

AN ACT relating to crimes and punishments.

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

➔Section 1. KRS 12.020 is amended to read as follows:

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

I. Cabinet for General Government - Departments headed by elected officers:

- (1) The Governor.
- (2) Lieutenant Governor.
- (3) Department of State.
  - (a) Secretary of State.
  - (b) Board of Elections.
  - (c) Registry of Election Finance.
- (4) Department of Law.
  - (a) Attorney General.
- (5) Department of the Treasury.
  - (a) Treasurer.
- (6) Department of Agriculture.

- (a) Commissioner of Agriculture.
  - (b) Kentucky Council on Agriculture.
  - (7) Auditor of Public Accounts.
- II. Program cabinets headed by appointed officers:
- (1) Justice and Public Safety Cabinet:
    - (a) Department of Kentucky State Police.
    - (b) Department of Criminal Justice Training.
    - (c) Department of Corrections.
    - (d) Department of Juvenile Justice.
    - (e) Office of the Secretary.
    - (f) Office of Drug Control Policy.
    - (g) Office of Legal Services.
    - (h) Office of the Kentucky State Medical Examiner.
    - (i) Parole Board.
    - (j) Kentucky State Corrections Commission.
    - (k) Office of Legislative and Intergovernmental Services.
    - (l) Office of Management and Administrative Services.
    - (m) Department for Public Advocacy.
    - (n) Office of the Kentucky State Criminal Forensic Laboratories.**
  - (2) Education and Workforce Development Cabinet:
    - (a) Office of the Secretary.
      - 1. Governor's Scholars Program.
    - (b) Office of Legal and Legislative Services.
      - 1. Client Assistance Program.
    - (c) Office of Communication.
    - (d) Office of Budget and Administration.
      - 1. Division of Human Resources.

2. Division of Administrative Services.
- (e) Office of Technology Services.
- (f) Office of Educational Programs.
- (g) Office for Education and Workforce Statistics.
- (h) Board of the Kentucky Center for Education and Workforce Statistics.
- (i) Board of Directors for the Center for School Safety.
- (j) Department of Education.
  1. Kentucky Board of Education.
  2. Kentucky Technical Education Personnel Board.
- (k) Department for Libraries and Archives.
- (l) Department of Workforce Investment.
  1. Office for the Blind.
  2. Office of Vocational Rehabilitation.
  3. Office of Employment and Training.
    - a. Division of Grant Management and Support.
    - b. Division of Workforce and Employment Services.
    - c. Division of Unemployment Insurance.
- (m) Foundation for Workforce Development.
- (n) Kentucky Office for the Blind State Rehabilitation Council.
- (o) Kentucky Workforce Investment Board.
- (p) Statewide Council for Vocational Rehabilitation.
- (q) Statewide Independent Living Council.
- (r) Unemployment Insurance Commission.
- (s) Education Professional Standards Board.
  1. Division of Educator Preparation.
  2. Division of Certification.
  3. Division of Professional Learning and Assessment.

4. Division of Legal Services.
- (t) Kentucky Commission on the Deaf and Hard of Hearing.
- (u) Kentucky Educational Television.
- (v) Kentucky Environmental Education Council.
- (3) Energy and Environment Cabinet:
  - (a) Office of the Secretary.
    1. Office of Legislative and Intergovernmental Affairs.
    2. Office of General Counsel.
    3. Office of Administrative Hearings.
    4. Mine Safety Review Commission.
    5. Kentucky State Nature Preserves Commission.
    6. Kentucky Environmental Quality Commission.
    7. Kentucky Public Service Commission.
  - (b) Department for Environmental Protection.
    1. Office of the Commissioner.
    2. Division for Air Quality.
    3. Division of Water.
    4. Division of Environmental Program Support.
    5. Division of Waste Management.
    6. Division of Enforcement.
    7. Division of Compliance Assistance.
  - (c) Department for Natural Resources.
    1. Office of the Commissioner.
    2. Division of Technical and Administrative Support.
    3. Division of Mine Permits.
    4. Division of Mine Reclamation and Enforcement.
    5. Division of Abandoned Mine Lands.

6. Division of Oil and Gas.
  7. Office of Mine Safety and Licensing.
  8. Division of Forestry.
  9. Division of Conservation.
  10. Office of the Reclamation Guaranty Fund.
- (d) Department for Energy Development and Independence.
1. Division of Efficiency and Conservation.
  2. Division of Renewable Energy.
  3. Division of Biofuels.
  4. Division of Energy Generation Transmission and Distribution.
  5. Division of Carbon Management.
  6. Division of Fossil Energy Development.
- (4) Public Protection Cabinet.
- (a) Office of the Secretary.
1. Office of Communications and Public Outreach.
  2. Office of Legal Services.
    - a. Insurance Legal Division.
    - b. Charitable Gaming Legal Division.
    - c. Alcoholic Beverage Control Legal Division.
    - d. Housing, Buildings and Construction Legal Division.
    - e. Financial Institutions Legal Division.
- (b) Crime Victims Compensation Board.
- (c) Board of Claims.
- (d) Kentucky Board of Tax Appeals.
- (e) Kentucky Boxing and Wrestling Authority.
- (f) Kentucky Horse Racing Commission.
1. Division of Licensing.

2. Division of Incentives and Development.
  3. Division of Veterinary Services.
  4. Division of Security and Enforcement.
- (g) Department of Alcoholic Beverage Control.
1. Division of Distilled Spirits.
  2. Division of Malt Beverages.
  3. Division of Enforcement.
- (h) Department of Charitable Gaming.
1. Division of Licensing and Compliance.
  2. Division of Enforcement.
- (i) Department of Financial Institutions.
1. Division of Depository Institutions.
  2. Division of Non-Depository Institutions.
  3. Division of Securities.
- (j) Department of Housing, Buildings and Construction.
1. Division of Fire Prevention.
  2. Division of Plumbing.
  3. Division of Heating, Ventilation, and Air Conditioning.
  4. Division of Building Code Enforcement.
- (k) Department of Insurance.
1. Property and Casualty Division.
  2. Health and Life Division.
  3. Division of Financial Standards and Examination.
  4. Division of Agent Licensing.
  5. Division of Insurance Fraud Investigation.
  6. Consumer Protection Division.
  7. Division of Kentucky Access.

- (l) Office of Occupations and Professions.
- (5) Labor Cabinet.
  - (a) Office of the Secretary.
    - 1. Division of Management Services.
    - 2. Office of General Counsel.
  - (b) Office of General Administration and Program Support for Shared Services.
    - 1. Division of Human Resource Management.
    - 2. Division of Fiscal Management.
    - 3. Division of Budgets.
    - 4. Division of Information Services.
  - (c) Office of Inspector General for Shared Services.
  - (d) Department of Workplace Standards.
    - 1. Division of Employment Standards, Apprenticeship, and Mediation.
    - 2. Division of Occupational Safety and Health Compliance.
    - 3. Division of Occupational Safety and Health Education and Training.
    - 4. Division of Workers' Compensation Funds.
  - (e) Department of Workers' Claims.
    - 1. Office of General Counsel for Workers' Claims.
    - 2. Office of Administrative Law Judges.
    - 3. Division of Claims Processing.
    - 4. Division of Security and Compliance.
    - 5. Division of Information and Research.
    - 6. Division of Ombudsman and Workers' Compensation Specialist Services.

7. Workers' Compensation Board.
8. Workers' Compensation Advisory Council.
9. Workers' Compensation Nominating Commission.
- (f) Workers' Compensation Funding Commission.
- (g) Kentucky Labor-Management Advisory Council.
- (h) Occupational Safety and Health Standards Board.
- (i) Prevailing Wage Review Board.
- (j) Apprenticeship and Training Council.
- (k) State Labor Relations Board.
- (l) Employers' Mutual Insurance Authority.
- (m) Kentucky Occupational Safety and Health Review Commission.
- (6) Transportation Cabinet:
  - (a) Department of Highways.
    1. Office of Project Development.
    2. Office of Project Delivery and Preservation.
    3. Office of Highway Safety.
    4. Highway District Offices One through Twelve.
  - (b) Department of Vehicle Regulation.
  - (c) Department of Aviation.
  - (d) Department of Rural and Municipal Aid.
    1. Office of Local Programs.
    2. Office of Rural and Secondary Roads.
  - (e) Office of the Secretary.
    1. Office of Public Affairs.
    2. Office for Civil Rights and Small Business Development.
    3. Office of Budget and Fiscal Management.
    4. Office of Inspector General.



- (f) Office of Support Services.
  - (g) Office of Transportation Delivery.
  - (h) Office of Audits.
  - (i) Office of Human Resource Management.
  - (j) Office of Information Technology.
  - (k) Office of Legal Services.
- (7) Cabinet for Economic Development:
- (a) Office of the Secretary.
    - 1. Office of Legal Services.
    - 2. Department for Business Development.
      - a. Office of Entrepreneurship.
        - i. Commission on Small Business Advocacy.
      - b. Office of Research and Public Affairs.
      - c. Bluegrass State Skills Corporation.
    - 3. Office of Financial Services.
      - a. Kentucky Economic Development Finance Authority.
      - b. Division of Finance and Personnel.
      - c. Division of Network Administration.
      - d. Compliance Division.
      - e. Incentive Assistance Division.
- (8) Cabinet for Health and Family Services:
- (a) Office of the Secretary.
  - (b) Office of Health Policy.
  - (c) Office of Legal Services.
  - (d) Office of Inspector General.
  - (e) Office of Communications and Administrative Review.
  - (f) Office of the Ombudsman.

- (g) Office of Policy and Budget.
  - (h) Office of Human Resource Management.
  - (i) Office of Administrative and Technology Services.
  - (j) Department for Public Health.
  - (k) Department for Medicaid Services.
  - (l) Department for Behavioral Health, Developmental and Intellectual Disabilities.
  - (m) Department for Aging and Independent Living.
  - (n) Department for Community Based Services.
  - (o) Department for Income Support.
  - (p) Department for Family Resource Centers and Volunteer Services.
  - (q) Kentucky Commission on Community Volunteerism and Service.
  - (r) Kentucky Commission for Children with Special Health Care Needs.
  - (s) Governor's Office of Electronic Health Information.
- (9) Finance and Administration Cabinet:
- (a) Office of General Counsel.
  - (b) Office of the Controller.
  - (c) Office of Administrative Services.
  - (d) Office of Public Information.
  - (e) Office of Policy and Audit.
  - (f) Department for Facilities and Support Services.
  - (g) Department of Revenue.
  - (h) Commonwealth Office of Technology.
  - (i) State Property and Buildings Commission.
  - (j) Office of Equal Employment Opportunity and Contract Compliance.
  - (k) Kentucky Employees Retirement Systems.
  - (l) Commonwealth Credit Union.

- (m) State Investment Commission.
  - (n) Kentucky Housing Corporation.
  - (o) Kentucky Local Correctional Facilities Construction Authority.
  - (p) Kentucky Turnpike Authority.
  - (q) Historic Properties Advisory Commission.
  - (r) Kentucky Tobacco Settlement Trust Corporation.
  - (s) Kentucky Higher Education Assistance Authority.
  - (t) Kentucky River Authority.
  - (u) Kentucky Teachers' Retirement System Board of Trustees.
  - (v) Executive Branch Ethics Commission.
- (10) Tourism, Arts and Heritage Cabinet:
- (a) Kentucky Department of Travel and Tourism.
    - 1. Division of Tourism Services.
    - 2. Division of Marketing and Administration.
    - 3. Division of Communications and Promotions.
  - (b) Kentucky Department of Parks.
    - 1. Division of Information Technology.
    - 2. Division of Human Resources.
    - 3. Division of Financial Operations.
    - 4. Division of Facilities Management.
    - 5. Division of Facilities Maintenance.
    - 6. Division of Customer Services.
    - 7. Division of Recreation.
    - 8. Division of Golf Courses.
    - 9. Division of Food Services.
    - 10. Division of Rangers.
    - 11. Division of Resort Parks.

12. Division of Recreational Parks and Historic Sites.
- (c) Department of Fish and Wildlife Resources.
1. Division of Law Enforcement.
  2. Division of Administrative Services.
  3. Division of Engineering.
  4. Division of Fisheries.
  5. Division of Information and Education.
  6. Division of Wildlife.
  7. Division of Public Affairs.
- (d) Kentucky Horse Park.
1. Division of Support Services.
  2. Division of Buildings and Grounds.
  3. Division of Operational Services.
- (e) Kentucky State Fair Board.
1. Office of Administrative and Information Technology Services.
  2. Office of Human Resources and Access Control.
  3. Division of Expositions.
  4. Division of Kentucky Exposition Center Operations.
  5. Division of Kentucky International Convention Center.
  6. Division of Public Relations and Media.
  7. Division of Venue Services.
  8. Division of Personnel Management and Staff Development.
  9. Division of Sales.
  10. Division of Security and Traffic Control.
  11. Division of Information Technology.
  12. Division of the Louisville Arena.
  13. Division of Fiscal and Contract Management.

14. Division of Access Control.
- (f) Office of the Secretary.
    1. Office of Finance.
    2. Office of Research and Administration.
    3. Office of Governmental Relations and Tourism Development.
    4. Office of the Sports Authority.
    5. Kentucky Sports Authority.
  - (g) Office of Legal Affairs.
  - (h) Office of Human Resources.
  - (i) Office of Public Affairs and Constituent Services.
  - (j) Office of Creative Services.
  - (k) Office of Capital Plaza Operations.
  - (l) Office of Arts and Cultural Heritage.
  - (m) Kentucky African-American Heritage Commission.
  - (n) Kentucky Foundation for the Arts.
  - (o) Kentucky Humanities Council.
  - (p) Kentucky Heritage Council.
  - (q) Kentucky Arts Council.
  - (r) Kentucky Historical Society.
    1. Division of Museums.
    2. Division of Oral History and Educational Outreach.
    3. Division of Research and Publications.
    4. Division of Administration.
  - (s) Kentucky Center for the Arts.
    1. Division of Governor's School for the Arts.
  - (t) Kentucky Artisans Center at Berea.
  - (u) Northern Kentucky Convention Center.

(v) Eastern Kentucky Exposition Center.

(11) Personnel Cabinet:

- (a) Office of the Secretary.
- (b) Department of Human Resources Administration.
- (c) Office of Employee Relations.
- (d) Kentucky Public Employees Deferred Compensation Authority.
- (e) Office of Administrative Services.
- (f) Office of Legal Services.
- (g) Governmental Services Center.
- (h) Department of Employee Insurance.
- (i) Office of Diversity and Equality.
- (j) Center of Strategic Innovation.

III. Other departments headed by appointed officers:

- (1) Council on Postsecondary Education.
- (2) Department of Military Affairs.
- (3) Department for Local Government.
- (4) Kentucky Commission on Human Rights.
- (5) Kentucky Commission on Women.
- (6) Department of Veterans' Affairs.
- (7) Kentucky Commission on Military Affairs.
- (8) Office of Minority Empowerment.
- (9) Governor's Council on Wellness and Physical Activity.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO READ AS FOLLOWS:

**(1) (a) The Prosecutors Advisory Council shall, by January 1, 2016, establish and operate a statewide database of information related to cases in which a defendant is charged with an offense for which the death penalty may be**

authorized. For each case that includes a charge of at least one (1) capital offense and an allegation of at least one (1) aggravating circumstance under KRS 532.025, the database shall identify:

1. The race of the defendant;
2. The race of the victim;
3. The circumstances of the crime;
4. The nature of the evidence, including whether the case involves eyewitness identification, scientific evidence, or incriminating statements by the defendant; and
5. The aggravating circumstances which could be or are established at trial and all known mitigating factors.

(b) The Commonwealth's attorney shall submit the information required by this subsection to the Prosecutors Advisory Council no later than six (6) days after a defendant is indicted for a capital offense and shall update the information no later than sixty (60) days after the defendant is sentenced.

(c) The information in the database shall be available upon request made to the Prosecutors Advisory Council. This requirement may be satisfied by making the information available through the council's public Web site.

(2) (a) The Prosecutors Advisory Council shall, by January 1, 2016, adopt guidelines for the exercise of prosecutorial discretion in capital cases. The guidelines shall be established in consultation with experts on capital punishment, including prosecutors, defense attorneys, and judges, and shall be designed to ensure that a decision to seek the death penalty occurs within the framework of consistent and evenhanded application of Kentucky's capital sentencing laws.

(b) Each Commonwealth's attorney's office shall adopt a written policy implementing the guidelines established under paragraph (a) of this

subsection. The policy shall be subject to review and approval by the Prosecutors Advisory Council, which shall establish a policy for any office failing to comply with this subsection.

(3) The Prosecutors Advisory Council shall, by January 1, 2016, adopt a model written policy and make training available to prosecutors in the Commonwealth relating to the following subjects:

(a) Conducting eyewitness identification procedures, including lineups in accordance with Sections 14 to 16 this Act;

(b) Conducting and recording nonsuggestive interviews in accordance with Section 20 of this Act;

(c) Acquiring, evaluating, and utilizing information testimony; and

(d) Recognizing intellectual disabilities and mental illness in capital defendants and death row inmates.

➔Section 3. KRS 15.334 is amended to read as follows:

- (1) The Kentucky Law Enforcement Council shall approve mandatory training subjects to be taught to all students attending a law enforcement basic training course that include but are not limited to:
  - (a) Abuse, neglect, and exploitation of the elderly and other crimes against the elderly, including the use of multidisciplinary teams in the investigation and prosecution of crimes against the elderly;
  - (b) The dynamics of domestic violence, pediatric abusive head trauma, as defined in KRS 620.020, child physical and sexual abuse, and rape; child development; the effects of abuse and crime on adult and child victims, including the impact of abuse and violence on child development; legal remedies for protection; lethality and risk issues; profiles of offenders and offender treatment; model protocols for addressing domestic violence, rape, pediatric abusive head trauma, as defined in KRS 620.020, and child abuse;



available community resources and victim services; and reporting requirements. This training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with expertise in domestic violence, child abuse, and rape. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services;

- (c) Human immunodeficiency virus infection and acquired immunodeficiency virus syndrome;
- (d) Identification and investigation of, responding to, and reporting bias-related crime, victimization, or intimidation that is a result of or reasonably related to race, color, religion, sex, or national origin;~~and~~

**(e) The proper collection and preservation of biological evidence;**

**(f) Conducting suspect lineups and photo lineups in accordance with Sections 14 to 16 of this Act;**

**(g) Conducting and recording nonsuggestive interviews in accordance with Section 20 of this Act;**

**(h) Recognizing intellectual disabilities and mental illness in capital defendants and death row inmates; and**

~~(i)(e)~~ The characteristics and dynamics of human trafficking, state and federal laws relating to human trafficking, the investigation of cases involving human trafficking, including but not limited to screening for human trafficking, and resources for assistance to the victims of human trafficking.

- (2) (a) The council shall develop and approve mandatory professional development training courses to be presented to all certified peace officers. A mandatory professional development training course shall be first taken by a certified

peace officer in the training year following its approval by the council and biennially thereafter. A certified peace officer shall be required to take these courses no more than two (2) times in eight (8) years.

- (b) Beginning January 1, 2011, the council shall require that one and one-half (1.5) hours of professional development covering the recognition and prevention of pediatric abusive head trauma be included in the curriculum of all mandatory professional development training courses such that all officers shall receive this training at least once by December 31, 2013. The one and one-half (1.5) hours required under this ~~paragraph~~<sup>section</sup> shall be included in the current number of required continuing education hours.

**(c) Beginning January 1, 2016, the council shall require that professional development courses covering the mandatory subjects listed in paragraphs (e), (f), (g), and (h) of subsection (1) of this section be included in the curriculum of all mandatory professional development training courses such that all officers shall receive this training at least once by December 30, 2018. The hours of training required under this paragraph shall be included in the current number of required continuing education hours.**

- (3) The Justice and Public Safety Cabinet shall provide training on the subjects of domestic violence and abuse and may do so utilizing currently available technology. All certified peace officers shall be required to complete this training at least once every two (2) years.
- (4) The council shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish mandatory basic training and professional development training courses.
- (5) The council shall make an annual report by December 31 each year to the Legislative Research Commission that details the subjects and content of mandatory professional development training courses established during the past year and the

subjects under consideration for future mandatory training.

➔Section 4. KRS 15.440 is amended to read as follows:

- (1) Each local unit of government which meets the following requirements shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund:
  - (a) Employs one (1) or more police officers;
  - (b) Pays every police officer at least the minimum federal wage;
  - (c) Maintains the minimum educational requirement of a high school degree, or its equivalent as determined by the Kentucky Law Enforcement Council, for employment of police officers on or after July 1, 1972, and for all sheriffs appointed or elected on or after July 15, 1998, and all deputy sheriffs, and state or public university police officers employed after July 15, 1998; provided, however, that all police officers employed prior to July 1, 1972, shall be deemed to have met the requirements of this subsection, and that all sheriffs serving in office on July 15, 1998, all deputy sheriffs, and state or public university police, employed prior to July 15, 1998, shall be deemed to have met the requirements of this subsection;
  - (d) Requires all police officers employed on or after July 1, 1972, and all sheriffs appointed or elected on or after July 15, 1998, and deputy sheriffs, and state or public university police officers employed on or after January 1, 1998, to successfully complete a basic training course of at least six hundred forty (640) hours' duration within one (1) year of the date of employment at a school certified or recognized by the Kentucky Law Enforcement Council. All sheriffs serving in office on July 15, 1998, all deputy sheriffs, and state or public university police, employed prior to January 1, 1998, shall be deemed to have met the requirements of this subsection. The council may, by the promulgation of administrative regulations in accordance with the provisions

of KRS Chapter 13A, set the number of hours for basic training at a number higher than six hundred forty (640) hours based upon a training curriculum approved by the Kentucky Law Enforcement Council as determined by a validated job task analysis;

- (e) Requires all police officers, whether originally employed before or after July 1, 1972, and all sheriffs appointed or elected before, on, or after July 15, 1998, and all deputy sheriffs and state or public police officers employed before, on, or after July 15, 1998, to successfully complete each calendar year an in-service training course, appropriate to the officer's rank and responsibility and the size and location of his department, of at least forty (40) hours' duration at a school certified or recognized by the Kentucky Law Enforcement Council. This requirement shall be waived for the period of time that a peace officer is serving on active duty in the United States Armed Forces. This waiver shall be retroactive for peace officers from the date of September 11, 2001;
- (f) Requires compliance with all provisions of law applicable to local police, state or public university police, or sheriffs and their deputies, including transmission of data to the centralized criminal history record information system as required by KRS 17.150;
- (g) Requires compliance with all reasonable rules and regulations, appropriate to the size and location of the local police department, state or public university police department, or sheriff's office, issued by the Justice and Public Safety Cabinet to facilitate the administration of the fund and further the purposes of KRS 15.410 to 15.510;~~and~~
- (h) Possesses a written policy and procedures manual related to domestic violence for law enforcement agencies that meets the standards set forth by, and has been approved by, the Justice and Public Safety Cabinet. The policy shall comply with the provisions of KRS 403.715 to 403.785. The policy shall

include purpose statements; definitions; supervisory responsibilities; procedures for twenty-four (24) hour access to protective orders; procedures for enforcement of court orders or relief when protective orders are violated; procedures for timely and contemporaneous reporting of adult abuse and domestic violence to the Cabinet for Families and Children, Department for Community Based Services; victim rights, assistance, and service responsibilities; and duties related to timely completion of records; **and**

**(i) Possesses a written policy and procedures manual related to the proper collection, storage, and preservation of biological evidence, both during investigation and after a conviction, that meets the standards set forth by and approved by the Justice and Public Safety Cabinet.**

- (2) No local unit of government which meets the criteria of this section shall be eligible to continue sharing in the distribution of funds from the Law Enforcement Foundation Program fund unless the local police department, state or public university police department, or sheriff's office actually begins and continues to comply with the requirements of this section; provided, further, that no local unit shall be eligible to share in the distribution of funds from the Law Enforcement Foundation Program fund until the local police department, state or public university police department, or sheriff's office has substantially complied with subsection (1)(f) and (g) of this section.
- (3) A sheriff's office shall not lose eligibility to share in the distribution of funds from the Law Enforcement Foundation Program fund if the sheriff does not participate in the Law Enforcement Foundation Program fund.

➔Section 5. KRS 15A.020 is amended to read as follows:

- (1) The Justice and Public Safety Cabinet shall have the following departments:
- (a) Department of Corrections;
  - (b) Department of Criminal Justice Training, which shall have the following

divisions:

1. Training Operations Division;
2. Administrative Division; and
3. Training Support Division;

(c) Department of Juvenile Justice, which shall have the following divisions:

1. Division of Medical Services;
2. Division of Western Region;
3. Division of Central Region;
4. Division of Eastern Region;
5. Division of Southeastern Region;
6. Division of Administrative Services;
7. Division of Program Services;
8. Division of Placement Services;
9. Division of Professional Development; and
10. Division of Community and Mental Health Services;

(d) Department of Kentucky State Police, which shall have the following divisions:

1. Administrative Division;
2. Operations Division;
3. Technical Services Division; and
4. Commercial Vehicle Enforcement Division; and

(e) Department for Public Advocacy, which shall have the following divisions:

1. Protection and Advocacy Division;
2. Division of Law Operations;
3. Division of Trial Services;
4. Division of Post-Trial Services; and
5. Division of Conflict Services.

- (2) Each department, except for the Department for Public Advocacy, shall be headed by a commissioner who shall be appointed by the secretary of justice and public safety with the approval of the Governor as required by KRS 12.040. Each commissioner shall be directly responsible to the secretary and shall have such functions, powers, and duties as provided by law and as the secretary may prescribe. The Department for Public Advocacy shall be headed by the public advocate, appointed as required by KRS 31.020, who shall be directly responsible to the Public Advocacy Commission. The Department for Public Advocacy is an independent state agency which shall be attached to the Justice and Public Safety Cabinet for administrative purposes only. The Justice and Public Safety Cabinet shall not have control over the Department for Public Advocacy's information technology equipment and use unless granted access by court order.
- (3) The Justice and Public Safety Cabinet shall have the following offices:
- (a) Office of the Secretary, which shall be headed by a deputy secretary appointed pursuant to KRS 12.050 and responsible for the direct administrative support for the secretary and other duties as assigned by the secretary, and which, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;
  - (b) Office of Management and Administrative Services, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible to and report to the secretary and be responsible for all matters relating to human resources, state and federal grants management, including but not limited to the administration of KRS 15A.060, fiscal functions, management and daily operations of the information processing activities for the cabinet, and management and daily administrative services for the cabinet; and who, with the approval of the secretary, may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;

(c) Office of Legal Services, which shall be headed by an executive director appointed pursuant to KRS 12.050 and 12.210, that:

1. Shall provide legal representation and services for the cabinet; and
2. May investigate all complaints regarding the facilities, staff, treatment of juveniles, and other matters relating to the operation of the Justice and Public Safety Cabinet. If it appears that there is a violation of statutes, administrative regulations, policies, court decisions, the rights of juveniles who are subject to the orders of the department, or any other matter relating to the Justice and Public Safety Cabinet, the office shall report to the secretary of the Justice and Public Safety Cabinet who shall, if required, refer the matter to a law enforcement agency, Commonwealth's attorney, county attorney, the Attorney General, or federal agencies, as appropriate. The office may be used to investigate matters in which there is a suspicion of violation of written policy, administrative regulation, or statutory law within the Department for Public Advocacy only when the investigation will have no prejudicial impact upon a person who has an existing attorney-client relationship with the Department for Public Advocacy. Notwithstanding the provisions of this subparagraph, investigation and discipline of KRS Chapter 16 personnel shall continue to be conducted by the Department of Kentucky State Police pursuant to KRS Chapter 16. The office shall conduct no other investigations under the authority granted in this subparagraph. The secretary may, by administrative order, assign the investigative functions in this subparagraph to a branch within the office.

The executive director shall be directly responsible to and report to the secretary and, with the approval of the secretary, may employ such attorneys



- appointed pursuant to KRS 12.210 and other staff as necessary to perform the duties, functions, and responsibilities of the office;
- (d) Office of Legislative and Intergovernmental Services, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible for all matters relating to the provision of support to the Criminal Justice Council, legislative liaison services, and functions and duties vested in the Criminal Justice Council as described in KRS 15A.030. The executive director shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the duties, functions, and responsibilities of the office;
- (e) Office of the Kentucky State Medical Examiner, which shall be headed by a chief medical examiner appointed pursuant to KRS 72.240 who shall be responsible for all matters relating to forensic pathology and forensic toxicology and other duties as assigned by the secretary. The executive director appointed pursuant to KRS 12.050 shall be responsible for all matters related to the administrative support of the Office of the State Medical Examiner. The executive director shall report directly to the secretary and with the approval of the secretary may employ such administrative support staff as necessary to perform the administrative duties, functions, and responsibilities of the office. The chief medical examiner shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the forensic duties, functions, and responsibilities of the office;~~and~~
- (f) Office of Drug Control Policy, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible for all matters relating to the research, coordination, and execution of drug control policy and for the management of state and federal grants, including but not limited to the prevention and treatment related to substance abuse. By December 31 of each

year, the Office of Drug Control Policy shall review, approve, and coordinate all current projects of any substance abuse program which is conducted by or receives funding through agencies of the executive branch. This oversight shall extend to all substance abuse programs which are principally related to the prevention or treatment, or otherwise targeted at the reduction, of substance abuse in the Commonwealth. The Office of Drug Control Policy shall promulgate administrative regulations consistent with enforcing this oversight authority. The executive director shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the duties, functions, and responsibilities of the office; and

(g) Office of the Kentucky State Criminal Forensic Laboratories, which shall be headed by an executive director appointed pursuant to KRS 12.050 who shall be responsible for all matters relating to the operation and administration of the Commonwealth's criminal forensic laboratories. The executive director shall hold a postgraduate degree in a scientific field relating to the scientific work of the laboratories and possess five (5) years of actual experience in forensic laboratory testing. The executive director shall seek accreditation from the American Society of Crime Laboratory Directors/Laboratory Accreditation Board for each of the state's forensic laboratories, and shall require the forensic personnel of each facility to receive certification or a similar status in their respective fields of work no later than January 1, 2018. The executive director shall be directly responsible to and report to the secretary and may employ such staff as necessary to perform the duties, functions, and responsibilities of the office.

➔Section 6. KRS 21A.170 is amended to read as follows:

The Supreme Court shall provide, at least once every two (2) years, in-service training programs for Circuit Judges, District Judges, and domestic relations and trial

commissioners in:

- (1) Child development, the dynamics of physical and sexual abuse, the impact of violence on child development, the treatment of offenders, and related issues;
- (2) Dynamics of domestic violence, effects of domestic violence on adult and child victims, legal remedies for protection, lethality and risk issues, model protocols for addressing domestic violence, available community resources and victims services, and reporting requirements;~~and~~
- (3) Dynamics of crimes against the elderly, including but not limited to elder abuse, neglect, and exploitation; the effects of these crimes on the elderly, institutions in which they may reside, and their families; legal remedies for protection; lethality and risk issues; financial implications; model protocols for addressing elder abuse, neglect, and exploitation and other crimes against the elderly; available community resources and victims services; and reporting requirements; **and**
- (4) Issues specific to the prosecution of capital offenses, including recognizing intellectual disabilities and mental illness in capital defendants.**

Each Circuit Judge, District Judge, and trial and domestic relations commissioner shall successfully complete the training prescribed by the Supreme Court by rule.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 31 IS CREATED TO READ AS FOLLOWS:

**The Department of Public Advocacy and any local office of public advocacy subject to KRS 31.060 shall:**

- (1) Adopt, implement, and enforce administrative regulations that ensure that:**
  - (a) Defense services in capital cases are delivered in a manner that meets national standards, such as the American Bar Association's Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases;**
  - (b) Each defendant or inmate qualifying for representation in a capital case is**

represented by two (2) attorneys and has access to an investigator and a mitigation specialist at every stage of the legal proceedings; and

(c) Any person providing representation or other case-related services through employment or by contract with the department or office in capital cases meets minimum educational, training, and experience criteria as established by the department or office, including training on screening for mental or psychological disorders and litigating claims of racial discrimination; and

(2) When contracting with private counsel for the representation of an indigent defendant in a death penalty case, offer rates comparable to those paid to appointed defense counsel in federal death penalty cases.

➔Section 8. KRS 31.185 is amended to read as follows:

- (1) Any defending attorney operating under the provisions of this chapter and any defending attorney privately representing a capital defendant is entitled to use the same state facilities for the evaluation of evidence as are available to the attorney representing the Commonwealth. If he or she considers their use impractical, the court of competent jurisdiction in which the case is pending may authorize the use of private facilities to be paid for on court order from the special account of the Finance and Administration Cabinet.
- (2) The defending attorney may request to be heard ex parte and on the record with regard to using private facilities under subsection (1) of this section. If the defending attorney so requests, the court shall conduct the hearing ex parte and on the record.
- (3) Any direct expense, including the cost of a transcript or bystander's bill of exceptions or other substitute for a transcript that is necessarily incurred in representing a needy person under this chapter, are charges against the county, urban-county government, charter county government, unified local government, or

consolidated local government on behalf of which the service is performed and shall be paid from the special account established in subsection (4) of this section and in accordance with procedures provided in subsection (5) of this section. However, a charge under this subsection shall not exceed the established rate charged by the Commonwealth and its agencies.

- (4) The consolidated local government, charter county government, unified local government, fiscal court of each county, or legislative body of an urban-county government shall annually appropriate twelve and a half cents (\$0.125) per capita of the population of the county, as determined by the Council of Local Governments' most recent population statistics, to a special account to be administered by the Finance and Administration Cabinet to pay court orders entered against counties pursuant to subsection (1) or (3) of this section. The funds in this account shall not lapse and shall remain in the special account.
- (5) The Finance and Administration Cabinet shall pay all court orders entered pursuant to subsection (1) or (3) of this section from the special account until the funds in the account are depleted. If in any given year the special account, including any funds from prior years, is depleted and court orders entered against counties pursuant to subsection (1) or (3) of this section for that year or any prior year remain unpaid, the Finance and Administration Cabinet shall pay those orders from the Treasury in the same manner in which judgments against the Commonwealth and its agencies are paid.
- (6) Expenses incurred in the representation of needy persons confined in a state correctional institution shall be paid from the special account established in subsection (4) of this section and in accordance with the procedures provided in subsection (5) of this section.
- (7) Only court orders entered after July 15, 1994, shall be payable from the special account administered by the Finance and Administration Cabinet or from the

Treasury as provided in subsections (4) and (5) of this section.

➔Section 9. KRS 61.878 is amended to read as follows:

- (1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:
  - (a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;
  - (b) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the disclosure or publication of which is directed by another statute;
  - (c)
    1. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;
    2. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:
      - a. In conjunction with an application for or the administration of a loan or grant;
      - b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;

- c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or
  - d. For the grant or review of a license to do business.
3. The exemptions provided for in subparagraphs 1. and 2. of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;
- (d) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;
  - (e) Public records which are developed by an agency in conjunction with the regulation or supervision of financial institutions, including but not limited to, banks, savings and loan associations, and credit unions, which disclose the agency's internal examining or audit criteria and related analytical methods;
  - (f) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;
  - (g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination

- before the exam is given or if it is to be given again;
- (h) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to **non-capital** criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. **Under this subsection only, enforcement action in a capital case shall be deemed completed at that point in time when a defendant would be entitled to file a notice of direct appeal from a Circuit Court case where the judgment was entered.** The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;
- (i) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;
- (j) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;
- (k) All public records or information the disclosure of which is prohibited by federal law or regulation;



- (l) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly;
- (m) 1. Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:
  - a. Criticality lists resulting from consequence assessments;
  - b. Vulnerability assessments;
  - c. Antiterrorism protective measures and plans;
  - d. Counterterrorism measures and plans;
  - e. Security and response needs assessments;
  - f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;
  - g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency; and
  - h. Records when their disclosure will expose a vulnerability referred to in this subparagraph and that describe the exact physical

- location of hazardous chemical, radiological, or biological materials.
2. As used in this paragraph, "terrorist act" means a criminal act intended to:
    - a. Intimidate or coerce a public agency or all or part of the civilian population;
    - b. Disrupt a system identified in subparagraph 1.f. of this paragraph;  
or
    - c. Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.
  3. On the same day that a public agency denies a request to inspect a public record for a reason identified in this paragraph, that public agency shall forward a copy of the written denial of the request, referred to in KRS 61.880(1), to the executive director of the Kentucky Office of Homeland Security and the Attorney General.
  4. Nothing in this paragraph shall affect the obligations of a public agency with respect to disclosure and availability of public records under state environmental, health, and safety programs.
  5. The exemption established in this paragraph shall not apply when a member of the Kentucky General Assembly seeks to inspect a public record identified in this paragraph under the Open Records Law; and
- (n) Public or private records, including books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, having historic, literary, artistic, or commemorative value accepted by the archivist of a public university, museum, or government depository from a donor or depositor other than a public agency. This exemption shall apply to the extent that nondisclosure is

requested in writing by the donor or depositor of such records, but shall not apply to records the disclosure or publication of which is mandated by another statute or by federal law.

- (2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.
- (3) No exemption in this section shall be construed to deny, abridge, or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him. The records shall include, but not be limited to, work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, lay-offs, disciplinary actions, examination scores, and preliminary and other supporting documentation. A public agency employee, including university employees, applicant, or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.
- (4) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.
- (5) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.

➔Section 10. KRS 72.225 is amended to read as follows:

An advisory commission is hereby established to act in a general advisory capacity to the medical examiner services. The commissioner of the Department of Kentucky State Police, the commissioner of criminal justice training, the secretary of justice and public

safety, and the secretary for health and family services shall be ex officio members of the advisory commission. The secretary of justice and public safety shall appoint five (5) additional members for terms of four (4) years each or until their successors are appointed and qualify. Members of the advisory commission shall receive no compensation for their services but shall be repaid their actual expenses incurred in attending meetings. **The commission shall recommend professional education, training, and certification standards to the Justice and Public Safety Cabinet for the employment of persons specified in Section 11 of this Act, which the cabinet shall promulgate and enforce as administrative regulations.**

➔Section 11. KRS 72.240 is amended to read as follows:

- (1) The Justice and Public Safety Cabinet ~~shall~~~~may~~ employ a board-certified forensic pathologist as the chief medical examiner who shall administer the Office of the Kentucky State Medical Examiner and one (1) associate chief medical examiner for the Commonwealth.
- (2) The Justice and Public Safety Cabinet may employ physicians licensed to practice medicine in Kentucky as county or district medical examiners to carry out the provisions of KRS 72.210 to 72.275 within the counties or district to which they are assigned by the medical examiner section. The cabinet may designate county or district health officers as county or district medical examiners and may authorize additional compensation therefor.

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

**Subject to reasonable security and time restrictions, the department shall not deny an inmate in its custody who has been sentenced to death, or who is charged with an offense for which he or she could be sentenced to death, access to department officers or employees if the access is for the purpose of preparing a petition for clemency under Section 77 of the Kentucky Constitution or for the purpose of assisting an inmate in**

**the investigation or litigation of a post-conviction action.**

➔Section 13. KRS 196.171 is amended to read as follows:

- (1) The Department of Corrections shall develop an educational course on the human immunodeficiency virus infection and acquired immunodeficiency syndrome approved by the Cabinet for Health and Family Services of not more than four (4) hours for the instruction of corrections personnel who have day-to-day contact with incarcerated persons and personnel who may be expected to respond to crisis situations. The literature and training curriculum shall include information of known modes of transmission and methods of controlling and preventing these diseases with an emphasis on appropriate behavior and attitude change. The training may be part of any continuing education program.

**(2) The Department of Corrections shall develop an educational course on recognizing intellectual disabilities and mental illness in capital defendants and death row inmates for the instruction of corrections personnel who have day-to-day contact with incarcerated capital defendants or inmates. The training may be part of any continuing education program.**

- (3)**~~(2)~~ All persons referred to in **subsections (1) and (2)**~~subsection (1)~~ of this section shall successfully complete the training required. Any person holding the position referred to in **subsections**~~subsection~~ (1) **and (2)** of this section shall not fill that position for more than one (1) year without successful completion of the required training. If a person does not successfully complete the required training within the time specified, he shall be suspended from further service until he successfully completes the required training.

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 421 IS CREATED TO READ AS FOLLOWS:

**As used in Sections 14 to 16 of this Act, unless the context otherwise requires:**

- (1) "Administrator" means the person conducting the photo lineup or live lineup;**

- (2) "Eyewitness" means a person whose identification by sight of another person may be relevant in a criminal procedure;
- (3) "Filler" means a person who is not suspected of the crime and is present as part of an identification procedure;
- (4) "Lineup" means an identification procedure conducted as part of a criminal investigation that is a photo lineup or live lineup;
- (5) "Live lineup" means a procedure in which a group of people is displayed to an eyewitness for the purpose of attempting to identify the perpetrator of a crime;
- (6) "Photo lineup" means a procedure in which an array of photographs is displayed to an eyewitness for the purpose of attempting to identify the perpetrator of a crime, and shall be synonymous with the terms "photo array" and "photo pack";  
and
- (7) "Suspect" means a person under investigation for participation in a crime.

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 421 IS CREATED TO READ AS FOLLOWS:

Lineups conducted by state, county, or local law enforcement agencies shall meet all of the following requirements:

- (1) Prior to participating in an identification procedure and as close in time to the incident as possible, the eyewitness shall complete a standardized form describing the perpetrator of the offense;
- (2) The lineup shall be conducted by an administrator who is not participating in the investigation of the criminal offense and is unaware of which person is the suspect;
- (3) (a) Before a lineup, the eyewitness shall be instructed that:
1. The perpetrator might or might not be presented in the lineup;
  2. The lineup administrator does not know the suspect's identity;
  3. The eyewitness shall not feel compelled to make an identification;

4. It is as important to exclude innocent persons as it is to identify the perpetrator; and
5. The investigation will continue even if an identification is not made.
- (b) The eyewitness shall acknowledge the receipt of the instructions in writing. If the eyewitness refuses to sign, the lineup administrator shall document the refusal of the eyewitness to sign the acknowledgment in writing;
- (4) In a photo lineup, the photograph of the suspect shall be contemporary and, to the extent practicable, shall resemble the suspect's appearance at the time of the offense;
- (5) (a) The lineup shall be composed so that the fillers generally resemble, to the extent practicable, the eyewitness's description of the perpetrator, while ensuring that the suspect does not unduly stand out from the fillers.
- (b) At least five (5) fillers shall be included in a lineup, in addition to the suspect;
- (6) If the eyewitness has previously viewed a lineup in connection with the identification of a different suspect involved in the same offense, the fillers in the lineup in which the current suspect participates shall be different from the fillers used in any prior lineups;
- (7) If there are multiple eyewitnesses, the suspect shall be placed in a different position in the lineup for each eyewitness;
- (8) In a lineup, no writings or information concerning any previous arrest, indictment, or conviction of the suspect shall be visible or made known to the eyewitness;
- (9) In a live lineup, any identifying actions, such as speech, gestures, or other movements, shall be performed by all lineup participants;
- (10) In all lineups, participants or photographs shall be out of view of the eyewitness prior to the lineup;

- (11) Only one (1) suspect shall be included in each lineup;
- (12) The lineup administrator shall obtain a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, regarding the eyewitness's confidence level in the identification;
- (13) The lineup administrator shall separate all witnesses before and during the procedure. Each witness shall be given instructions regarding the identification procedures without other witnesses present;
- (14) If the eyewitness identifies a person as the perpetrator, the eyewitness shall not be provided any information concerning the person before the lineup administrator obtains the eyewitness's confidence statement about the selection. There shall be no one present during the lineup who knows the suspect's identity, except counsel as required by law;
- (15) A video record of all identification procedures shall be made. If a video recording is not practical, the reasons shall be documented and an audio record shall be made. If neither video nor audio recordings are practical, the reasons shall be documented, and the lineup administrator shall make a written record of the lineup; and
- (16) Whether video, audio, or written, the record shall include all of the following information:
- (a) A written summary of all identification and nonidentification results obtained during the lineup, signed by the eyewitness and the administrator, including the eyewitness's confidence statement. If the eyewitness refuses to sign, the lineup administrator shall document the refusal;
  - (b) The names or other identifying information of all persons present in the lineup;
  - (c) The date, time, and location of the lineup;
  - (d) The actual words used by the eyewitness in any identification, including any



words that describe the eyewitness's certainty of identification;

(e) The sources of all photographs or persons used;

(f) In a photo lineup, the photographs themselves; and

(g) In a live lineup, when a video record is not made, there shall be photographs taken of all individuals participating in the lineup.

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 421 IS CREATED TO READ AS FOLLOWS:

(1) The following shall be available as remedies for noncompliance with Sections 14 to 16 of this Act:

(a) Failure to comply with any of the requirements of Sections 14 to 16 of this Act shall be considered by the court in adjudicating motions to suppress eyewitness identification and shall be reflected in the court's findings of fact; and

(b) Failure to comply with any of the requirements of Sections 14 to 16 of this Act shall be admissible in support of claims of eyewitness misidentification, only if such evidence is otherwise admissible.

(2) When evidence of compliance or noncompliance with the requirements of Sections 14 to 16 of this Act has been presented at trial, the jury shall be instructed that it may consider evidence of compliance or noncompliance to determine the reliability of eyewitness identification if submitted by counsel.

➔Section 17. 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, 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 *or 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;*
- (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, the petitioner was convicted of the offense after a trial or after entering an Alford plea;
- (e) Except for a petitioner sentenced to death, 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, the petitioner was convicted of the offense after a trial or after entering an Alford plea;
  - (e) Except for a petitioner sentenced to death, 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.

**(13) The filing of a motion under this section by an inmate subject to execution shall operate as a stay of execution, which shall remain in effect until the court lifts the**

**stay at the conclusion of the proceedings under this section.**

➔Section 18. KRS 431.240 is amended to read as follows:

- (1) Unless the execution is stayed for any cause, the warden of the institution or his deputy shall proceed, on the day named in the judgment of conviction, a governor's warrant, or an order of the court, to cause the condemned person to be executed. The execution shall take place at a time designated by the warden of the institution where the execution is to take place on the day designated in the judgment of conviction, the governor's warrant, or an order of the court.
- (2) If the condemned person is insane, as defined in KRS 431.213 or pregnant with child on the day designated for the execution, the execution shall be suspended until the condemned is restored to sanity or is delivered of child. The execution shall then take place under the warrant of the Governor and at the time designated by him, unless stayed by due process of law. If execution is suspended on the ground of insanity, the commissioner of the Department of Corrections shall transfer the condemned person to the Kentucky Correctional Psychiatric Center until the time he is restored to sanity. Any administrative hearings authorized under authority of this section shall be conducted in accordance with KRS Chapter 13B.
- (3) If the condemned person escapes from custody and is recaptured after the expiration of the date fixed for the execution, the Governor, upon receiving written notice of the recapture from the warden of the institution, shall send his warrant of execution to the warden by special messenger and shall name therein the day of execution. The warden shall then proceed to the execution thereof according to the provisions of KRS 431.215 to 431.270.
- (4) When a judgment of death has not been executed on the day appointed therefor by the court, from any cause, the Governor, by a warrant under his hand and the seal of the Commonwealth, shall fix the day of the execution, which warrant shall be obeyed by the warden of the institution.

(5) Within the applicable time limitations for a motion seeking post-conviction relief under Rule 11.42 of the Kentucky Rules of Criminal Procedure, in the three (3) year period following the imposition of a sentence of death, if the condemned person files with the Circuit Court that issued the death sentence a notice of intent to file a motion seeking post-conviction relief under Rule of Criminal Procedure 11.42, the condemned shall not be executed pursuant to that death sentence until the time for filing the motion expires, the inmate withdraws the notice, or the inmate files a motion and the proceedings commenced by that motion are completed and final.

→Section 19. KRS 439.450 is amended to read as follows:

On request of the Governor the board shall investigate and report to him with respect to any case of pardon, commutation of sentence, reprieve or remission of fine or forfeiture. If the request is in regard to a request for clemency from a sentence of death, the board shall afford the condemned inmate an opportunity to appear personally at a hearing before the board on the petition, and any investigation, report, or recommendation by the board shall be made available to the public.

→SECTION 20. A NEW SECTION OF KRS CHAPTER 455 IS CREATED TO READ AS FOLLOWS:

(1) A custodial interrogation by a peace officer, prosecutor, or other law enforcement agent of a person who is under suspicion or investigation for criminal homicide shall be electronically recorded in its entirety by digital media, videotape, or other reproducible recording medium that captures both sight and sound from the interrogation. At the commencement of the interrogation, the person shall be informed that the interrogation is being recorded.

(2) If the suspect confesses to an offense, makes an admission that may be used in the prosecution of the suspect, recants his or her confession, or contradicts any admission made during the interrogation, the recording may be admitted in

court, if found to be otherwise admissible under the rules of evidence and constitutional or statutory law.

(3) If the custodial interrogation has not been electronically recorded in its entirety, any confession, admission, or statement made by the person during the interrogation shall be inadmissible against the person in any trial or sentencing hearing, unless the Commonwealth proves by clear and convincing evidence that:

(a) The failure to electronically record the entire interrogation was the result of equipment failure and obtaining replacement equipment was not feasible;

(b) The person refused to have his or her interrogation electronically recorded, and the refusal itself was electronically recorded;

(c) The statement was obtained in another state and was obtained by a law enforcement agent of that state in compliance with the laws of that state;

(d) The statement was made in open court or before a grand jury; or

(e) The statement was made spontaneously and concurrently with the person's arrest or offense and did not stem from the custodial interrogation.

(4) A true, complete, and accurate copy of the entire recording shall be made available to the attorney representing the person no later than thirty (30) days, or earlier if ordered by the court, prior to any proceeding in which the interrogation or statements made during the interrogation may be relevant evidence.

(5) Recordings shall be used for official purposes only, including:

(a) Viewing and playing in court;

(b) Viewing and playing by the prosecution and defense in preparation for any criminal proceeding;

(c) Viewing and playing for purposes of administrative reviews and official administrative proceedings;

(d) Viewing and playing for the purpose of education or training of law enforcement personnel; and



- (e) Making available for inspection and copying, to the extent provided by the Kentucky Open Records Act, KRS 61.870 to 61.884, upon their being played or viewed in court, or upon the conclusion of any prosecution or investigation of the person.
- (6) An electronic recording taken in accordance with this section shall not be destroyed, except upon a motion by a party and an order of the court made after a hearing in open court with at least thirty (30) days' advance notice to the person and to his or her attorney. Under no circumstances shall an electronic recording taken in accordance with this section be destroyed before all the convictions of the defendant or any co-defendant become final and all direct and habeas corpus appeals are exhausted or the defendant and all co-defendants have completed service of their sentences, whichever is later.
- (7) Public officials or employees utilizing or showing recordings other than as permitted in this section or permitting others to do so shall be guilty of official misconduct in the first degree.

➔SECTION 21. A NEW SECTION OF KRS CHAPTER 455 IS CREATED TO READ AS FOLLOWS:

- (1) If requested by a defendant in a prosecution for a capital offense, the Commonwealth shall allow full, open-file discovery if such discovery is requested by the defense.
- (2) If open-file discovery is in effect under subsection (1) of this section, the Commonwealth shall be under a continuing duty to disclose, as it becomes available, new material coming into its possession or control, including a specific duty to disclose material coming into the possession or control of law enforcement.

➔Section 22. 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) **In cases in which the defendant has not been sentenced to death:**
    - 1.** 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;

~~2.(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;

~~3.(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

~~4.(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; and

**(b) In cases in which the defendant has been sentenced to death:**

**1. The defendant has been executed or has died and three (3) years have passed since the defendant's death; or**

**2. The defendant has been pardoned or the death sentence has been commuted.**

(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 *Office of the Kentucky State Criminal Forensic Laboratories*~~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 *Office of the Kentucky State Criminal Forensic Laboratories*~~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 *Office of the Kentucky State Criminal Forensic Laboratories*~~Department of Kentucky State Police laboratory~~ follows the directive of the court with regard to the testing and analysis; or
- (c) If the *Office of the Kentucky State Criminal Forensic Laboratories*~~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 23. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO READ AS FOLLOWS:

**(1) A sentence of death shall not be carried out if the prisoner has a mental disorder or other disability that significantly impairs his or her capacity to:**

**(a) Make a rational decision to forgo or terminate post-conviction proceedings available to challenge the validity of the conviction or sentence; or**

**(b) Understand or communicate pertinent information, or otherwise assist counsel, in relation to specific claims bearing on the validity of the conviction or sentence that cannot be fairly resolved without the prisoner's participation.**

**(2) If a court finds that a prisoner under sentence of death who wishes to forgo or terminate post-conviction proceedings has a mental disorder or disability that significantly impairs his or her capacity to make a rational decision, the court shall permit a next friend acting on the prisoner's behalf to initiate or pursue available remedies to set aside the death sentence.**

- (3) If a court finds at any time that a prisoner under sentence of death has a mental disorder or disability that significantly impairs his or her capacity to understand or communicate pertinent information, or otherwise to assist counsel, in connection with post-conviction proceedings, and that the prisoner's participation is necessary for a fair resolution of specific claims bearing on the validity of the conviction or death sentence, the court shall suspend the proceedings. If the court finds that there is no significant likelihood of restoring the prisoner's capacity to participate in post-conviction proceedings in the foreseeable future, as defined in KRS 504.060, it shall reduce the prisoner's sentence to a term of imprisonment for life without benefit of probation or parole, as authorized by KRS 532.030.**
- (4) The provisions of this section may be used in addition to or in lieu of proceedings under KRS 431.213 and 431.2135, KRS Chapter 504, or Sections 26, 27, and 28 of this Act.**

➔Section 24. KRS 532.025 is amended to read as follows:

- (1) (a) Upon conviction of a defendant in cases where the death penalty may be imposed, a hearing shall be conducted. In such hearing, the judge shall hear additional evidence in extenuation, mitigation, and aggravation of punishment, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant, or the absence of any prior conviction and pleas; provided, however, that only such evidence in aggravation as the state has made known to the defendant prior to his trial shall be admissible. Subject to the Kentucky Rules of Evidence, juvenile court records of adjudications of guilt of a child for an offense that 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 that 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. 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 IV-B of the Federal Social Security Act is also prohibited. The judge shall also hear argument by the defendant or his counsel and the prosecuting attorney, as provided by law, regarding the punishment to be imposed. The prosecuting attorney shall open and the defendant shall conclude the argument. In cases in which the death penalty may be imposed, the judge when sitting without a jury shall follow the additional procedure provided in subsection (2) of this section. Upon the conclusion of the evidence and arguments, the judge shall impose the sentence or shall recess the trial for the purpose of taking the sentence within the limits prescribed by law. If the trial court is reversed on appeal because of error only in the presentence hearing, the new trial which may be ordered shall apply only to the issue of punishment;

- (b) In all cases in which the death penalty may be imposed and which are tried by a jury, upon a return of a verdict of guilty by the jury, the court shall resume the trial and conduct a presentence hearing before the jury. Such hearing shall be conducted in the same manner as presentence hearings conducted before the judge as provided in paragraph (a) of this subsection, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant. Upon the conclusion of the evidence, *the judge shall give the jury the appropriate instructions in open court orally and in*

~~*writing, after which the jury shall hear final arguments and then*~~ and arguments, the judge shall give the jury appropriate instructions, and the jury shall retire to determine whether any mitigating or aggravating circumstances, as defined in subsection (2) of this section, exist and to recommend a sentence for the defendant. Upon the findings of the jury, the judge shall fix a sentence within the limits prescribed by law.

(2) In all cases of offenses for which the death penalty may be authorized, the judge shall consider, or he shall include in his instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by law and any of the following statutory aggravating or mitigating circumstances which may be supported by the evidence:

(a) Aggravating circumstances:

1. The offense of murder or kidnapping was committed by a person with a prior record of conviction for a capital offense, or the offense of murder was committed by a person who has a substantial history of serious assaultive criminal convictions;
2. The offense of murder or kidnapping was committed while the offender was engaged in the commission of arson in the first degree, robbery in the first degree, burglary in the first degree, rape in the first degree, or sodomy in the first degree;
3. The offender by his act of murder, armed robbery, or kidnapping knowingly created a great risk of death to more than one (1) person in a public place by means of a weapon of mass destruction, weapon, or other device which would normally be hazardous to the lives of more than one (1) person;
4. The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value,



- or for other profit;
5. The offense of murder was committed by a person who was a prisoner and the victim was a prison employee engaged at the time of the act in the performance of his duties;
  6. The offender's act or acts of killing were intentional and resulted in multiple deaths;
  7. The offender's act of killing was intentional and the victim was a state or local public official or police officer, sheriff, or deputy sheriff engaged at the time of the act in the lawful performance of his duties; and
  8. The offender murdered the victim when an emergency protective order or a domestic violence order was in effect, or when any other order designed to protect the victim from the offender, such as an order issued as a condition of a bond, conditional release, probation, parole, or pretrial diversion, was in effect.
- (b) Mitigating circumstances:
1. The defendant has no significant history of prior criminal activity;
  2. The capital offense was committed while the defendant was under the influence of extreme mental or emotional disturbance even though the influence of extreme mental or emotional disturbance is not sufficient to constitute a defense to the crime;
  3. The victim was a participant in the defendant's criminal conduct or consented to the criminal act;
  4. The capital offense was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct even though the circumstances which the defendant believed to provide a moral justification or extenuation for his conduct are not sufficient to constitute a defense to the crime;

5. The defendant was an accomplice in a capital offense committed by another person and his participation in the capital offense was relatively minor;
  6. The defendant acted under duress or under the domination of another person even though the duress or the domination of another person is not sufficient to constitute a defense to the crime;
  7. At the time of the capital offense, the capacity of the defendant to appreciate the criminality of his conduct to the requirements of law was impaired as a result of mental illness or an intellectual disability or intoxication even though the impairment of the capacity of the defendant to appreciate the criminality of his conduct or to conform the conduct to the requirements of law is insufficient to constitute a defense to the crime; and
  8. The youth of the defendant at the time of the crime.
- (3) The instructions as determined by the trial judge to be warranted by the evidence or as required by KRS 532.030(4) shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict be a recommendation of death, or imprisonment for life without benefit of probation or parole, or imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall designate in writing, signed by the foreman of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In nonjury cases, the judge shall make such designation. In all cases unless at least one (1) of the statutory aggravating circumstances enumerated in subsection (2) of this section is so found, the death penalty, or imprisonment for life without benefit of probation or parole, or the sentence to imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall not be imposed.

➔Section 25. KRS 532.075 is amended to read as follows:

- (1) Whenever the death penalty is imposed for a capital offense, and upon the judgment becoming final in the Circuit Court, the sentence shall be reviewed on the record by the Supreme Court. The circuit clerk, within ten (10) days after receiving the transcript, shall transmit the entire record and transcript to the Supreme Court together with a notice prepared by the clerk and a report prepared by the trial judge. The notice shall set forth the title docket number of the case, the name of the defendant and the name and address of his attorney, a narrative statement of the judgment, the offense, and the punishment prescribed. The report shall be in the form of a standard questionnaire prepared and supplied by the Supreme Court.
- (2) The Supreme Court shall consider the punishment as well as any errors enumerated by way of appeal.
- (3) With regard to the sentence, the court shall determine:
  - (a) Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor, and
  - (b) Whether the evidence supports the jury's or judge's finding of statutory aggravating circumstances as enumerated in KRS 532.025(2), and
  - (c) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant, *including cases in which the death penalty was sought but not imposed or could have been sought but was not. In making this determination, the court shall consider information contained in the database created pursuant to Section 2 of this Act, whether by submission of either party or by the court's own motion.*
- (4) Both the defendant and the Commonwealth shall have the right to submit briefs within the time provided by the court, and to present oral argument to the court.
- (5) The court shall include in its decision a reference to those similar cases which it

took into consideration. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:

- (a) Affirm the sentence of death; or
  - (b) Set the sentence aside and remand the case for resentencing by the trial judge based on the record and argument of counsel. The records of those similar cases referred to by the Supreme Court in its decision, and the extracts prepared as hereinafter provided for, shall be provided to the resentencing judge for his consideration.
- (6) The Chief Justice shall assign to an administrative assistant who is an attorney the following duties:
- (a) To accumulate the records of all felony offenses in which the death penalty was imposed after January 1, 1970, or such earlier date as the court may deem appropriate.
  - (b) To provide the court with whatever extracted information it desires with respect thereto, including but not limited to a synopsis or brief of the facts in the record concerning the crime and the defendant.
  - (c) To compile such data as are deemed by the Chief Justice to be appropriate and relevant to the statutory questions concerning the validity of the sentence.
- (7) The administrative office of the courts shall provide such staff, services, and data as are necessary to proper consideration of any matter relating to the imposition of the death penalty in any case.
- (8) The sentence review shall be in addition to the direct appeal, if taken, and the review and appeal shall be consolidated. The court shall render its decision on legal errors enumerated, the factual substantiation of the verdict, and the validity of the sentence.

➔Section 26. KRS 532.130 is amended to read as follows:

- (1) An adult, or a minor under eighteen (18) years of age who may be tried as an adult,

convicted of a crime and subject to sentencing, is referred to in KRS 532.135 and 532.140 as a defendant.

- (2) A defendant with significantly~~[significant]~~ subaverage general intellectual functioning existing concurrently with substantial deficits in adaptive behavior and manifested during the developmental period or resulting from dementia or a traumatic brain injury is referred to in KRS 532.135 and 532.140 as a "defendant with a serious intellectual disability." As used in this subsection, "significantly subaverage general intellectual functioning" includes having~~[is defined as]~~ an intelligence quotient (I.Q.) of seventy-five (75)~~[seventy (70)]~~ or below, but may also be proven by other competent evidence if a defendant's intelligence quotient is determined to be greater than seventy-five (75). The determination of whether a defendant has a "serious intellectual disability" shall not require the existence of evidence, including test results, conducted or collected prior to the date of the offense.

- (3) A defendant who, at the time of the offense, had a severe mental disorder or disability that significantly impaired his or her capacity to appreciate the nature, consequences, or wrongfulness of his or her conduct, exercise rational judgment in relation to his or her conduct, or conform his or her conduct to the requirements of the law, is referred to in Sections 27 and 28 of this Act as a "severely mentally ill defendant." A mental disorder manifested primarily by repeated criminal conduct or attributable solely to the acute effects of intentional use of alcohol or other drugs shall not, standing alone, constitute a mental disorder or disability for purposes of this subsection.

➔Section 27. KRS 532.135 is amended to read as follows:

- (1) At least thirty (30) days before trial, the defendant shall file a motion with the trial court wherein the defendant may allege that he or she is a defendant with a serious intellectual disability or a severely mentally ill defendant and present evidence with

regard thereto. The Commonwealth may offer evidence in rebuttal.

- (2) At least ten (10) days before the beginning of the trial, the court shall determine whether or not the defendant is a defendant with a serious intellectual disability or a severely mentally ill defendant in accordance with the definitions~~[definition]~~ in KRS 532.130.
- (3) The decision of the court shall be placed in the record.
- (4) The pretrial determination of the trial court shall not preclude the defendant from raising any legal defense during the trial. If it is determined the defendant is an offender with a serious intellectual disability or a severely mentally ill defendant, he or she shall be sentenced as provided in KRS 532.140.

➔Section 28. KRS 532.140 is amended to read as follows:

- (1) KRS 532.010, 532.025, and 532.030 to the contrary notwithstanding, a defendant~~[no offender]~~ who has been determined to be a defendant~~[an offender]~~ with a serious intellectual disability or a severely mentally ill defendant under the provisions of KRS 532.135, shall not 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 defendant~~[offender]~~ with a serious intellectual disability or a severely mentally ill defendant 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 or a severely mentally ill defendant to any other sentence authorized by KRS 532.010, 532.025, or 532.030 for a crime which is a capital offense.
- (3) The provisions of KRS 532.135 and this section~~[532.140]~~ shall apply only to trials commenced after July 13, 1990.

➔Section 29. KRS 532.300 is amended to read as follows:

- (1) No person shall be subject to or given a sentence of death that was sought on the basis of race.

- (2) A finding that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the Commonwealth or the judicial circuit where the defendant was indicted or tried at the time the death sentence was sought or imposed.
- (3) Evidence relevant to establish a finding that race was the basis of the decision to seek or impose a death sentence may include statistical evidence or other evidence, or both, that death sentences were sought or imposed significantly more frequently:
- (a) Upon persons of one race than upon persons of another race; or
  - (b) As punishment for capital offenses against persons of one race than as punishment for capital offenses against persons of another race.
- (4) ~~A~~ ~~The defendant shall state with particularity how the evidence supports a claim that racial considerations played a significant part in the decision to seek a death sentence in his or her case. The~~ claim that racial discrimination played a significant part in the decision to seek or impose a death sentence shall be raised by the defendant at the pre-trial conference or by post-trial motion, as appropriate. The court shall schedule a hearing on the claim and shall prescribe a time for the submission of evidence by both parties. If the court finds that race was the basis of the decision to seek or impose the death sentence, the court shall order that a death sentence shall not be sought or, if a death sentence has been imposed, resentence the defendant to a lesser allowable penalty using the evidence and arguments on record in the case.
- (5) The defendant has the burden of proving by a preponderance of the ~~clear and convincing~~ evidence that race was the basis of the decision to seek the death penalty. The Commonwealth may offer evidence in rebuttal of the claims or evidence of the defendant.
- (6) This section may be the subject of post-trial and post-appellate relief.

➔Section 30. KRS 532.305 is amended to read as follows:

KRS 532.300 shall~~not~~ apply to sentences imposed prior to July 15, 1998.

➔Section 31. KRS 17.169 is amended to read as follows:

As used in this section and KRS 17.170 and 17.175, the following definitions shall apply:

- (1) "DNA sample" or "deoxyribonucleic acid sample" means a blood or swab specimen from a person, as prescribed by administrative regulation, that is required to provide a DNA sample pursuant to KRS 17.170 or 17.510, that shall be submitted to the Office of the Kentucky State Criminal Forensic Laboratories~~Department of Kentucky State Police forensic laboratory~~ for law enforcement identification purposes and inclusion in law enforcement identification databases; and
- (2) "Authorized personnel" means an agent of state government who is properly trained in DNA sample collection pursuant to administrative regulation.

➔Section 32. KRS 17.170 is amended to read as follows:

- (1) Any DNA sample collected pursuant to the law in effect prior to March 27, 2009, shall be maintained and used pursuant to this section and KRS 17.175 and 17.510.
- (2) The following persons shall have a DNA sample collected by authorized personnel:
  - (a) Any person convicted on or after March 27, 2009, of a felony offense under the Kentucky Revised Statutes; or
  - (b) Any juvenile who was at least fourteen (14) years of age at the time of the commission of the offense and who stands adjudicated delinquent of being a public offender by a court of competent jurisdiction, of:
    1. Any felony offense in KRS Chapter 510;
    2. Incest as defined in KRS 530.020;
    3. Criminal attempt or criminal conspiracy to commit an offense identified in subparagraph 1. or 2. of this paragraph; or
    4. Being a juvenile sexual offender under KRS 635.510.
- (3) Any person who is required to register as a sex offender under KRS 17.510 who is



not otherwise required to submit to a DNA sample collection under this section or KRS 17.510, including those persons convicted of a felony or adjudicated as a public offender on offenses in other jurisdictions as identified in KRS 17.510(6) and (7), shall have a DNA sample collected by authorized personnel.

- (4) Any person who is required to provide a DNA sample pursuant to subsection (2) of this section and who is released from custody upon sentencing or adjudication shall immediately report to the local probation and parole office and shall have a DNA sample collected by authorized personnel.
- (5) A DNA sample shall be obtained in an approved manner by authorized personnel, a physician, registered nurse, phlebotomist, medical technician, or medical technologist, and packaged with supplies and containers provided by the Office of the Kentucky State Criminal Forensic Laboratories~~Department of Kentucky State Police forensic laboratory~~ in accordance with administrative regulations promulgated by the cabinet. No civil liability shall attach to any person authorized to obtain the DNA sample as provided by this section as a result of the act of obtaining the DNA sample from any person, provided the procedure was done according to administrative regulations by the cabinet.
- (6) Authorized personnel collecting DNA samples under this section or KRS 17.510 are not engaging in the practice of medicine pursuant to KRS 311.550.
- (7) Any person required to provide a DNA sample under this section or KRS 17.510 who, after receiving notice of the requirement to provide a DNA sample, knowingly refuses to provide such DNA sample, shall be guilty of a Class A misdemeanor for each separate violation of the offense.
- (8) Any person who tampers or attempts to tamper with any DNA sample collected under this section or its container without lawful authority shall be guilty of a Class D felony.

➔Section 33. KRS 17.175 is amended to read as follows:

- (1) A centralized database of DNA (deoxyribonucleic acid) identification records for convicted or adjudicated offenders, crime scene specimens, unidentified human remains, missing persons, and close biological relatives of missing persons shall be established in the Department of Kentucky State Police under the direction, control, and supervision of the *Office of the Kentucky State Criminal Forensic Laboratories*~~[Department of Kentucky State Police forensic laboratory]~~. The established system shall be compatible with the procedures set forth in a national DNA identification index to ensure data exchange on a national level.
- (2) The purpose of the centralized DNA database is to assist federal, state, and local criminal justice and law enforcement agencies within and outside the Commonwealth in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of sex-related crimes, violent crimes, or other crimes and the identification and location of missing and unidentified persons.
- (3) The *Office of the Kentucky State Criminal Forensic Laboratories*~~[Department of Kentucky State Police forensic laboratory]~~ shall receive, analyze, and classify DNA samples received from the Department of Corrections, the Department of Juvenile Justice, and other sources, and shall file the DNA results in the centralized databases for law enforcement identification and statistical purposes.
- (4) DNA identification records produced from the samples are not public records but shall be confidential and used only for law enforcement purposes. DNA identification records shall be exempt from the provisions of KRS 61.870 to 61.884.
- (5) A person whose DNA profile has been included in the data bank pursuant to this chapter may request expungement on the grounds that the conviction or adjudication on which the authority for including the DNA profile was based has been reversed and the case dismissed, or that the person successfully completed the pretrial diversion program under KRS 533.258 and the charges were dismissed-diverted. The Department of Kentucky State Police shall expunge all identifiable

information in the data bank pertaining to the person and destroy all samples from the person upon receipt of:

- (a) A written request for expungement pursuant to this section; and
- (b) Either:
  - 1. A certified copy of the court order reversing and dismissing the conviction or adjudication; or
  - 2. A certified copy of the court order deeming the charges dismissed-diverted.
- (6) The cabinet shall promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system to include procedures for collection of DNA samples and the database system usage and integrity.
- (7) The Department of Kentucky State Police shall destroy all DNA samples that are not entered into the DNA database identification system.
- (8) Any person who disseminates, receives, or otherwise uses or attempts to use information in the DNA database identification system, knowing that such dissemination, receipt, or use is for a purpose other than authorized by this section, shall be guilty of a Class D felony.

➔Section 34. 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 *Office of the*

*Kentucky State Criminal Forensic Laboratories* ~~Department of Kentucky State Police forensic laboratory~~ or another laboratory selected by the *Office of the Kentucky State Criminal Forensic Laboratories* ~~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 *Office of the Kentucky State Criminal Forensic Laboratories* ~~Department of Kentucky State Police forensic laboratory~~ or another laboratory selected by the *Office of the Kentucky State Criminal Forensic Laboratories* ~~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 *Office of the Kentucky State Criminal Forensic Laboratories* ~~Department of Kentucky State Police forensic laboratory~~ or another laboratory selected by the *Office of the Kentucky State Criminal Forensic Laboratories* ~~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 35. KRS 17.500 is amended to read as follows:

As used in KRS 17.500 to 17.580:

- (1) "Approved provider" means a mental health professional licensed or certified in Kentucky whose scope of practice includes providing mental health treatment services and who is approved by the Sex Offender Risk Assessment Advisory Board, under administrative regulations promulgated by the board, to provide comprehensive sex offender presentence evaluations or treatment to adults and youthful offenders, as defined in KRS 600.020;
- (2) "Cabinet" means the Justice and Public Safety Cabinet;
- (3) (a) Except as provided in paragraph (b) of this subsection, "criminal offense against a victim who is a minor" means any of the following offenses if the victim is under the age of eighteen (18) at the time of the commission of the offense:
1. Kidnapping, as set forth in KRS 509.040, except by a parent;
  2. Unlawful imprisonment, as set forth in KRS 509.020, except by a parent;
  3. Sex crime;
  4. Promoting a sexual performance of a minor, as set forth in KRS 531.320;
  5. Human trafficking involving commercial sexual activity, as set forth in KRS 529.100;

6. Promoting prostitution, as set forth in KRS 529.040, when the defendant advances or profits from the prostitution of a person under the age of eighteen (18);
  7. Use of a minor in a sexual performance, as set forth in KRS 531.310;
  8. Sexual abuse, as set forth in KRS 510.120 and 510.130;
  9. Unlawful transaction with a minor in the first degree, as set forth in KRS 530.064(1)(a);
  10. Any offense involving a minor or depictions of a minor, as set forth in KRS Chapter 531;
  11. Any attempt to commit any of the offenses described in subparagraphs 1. to 10. of this paragraph; and
  12. Solicitation to commit any of the offenses described in subparagraphs 1. to 10. of this paragraph.
- (b) Conduct which is criminal only because of the age of the victim shall not be considered a criminal offense against a victim who is a minor if the perpetrator was under the age of eighteen (18) at the time of the commission of the offense;
- (4) "Law enforcement agency" means any lawfully organized investigative agency, sheriff's office, police unit, or police force of federal, state, county, urban-county government, charter county, city, consolidated local government, or a combination of these, responsible for the detection of crime and the enforcement of the general criminal federal or state laws;
- (5) "Registrant" means:
- (a) Any person eighteen (18) years of age or older at the time of the offense or any youthful offender, as defined in KRS 600.020, who has committed:
    1. A sex crime; or
    2. A criminal offense against a victim who is a minor; or

- (b) Any person required to register under KRS 17.510; or
  - (c) Any sexually violent predator; or
  - (d) Any person whose sexual offense has been diverted pursuant to KRS 533.250, until the diversionary period is successfully completed;
- (6) "Registrant information" means the name, including any lawful name change together with the previous name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, fingerprints, DNA sample, a photograph, aliases used, residence, electronic mail address and any instant messaging, chat, or other Internet communication name identities, a brief description of the crime or crimes committed, and other information the cabinet determines, by administrative regulation, may be useful in the identification of registrants;
- (7) "Residence" means any place where a person sleeps. For the purposes of this statute, a registrant may have more than one (1) residence. A registrant is required to register each residence address;
- (8) "Sex crime" means:
- (a) A felony offense defined in KRS Chapter 510, or KRS 530.020, 530.064(1)(a), 531.310, 531.320, or 531.335;
  - (b) A felony attempt to commit a felony offense specified in paragraph (a) of this subsection; or
  - (c) A federal felony offense, a felony offense subject to a court-martial of the United States Armed Forces, or a felony offense from another state or a territory where the felony offense is similar to a felony offense specified in paragraph (a) of this subsection;
- (9) "Sexual offender" means any person convicted of, pleading guilty to, or entering an Alford plea to a sex crime as defined in this section, as of the date the verdict is entered by the court;
- (10) "Sexually violent predator" means any person who has been subjected to

involuntary civil commitment as a sexually violent predator, or a similar designation, under a state, territory, or federal statutory scheme;

- (11) "The board" means the Sex Offender Risk Assessment Advisory Board created under KRS 17.554;
- (12) "Victim" has the same meaning as in KRS 421.500;
- (13) "DNA sample" or "deoxyribonucleic acid sample" means a blood or swab specimen from a person, as prescribed by administrative regulation, that is required to provide a DNA sample pursuant to KRS 17.170 or 17.510, that shall be submitted to the Office of the Kentucky State Criminal Forensic Laboratories~~[Department of Kentucky State Police forensic laboratory]~~ for law enforcement identification purposes and inclusion in law enforcement identification databases; and
- (14) "Authorized personnel" means an agent of state government who is properly trained in DNA sample collection pursuant to administrative regulation.

➔Section 36. KRS 17.510 is amended to read as follows:

- (1) The cabinet shall develop and implement a registration system for registrants which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.
- (2) A registrant shall, on or before the date of his or her release by the court, the parole board, the cabinet, or any detention facility, register with the appropriate local probation and parole office in the county in which he or she intends to reside. The person in charge of the release shall facilitate the registration process.
- (3) Any person required to register pursuant to subsection (2) of this section shall be informed of the duty to register by the court at the time of sentencing if the court grants probation or conditional discharge or does not impose a penalty of incarceration, or if incarcerated, by the official in charge of the place of confinement upon release. The court and the official shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to



register has been explained to the person. The court and the official in charge of the place of confinement shall require the releasee to complete the acknowledgment form and the court or the official shall retain the original completed form. The official shall then send the form to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.

- (4) The court or the official shall order the person to register with the appropriate local probation and parole office which shall obtain the person's fingerprints, DNA sample, and photograph. Thereafter, the registrant shall return to the appropriate local probation and parole office not less than one (1) time every two (2) years in order for a new photograph to be obtained, and the registrant shall pay the cost of updating the photo for registration purposes. Any registrant who has not provided a DNA sample as of July 1, 2009, shall provide a DNA sample to the appropriate local probation and parole office when the registrant appears for a new photograph to be obtained. Failure to comply with this requirement shall be punished as set forth in subsection (11) of this section.
- (5) (a) The appropriate probation and parole office shall send the registration form containing the registrant information, fingerprint card, and photograph, and any special conditions imposed by the court or the Parole Board, to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601. The appropriate probation and parole office shall send the DNA sample to the Office of the Kentucky State Criminal Forensic Laboratories [~~Department of Kentucky State Police forensic laboratory~~] in accordance with administrative regulations promulgated by the cabinet.
- (b) The Information Services Center, upon request by a state or local law enforcement agency, shall make available to that agency registrant information, including a person's fingerprints and photograph, where available, as well as any special conditions imposed by the court or the Parole

Board.

- (c) Any employee of the Justice and Public Safety Cabinet who disseminates, or does not disseminate, registrant information in good faith compliance with the requirements of this subsection shall be immune from criminal and civil liability for the dissemination or lack thereof.
- (6) Any person who has been convicted in a court of any state or territory, a court of the United States, or a similar conviction from a court of competent jurisdiction in any other country, or a court martial of the United States Armed Forces of a sex crime or criminal offense against a victim who is a minor and who has been notified of the duty to register by that state, territory, or court, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws, or has a similar conviction from a court of competent jurisdiction in any other country, shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register with the appropriate local probation and parole office in the county of residence within five (5) working days of relocation. No additional notice of the duty to register shall be required of any official charged with a duty of enforcing the laws of this Commonwealth.
- (7) If a person is required to register under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register within five (5) working days with the appropriate local probation and parole office in the county of residence,

employment, vocation, or schooling. A person required to register under federal law or the laws of another state or territory shall be presumed to know of the duty to register in the Commonwealth. As used in this subsection, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.

- (8) The registration form shall be a written statement signed by the person which shall include registrant information, including an up-to-date photograph of the registrant for public dissemination.
- (9) For purposes of KRS 17.500 to 17.580 and 17.991, a post office box number shall not be considered an address.
- (10)
  - (a) If the residence address of any registrant changes, but the registrant remains in the same county, the person shall register, on or before the date of the change of address, with the appropriate local probation and parole office in the county in which he or she resides.
  - (b)
    - 1. If the registrant changes his or her residence to a new county, the person shall notify his or her current local probation and parole office of the new residence address on or before the date of the change of address.
    - 2. The registrant shall also register with the appropriate local probation and parole office in the county of his or her new residence no later than five (5) working days after the date of the change of address.
  - (c) If the electronic mail address or any instant messaging, chat, or other Internet communication name identities of any registrant changes, or if the registrant

creates or uses any new Internet communication name identities, the registrant shall register the change or new identity, on or before the date of the change or use or creation of the new identity, with the appropriate local probation and parole office in the county in which he or she resides.

- (d) 1. As soon as a probation and parole office learns of the person's new address under paragraph (b)1. of this subsection, that probation and parole office shall notify the appropriate local probation and parole office in the county of the new address of the effective date of the new address.
  2. As soon as a probation and parole office learns of the person's new address under paragraph (b)2. of this subsection or learns of the registrant's new or changed electronic mail address or instant messaging, chat, or other Internet communication name identities under paragraph (c) of this subsection, that office shall forward this information as set forth under subsection (5) of this section.
- (11) Any person required to register under this section who knowingly violates any of the provisions of this section or prior law is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (12) Any person required to register under this section or prior law who knowingly provides false, misleading, or incomplete information is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.
- (13) (a) The cabinet shall verify the addresses and the electronic mail address and any instant messaging, chat, or other Internet communication name identities of individuals required to register under this section. Verification shall occur at least once every ninety (90) days for a person required to register under KRS 17.520(2) and at least once every calendar year for a person required to register under KRS 17.520(3). If the cabinet determines that a person has

moved or has created or changed any electronic mail address or any instant messaging, chat, or other Internet communication name identities used by the person without providing his or her new address, electronic mail address, or instant messaging, chat, or other Internet communication name identity to the appropriate local probation and parole office or offices as required under subsection (10)(a), (b), and (c) of this section, the cabinet shall notify the appropriate local probation and parole office of the new address or electronic mail address or any instant messaging, chat, or other Internet communication name identities used by the person. The office shall then forward this information as set forth under subsection (5) of this section. The cabinet shall also notify the appropriate court, Parole Board, and appropriate Commonwealth's attorney, sheriff's office, probation and parole office, corrections agency, and law enforcement agency responsible for the investigation of the report of noncompliance.

- (b) An agency that receives notice of the noncompliance from the cabinet under paragraph (a) of this subsection:
  - 1. Shall consider revocation of the parole, probation, postincarceration supervision, or conditional discharge of any person released under its authority; and
  - 2. Shall notify the appropriate county or Commonwealth's Attorney for prosecution.

➔Section 37. KRS 189A.050 is amended to read as follows:

- (1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), (d), or (e) shall be sentenced to pay a service fee of three hundred seventy-five dollars (\$375), which shall be in addition to all other penalties authorized by law.
- (2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 relating to the method of imposition and KRS 534.060 as to remedies for

nonpayment of the fee.

- (3) The first fifty dollars (\$50) of each service fee imposed by this section shall be paid into the general fund, and the remainder of the revenue collected from the service fee imposed by this section shall be utilized as follows:
- (a) Twelve percent (12%) of the amount collected shall be transferred to the *Office of the Kentucky State Criminal Forensic Laboratories*~~Department of Kentucky State Police forensic laboratory~~ for the acquisition, maintenance, testing, and calibration of alcohol concentration testing instruments and the training of laboratory personnel to perform these tasks;
  - (b) Twenty percent (20%) of the service fee collected pursuant to this section shall be allocated to the Department for Public Advocacy;
  - (c) One percent (1%) shall be transferred to the Prosecutor's Advisory Council for training of prosecutors for the prosecution of persons charged with violations of this chapter and for obtaining expert witnesses in cases involving the prosecution of persons charged with violations of this chapter or any other offense in which driving under the influence is a factor in the commission of the offense charged;
  - (d) Sixteen percent (16%) of the amount collected shall be transferred as follows:
    - 1. Fifty percent (50%) shall be credited to the traumatic brain injury trust fund established under KRS 211.476; and
    - 2. Fifty percent (50%) shall be credited to the Cabinet for Health and Family Services, Department for Behavioral Health, Developmental and Intellectual Disabilities, for the purposes of providing direct services to individuals with brain injuries that may include long-term supportive services and training and consultation to professionals working with individuals with brain injuries. As funding becomes available under this subparagraph, the cabinet may promulgate administrative regulations

pursuant to KRS Chapter 13A to implement the services permitted by this subparagraph;

- (e) Any amount specified by a specific statute shall be transferred as provided in that statute;
  - (f) Forty-six percent (46%) of the amount collected shall be transferred to be utilized to fund enforcement of this chapter and for the support of jails, recordkeeping, treatment, and educational programs authorized by this chapter and by the Department for Public Advocacy; and
  - (g) The remainder of the amount collected shall be transferred to the general fund.
- (4) The amounts specified in subsection (3)(a), (b), (c), and (d) of this section shall be placed in trust and agency accounts that shall not lapse.

➔Section 38. KRS 422.287 is amended to read as follows:

- (1) When a person is being tried for a capital offense and there is evidence in the case which may be subjected to deoxyribonucleic acid (DNA) testing and analysis, the Commonwealth or the defendant may move to have any item of evidence not previously subjected to DNA testing and analysis tested and analyzed.
- (2) If the court is satisfied that the item of evidence has not been tested and analyzed, that DNA testing and analysis would yield evidence of probative value, and that the item of evidence has not previously been the subject of DNA testing and analysis or that new DNA testing and analysis would yield a more accurate result, the court shall order DNA testing and analysis of the evidence.
- (3) The testing and analysis of the evidence shall be done by the *Office of the Kentucky State Criminal Forensic Laboratories*~~[ Department of Kentucky State Police laboratory]~~ or at another laboratory selected by the *Office of the Kentucky State Criminal Forensic Laboratories*~~[ Department of Kentucky State Police laboratory]~~.
- (4) DNA testing and analysis results shall be made available to both the Commonwealth and the defendant, and either the Commonwealth or the defendant

may move that they be admitted at trial.

- (5) If the defendant is convicted of any offense for which DNA test and analysis results are required to be maintained by law, the DNA test and analysis results obtained pursuant to this section shall be utilized for that purpose, whether or not the test and analysis results were introduced in the case.

➔Section 39. The Chief Justice shall convene a bipartisan commission to undertake a comprehensive evaluation of the fairness of Kentucky's system of selecting judges and justices and any effect that system may have in allowing unfair practices to affect the independence of Kentucky's courts. The commission shall include among its members representatives from all three branches of government, and shall make its report to the Chief Justice by December 1, 2015.

➔Section 40. The secretary of the Justice and Public Safety Cabinet shall contract with a public university in this state to undertake a comprehensive review of the impact of racial discrimination in capital sentencing in Kentucky since the adoption of the Kentucky Racial Justice Act in 1998 to determine what effect, if any, that Act has had on ameliorating racial discrimination in capital cases.

➔Section 41. A person having at least five years of experience managing a Kentucky State Police forensic laboratory during the time period immediately preceding the effective date of this Act shall be deemed qualified for appointment as the executive director of the Office of the Kentucky Criminal Forensic Laboratories, notwithstanding any contrary provisions of subsection (3)(g) of Section 5 of this Act.