, subject to court order to pay any amount for the support of a minor child, is delinquent in meeting the full obligation established by such order and has been so delinquent for a period of at least two (2) months duration.

(2) A person is guilty of flagrant nonsupport when he ***or she*** persistently fails to provide support which he ***or she*** can reasonably provide and which he ***or she*** knows he ***or she*** has a duty to provide by virtue of a court or administrative order to a minor or to a child adjudged mentally disabled, indigent spouse or indigent parent and the failure results in:

(a) An arrearage of not less than one thousand dollars ($1,000); or

(b) Six (6) consecutive months without payment of support; or

(c) The dependent having been placed in destitute circumstances. For the

purposes of this paragraph, it shall be prima facie evidence that a dependent has been placed in destitute circumstances if the dependent is a recipient of public assistance as defined in KRS 205.010.

(3) A person has a duty to provide support for an indigent spouse, a minor child or children, or a child or children adjudged mentally disabled and, for purposes of this section, is presumed to know of that duty.

(4) Any person who is eighteen (18) years of age or over, residing in this state and having in this state a parent who is destitute of means of subsistence and unable because of old age, infirmity, or illness to support himself or herself, has a duty to provide support for such parent and, for purposes of this section, is presumed to know of that duty.

(5) Nonsupport is a Class A misdemeanor. For a second offense, the person shall receive a minimum sentence of seven (7) days in jail. For a third or any subsequent offense, the person shall receive a minimum sentence of thirty (30) days in jail.

(6) Flagrant nonsupport is a ***gross misdemeanor*** ~~[Class D felony]~~.

➔Section 3. KRS 532.020 is amended to read as follows:

(1) Any offense defined outside this code for which a law outside this code provides a sentence to a term of imprisonment in the state for:

(a) At least one (1) but not more than five (5) years shall be deemed a Class D felony;

(b) At least five (5) but not more than ten (10) years shall be deemed a Class C felony;

(c) At least ten (10) but not more than twenty (20) years shall be deemed a Class B felony;

(d) For at least twenty (20) but not more than fifty (50) years or for life shall be deemed a Class A felony.

(2) ***Any offense defined outside this code for which a law outside this code provides a***

sentence to a term of imprisonment in the state with a maximum which falls between twelve (12) and twenty-four (24) months shall be deemed a gross misdemeanor.

(3) Any offense defined outside this code for which a law outside this code provides a sentence to a definite term of imprisonment with a maximum which falls between ninety (90) days and twelve (12) months shall be deemed a Class A misdemeanor.

(4) ~~[(3)]~~ Any offense defined outside this code for which a law outside this code provides a sentence to a definite term of imprisonment with a maximum of less than ninety (90) days shall be deemed a Class B misdemeanor.

(5) ~~[(4)]~~ Any offense defined outside this code for which a law outside this code provides a sentence to a fine only or to any other punishment, whether in combination with a fine or not, other than death or imprisonment shall be deemed a violation.

➔Section 4. KRS 532.040 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, when a person is convicted of an offense, other than a capital offense or having been designated a violent offender as defined in KRS 439.3401, the court, where authorized by KRS Chapter 533 and where not prohibited by other provisions of applicable law, may sentence such person to a period of probation or to a period of conditional discharge as provided in that chapter. A sentence to probation or conditional discharge shall be deemed a tentative one to the extent that it may be altered or revoked in accordance with KRS Chapter 533, but for purposes of appeal shall be deemed to be a final judgment of conviction. In any case where the court imposes a sentence of probation or conditional discharge, it may also impose a fine as authorized by KRS Chapter 534.

(2) Unless a defendant is ineligible for probation under another provision of law, a sentence of imprisonment for a gross misdemeanor shall be probated on such reasonable terms as the court deems necessary to address the risks and needs of

the defendant, including imposition of an alternative sentence, if a plan is submitted by the defendant and accepted by the court.

➔Section 5. KRS 532.070 is amended to read as follows:

(1) When a sentence of imprisonment for a felony is fixed by a jury pursuant to KRS 532.060 and the trial court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that the maximum term fixed by the jury is unduly harsh, the court may modify that sentence and fix a maximum term within the limits provided in KRS 532.060 for the offense for which the defendant presently stands convicted.

(2) When a sentence of imprisonment for a Class D felony is fixed by a jury pursuant to KRS 532.060 and the trial court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose such a sentence, the court may sentence the defendant to a definite term of imprisonment in a county or a regional correctional institution for a term of one (1) year or less.

(3) When a sentence of imprisonment for a gross misdemeanor is fixed by a jury pursuant to Section 6 of this Act and the trial court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose such a sentence, the court may sentence the defendant to a definite term of imprisonment in a county or a regional correctional institution for a term of one (1) year or less.

➔Section 6. KRS 532.090 is amended to read as follows:

(1) A sentence of imprisonment for a ***Class A or Class B*** misdemeanor shall be a definite term and shall be fixed within the following maximum limitations:

(a) ~~[(1)]~~ For a Class A misdemeanor, the term shall not exceed twelve (12) months; and

(b) ~~[(2)]~~ For a Class B misdemeanor, the term shall not exceed ninety (90) days.

(2) A sentence of imprisonment for a gross misdemeanor shall be an indeterminate sentence, the maximum of which shall be not more than twenty-four (24) months, subject to modification by the trial judge pursuant to Section 5 of this Act.

➔Section 7. 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 ***or her*** 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 ***or her*** 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 ***or she*** 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) 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.

(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***, herself,*** 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 ***or she*** 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) ***Persons convicted of gross misdemeanors shall be considered state prisoners and, if sentenced to serve a term of imprisonment, shall serve their sentences in the local jail, and the Department of Corrections shall pay the jail in which the prisoner is incarcerated a per diem as otherwise provided by statute or administrative regulation applicable to Class D felons in local jails.***

(8) State prisoners, excluding ***gross misdemeanants and*** 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 8. KRS 532.110 is amended to read as follows:

(1) When multiple sentences of imprisonment are imposed on a defendant for more than one (1) crime, including a crime for which a previous sentence of probation or conditional discharge has been revoked, the multiple sentences shall run

concurrently or consecutively as the court shall determine at the time of sentence, except that:

(a) A definite and an indeterminate term shall run concurrently and both sentences shall be satisfied by service of the indeterminate term;

(b) The aggregate of consecutive definite terms shall not exceed ***in maximum length the longest extended term which would be authorized for the highest class of crime for which any of the sentences is imposed***~~[one (1) year]~~;

(c) The aggregate of consecutive indeterminate terms shall not exceed in maximum length the longest extended term which would be authorized by KRS 532.080 for the highest class of crime for which any of the sentences is imposed. In no event shall the aggregate of consecutive indeterminate terms exceed seventy (70) years; and

(d) The sentences of a defendant convicted of two (2) or more felony sex crimes, as defined in KRS 17.500, involving two (2) or more victims shall run consecutively.

(2) If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run concurrently with any other sentence which the defendant must serve unless the sentence is required by subsection (3) of this section or KRS 533.060 to run consecutively.

(3) Notwithstanding any provision in this section to the contrary, if a person is convicted of an offense that is committed while he ***or she*** is imprisoned in a penal or reformatory institution, during an escape from imprisonment, or while he ***or she*** awaits imprisonment, the sentence imposed for that offense may be added to the portion of the term which remained unserved at the time of the commission of the offense. The sentence imposed upon any person convicted of an escape or attempted escape offense shall run consecutively with any other sentence which the defendant must serve.

(4) Notwithstanding any provision in this chapter to the contrary, if a person is convicted of an offense that is committed while he ***or she*** is imprisoned in a penal or reformatory institution, the sentence imposed for that offense may, upon order of the trial court, be served in that institution. The person may be transferred to another institution pursuant to administrative regulations of the Department of Corrections.

➔Section 9. KRS 532.260 is amended to read as follows:

(1) Any Class C or Class D felon ***or gross misdemeanant*** 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 KRS 532.262 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 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;

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 10. 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:

(a) There is substantial risk that during a period of probation or conditional discharge the defendant will commit another crime;

(b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution; or

(c) 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:

(a) 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;

(b) The defendant is in need of correctional treatment that can be provided most effectively by commitment to a correctional institution; or

(c) 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:

(a) The defendant has never been convicted of, pled guilty to, or entered an Alford plea to a felony offense;

(b) 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

(c) 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 ***gross misdemeanants or*** 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 11. KRS 533.251 is amended to read as follows:

(1) Every pretrial diversion program shall set as a condition precedent for entry into the program that any defendant charged with a Class D felony offense under KRS Chapter 218A and any defendant charged with a ***gross misdemeanor or*** Class D felony offense whose criminal, medical, or mental health record indicates a present need for or benefit from substance abuse treatment participate in and demonstrate

suitable compliance with the terms of a secular or faith-based substance abuse treatment or recovery program if space is available in a treatment or recovery program suitable for that defendant. The substance abuse treatment or recovery program shall be appropriate to the defendant's needs, and may include commitment to an intensive outpatient program, a residential substance abuse treatment or recovery facility, or the intensive secured drug abuse treatment program developed under KRS 196.285. Consideration may be given, in whole or in part, to a defendant's participation in drug monitoring or a substance abuse treatment or recovery plan ordered under KRS 431.518 as evidence of suitable compliance under this section.

(2) The court may waive compliance with subsection (1) of this section if the defendant can show that exigent circumstances exist sufficient to justify diversion program participation without a prior demonstration of treatment compliance.

(3) The court may continue in effect any nonfinancial conditions of pretrial release imposed under KRS 431.520 or 431.525 and may hold the case in abeyance during the period of time the defendant is attempting treatment or recovery prior to diversion under subsection (1) of this section.

(4) The court may allow a person charged with a Class C felony to participate in a secular or faith-based substance abuse treatment or recovery program under subsection (1) of this section or obtain a waiver under subsection (2) of this section. If the person is successful in the program or is waived, the person shall be eligible for entry into the pretrial diversion program under the same terms, conditions, and limitations as a Class D felon.

➔Section 12. KRS 431.410 is amended to read as follows:

The issuance of a summons rather than an arrest warrant shall be mandatory for all offenses, except for violations of KRS 189.290, 189.393, 189.520, 189.580, 511.080 or 525.070, which are deemed violations as defined in KRS 532.020***(5)*** ~~[(4)]~~ and traffic

infractions for which a fine only can be imposed unless the judicial officer finds that:

(1) The defendant previously has failed to respond to a citation or summons for an offense; or

(2) He has no ties to the community and there is a substantial likelihood that he will refuse to respond to a summons; or

(3) The whereabouts of the defendant are unknown and the issuance of an arrest warrant is necessary in order to subject him to the jurisdiction of the court; or

(4) Where arrest is necessary to prevent imminent bodily harm to the accused or to another; or

(5) For any other good and compelling reason as determined by the judicial officer.

➔Section 13. KRS 439.177 is amended to read as follows:

(1) Any misdemeanant***, other than a gross misdemeanant,*** may petition the sentencing court for parole privileges.

(2) The sentencing judge shall study the record of all persons petitioning for parole and, in his discretion, may:

(a) Cause additional background or character information to be collected or reduced to writing by the Department of Corrections;

(b) Conduct hearings on the desirability of granting parole;

(c) Impose on the parolee the conditions he sees fit;

(d) Order the granting of parole;

(e) Issue warrants for persons when there is reason to believe they have violated the conditions of their parole and conduct hearings on such matters;

(f) Determine the period of supervision for parolees, which period may be subject to extension or reduction;

(g) Grant final discharge to parolees.

(3) The sentencing judge shall keep a record of his acts, and shall notify the appropriate jail official of his decision relating to the persons who are or have been confined

therein.

(4) When an order for parole is issued, it shall recite the conditions thereof, and such orders shall be transmitted to the Department of Corrections.

(5) The period of time spent on parole shall not count as a part of the prisoner's maximum sentence except in determining the parolee's eligibility for a final discharge from parole as set out in subsection (7).

(6) Paroled prisoners shall be under the supervision of the department and subject to its decision for the duration of parole. Supervision of the parolee by the Department of Corrections shall cease at the time of recommitment of the prisoner to the jail as a parole violator, or at the time a final discharge from parole is granted by the sentencing judge.

(7) When any paroled prisoner has performed the obligations of his parole during his period of active parole supervision, the sentencing judge may, at the termination of a period to be determined by the sentencing judge, issue a final discharge from parole to the prisoner. Unless ordered earlier by the sentencing judge, a final discharge shall be issued when the prisoner has been out of jail on parole a sufficient period of time to have been eligible for discharge from jail by maximum expiration of sentence had he not been paroled, if before this date he had not absconded from parole supervision or that a warrant for parole violation had not been issued.

(8) The prisoner convicted of a misdemeanor and released on parole under the provisions of this statute shall be subject to all reasonable Department of Corrections regulations.

➔Section 14. 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 ***or gross misdemeanants*** 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 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 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**, *and gross misdemeanors***. 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 gross misdemeanor with an aggregate sentence of not more than twenty-four (24) months 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) 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.

(c) ~~[(b)]~~ Except as provided in this section, 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 in state penal institutions, halfway houses, and county jails are considered for parole not less than sixty (60) days prior to 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 ***gross misdemeanors and*** 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 KRS

439.3408.

(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 a prisoner convicted of a gross misdemeanor, the maximum deferment shall be twelve (12) 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 15. KRS 441.127 is amended to read as follows:

(1) Unless precluded by written order of the sentencing court with regard to a specific inmate or inmates, the jailer or correctional services department may grant sentence credits to inmates confined in the county jail on conviction of misdemeanor charges~~[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]~~.

(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.~~[(b)]~~ For every five (5) of sentence credits earned, one (1) day of the sentence to be served by the inmate shall be deducted;~~[and]~~

(b) For successfully receiving a general equivalency diploma or a high school diploma, a service credit of thirty (30) days; and

(c) ***For good behavior, an amount not to exceed five (5) days for each month served, to be determined by the jailer or chief executive of the jail for the conduct of the inmate.***

Sentence credits shall be deducted from the maximum expiration date of the sentence.

(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 16. KRS 439.3108 is amended to read as follows:

(1) Notwithstanding any administrative regulation or law to the contrary, including KRS 439.340(3)***(c)*** ~~[(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 KRS 439.3107. 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 KRS 439.3107(3) 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.