AN ACT relating to the abolition of the death penalty.

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

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

(1) Notwithstanding any provision of law to the contrary, capital punishment by means of the death penalty is abolished as of the effective date of this Act.

(2) The court having jurisdiction over a person sentenced to death before the effective date of this Act and for whom the death sentence had not been executed shall sentence that person to imprisonment for life without benefit of probation or parole.

➔Section 2. KRS 6.949 is amended to read as follows:

(1) Any bill, amendment, or committee substitute that creates a new crime, increases the penalty for an existing crime, decreases the penalty for an existing crime, changes the elements of the offense for an existing crime, repeals an existing crime, or proposes to increase, decrease, or otherwise impact incarceration shall be identified by the staff of the Legislative Research Commission as having a corrections impact on a "Corrections Impact Statement" form specified by the Legislative Research Commission.

(2) If a bill, amendment, or committee substitute is identified as having a corrections impact under subsection (1) of this section, the staff of the Legislative Research Commission shall notify the sponsor of the bill, amendment, or committee substitute that a corrections impact is required.

(3) If a bill, amendment, or committee substitute is identified as having a corrections impact, a "Corrections Impact Statement" shall be prepared by the staff of the Department of Corrections with the assistance of the Department of Kentucky State Police, Administrative Office of the Courts, Parole Board, and other persons, agencies, or organizations deemed necessary by the Department of Corrections staff

assigned to prepare the corrections impact statement. The Department of Kentucky State Police, Administrative Office of the Courts, Parole Board, and other persons, agencies, and organizations that have been requested to provide information for the corrections impact statement shall do so within the period of time specified by the Department of Corrections staff person requesting the information, which in no case shall exceed two (2) business days unless an extension is granted by the requesting staff person.

(4) The corrections impact statement shall contain the estimated costs, estimated savings, and necessary appropriations based upon:

(a) Incarceration in jail prior to trial and during trial based on the available information about persons granted bail or other form of pretrial release and the length of time spent in jail prior to release;

(b) Supervision of a person who has been granted bail or pretrial release based on the average time spent between the time of release until the time of trial for the offense;

(c) Incarceration in jail for a misdemeanor following conviction based on the maximum time of incarceration authorized for the offense;

(d) Incarceration in a state correctional facility for a~~[capital offense, or]~~ felony offense based on the maximum and minimum length of incarceration authorized for the offense, except for offenses in which incarceration in a county jail for a Class D felony is required;

(e) Incarceration in a county jail for a Class D felony for which incarceration in a county jail is authorized based on the maximum and minimum sentence of incarceration authorized for a Class D felony;

(f) Probation or conditional discharge supervision based on the maximum time of probation or conditional discharge authorized for the offense;

(g) Parole supervision based on the minimum expiration of sentence; and

(h) Treatment, education, and other programs which are to be paid by the state based on the average costs actually paid by the Department of Corrections during the previous fiscal year.

(5) Insofar as possible, costs and savings for a change to an existing crime shall be calculated using:

(a) Arrest data for the crime from the Department of Kentucky State Police;

(b) Pretrial incarceration data from the Administrative Office of the Courts;

(c) Preconviction jail data from the Administrative Office of the Courts;

(d) Conviction data from the Administrative Office of the Courts;

(e) Postconviction jail and imprisonment data from the Department of Corrections;

(f) Probation and parole data from the Department of Corrections; and

(g) Data from applicable agencies or organizations providing treatment, education, or other mandated programs.

(6) Insofar as possible, costs or savings for a new crime shall be calculated in the same manner as specified in subsection (5) of this section using data for similar crimes unless that is determined by the Department of Corrections staff person to be impractical or impossible in which case the estimate for a new crime may be prepared using:

(a) The maximum and minimum length of incarceration for the offense;

(b) An estimate of cost based on ten (10) persons being charged with the offense, and based on one hundred (100) persons being charged with the offense;

(c) An estimate of cost based on ten (10) persons and one hundred (100) persons being convicted of the offense and sent to jail if the offense is a misdemeanor using the criteria specified in subsection (7) of this section; and

(d) An estimate of cost based on ten (10) persons and one hundred (100) persons being convicted of a felony offense requiring imprisonment in a state-operated

correctional facility unless the offense is a Class D felony for which imprisonment in a county jail is required in which case the cost shall be based on the amount paid by the Department of Corrections for a person incarcerated in a county jail for a Class D felony.

(7) Costs or savings shall be based on the average costs actually paid by the Department of Corrections during the previous fiscal year for incarceration of a person in a state correctional facility, the average cost for supervision of a person placed on probation without electronic monitoring, the average cost of a person placed on probation with electronic monitoring, the average cost of parole supervision without electronic monitoring, and the average cost of parole supervision with electronic monitoring.

(8) If an amendment to a bill is combined into a committee substitute or a GA version of the bill is created incorporating a floor amendment, a new corrections impact statement shall be prepared combining the information in the original bill as modified by the amendment.

➔Section 3. KRS 17.165 is amended to read as follows:

(1) As used in this section, "sex crime" means a conviction or a plea of guilty to a sex crime specified in KRS 17.500.

(2) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of a~~[capital offense,]~~ Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.

(3) As used in this section, "violent crime" shall mean a conviction of or a plea of guilty to the commission of a~~[capital offense,]~~ Class A felony, or Class B felony involving the death of the victim, or rape in the first degree or sodomy in the first degree of the victim or serious physical injury to a victim.

(4) No child-care center as defined in KRS 199.894 shall employ, in a position which

involves supervisory or disciplinary power over a minor, or direct contact with a minor, any person who is a violent offender or has been convicted of a sex crime. Each child-care center shall request all conviction information for any applicant for employment from the Justice and Public Safety Cabinet or the Administrative Office of the Courts prior to employing the applicant.

(5) No child-care provider that is required to be certified under KRS 199.8982 or that receives a public child-care subsidy administered by the cabinet or an adult who resides on the premises of the child-care provider and has direct contact with a minor shall have been convicted of a violent crime, or a sex crime, or have been found by the Cabinet for Health and Family Services or a court to have abused or neglected a child.

(6) Each application form, provided by the employer to the applicant, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT."

(7) Any request for records under subsection (4) of this section shall be on a form approved by the Justice and Public Safety Cabinet or the Administrative Office of the Courts, and the cabinet may charge a fee to be paid by the applicant in an amount no greater than the actual cost of processing the request.

(8) The provisions of this section shall apply to all applicants for initial employment in a position which involves supervisory or disciplinary power over a minor after July 15, 1988.

➔Section 4. KRS 17.167 is amended to read as follows:

(1) As used in this section, "felony offender" means any person who has been convicted of, entered an Alford plea to, or pleaded guilty to the commission of a~~[capital offense or a]~~ felony.

(2) Any paid or volunteer fire department certified by the Commission on Fire

Protection Personnel Standards and Education, ambulance service licensed by the Commonwealth of Kentucky, or rescue squad officially affiliated with a local disaster and emergency services organization or with the Division of Emergency Management may apply to the Justice and Public Safety Cabinet or the Administrative Office of the Courts for a felony offender record check on applicants for employment or membership with the fire department, ambulance service, or rescue squad.

(3) Each application form, provided by a fire department, ambulance service, or rescue squad to an applicant for employment or membership, shall conspicuously state the following: "FOR EMPLOYMENT WITH OR MEMBERSHIP WITH A FIRE DEPARTMENT, AMBULANCE SERVICE, OR RESCUE SQUAD, STATE LAW PERMITS A CRIMINAL RECORD CHECK AS A CONDITION OF EMPLOYMENT OR MEMBERSHIP."

(4) Any request for records under this section shall be on a form approved by the Justice and Public Safety Cabinet or the Administrative Office of the Courts. The Justice and Public Safety Cabinet and the Administrative Office of the Courts shall not charge a fee for making record checks.

➔Section 5. KRS 17.176 is amended to read as follows:

(1) In addition to the requirements specified in KRS 422.285, any evidence submitted for testing and analysis pursuant to KRS 422.285~~[or 422.287]~~ shall be of probative value. When the motion is filed with the court requesting testing and analysis of evidence pursuant to this section, the applicant shall include sufficient information about the evidence, the necessity for its testing and analysis, and its applicability to the proceeding for a court to make a determination of the probative value of the evidence proposed to be tested and analyzed.

(2) The prosecution, with a court order issued pursuant to this section, may submit not more than five (5) items of evidence for testing and analysis by the Department of

Kentucky State Police forensic laboratory or another laboratory selected by the Department of Kentucky State Police forensic laboratory.~~[In capital cases, the tests shall be performed without charge to the prosecution.]~~ The cost of testing and analysis of any items of evidence in excess of the five (5) initial items to be tested and analyzed shall be borne by the agency or person requesting the testing and analysis. Any additional item of evidence submitted for testing and analysis shall be accompanied by the court order specified in subsection (1) of this section.

(3) The defense, with a court order issued pursuant to this section, may submit not more than five (5) items of evidence for testing and analysis by the Department of Kentucky State Police forensic laboratory or another laboratory selected by the Department of Kentucky State Police forensic laboratory.~~[In capital cases, the tests shall be performed without charge to the defense.]~~ The cost of testing and analysis of any item of evidence in excess of the five (5) initial items to be tested and analyzed shall be borne by the agency or person requesting the testing and analysis. Any additional item of evidence submitted for testing and analysis shall be accompanied by the court order specified in subsection (1) of this section.

(4) Any other party in a criminal case, with permission of the court after a specific showing of necessity for testing and analysis, together with the items specified in subsection (1) of this section, may submit an item of evidence for testing and analysis by the Department of Kentucky State Police forensic laboratory or another laboratory selected by the Department of Kentucky State Police forensic laboratory for testing and analysis. The cost of testing and analysis of any item of evidence permitted to be submitted by the court shall be borne by the person or organization requesting the testing and analysis.

(5) The Department of Kentucky State Police shall promulgate by administrative regulation a uniform schedule of fees to be charged for testing and analysis conducted pursuant to KRS 422.285 or~~[422.287]~~.

➔Section 6. KRS 24A.110 is amended to read as follows:

(1) The District Court shall have exclusive jurisdiction to make final disposition of all criminal matters, including violations of county, urban-county, or city ordinances or codes, except:

(a) Offenses denominated by statute as felonies~~[or capital offenses]~~; and

(b) Offenses punishable by~~[death or]~~ imprisonment in the penitentiary.

(2) The District Court has exclusive jurisdiction to make a final disposition of any charge or a public offense denominated as a misdemeanor or violation, except where the charge is joined with an indictment for a felony, and all violations of county, urban-county, or city ordinances and, prior to trial, to commit the defendant to jail or hold him ***or her*** to bail or other form of pretrial release.

(3) The District Court has, concurrent with Circuit Court, jurisdiction to examine any charge of a public offense denominated as a felony~~[or capital offense]~~ or which may be punished by~~[death or]~~ imprisonment in the penitentiary and to commit the defendant to jail or hold him ***or her*** to bail or other form of pretrial release.

(4) The District Court may, upon motion and for good cause shown, reduce a charge of a felony to a misdemeanor in accordance with the Rules of Criminal Procedure.

➔Section 7. KRS 27A.430 is amended to read as follows:

The institutional level of the system shall consist of at least the following information:

(1) Date of institutionalization;

(2) Type of incoming action;

(3)~~[If defendant sentenced to death:~~

~~(a) First scheduled date of execution;~~

~~(b) Date defendant executed;~~

~~(c) Date sentence commuted in lieu of execution;~~

~~(d) Sentence to which sentence of death was commuted;~~

~~(4)]~~ Date defendant released from institution;

(4)~~[(5)]~~ Type of release from institution;

(5)~~[(6)]~~ If the offender is released on parole:

(a) Offense for which convicted;

(b) Maximum expiration date;

(c) Minimum expiration date;

(d) Was the parole supervision fee imposed;

(e) What was the amount actually imposed for the parole supervision fee;

(f) What amount of the parole supervision fee was actually collected;

(g) Was restitution ordered as part of conditions of the parole;

(h) What amount of restitution was ordered;

(i) What amount of restitution has been paid;

(j) Was a victim impact statement presented to the parole board; did it favor the release of the offender;

(k) Did the prosecutor present a statement to the parole board; did it favor the release of the offender; and

(l) Did the victim or a representative of the victim appear before the parole board; did he ***or she*** favor the release of the offender;

(6)~~[(7)]~~ If the offender released on parole violates parole or is rearrested:

(a) What was the specific parole violation;

(b) Was the offender arrested for the violation;

(c) What was the outcome of the parole violation hearing;

(d) Was the offender reinstitutionalized;

(e) If arrested for a new criminal offense, list the KRS number, name, and level of the offense;

(f) Was the offender subsequently convicted thereof;

(g) Was the offender reinstitutionalized for the offense; and

(h) Was the offender placed on probation for the offense.

➔Section 8. KRS 244.120 is amended to read as follows:

(1) A retail licensee, a patron, or the licensee's agents, servants, or employees shall not cause, suffer, or permit the licensed premises to be disorderly.

(2) Acts which constitute disorderly premises consist of causing, suffering, or permitting patrons, the licensee, or the licensee's servants, agents, or employees to cause public inconvenience, annoyance, or alarm, or create a risk through:

(a) Engaging in fighting or in violent, tumultuous, or threatening behavior;

(b) Making unreasonable noise;

(c) Refusing to obey an official order to disperse issued to maintain public safety in dangerous proximity to a fire, hazard, or other emergency;

(d) Creating a hazardous or physically offensive condition by any act that serves no legitimate purpose;

(e) Creating a public nuisance;

(f) Engaging in criminal activity that would constitute a~~[capital offense,]~~ felony~~[,]~~ or misdemeanor; or

(g) Failing to maintain the minimum health, fire, safety, or sanitary standards established by the state or a local government, or by state administrative regulations, for the licensed premises.

➔Section 9. KRS 281A.010 is amended to read as follows:

(1) "Alcohol" means:

(a) Beer, ale, port, or stout and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percentum (0.5%) or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;

(b) Wine of not less than one-half of one percentum (0.5%) of alcohol by volume;

(c) Distilled spirits, which means that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof

from whatever source or by whatever process produced; or

(d) Any substance containing ethyl alcohol, hydrated oxide of ethyl, spirit of wine, or any distilled spirits including but not limited to ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

(a) The number of grams of alcohol per one hundred (100) milliliters of blood;

(b) The number of grams of alcohol per two hundred ten (210) liters of breath; or

(c) The number of grams of alcohol per sixty-seven (67) milliliters of urine.

(3) "Cabinet" means the Transportation Cabinet of the Commonwealth of Kentucky.

(4) "Commerce" means:

(a) Any trade, traffic, or transportation within the jurisdiction of the United States between a place in a state and a place outside of the state, including a place outside of the United States; and

(b) Trade, traffic, and transportation in the United States that affects any trade, traffic, and transportation described in paragraph (a) of this subsection.

(5) "Commercial driver's license," or "CDL," means a license issued to an individual in accordance with the requirements of this chapter or, if the license is issued by another state in accordance with the Federal Commercial Motor Vehicle Safety Act, to an individual that authorizes the individual to drive any class of commercial motor vehicle.

(6) "Commercial driver's license information system" or CDLIS means the national information system established to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(7) "Commercial driver's instruction permit" means a permit issued pursuant to KRS 281A.120.

(8) "Commercial motor vehicle," or "CMV," means a motor vehicle or combination motor vehicle used in commerce that is:

(a) Designed to carry property and has a gross vehicle weight rating as determined by federal regulation which has been adopted into cabinet administrative regulations pursuant to KRS Chapter 13A;

(b) Designed to transport sixteen (16) or more passengers, including the driver;

(c) Transporting hazardous materials and is required to be placarded in accordance with Title 49, Code of Federal Regulations, Part 172; or

(d) Any other vehicle that is required by cabinet administrative regulation, pursuant to KRS Chapter 13A, to be operated by a licensed commercial driver.

(9) "Controlled substance" means any substance so classified under Section 102(6) of the Controlled Substances Act, 21 U.S.C. sec. 802(6), and includes all substances listed on Schedules I through V, of Title 21, Code of Federal Regulations, Part 1308, as adopted by the Transportation Cabinet by administrative regulation pursuant to KRS Chapter 13A. It shall also include those substances defined or listed in KRS Chapter 218A.

(10) "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty, a plea of nolo contendere, or Alford plea entered and accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(11) "Disqualification" means any of the following actions:

(a) The suspension, revocation, or cancellation of a CDL by the Commonwealth or the jurisdiction of issuance;

(b) Any withdrawal of a person's privilege to drive a commercial motor vehicle by the Commonwealth or another jurisdiction as a result of a violation of state or

local law relating to motor vehicle traffic control, other than parking, vehicle weight, or vehicle defect violations; or

(c) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. pt. 391.

(12) "Drive" means to drive, operate, or be in physical control of a motor vehicle.

(13) "Driver" means any person who drives, operates, or is in physical control of a commercial motor vehicle, or who is required to hold a commercial driver's license.

(14) "Driver's license" means a license issued by a state to an individual that authorizes the individual to drive a motor vehicle.

(15) "Employee" means any operator of a commercial motor vehicle, including full-time, regularly employed drivers; casual, intermittent, or occasional drivers; leased drivers and independent, owner-operator contractors while in the course of operating a commercial motor vehicle who are either directly employed by, under lease to, or operating in a manner indicating employment to an employer.

(16) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(17) "Felony" means any offense under state or federal law that is punishable by~~[death or]~~ imprisonment for a term exceeding one (1) year.

(18) "Gross combination weight rating," or "GCWR," is the gross vehicle weight rating of power unit plus the gross vehicle weight rating of any towed unit. In the absence of a value specified by the manufacturer, GCWR shall be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit and load therein.

(19) "Gross vehicle weight rating," or "GVWR," means the value specified by the manufacturer as the maximum loaded weight of a single, a combination or an

articulated vehicle.

(20) "Hazardous materials" has the same meaning as in 49 C.F.R. sec. 383.5.

(21) "Highway" shall include any way or place of any nature when any part of it is open to the use of the public as a matter of right, license, or privilege for the use of vehicular traffic.

(22) "Imminent hazard" means a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a danger to health, property, or the environment exists.

(23) "Moped" shall have the same meaning as in KRS 186.010(5).

(24) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but shall not include any vehicle, machine, tractor, trailer, or semitrailers operated exclusively on a rail.

(25) "NDR" means the national driver register.

(26) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 C.F.R. sec. 386.72, 392.5, 395.13, or 396.9; comparable laws or regulations; or the North American Uniform Out-of-Service Criteria.

(27) "Resident" means a person who has established Kentucky as his or her state of domicile. Proof of residency shall include but not be limited to a deed or property tax bill, utility agreement or utility bill, or rental housing agreement.

(28) "School bus" means a vehicle that meets the specification of KRS 156.153 used to transport preprimary, primary, or secondary school students between school and home, or to and from school-sponsored events. A school bus shall not include a bus used as a common carrier.

(29) "Serious traffic violation" means a conviction when operating a commercial motor

vehicle of:

(a) Excessive speeding, involving a single charge of any speed fifteen (15) miles per hour or more, above the specified speed limit;

(b) Reckless driving, as defined under state or local law, including conviction of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;

(c) Improper or erratic traffic lane changes;

(d) Following the vehicle ahead too closely;

(e) A violation of any state or local law related to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident;

(f) Driving a commercial motor vehicle without a CDL;

(g) Driving a commercial motor vehicle without a CDL in one's possession or refusing to display a CDL upon request;

(h) Driving a commercial motor vehicle without the proper class of CDL or endorsements, or both, for the specific vehicle type or types being operated or for the passengers or type or types of cargo being transported; or

(i) Any conviction of an offense that requires mandatory suspension under KRS 186.560 or a serious violation as defined by Title 49 of the Code of Federal Regulations Part 383 or as amended by the Federal Highway Administration.

(30) "State" means a state of the United States and the District of Columbia.

(31) "State police" means the Department of Kentucky State Police.

(32) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn along a public highway, except devices moved by human or animal power, used exclusively upon stationary rails or tracks, or which derives its power from overhead wires.

➔Section 10. KRS 422.285 is amended to read as follows:

(1) (a) Except as provided in paragraph (b) of this subsection, a person who was

convicted of a capital offense ***prior to the effective date of this Act who has since been sentenced by the court having jurisdiction to imprisonment for life without benefit of probation or parole***, a Class A felony, a Class B felony, or any offense designated a violent offense under KRS 439.3401 and who meets the requirements of this section may at any time request the forensic deoxyribonucleic acid (DNA) testing and analysis of any evidence that is in the possession or control of the court or Commonwealth, that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence.

(b) This subsection shall not apply to offenses under KRS Chapter 218A, unless the offense was accompanied by another offense outside of that chapter for which testing is authorized by paragraph (a) of this subsection.

(2) Upon receipt of a request under this section accompanied by a supporting affidavit containing sufficient factual averments to support the request from a person who meets the requirements of subsection (5)(f) of this section at the time the request is made for an offense to which the DNA relates, the court shall:

(a) If the petitioner is not represented by counsel, appoint the Department for Public Advocacy to represent the petitioner for purposes of the request, pursuant to KRS 31.110(2)(c); or

(b) If the petitioner is represented by counsel or waives appointment of counsel in writing or if the Department for Public Advocacy has previously withdrawn from representation of the petitioner for purposes of the request, require the petitioner to deposit an amount certain with the court sufficient to cover the reasonable costs of the testing being requested.

(3) Counsel representing the petitioner shall be provided a reasonable opportunity to investigate the petitioner's request and shall be permitted to supplement the request. Pursuant to KRS 31.110(2)(c), the petitioner shall have no further right to counsel

provided by the Department for Public Advocacy on the matter if counsel determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his or her own expense. If the Department for Public Advocacy moves to withdraw as counsel for petitioner and the court grants the motion, the court shall proceed as directed under subsection (2)(b) of this section.

(4) Upon receipt of the deposit required under subsection (2)(b) of this section or a motion from counsel provided by the Department for Public Advocacy to proceed, the court shall provide notice to the prosecutor and an opportunity to respond to the petitioner's request.

(5) After due consideration of the request and any supplements and responses thereto, the court shall order DNA testing and analysis if the court finds that all of the following apply:

(a) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing and analysis;

(b) The evidence is still in existence and is in a condition that allows DNA testing and analysis to be conducted;

(c) The evidence was not previously subjected to DNA testing and analysis or was not subjected to the testing and analysis that is now requested and may resolve an issue not previously resolved by the previous testing and analysis;

(d) Except for a petitioner sentenced to death ***prior to the effective date of this Act***, the petitioner was convicted of the offense after a trial or after entering an Alford plea;

(e) Except for a petitioner sentenced to death ***prior to the effective date of this Act***, the testing is not sought for touch DNA, meaning casual or limited contact DNA; and

(f) The petitioner is still incarcerated or on probation, parole, or other form of

correctional supervision, monitoring, or registration for the offense to which the DNA relates.

(6) After due consideration of the request and any supplements and responses thereto, the court may order DNA testing and analysis if the court finds that all of the following apply:

(a) A reasonable probability exists that either:

1. The petitioner's verdict or sentence would have been more favorable if the results of DNA testing and analysis had been available at the trial leading to the judgment of conviction; or

2. DNA testing and analysis will produce exculpatory evidence;

(b) The evidence is still in existence and is in a condition that allows DNA testing and analysis to be conducted;

(c) The evidence was not previously subject to DNA testing and analysis or was not subjected to the testing and analysis that is now requested and that may resolve an issue not previously resolved by the previous testing and analysis;

(d) Except for a petitioner sentenced to death ***prior to the effective date of this Act***, the petitioner was convicted of the offense after a trial or after entering an Alford plea;

(e) Except for a petitioner sentenced to death ***prior to the effective date of this Act***, the testing is not sought for touch DNA, meaning casual or limited contact DNA; and

(f) The petitioner is still incarcerated or on probation, parole, or other form of correctional supervision, monitoring, or registration for the offense to which the DNA relates.

(7) The provisions of KRS 17.176 to the contrary notwithstanding, the petitioner shall pay the costs of all testing and analysis ordered under this section. If the court determines that the petitioner is a needy person using the standards set out in KRS

31.120 and the Department for Public Advocacy so moves, the court shall treat the costs of testing and analysis as a direct expense of the defense for the purposes of authorizing payment under KRS 31.185.

(8) If the prosecutor or defense counsel has previously subjected evidence to DNA testing and analysis, the court shall order the prosecutor or defense counsel to provide all the parties and the court with access to the laboratory reports that were prepared in connection with the testing and analysis, including underlying data and laboratory notes. If the court orders DNA testing and analysis pursuant to this section, the court shall order the production of any laboratory reports that are prepared in connection with the testing and analysis and may order the production of any underlying data and laboratory notes.

(9) If a petition is filed pursuant to this section, the court shall order the state to preserve during the pendency of the proceeding all evidence in the state's possession or control that could be subjected to DNA testing and analysis. The state shall prepare an inventory of the evidence and shall submit a copy of the inventory to the defense and the court. If the evidence is intentionally destroyed after the court orders its preservation, the court may impose appropriate sanctions, including criminal contempt.

(10) The court may make any other orders that the court deems appropriate, including designating any of the following:

(a) The preservation of some of the sample for replicating the testing and analysis; and

(b) Elimination samples from third parties.

(11) If the results of the DNA testing and analysis are not favorable to the petitioner, the court shall dismiss the petition. The court may make further orders as it deems appropriate, including any of the following:

(a) Notifying the Department of Corrections and the Parole Board;

(b) Requesting that the petitioner's sample be added to the Department of Kentucky State Police database; and

(c) Providing notification to the victim or family of the victim.

(12) Notwithstanding any other provision of law that would bar a hearing as untimely, if the results of the DNA testing and analysis are favorable to the petitioner, the court shall order a hearing and make any further orders that are required pursuant to this section or the Kentucky Rules of Criminal Procedure.

➔Section 11. KRS 431.060 is amended to read as follows:

Offenses are either felonies, misdemeanors, or violations:

(1) Offenses punishable by~~[death or]~~ confinement in the penitentiary, whether or not a fine or other penalty may also be assessed, are felonies.

(2) Offenses punishable by confinement other than in the penitentiary, whether or not a fine or other penalty may also be assessed, are misdemeanors.

(3) Offenses punishable by a fine only or by any other penalty not cited herein, whether in combination with a fine or not, are violations.

➔Section 12. KRS 431.215 is amended to read as follows:

(1) If the judgment imposes a sentence of~~[death or]~~ confinement in the penitentiary, county jail or other institution, two (2) certified copies thereof shall be furnished forthwith to the sheriff who shall execute the same by delivering the defendant and a certified copy of the judgment to the person in charge of the penitentiary, jail or institution of confinement and making a written return thereof in the office of the circuit clerk within ten (10) days after the execution.

(2) When the judgment imposes a sentence of~~[death or]~~ confinement in the penitentiary, the county in which the prisoner is incarcerated shall receive from the State Treasury a fee per day beginning on the day on which judgment was rendered and ending the day that the defendant is delivered to the penitentiary. The fee shall be paid to the county treasurer for use for the incarceration of prisoners as provided

in KRS 441.025.

➔Section 13. KRS 431.510 is amended to read as follows:

(1) It shall be unlawful for any person to engage in the business of bail bondsman as defined in subsection (3) of this section, or to otherwise for compensation or other consideration:

(a) Furnish bail or funds or property to serve as bail; or

(b) Make bonds or enter into undertakings as surety;

for the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine ***or*** ~~[,]~~ imprisonment ~~[or death,]~~ before any of the courts of this state, including city courts, or to secure the payment of fines imposed and of costs assessed by such courts upon a final disposition.

(2) Nothing contained herein shall serve to release any bail bondsman heretofore licensed by this state from the obligation of undischarged bail bond liability existing on June 19, 1976.

(3) "Bail bondsman" shall mean any person, partnership, or corporation engaged for profit in the business of furnishing bail, making bonds or entering into undertakings, as surety, for the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine ***or*** ~~[,]~~ imprisonment ~~[, or death,]~~ before any of the courts of this state, or securing the payment of fines imposed and of costs assessed by such courts upon final disposition thereof, and the business of a bail bondsman shall be limited to the acts, transactions, and undertakings described in this subsection and to no other.

(4) KRS 431.510 to 431.550 shall not be construed to limit or repeal KRS 431.021 or to prevent licensed insurers providing security required by Subtitle 39 of KRS Chapter 304 and nonprofit associations from posting or causing to be posted by licensed insurers security or acting as surety for their insureds or members for an offense arising from the operation of a motor vehicle, provided that such posting of security

or acting as surety is merely incidental to the terms and conditions of an insurance contract or a membership agreement and provided further that no separate premium or charge therefor is required from the insureds or members.

➔Section 14. KRS 439.265 is amended to read as follows:

(1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any Circuit Court may, upon motion of the defendant made not earlier than thirty (30) days nor later than one hundred eighty (180) days after the defendant has been incarcerated in a county jail following his ***or her*** conviction and sentencing pending delivery to the institution to which he ***or she*** has been sentenced, or delivered to the keeper of the institution to which he ***or she*** has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon terms the court determines. Time spent on any form of release following conviction shall not count toward time required under this section.

(2) The court shall consider any motion filed in accordance with subsection (1) of this section within sixty (60) days of the filing date of that motion, and shall enter its ruling within ten (10) days after considering the motion. The defendant may, in the discretion of the trial court, have the right to a hearing on any motion he ***or she*** may file, or have filed for him ***or her***, that would suspend further execution of sentence. Any court order granting or denying a motion to suspend further execution of sentence is not reviewable.

(3) (a) During the period in which the defendant may file a motion pursuant to this statute, the sentencing judge, within his or her discretion, may order that the defendant be held in a local detention facility that is not at or above maximum capacity until such time as the court rules on said motion. During this period of detention, and prior to the court's ruling on said motion, the court may require the defendant to participate in any approved community work program or other forms of work release. Persons held in the county jail pursuant to this

subsection shall not be subject to transfer to a state correctional facility until the decision is made not to place the petitioner on shock probation.

(b) The provisions concerning community work programs or other forms of work release shall apply only to persons convicted of Class C or Class D felonies, and may be granted only after a hearing at which the Commonwealth's attorney has the opportunity to present arguments in favor or opposition thereto.

(4) If the defendant is a violent offender as defined in KRS 439.3401, the sentence shall not be probated under this section.

(5) If the defendant has been convicted of an offense under KRS 510.050, 510.080, 530.020, 530.064(1)(a), or 531.310, or criminal attempt to commit any of these offenses under KRS 506.010, the sentence shall not be suspended, in accordance with KRS 532.045.

(6) When a defendant has been convicted of a sex crime, as defined in KRS 17.500, the court shall order a comprehensive sex offender presentence evaluation, unless one has been provided within the past six (6) months, in which case the court may order an update of the comprehensive sex offender presentence evaluation of the defendant conducted by the sex offender treatment program operated or approved by the Department of Corrections or the Sex Offender Risk Assessment Advisory Board. The comprehensive sex offender presentence evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining whether to suspend the sentence. If the court suspends the sentence and places the defendant on probation, the provisions of KRS 532.045(3) to (7) shall apply.

(7) The authority granted in this section shall be exercised by the judge who imposed sentence on the defendant, unless he ***or she*** is unable to act and it appears that his ***or***

her inability to act should continue beyond the expiration of the term of the court. In such case, the judge who imposed sentence shall assign a judge to dispose of a motion filed under this section, or as prescribed by the rules and practices concerning the responsibility for disposition of criminal matters.

~~[(8) The provisions of this section shall not apply where a sentence of death has been imposed.]~~

➔Section 15. 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;

(b) ~~[(c)]~~ A Class B felony involving the death of the victim or serious physical injury to a victim;

(c) ~~[(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;

(d) ~~[(e)]~~ The commission or attempted commission of a felony sexual offense described in KRS Chapter 510;

(e) ~~[(f)]~~ Use of a minor in a sexual performance as described in KRS 531.310;

(f) ~~[(g)]~~ Promoting a sexual performance by a minor as described in KRS 531.320;

(g) ~~[(h)]~~ Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a);

(h) ~~[(i)]~~ Human trafficking under KRS 529.100 involving commercial sexual activity where the victim is a minor;

(i) ~~[(j)]~~ Criminal abuse in the first degree as described in KRS 508.100;

(j) ~~[(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;

(k) ~~[(l)]~~ Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or

(l) ~~[(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 ***or she*** 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.

(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 16. KRS 439.3406 is amended to read as follows:

(1) The board shall order mandatory reentry supervision six (6) months prior to the projected completion date of an inmate's sentence for an inmate who has not been granted discretionary parole.

(2) The provisions of subsection (1) of this section shall not apply to an inmate who:

(a) Is not eligible for parole by statute;

(b) Has been convicted of a~~[capital offense or a]~~ Class A felony;

(c) Has a maximum or close security classification as defined by administrative regulations promulgated by the department;

(d) Has been sentenced to two (2) years or less of incarceration;

(e) Is subject to the provisions of KRS 532.043; or

(f) Has six (6) months or less to be served after his or her sentencing by a court or recommitment to prison for a violation of probation, shock probation, parole, or conditional discharge.

(3) An inmate granted mandatory reentry supervision pursuant to this section may be returned by the board to prison for violation of the conditions of supervision and shall not again be eligible for mandatory reentry supervision during the same period of incarceration.

(4) An inmate released to mandatory reentry supervision shall be considered to be released on parole.

(5) Mandatory reentry supervision is not a commutation of sentence or any other form of clemency.

(6) No hearing shall be required for the board to order an inmate to mandatory reentry supervision pursuant to subsection (1) of this section. Terms of supervision for inmates released on mandatory reentry supervision shall be established as follows:

(a) The board shall adopt administrative regulations establishing general conditions applicable to each inmate ordered to mandatory reentry supervision pursuant to subsection (1) of this section. If an inmate is ordered to mandatory reentry supervision, the board's order shall set forth the general conditions and shall require the inmate to comply with the general conditions and any requirements imposed by the department in accordance with this section;

(b) Upon intake of an inmate ordered to mandatory reentry supervision by the board, the department shall use the results of the risk and needs assessment administered pursuant to KRS 439.3104(1) to establish appropriate terms and conditions of supervision, taking into consideration the level of risk to public safety, criminal risk factors, and the need for treatment and other

interventions. The terms and conditions imposed by the department under this paragraph shall not conflict with the general conditions adopted by the board pursuant to paragraph (a) of this subsection; and

(c) The powers and duties assigned to the commissioner in relation to probation or parole under KRS 439.470 shall be assigned to the commissioner in relation to mandatory reentry supervision.

(7) Subject to subsection (3) of this section, the period of mandatory reentry supervision shall conclude upon completion of the individual's minimum expiration of sentence.

(8) If the board issues a warrant for the arrest of an inmate for absconding from supervision during the mandatory reentry supervision period, and the inmate is subsequently returned to prison as a violator of conditions of supervision for absconding, the inmate shall not receive credit toward the remainder of his or her sentence for the time spent absconding.

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

➔Section 17. KRS 440.280 is amended to read as follows:

The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by~~[death or]~~ imprisonment for a term exceeding one (1) year, but when so arrested the accused must be taken before a judge with all practicable speed and complaint must be made against ***the accused***~~[him]~~ under oath setting forth the ground for the arrest as in the preceding section; and thereafter his ***or her*** answer shall be heard as if he ***or she*** had been arrested on a warrant.

➔Section 18. KRS 506.010 is amended to read as follows:

(1) A person is guilty of criminal attempt to commit a crime when, acting with the kind of culpability otherwise required for commission of the crime, he ***or she***:

(a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he ***or she*** believes them to be; or

(b) Intentionally does or omits to do anything which, under the circumstances as he ***or she*** believes them to be, is a substantial step in a course of conduct planned to culminate in his ***or her*** commission of the crime.

(2) Conduct shall not be held to constitute a substantial step under subsection (1)(b) unless it is an act or omission which leaves no reasonable doubt as to the defendant's intention to commit the crime which he ***or she*** is charged with attempting.

(3) A person is guilty of criminal attempt to commit a crime when he ***or she*** engages in conduct intended to aid another person to commit that crime, although the crime is not committed or attempted by the other person, provided that his ***or her*** conduct would establish complicity under KRS 502.020 if the crime were committed by the other person.

(4) A criminal attempt is a:

(a) Class C felony when the crime attempted is a violation of KRS 521.020 or 521.050;

(b) Class B felony when the crime attempted is a Class A felony~~[or capital offense]~~;

(c) Class C felony when the crime attempted is a Class B felony;

(d) Class A misdemeanor when the crime attempted is a Class C or D felony;

(e) Class B misdemeanor when the crime attempted is a misdemeanor.

➔Section 19. KRS 506.030 is amended to read as follows:

(1) A person is guilty of criminal solicitation when, with the intent of promoting or facilitating the commission of a crime, he ***or she*** commands or encourages another person to engage in specific conduct which would constitute that crime or an attempt to commit that crime or which would establish the other's complicity in its

commission or attempted commission.

(2) A criminal solicitation is a:

(a) Class C felony when the crime solicited is a violation of KRS 521.020 or 521.050;

(b) Class B felony when the crime solicited is a Class A felony~~[or capital offense]~~;

(c) Class C felony when the crime solicited is a Class B felony;

(d) Class A misdemeanor when the crime solicited is a Class C or D felony;

(e) Class B misdemeanor when the crime solicited is a misdemeanor.

➔Section 20. KRS 506.040 is amended to read as follows:

(1) A person having the intention of promoting or facilitating the commission of a crime is guilty of criminal conspiracy when he ***or she***:

(a) Agrees with one (1) or more persons that at least one (1) of them will engage in conduct constituting that crime or an attempt or solicitation to commit such a crime; or

(b) Agrees to aid one or more persons in the planning or commission of that crime or an attempt or solicitation to commit such a crime.

(2) Except as provided in a specific statute to the contrary, a criminal conspiracy is a:

(a) Class C felony when the conspiratorial agreement is a violation of KRS 521.020 or 521.050;

(b) Class B felony when the object of the conspiratorial agreement is a Class A felony~~[or capital offense]~~;

(c) Class C felony when the object of the conspiratorial agreement is a Class B felony;

(d) Class A misdemeanor when the object of the conspiratorial agreement is a Class C or D felony;

(e) Class B misdemeanor when the object of the conspiratorial agreement is a

misdemeanor.

➔Section 21. KRS 506.080 is amended to read as follows:

(1) A person is guilty of criminal facilitation when, acting with knowledge that another person is committing or intends to commit a crime, he ***or she*** engages in conduct which knowingly provides such person with means or opportunity for the commission of the crime and which in fact aids such person to commit the crime.

(2) Criminal facilitation is a:

(a) Class D felony when the crime facilitated is a Class A or Class B felony~~[or capital offense]~~;

(b) Class A misdemeanor when the crime facilitated is a Class C or Class D felony;

(c) Class B misdemeanor when the crime facilitated is a misdemeanor.

➔Section 22. KRS 507.020 is amended to read as follows:

(1) A person is guilty of murder when:

(a) With intent to cause the death of another person, he ***or she*** causes the death of such person or of a third person; except that in any prosecution a person shall not be guilty under this subsection if he ***or she*** acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. However, nothing contained in this section shall constitute a defense to a prosecution for or preclude a conviction of manslaughter in the first degree or any other crime; or

(b) Including, but not limited to, the operation of a motor vehicle under circumstances manifesting extreme indifference to human life, he ***or she*** wantonly engages in conduct which creates a grave risk of death to another person and thereby causes the death of another person.

(2) Murder is a ***Class A felony*** ~~[capital offense]~~.

➔Section 23. KRS 507A.020 is amended to read as follows:

(1) A person is guilty of fetal homicide in the first degree when:

(a) With intent to cause the death of an unborn child or with the intent necessary to commit an offense under KRS 507.020(1)(a), he ***or she*** causes the death of an unborn child; except that in any prosecution, a person shall not be guilty under this subsection if he ***or she*** acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. However, nothing contained in this section shall constitute a defense to a prosecution for or preclude a conviction of fetal homicide in the second degree or any other crime; or

(b) Including but not limited to the operation of a motor vehicle under circumstances manifesting extreme indifference to human life, he ***or she*** wantonly engages in conduct which creates a grave risk of death to an unborn child and thereby causes the death of an unborn child.

(2) Fetal homicide in the first degree is a ***Class A felony*** ~~[capital offense]~~.

➔Section 24. KRS 509.040 is amended to read as follows:

(1) A person is guilty of kidnapping when he ***or she*** unlawfully restrains another person and when his ***or her*** intent is:

(a) To hold him ***or her*** for ransom or reward; or

(b) To accomplish or to advance the commission of a felony; or

(c) To inflict bodily injury or to terrorize the victim or another; or

(d) To interfere with the performance of a governmental or political function; or

(e) To use him ***or her*** as a shield or hostage; or

(f) To deprive the parents or guardian of the custody of a minor, when the person

taking the minor is not a person exercising custodial control or supervision of the minor as the term "person exercising custodial control or supervision" is defined in KRS 600.020.

(2) Kidnapping is a Class B felony when the victim is released alive and in a safe place prior to trial, except as provided in ***subsection (3) of*** this section.

(3) Kidnapping is a Class A felony when***:***

(a) The victim is released alive but the victim has suffered serious physical injury***:***

1. During the kidnapping***;*** ~~[, or]~~

2. As a result of not being released in a safe place***;*** ~~[,]~~ or

3. As a result of being released in any circumstances which are intended, known or should have been known to cause or lead to serious physical injury***; or*** ~~[. Kidnapping is a capital offense when]~~

(b) The victim is not released alive***,*** or ~~[when]~~ the victim is released alive but subsequently dies as a result of:

1. ~~[(a)]~~ Serious physical injuries suffered during the kidnapping; or

2. ~~[(b)]~~ Not being released in a safe place; or

3. ~~[(c)]~~ Being released in any circumstances which are intended, known or should have been known to cause or lead to the victim's death.

➔Section 25. KRS 520.120 is amended to read as follows:

(1) A person is guilty of hindering prosecution or apprehension in the first degree when, with the intent to hinder the apprehension, prosecution, conviction or punishment of another whom he ***or she*** knows is being sought in connection with the commission of a ~~[capital offense or]~~ Class A felony, he ***or she*** renders assistance to such person.

(2) Hindering prosecution or apprehension in the first degree is a Class D felony.

➔Section 26. KRS 524.140 is amended to read as follows:

(1) As used in this section:

(a) "Defendant" means a person charged with a:

1. ~~[Capital offense,]~~Class A felony, Class B felony, or Class C felony; or

2. Class D felony under KRS Chapter 510; and

(b) "Following trial" means after:

1. The first appeal authorized by the Constitution of Kentucky in a criminal case has been decided; or

2. The time for the first appeal authorized by the Constitution of Kentucky in a criminal case has lapsed without an appeal having been filed.

(2) No item of evidence gathered by law enforcement, prosecutorial, or defense authorities that may be subject to deoxyribonucleic acid (DNA) evidence testing and analysis in order to confirm the guilt or innocence of a criminal defendant shall be disposed of prior to trial of a criminal defendant unless:

(a) The prosecution has determined that the defendant will not be tried for the criminal offense;

(b) The prosecution has made a motion before the court in which the case would have been tried to destroy the evidence; and

(c) The court has, following an adversarial proceeding in which the prosecution and the defendant were heard, authorized the destruction of the evidence by court order.

(3) No item of evidence gathered by law enforcement, prosecutorial, or defense authorities that may be subject to deoxyribonucleic acid (DNA) evidence testing and analysis in order to confirm the guilt or innocence of a criminal defendant shall be disposed of following the trial unless:

(a) The evidence, together with DNA evidence testing and analysis results, has been presented at the trial, and the defendant has been found guilty, pled guilty, or entered an Alford plea at the trial;

(b) The evidence was not introduced at the trial, or if introduced at the trial was

not the subject of DNA testing and analysis, and the defendant has been found guilty, pled guilty, or entered an Alford plea at the trial, and the trial court has ordered the destruction of the evidence after an adversarial hearing conducted upon motion of either the prosecution or the defendant;

(c) The trial resulted in the defendant being found not guilty or the charges were dismissed after jeopardy attached, whether or not the evidence was introduced at the trial or was subject to DNA testing and analysis or not, and the trial court ordered the destruction of the evidence after an adversarial hearing conducted upon motion of either the prosecution or the defendant; or

(d) The trial resulted in the dismissal of charges against the defendant, and the defendant may be subject to retrial, in which event the evidence shall be retained until after the retrial, which shall be considered a new trial for the purposes of this section.

(4) The burden of proof for a motion to destroy evidence that may be subject to DNA testing and analysis shall be upon the party making the motion, and the court may permit the destruction of the evidence under this section upon good cause shown favoring its destruction.

(5) It is recognized by the General Assembly that the DNA evidence laboratory testing and analysis procedure consumes and destroys a portion of the evidence or may destroy all of the evidence if the sample is small. The consuming and destruction of evidence during the laboratory analysis process shall not result in liability for its consumption or destruction if the following conditions are met:

(a) The Department of Kentucky State Police laboratory uses a method of testing and analysis which preserves as much of the biological material or other evidence tested and analyzed as is reasonably possible; or

(b) If the Department of Kentucky State Police laboratory knows or reasonably believes that the entire sample of evidence to be tested and analyzed that the

laboratory, prior to the testing or analysis of the evidence, notifies in writing the court which ordered the testing and analysis and counsel for all parties:

1. That the entire sample of evidence may be destroyed by the testing and analysis;
2. The possibility that another laboratory may be able to perform the testing and analysis in a less destructive manner with at least equal results;
3. The name of the laboratory capable of performing the testing and analysis, the costs of testing and analysis, the advantages of sending the material to that other laboratory, and the amount of biological material or other evidence which might be saved by alternative testing and analysis; and
4. The Department of Kentucky State Police laboratory follows the directive of the court with regard to the testing and analysis; or

(c) If the Department of Kentucky State Police laboratory knows or reasonably believes that so much of the biological material or evidence may be consumed or destroyed in the testing and analysis that an insufficient sample will remain for independent testing and analysis that the laboratory follows the procedure specified in paragraph (b) of this subsection.

(6) Destruction of evidence in violation of this section shall be a violation of KRS 524.100.

(7) Subject to KRS 422.285(9), the appropriate governmental entity shall retain any biological material secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case. The governmental entity shall have the discretion to determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for DNA testing and analysis.

➔Section 27. KRS 527.200 is amended to read as follows:

(1) A person is guilty of use of a weapon of mass destruction in the first degree when he or she intentionally, without lawful authority, places a weapon of mass destruction at any location in the Commonwealth and, as a result, any person other than the defendant is killed or receives serious physical injury.

(2) A weapon of mass destruction is used with lawful authority if it is used with the written permission of an agency of the Commonwealth or of a city, county, charter county, or urban-county government having jurisdiction over the use of destructive devices as defined in KRS 237.030 or the use of explosives.

(3) Use of a weapon of mass destruction in the first degree is a Class A felony~~[unless a person other than the defendant is killed as a result, in which case it is a capital offense]~~.

➔Section 28. KRS 532.010 is amended to read as follows:

Felonies are classified, for the purpose of sentencing, into five categories:

(1) ~~[Capital offenses;~~

~~(2)]~~Class A felonies;

(2)~~[(3)]~~ Class B felonies;

(3)~~[(4)]~~ Class C felonies; and

(4)~~[(5)]~~ Class D felonies.

➔Section 29. 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 definite term of imprisonment with a maximum which falls between ninety (90) days and twelve (12) months shall be deemed a Class A 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 of less than ninety (90) days shall be deemed a Class B misdemeanor.

(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 30. KRS 532.030 is amended to read as follows:

(1)~~[When a person is convicted of a capital offense, he shall have his punishment fixed at death, or at a term of imprisonment for life without benefit of probation or parole, or at a term of imprisonment for life without benefit of probation or parole until he has served a minimum of twenty-five (25) years of his sentence, or to a sentence of life, or to a term of not less than twenty (20) years nor more than fifty (50) years.~~

~~(2)]~~ When a person is convicted of a Class A felony, he shall have his punishment fixed at imprisonment in accordance with KRS 532.060.

(2)~~[(3)]~~ When a person is convicted of an offense other than a~~[capital offense or]~~ Class A felony, he ***or she*** shall have his ***or her*** punishment fixed at:

(a) A term of imprisonment authorized by this chapter; or

(b) A fine authorized by KRS Chapter 534; or

(c) Both imprisonment and a fine unless precluded by the provisions of KRS Chapter 534.

(3) When a person is convicted of a Class A felony, he or she shall have his or her

punishment fixed at imprisonment for:

(a) Life without benefit of probation or parole; or

(b) Life without benefit of probation or parole until he or she has served a minimum term of twenty-five (25) years; or

(c) A term of not less than twenty (20) years nor more than fifty (50) years; when the person is convicted of any of the following:

1. Murder under KRS 507.020;

2. Kidnapping under KRS 509.040 if the victim is not released alive or if the victim is released alive but subsequently dies as a result of:

a. Serious physical injury suffered during the kidnapping;

b. Not being released in a safe place; or

c. Being released in any circumstances that are intended, known, or should have been known to cause or lead to the victim's death; or

3. Use of a weapon of mass destruction under KRS 527.200 if a person other than a defendant is killed as a result of the use of the weapon.

(4) ***When a person is convicted of a Class A felony not involving the offenses specified in subsection (3) of this section, he or she shall have his or her sentence fixed at***~~[In all cases in which the death penalty may be authorized the judge shall instruct the jury in accordance with subsection (1) of this section. The instructions shall state, subject to the aggravating and mitigating limitations and requirements of KRS 532.025, that the jury may recommend upon a conviction for a capital offense a sentence of death, or at a term of imprisonment for life without benefit of probation or parole, or a term of imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, or]~~ a sentence of life~~[,]~~ or to a term of not less than twenty (20) years nor more than fifty (50) years.

➔Section 31. KRS 532.040 is amended to read as follows:

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.

➔Section 32. KRS 532.050 is amended to read as follows:

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

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

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

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

(c) A preliminary calculation of the credit allowed the defendant for time spent in custody prior to the commencement of a sentence under KRS 532.120; and

(d) Any other matters that the court directs to be included.

(3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding

sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.

(4) If the defendant has been convicted of a sex crime, as defined in KRS 17.500, prior to determining the sentence or prior to final sentencing for youthful offenders, the court shall order a comprehensive sex offender presentence evaluation of the defendant to be conducted by an approved provider, as defined in KRS 17.500, the Department of Corrections, or the Department of Juvenile Justice if the defendant is a youthful offender. The comprehensive sex offender presentence evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment and shall be considered by the court in determining the appropriate sentence. A copy of the comprehensive sex offender presentence evaluation shall be furnished to the court, the Commonwealth's attorney, and to counsel for the defendant. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the comprehensive sex offender presentence evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any comprehensive sex offender presentence evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.

(5) The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based**,**~~[and]~~ correctional-***based, and*** institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to

meet those needs.

(6) Before imposing sentence, the court shall advise the defendant or his or her counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

➔Section 33. 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.

(4) ~~[(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 ***the commissioner*** ~~[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.

(5) ~~[(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).

(6) ~~[(7)]~~ State prisoners, excluding the Class D felons and Class C felons qualifying to serve time in county jails, shall be transferred to the state institution within forty-five (45) days of final sentencing.

➔Section 34. KRS 532.140 is amended to read as follows:

(1) ~~[KRS 532.010, 532.025, and 532.030 to the contrary notwithstanding, no offender who has been determined to be an offender with a serious intellectual disability under the provisions of KRS 532.135, shall be subject to execution. The same procedure as required in KRS 532.025 and 532.030 shall be utilized in determining the sentence of the offender with a serious intellectual disability under the provisions of KRS 532.135 and 532.140.~~

~~(2)~~ The provisions of KRS 532.135 and 532.140 do not preclude the sentencing of an offender with a serious intellectual disability to any~~[other]~~ sentence authorized by KRS 532.010~~[, 532.025,]~~ or 532.030 for a crime which is a ***Class A felony*** ~~[capital offense]~~.

(3) The provisions of KRS 532.135 ***shall apply only to trials commenced after July 13, 1990*** and ***this section*** ~~[532.140]~~ shall apply only to trials commenced after ***the effective date of this Act*** ~~[July 13, 1990]~~.

➔Section 35. KRS 532.400 is amended to read as follows:

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

(a) Is convicted of a~~[capital offense or a]~~ Class A felony;

(b) Has a maximum or close security classification as defined by administrative regulations promulgated by the department; or

(c) Is not eligible for parole by statute;

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

(2) The period of postincarceration supervision shall be one (1) year.

(3) During the period of postincarceration supervision, the defendant shall:

(a) Be subject to all orders specified by the Department of Corrections; and

(b) Comply with all education, treatment, testing, or combination thereof required by the Department of Corrections.

(4) Persons under postincarceration supervision pursuant to this section shall be subject to the supervision of the Division of Probation and Parole and under the authority of the Parole Board.

(5) If a person violates a provision specified in subsection (3) of this section, the violation shall be reported in writing by the Division of Probation and Parole. Notice of the violation shall be sent to the Parole Board to determine whether probable cause exists to revoke the defendant's postincarceration supervision and

reincarcerate the defendant as set forth in KRS 532.060.

(6) The provisions of this section shall not apply to a person who is subject to the provisions of KRS 532.043.

(7) The provisions of this section shall apply only to persons convicted, pleading guilty, or entering an Alford plea for an offense committed after June 8, 2011.

➔Section 36. 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 ***imprisonment for life without parole or life without parole for twenty-five (25) years*** ~~[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 ***or her*** 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 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 37. KRS 605.090 is amended to read as follows:

(1) Unless precluded by law, any child committed to the Department of Juvenile Justice or the cabinet may by the decision of the Department of Juvenile Justice or the cabinet or its designee, at any time during the period of his or her commitment, be:

(a) Upon fourteen (14) days' prior written notice to the court, discharged from commitment. Written notice of discharge shall be given to the committing

court and to any other parties as may be required by law;

(b) Placed in the home of the child's parents, in the home of a relative, a suitable foster home, or boarding home, upon such conditions as the Department of Juvenile Justice or the cabinet may prescribe and subject to visitation and supervision by a social service worker or juvenile probation and parole officer.

1. At the time a committed child is placed in the home of his or her parents by the Department of Juvenile Justice or the cabinet, the parents shall be informed in writing of the conditions of the placement and the criteria that will be used to determine whether removal is necessary.

2. At the time a committed child is placed anywhere other than the home of the child's parents, the cabinet or the Department of Juvenile Justice shall inform the foster home, the relative, or the governing authority of any private facility or agency in which the child has been placed whether the minor placed is a juvenile sexual offender as defined in KRS 635.505(2) or of any inappropriate sexual acts or sexual behavior by the child specifically known to the cabinet or Department of Juvenile Justice, and any behaviors of the child specifically known to the cabinet or Department of Juvenile Justice that indicate a safety risk for the placement. Information received by any private facility or agency under this paragraph shall be disclosed immediately and directly to the individual or individuals who have physical custody of the child.

3. If, after a placement is made, additional information is obtained by the cabinet or the Department of Juvenile Justice about inappropriate sexual behavior or other behavior of the committed child that may indicate a safety risk for the placement, the cabinet or the Department of Juvenile Justice shall as soon as practicable, but no later than seventy-two (72)

hours after the additional information is received, inform the foster parent, relative, or private facility or agency. Additional information received by any private facility or agency shall be disclosed immediately and directly to the individual or individuals who have physical custody of the child.

4. Information disclosed under this paragraph shall be limited to the acts or behaviors of the committed child and shall not constitute a violation of confidentiality under KRS Chapter 610 or 620. No foster parent, relative, or other person caring for a committed child shall divulge the information received under this paragraph to persons who do not have a legitimate interest or responsibility relating to the case. Nothing in this subparagraph shall prohibit the disclosure or sharing of information between a foster parent, custodian, private facility, or governmental entity for the protection of any child. A violation of this subparagraph is a Class B misdemeanor;

(c) Placed in one (1) of the facilities or programs operated by the Department of Juvenile Justice or the cabinet, except that no child committed under the provisions of KRS 610.010(2)(a), (b), or (c) shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as a public offender unless the cabinet and the department agree, and the court consents, that the placement is in the best interest of the child and that the placement does not exceed a group home level;

(d) Placed in a child-caring facility operated by a local governmental unit or by a private organization willing to receive the child, upon such conditions as the cabinet may prescribe;

(e) However, under no circumstances shall a child committed under KRS Chapter 620 be placed in a home, facility, or other shelter with a child who has been

committed to the Department of Juvenile Justice for commission of a sex crime, as that term is defined in KRS 17.500, unless the child committed for the commission of a sex crime is kept segregated from other children in the home, facility, or other shelter that have not been committed for the commission of a sex crime;

(f) Treated as provided in KRS Chapter 645;

(g) Following the transfer or placement of a child pursuant to paragraphs (b), (c), (d), (e), or (f) of this subsection, the Department of Juvenile Justice or the cabinet shall, within fourteen (14) days, excluding weekends and holidays, give written notice to the court of the transfer, the placement, and the reasons therefor.

(2) No child ten (10) years of age or under shall be placed in a facility operated by the Department of Juvenile Justice for children adjudicated as public offenders, except that a child charged with the commission of ~~[a capital offense or with]~~an offense designated as a Class A or Class B felony may be detained in a state-operated detention facility when there is no available less restrictive alternative.

(3) If a child committed to the cabinet as dependent, neglected, or abused is placed in the home of the child's parents, the child shall not be removed except in accordance with the following standards and procedures:

(a) If the social service worker believes that the committed child continues to be dependent, neglected, or abused, but immediate removal is unnecessary to protect the child from imminent death or serious physical injury, the casework situation and evidence shall be reviewed with his supervisor to determine whether to continue work with the family intact or to remove the child. There shall be documentation that the social service worker, prior to the court hearing, made an effort to contact the parents to inform them of the specific problems that could lead to removal so they have an opportunity to take

corrective action. If the parents are unavailable or do not respond to attempts to communicate, the specific circumstances shall be documented;

(b) If it appears that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm and there is not reasonably available an alternative less drastic than removal of the child from the home, the cabinet shall petition the District Court to review the commitment pursuant to KRS 610.120 in relation to the cabinet's intention to remove the child from the parent's home. The petition shall set forth the facts which constitute the need for removal of the child. The court shall serve notice of the petition and the time and place of the hearing on the parents; however, the social service worker shall also contact the parents to ensure that they received the notice and are aware of the right to be represented by counsel. If the parents' whereabouts are unknown, notice may be mailed to the last known address of an adult who is a near relative. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall not be removed from the parents' home;

(c) If a social service worker finds a committed, unattended child who is too young to take care of himself, the social service worker shall make reasonable efforts to arrange for an emergency caretaker in the child's home until the parents return or fail to return within a reasonable time. If no in-home caretaker is available for the child, the social service worker shall request any appropriate law enforcement officer to take the child into protective custody. If, after a reasonable time, it appears the child has been abandoned, the cabinet shall petition the District Court to review the case; or

(d) If there exist reasonable grounds to believe that the child is in danger of

imminent death or serious physical injury or is being sexually abused and that the parents are unable or unwilling to protect the child, the social service worker shall, with the assistance of a law enforcement officer, immediately remove the child prior to filing a petition for review. Within seventy-two (72) hours after the removal, the cabinet shall file a petition for review in District Court pursuant to KRS 610.120 with a request for an expeditious hearing. If the court fails to find that the child's health or welfare or physical, mental, or emotional condition is subjected to or threatened with real and substantial harm, or recommends a less drastic alternative that is reasonably available, the child shall be returned to the parents' home.

(4) The cabinet or the Department of Juvenile Justice, as appropriate, shall notify the juvenile court of the county of placement with the conditions of supervised placement of each child placed in that county from one (1) of the residential treatment facilities operated by the Department of Juvenile Justice or the cabinet. Notice of the conditions of such placement may be made available by the court to any law enforcement agency.

(5) The person in charge of any home to which a child is probated, and the governing authority of any private facility or agency to which a child is committed, shall make such reports to the court as the court may require, and such reports as the Department of Juvenile Justice or the cabinet may require in the performance of its functions under the law. The Department of Juvenile Justice or the cabinet shall have the power to make such visitations and inspections of the homes, facilities, and agencies in which children who have committed public offenses have been placed as it deems necessary to carry out its functions under the law.

(6) The Department of Juvenile Justice or the cabinet shall provide a written transfer summary to the person in charge of any foster home or any governing authority of any private facility or agency in which the Department of Juvenile Justice or the

cabinet has placed a child. The written summary shall include, at a minimum, demographic information about the child, a narrative statement detailing the child's prior placements, the length of time the child has been committed, a description of the services and assistance provided to the child or the child's family since the most current case plan, a copy of the current case plan for the child and the child's family, and a copy of the child's medical and educational passport, if available, provided that no information shall be provided that violates any statutory confidentiality requirements. The transfer summary shall state whether the child placed is a juvenile sexual offender as defined in KRS 635.505(2), and include information required under subsection (1) of this section. The transfer summary shall be provided by the Department of Juvenile Justice if it is responsible for the child, or the cabinet if it is responsible for the child, within seven (7) days of the placement of the child with the person, agency, or facility providing care to the child.

(7) The Department of Juvenile Justice may assist the courts in placing children who have committed public offenses in boarding homes, and, under agreements with the individual courts, may assume responsibility for making such placements. Counties may pay or contribute towards the expenses of maintaining such children and, to the extent authorized by the fiscal court, the Department of Juvenile Justice may incur obligations chargeable to the county for such expenses.

➔Section 38. KRS 610.200 (Effective until July 1, 2015) is amended to read as follows:

(1) When a peace officer has taken or received a child into custody on a charge of committing an offense, the officer shall immediately inform the child of his ***or her*** constitutional rights and afford ***the child*** ~~[him]~~ the protections required thereunder, notify the parent, or if the child is committed, the Department of Juvenile Justice or the cabinet, as appropriate, and if the parent is not available, then a relative, guardian, or person exercising custodial control or supervision of the child, that the

child has been taken into custody, give an account of specific charges against the child, including the specific statute alleged to have been violated, and the reasons for taking the child into custody.

(2) Unless the child is subject to trial as an adult or unless the nature of the offense or other circumstances are such as to indicate the necessity of retaining the child in custody, the officer shall release the child to the custody of his parent or if the child is committed, the Department of Juvenile Justice or the cabinet, as appropriate; or if the parent is not available, then a relative, guardian, or person exercising custodial control or supervision or other responsible person or agency approved by the court upon the written promise, signed by such person or agency, to bring the child to the court at a stated time or at such time as the court may order. The written promise, accompanied by a written report by the officer, shall be submitted forthwith to the court or court-designated worker and shall detail the reasons for having taken custody of the child, the release of the child, the person to whom the child was released, and the reasons for the release.

(3) If the person fails to produce the child as agreed or upon notice from the court, a summons, warrant, or custody order may be issued for the apprehension of the person or of the child, or both.

(4) The release of a child pursuant to this section shall not preclude a peace officer from proceeding with a complaint against a child or any other person.

(5) Unless the child is subject to trial as an adult, if the child is not released, the peace officer shall contact the court-designated worker who may:

(a) Release the child to his parents;

(b) Release the child to such other persons or organizations as are authorized by law;

(c) Release the child to either of the above subject to stated conditions; or

(d) Except as provided in subsection (6) of this section, authorize the peace

officer to retain custody of the child for an additional period not to exceed twelve (12) hours during which the peace officer may transport the child to a secure juvenile detention facility, a juvenile holding facility, or a nonsecure facility. If the child is retained in custody, the court-designated worker shall give notice to the child's parents or person exercising custodial control or supervision of the fact that the child is being retained in custody.

(6) (a) Except as provided in paragraph (b) of this subsection, no child ten (10) years of age or under shall be taken to or placed in a juvenile detention facility.

(b) Any child ten (10) years of age or under who has been charged with the commission of~~[a capital offense or with]~~ an offense designated as a Class A or Class B felony may be taken to or placed in a secure juvenile detention facility or youth alternative center when there is no available less restrictive alternative.

➔Section 39. KRS 610.200 (Effective July 1, 2015) is amended to read as follows:

(1) When a peace officer has taken or received a child into custody on a charge of committing an offense, the officer shall immediately inform the child of his ***or her*** constitutional rights and afford ***the child***~~[him]~~ the protections required thereunder, notify the parent, or if the child is committed, the Department of Juvenile Justice or the cabinet, as appropriate, and if the parent is not available, then a relative, guardian, or person exercising custodial control or supervision of the child, that the child has been taken into custody, give an account of specific charges against the child, including the specific statute alleged to have been violated, and the reasons for taking the child into custody.

(2) (a) When a peace officer has taken or received a child into protective custody on suspicion of being a runaway, the officer shall immediately notify:

1. The child's parent, guardian, or person exercising custodial control or

supervision of the child, if determined;

2. The cabinet or Department of Juvenile Justice, if appropriate; and

3. The court-designated worker.

(b) If the parent, guardian, or other person exercising custodial control or supervision is identified and notified, the peace officer may retain custody of the child for a reasonable period to allow the person notified the opportunity to arrive at the officer's location and collect the child.

(c) If the parent, guardian, or other person exercising custodial control or supervision cannot be identified or located, the peace officer may retain custody of the child for a period of time not to exceed two (2) hours to continue his or her investigation.

(d) If, at the conclusion of the peace officer's investigation, the parent, guardian, or person exercising custodial control or supervision of the child is identified and notified, the peace officer shall return the child to the custody of that person and shall file a status offense case with the court-designated worker.

(e) If, at the conclusion of the peace officer's investigation, the parent, guardian, or person exercising custodial control or supervision of the child cannot be identified or located, or that person refuses to collect the child, the peace officer shall file a complaint pursuant to KRS 610.012.

(3) Unless the child is subject to trial as an adult or unless the nature of the offense or other circumstances are such as to indicate the necessity of retaining the child in custody, the officer shall release the child to the custody of his parent or if the child is committed, the Department of Juvenile Justice or the cabinet, as appropriate; or if the parent is not available, then a relative, guardian, or person exercising custodial control or supervision or other responsible person or agency approved by the court upon the written promise, signed by such person or agency, to bring the child to the court at a stated time or at such time as the court may order. The written promise,

accompanied by a written report by the officer, shall be submitted forthwith to the court or court-designated worker and shall detail the reasons for having taken custody of the child, the release of the child, the person to whom the child was released, and the reasons for the release.

(4) (a) If the person fails to produce the child as agreed or upon notice from the Court as provided in subsection (3) of this section, a summons, warrant, or custody order may be issued for the apprehension of the person or of the child, or both.

(b) If the person notified to collect a suspected runaway pursuant to subsection (2)(a) of this section fails or refuses to collect the child, the peace officer shall notify the county attorney, who may file a charge of endangering the welfare of a minor, and the cabinet.

(5) The release of a child pursuant to this section shall not preclude a peace officer from proceeding with a complaint against a child or any other person.

(6) Unless the child is subject to trial as an adult, if the child is not released, the peace officer shall contact the court-designated worker who may:

(a) Release the child to his parents;

(b) Release the child to such other persons or organizations as are authorized by law;

(c) Release the child to either of the above subject to stated conditions; or

(d) Except as provided in subsection (7) of this section, authorize the peace officer to retain custody of the child for an additional period not to exceed twelve (12) hours during which the peace officer may transport the child to a secure juvenile detention facility or a nonsecure facility. If the child is retained in custody, the court-designated worker shall give notice to the child's parents or person exercising custodial control or supervision of the fact that the child is being retained in custody.

(7) (a) Except as provided in paragraph (b) of this subsection, no child ten (10) years of age or under shall be taken to or placed in a juvenile detention facility.

(b) Any child ten (10) years of age or under who has been charged with the commission of~~[a capital offense or with]~~ an offense designated as a Class A or Class B felony may be taken to or placed in a secure juvenile detention facility or youth alternative center when there is no available less restrictive alternative.

➔Section 40. KRS 610.265 (Effective until July 1, 2015) is amended to read as follows:

(1) Any child who is alleged to be a status offender or who is accused of being in contempt of court on an underlying finding that the child is a status offender may be detained in a nonsecure facility, a secure juvenile detention facility, or a juvenile holding facility for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays, pending a detention hearing. Any child who is accused of committing a public offense or of being in contempt of court on an underlying public offense may be detained in a secure juvenile detention facility or juvenile holding facility for a period of time not to exceed forty-eight (48) hours, exclusive of weekends and holidays or, if neither is reasonably available, an intermittent holding facility, for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays, pending a detention hearing.

(2) Within the period of detention described in subsection (1) of this section, exclusive of weekends and holidays, a detention hearing shall be held by the judge or trial commissioner of the court for the purpose of determining whether the child shall be further detained. At the hearing held pursuant to this subsection, the court shall consider the nature of the offense, the child's background and history, and other information relevant to the child's conduct or condition.

(3) If the court orders a child detained, that detention shall be served as follows:

(a) If the child is charged with a~~[capital offense,]~~ Class A felony~~[,]~~ or Class B felony, detention shall occur in either a secure juvenile detention facility or a juvenile holding facility pending the child's next court appearance subject to the court's review of the detention order prior to that court appearance.

(b) Except as provided in KRS 630.080(2), if it is alleged that the child is a status offender, the child may be detained in a secure juvenile detention facility for a period not to exceed twenty-four (24) hours after which detention shall occur in a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance subject to the court's review of the detention order prior to the next court appearance.

(c) If a status offender or a child alleged to be a status offender is charged with violating a valid court order, the child may be detained in a secure juvenile detention facility, a juvenile holding facility, or in a nonsecure setting approved by the Department of Juvenile Justice, for a period not to exceed forty-eight (48) hours, exclusive of weekends and holidays, pending the child's next court appearance.

(d) Prior to ordering a status offender or alleged status offender who is subject to a valid court order securely detained because the child violated the valid court order, the court shall:

1. Affirm that the requirements for a valid court order were met at the time the original order was issued;
2. Make a determination during the adjudicatory hearing that the child violated the valid court order; and
3. Within forty-eight (48) hours after the adjudicatory hearing on the violation of a valid court order by the child, exclusive of weekends and holidays, receive and review a written report prepared by an appropriate public agency that reviews the behavior of the child and the

circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate. If a prior written report is included in the child's file, that report shall not be used to satisfy this requirement. The child may be securely detained for a period not to exceed forty-eight (48) hours, exclusive of weekends and holidays, pending receipt and review of the report by the court. The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure or nonsecure detention of a status offender.

(e) If the child is charged with a public offense, or contempt of court on an underlying public offense, and the county in which the case is before the court is not served by a state operated secure detention facility under the statewide detention plan, detention may occur in a secure juvenile detention facility, juvenile holding facility, or a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance, subject to the court's review of the detention order prior to that court appearance.

(f) If the child is charged with a public offense, or contempt on a public offense, and the county in which the case is before the court is served by a state operated secure detention facility under the statewide detention plan, the child shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance.

(4) If, at the hearing conducted under subsection (2) of this section, the court conducts an adjudicatory hearing on the merits of a violation of a valid court order, that hearing shall conform to the requirements of KRS 630.080.

(5) If the detention hearing is not held as provided in subsection (1) of this section, the child shall be released as provided in KRS 610.290.

(6) If the child is not released, the court-designated worker shall notify the parent, person exercising custodial control or supervision, a relative, guardian, or other responsible adult, and the Department of Juvenile Justice or the cabinet, as appropriate.

➔Section 41. KRS 610.265 (Effective July 1, 2015) is amended to read as follows:

(1) Any child who is alleged to be a status offender or who is accused of being in contempt of court on an underlying finding that the child is a status offender may be detained in a nonsecure facility or a secure juvenile detention facility for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays, pending a detention hearing. Any child who is accused of committing a public offense or of being in contempt of court on an underlying public offense may be detained in a secure juvenile detention facility or a nonsecure setting approved by the Department of Juvenile Justice for a period of time not to exceed forty-eight (48) hours, exclusive of weekends and holidays, pending a detention hearing.

(2) Within the period of detention described in subsection (1) of this section, exclusive of weekends and holidays, a detention hearing shall be held by the judge or trial commissioner of the court for the purpose of determining whether the child shall be further detained. At the hearing held pursuant to this subsection, the court shall consider the nature of the offense, the child's background and history, and other information relevant to the child's conduct or condition.

(3) If the court orders a child detained further, that detention shall be served as follows:

(a) If the child is charged with a~~[capital offense,]~~ Class A felony~~[,]~~ or Class B felony, detention shall occur in a secure juvenile detention facility pending the child's next court appearance subject to the court's review of the detention

order prior to that court appearance;

(b) Except as provided in KRS 630.080(2), if it is alleged that the child is a status offender, the child may be detained in a secure juvenile detention facility for a period not to exceed twenty-four (24) hours after which detention shall occur in a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance subject to the court's review of the detention order prior to the next court appearance;

(c) If a status offender or a child alleged to be a status offender is charged with violating a valid court order, the child may be detained in a secure juvenile detention facility, or in a nonsecure setting approved by the Department of Juvenile Justice, for a period not to exceed forty-eight (48) hours, exclusive of weekends and holidays, pending the child's next court appearance;

(d) Prior to ordering a status offender or alleged status offender who is subject to a valid court order securely detained because the child violated the valid court order, the court shall:

1. Affirm that the requirements for a valid court order were met at the time the original order was issued;

2. Make a determination during the adjudicatory hearing that the child violated the valid court order; and

3. Within forty-eight (48) hours after the adjudicatory hearing on the violation of a valid court order by the child, exclusive of weekends and holidays, receive and review a written report prepared by an appropriate public agency that reviews the behavior of the child and the circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate. If a prior written report is included in the child's file, that

report shall not be used to satisfy this requirement. The child may be securely detained for a period not to exceed forty-eight (48) hours, exclusive of weekends and holidays, pending receipt and review of the report by the court. The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure or nonsecure detention of a status offender; and

(e) If the child is charged with a public offense, or contempt on a public offense, and the county in which the case is before the court is served by a state operated secure detention facility under the statewide detention plan, the child shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance.

(4) If, at the hearing conducted under subsection (2) of this section, the court conducts an adjudicatory hearing on the merits of a violation of a valid court order, that hearing shall conform to the requirements of KRS 630.080.

(5) If the detention hearing is not held as provided in subsection (1) of this section, the child shall be released as provided in KRS 610.290.

(6) If the child is not released, the court-designated worker shall notify the parent, person exercising custodial control or supervision, a relative, guardian, or other responsible adult, and the Department of Juvenile Justice or the cabinet, as appropriate.

➔Section 42. KRS 610.320 is amended to read as follows:

(1) A special record book shall be kept by the court for all cases, to be known as the "juvenile record," and the docket or calendar of such cases shall be called the "juvenile docket."

(2) No probation officer, nor employee of a probation officer, shall, without the consent

of the District Judge sitting in juvenile session, divulge or communicate to any persons other than the court, law enforcement, the Department of Juvenile Justice, an officer of the court interested in the case, a member of the advisory board of the court, or a representative of the cabinet, any information obtained pursuant to the discharge of his duties, nor shall any record of the action of the probation officer be made public except by leave of the District Judge; provided, that nothing in this subsection shall prohibit the probation officer from divulging or communicating such information to the court, to his colleagues or superiors in his own department, or to another probation officer having a direct interest in the record or social history of the child.

(3) All law enforcement and court records regarding children who have not reached their eighteenth birthday shall not be opened to scrutiny by the public, except that a separate public record shall be kept by the clerk of the court which shall be accessible to the public for court records, limited to the petition, order of the adjudication, and disposition in juvenile delinquency proceedings concerning a child who is fourteen (14) years of age or older at the time of the commission of the offense, and who is adjudicated a juvenile delinquent for the commission of an offense that would constitute a~~[capital offense or a]~~ Class A, B, or C felony if the juvenile were an adult, or any offense involving a deadly weapon, or an offense wherein a deadly weapon is used or displayed.

(4) Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or Title IV-B of the Federal Social Security Act is also prohibited. Otherwise, the law enforcement records shall be made available to the child, family, guardian, or legal representative of the child involved. The records shall also be made available to the court, probation officers, prosecutors, the Department of Juvenile Justice, and law

enforcement agencies or representatives of the cabinet. Records, limited to the child's adjudication of delinquency, and disposition of a criminal activity covered by KRS 610.345, shall also be made available to public or private elementary and secondary school administrative, transportation, and counseling personnel, and to any teacher to whose class the student has been assigned for instruction, subject to the provisions of KRS 610.340 and 610.345.

(5) Subject to the Kentucky Rules of Evidence, juvenile court records of adjudications of guilt of a child for an offense which would be a felony if committed by an adult shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial, and may be used during the sentencing phase of a criminal trial. However, the fact that a juvenile has been adjudicated delinquent of an offense which would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication.

(6) This section shall not relieve the probation officer or peace officer from divulging such facts as a witness in a trial or hearing involving any cases falling under KRS Chapters 600 to 645 or the production of juvenile records for use in the trial or proceedings.

(7) This section shall not prohibit release of information regarding juvenile proceedings in the District Court which do not reveal the identity of the child or its parents or guardians, or which relate to the child's eligibility for services under Title IV-E or IV-B of the Federal Social Security Act. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court.

➔Section 43. KRS 635.020 is amended to read as follows:

(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) Any other provision of KRS Chapters 610 to 645 to the contrary notwithstanding, if a child charged with a felony in which a firearm, whether functional or not, was used in the commission of the offense had attained the age of fourteen (14) years at the time of the commission of the alleged offense, he ***or she*** 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 the child committed a felony, that a firearm was used in the commission of that felony, and that the child was fourteen (14) years of age or older at the time of the commission of the alleged felony. If convicted in the Circuit Court, ***the child***~~[he]~~ shall be subject to the same penalties as an adult offender, except that until he ***or she*** reaches the age of eighteen (18)

years, ***the child*** ~~[he]~~ shall be confined in a facility or program 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 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 ***Class*** 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.

➔Section 44. KRS 635.090 is amended to read as follows:

(1) If the court chooses to treat the child as other than a youthful offender, if the Commonwealth fails to prove the criteria bringing a case under KRS Chapter 640, or if the county attorney elects not to proceed under KRS Chapter 640, the court may:

(a) If a child is fourteen (14) years of age or older and is adjudicated a public offender in the commission of a~~[capital offense,]~~ Class A felony~~[,]~~ or Class B felony, the court in its discretion may commit the child to the Department of Juvenile Justice for purposes of treatment or placement in a facility or program for an indeterminate period of time not less than six (6) months. The Department of Juvenile Justice may petition the court to continue the commitment for the purpose of completing a treatment program but the commitment shall not extend past the child's nineteenth birthday; or

(b) If a child is sixteen (16) years of age or older and is adjudicated a public offender in the commission of a felony offense and has previously been adjudicated delinquent of one (1) or more felony offenses not arising out of the same course of conduct in separate adjudications, or has previously been adjudicated a public offender for one (1) or more felony offenses not arising out of the same course of conduct in separate adjudications, the court in its discretion may commit the child to the Department of Juvenile Justice for purposes of treatment or placement in a facility or program for an indeterminate period of time not less than six (6) months. The Department of Juvenile Justice may petition the court to continue the commitment for the purpose of completing a treatment program, but the commitment shall not extend past the child's nineteenth birthday.

(2) The Department of Juvenile Justice shall maintain jurisdiction over the child during the period of the commitment. The committing court may, upon motion of the

Department of Juvenile Justice, order the child released from the facility or program operated by the Department of Juvenile Justice.

(3) The Department of Juvenile Justice shall notify the committing court if it transfers the child to a different facility or program and note the reasons for the transfer.

(4) The Department of Juvenile Justice shall notify the committing court prior to the termination of treatment or placement as to the future intentions of the Department of Juvenile Justice as they relate to continued treatment of the child.

(5) The committing court may, upon motion of the child, grant shock probation to any child committed under this section after the child has been committed for a minimum of thirty (30) days.

(6) After a child has been committed to the Department of Juvenile Justice as provided in this section, he ***or she*** may not then be transferred to the Circuit Court as provided for in KRS 640.020.

➔Section 45. KRS 640.040 is amended to read as follows:

(1) ~~[No youthful offender who has been convicted of a capital offense who was under the age of sixteen (16) years at the time of the commission of the offense shall be sentenced to capital punishment. A youthful offender may be sentenced to capital punishment if he was sixteen (16) years of age or older at the time of the commission of the offense.]~~A youthful offender convicted of a ***Class A felony*** ~~[capital offense]~~ regardless of age**,** may be sentenced to a term of imprisonment appropriate for one who has committed a Class A felony and may be sentenced to life imprisonment without benefit of parole for twenty-five (25) years ***but not to life imprisonment without benefit of parole***.

(2) No youthful offender shall be subject to persistent felony offender sentencing under the provisions of KRS 532.080 for offenses committed before the age of eighteen (18) years.

(3) No youthful offender shall be subject to limitations on probation, parole or

conditional discharge as provided for in KRS 533.060.

(4) Any youthful offender convicted of a misdemeanor or any felony offense which would exempt him ***or her*** from KRS 635.020(2), (3), (4), (5), (6), (7), or (8) shall be disposed of by the Circuit Court in accordance with the provisions of KRS 635.060.

➔Section 46. The following KRS sections are repealed:

422.287 Motion for DNA testing of evidence -- Court order -- Results -- Maintaining results.

431.213 Definitions for KRS 431.213, 431.2135, and 431.240.

431.2135 Procedure for challenging condemned person's sanity.

431.218 Date of execution of condemned -- Copy of mandate to proper officer.

431.220 Execution of death sentence.

431.223 Method of execution in event of unconstitutionality of KRS 431.220.

431.224 Retroactive applicability.

431.240 Time of execution -- Governor to fix time in case of insanity, pregnancy, or escape -- Administrative hearings -- Transfer to forensic psychiatric facility in case of insanity.

431.250 Persons who may attend executions.

431.260 Warden's return on judgment.

431.270 Delivery or burial of body.

507A.060 Death sentence prohibited.

532.025 Presentence hearings -- Use of juvenile court records -- Aggravating or mitigating circumstances -- Instruction to jury.

532.075 Review of death sentence by Supreme Court.

532.300 Prohibition against death sentence being sought or given on the basis of race -- Procedures for dealing with claims.

532.305 Application of KRS 532.300.

532.309 Short title for KRS 532.300 to 532.309.