

AN ACT relating to persistent felony offender sentencing.

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

➔ Section 1. KRS 532.080 is amended to read as follows:

(1) (a) A persistent felony offender is a person who:

1. Stands convicted of a triggering felony offense specified in subsection (10) of this section;

2. Was twenty-one (21) years of age or older at the time of the commission of the triggering felony offense; and

3. Has at the time of the conviction for the triggering felony offense been either:

a. Twice previously convicted for committing any felony offense; or

b. Once previously convicted for committing a felony level "criminal offense against a victim who is a minor" as that phrase is defined in KRS 17.500.

(b) For the purposes of paragraph (a)3. of this subsection, a previous felony conviction is a conviction of a felony in this state or in any other jurisdiction provided:

1. That the offender was imprisoned under a sentence to a term of imprisonment of one (1) year or more or a sentence to death as a result of the conviction;

2. That the offender was over the age of eighteen (18) years at the time the prior felony offense was committed;

3. That the offender did not complete service of the sentence or term of supervision imposed for any of the previous felony convictions more than fifteen (15) years prior to the date of the commission of the felony for which he or she now stands convicted; and

4. That the offender:

- a. 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 or she now stands convicted;
- b. Was on probation, parole, 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 or she now stands convicted;
- c. Was discharged from probation, parole, 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 or she now stands convicted;
- d. Was in custody from the previous felony conviction at the time of commission of the felony for which he or she now stands convicted; or
- e. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he or she now stands convicted.

(2) 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, may~~shall~~ fix a sentence of imprisonment as authorized by subsection (4)~~(5) or (6)~~ of this section. When a defendant is charged with being a persistent felony offender, the determination of whether or not he or she is to be sentenced as such an offender and the punishment to be imposed pursuant to subsection (4)~~(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.]~~

~~(4)[(6)]~~ A person who is found to be a persistent felony offender may~~[in the first degree shall]~~ be sentenced to imprisonment as follows:

- (a) If the offense for which he or she 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 may~~[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 or she presently stands convicted is a Class C or Class D felony, a persistent felony offender may~~[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; or

(c) If the jury declines to sentence the defendant as a persistent felony offender, it shall sentence the defendant in accordance with KRS 532.060.

~~(5)~~~~(7)~~ A person who is sentenced as~~[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 five~~(5)~~~~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.

~~(6)~~~~(8)~~ A conviction, plea of guilty, or Alford plea under KRS 218A.1415 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 KRS 218A.1415 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.

~~(7)~~~~(9)~~ The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be retroactive.

~~(8)~~~~(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, **due to the operation of KRS 218A.992 or** 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.

(9) The provisions of this section as amended by Section 1 of this chapter of 2015 Ky.

Acts shall be applied retroactively only as follows:

(a) A person sentenced prior to the effective date of this Act shall not have his or her sentence altered as a result of Section 1 of this chapter of 2015 Ky. Acts, but an application for parole, if otherwise allowable, may be brought within the amended time frame established in Section 1 of this chapter of 2015 Ky. Acts.

(b) The repeal of the offense of being a persistent felony offender in the second degree shall be retroactive but only as to persons who have not received a final sentence on that charge as of the effective date of this Act and no provision of Section 1 of this chapter of 2015 Ky. Acts shall be deemed to alter or amend a sentence on that charge entered prior to the effective date

of this Act.

(c) A person chargeable with being a persistent felony offender in the first degree prior to the effective date of this Act may be charged with being a persistent felony offender in the first degree utilizing the provisions of this section in effect at the time the person met the criteria for being a persistent felony offender in the first degree only if the person meets the criteria for being a persistent felony offender under the version of this section enacted in Section 1 of this chapter of 2015 Ky. Acts.

(d) A person charged with being a persistent felony offender in the first degree under the version of this section in effect prior to the effective date of this Act but who has not yet been sentenced shall remain subject to that charge and its penalty only if the person would be eligible to be convicted as a persistent felony offender under the version of this section enacted in Section 1 of this chapter of 2015 Ky. Acts.

(10) As used in this section, a "triggering felony offense" is any of the following felony offenses:

(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.

➔Section 2. 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 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 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 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 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 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.