

AN ACT relating to assault.

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

➔Section 1. KRS 508.020 is amended to read as follows:

- (1) A person is guilty of assault in the second degree when:
- (a) ~~[He intentionally causes serious physical injury to another person; or~~
 - (b) ~~]~~He ***or she*** intentionally causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or
 - (b)~~(c)~~ He ***or she*** wantonly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument.
- (2) Assault in the second degree is a Class C felony.

➔Section 2. KRS 508.025 is amended to read as follows:

- (1) A person is guilty of assault in the third degree when~~[the actor]~~:
- (a) ***He or she intentionally causes serious physical injury to another person;***
 - (b) ***He or she wantonly causes serious physical injury to another person;***
 - (c) ***He or she wantonly causes physical injury to another person by means of a deadly weapon or dangerous instrument;***
 - (d) ***He or she recklessly causes serious physical injury to another person by means of a deadly weapon or dangerous instrument; or***
 - (e) ~~[Recklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury to:~~
 - 1. ~~A state, county, city, or federal peace officer;~~
 - 2. ~~An employee of a detention facility, or state residential treatment facility or state staff secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender;~~
 - 3. ~~An employee of the Department for Community Based Services~~

- ~~employed as a social worker to provide direct client services, if the event occurs while the worker is performing job-related duties;~~
- ~~4. Paid or volunteer emergency medical services personnel certified or licensed pursuant to KRS Chapter 311A, if the event occurs while personnel are performing job-related duties;~~
 - ~~5. A paid or volunteer member of an organized fire department, if the event occurs while the member is performing job-related duties;~~
 - ~~6. Paid or volunteer rescue squad personnel affiliated with the Division of Emergency Management of the Department of Military Affairs or a local disaster and emergency services organization pursuant to KRS Chapter 39F, if the event occurs while personnel are performing job-related duties;~~
 - ~~7. A probation and parole officer;~~
 - ~~8. A transportation officer appointed by a county fiscal court or legislative body of a consolidated local government, urban county government, or charter government to transport inmates when the county jail or county correctional facility is closed while the transportation officer is performing job-related duties;~~
 - ~~9. A public or private elementary or secondary school or school district classified or certified employee, school bus driver, or other school employee acting in the course and scope of the employee's employment;~~
~~or~~
 - ~~10. A public or private elementary or secondary school or school district volunteer acting in the course and scope of that person's volunteer service for the school or school district; or~~
- ~~(b) Being a person confined in a detention facility, or state residential treatment facility or state staff secure facility for residential treatment which provides~~

for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender, inflicts physical injury upon or throws or causes feces, or urine, or other bodily fluid to be thrown upon an employee of the facility.

(2) Assault in the third degree is a Class D felony.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 508 IS CREATED TO READ AS FOLLOWS:

A person convicted under Section 1 or 2 of this Act shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing provisions of KRS 532.060(2) for the next highest degree than the offense for which convicted, and a person convicted under KRS 508.030 shall be sentenced pursuant to the sentencing provisions of KRS 532.060(2)(d), if the victim of the offense is:

(1) A state, county, city, or federal peace officer;

(2) An employee of a detention facility, state residential treatment facility, or state staff secure facility for residential treatment which provides for the care, treatment, or detention of a juvenile charged with or adjudicated delinquent because of a public offense or as a youthful offender;

(3) An employee of the Department for Community Based Services employed as a social worker to provide direct client services, if the event occurs while the worker is performing job-related duties;

(4) Paid or volunteer emergency medical services personnel certified or licensed pursuant to KRS Chapter 311A, if the event occurs while personnel are performing job-related duties;

(5) A paid or volunteer member of an organized fire department, if the event occurs while the member is performing job-related duties;

(6) Paid or volunteer rescue squad personnel affiliated with the Division of Emergency Management of the Department of Military Affairs or a local disaster

and emergency services organization pursuant to KRS Chapter 39F, if the event occurs while personnel are performing job-related duties;

(7) A probation and parole officer;

(8) A transportation officer appointed by a county fiscal court or legislative body of a consolidated local government, urban-county government, or charter government to transport inmates when the county jail or county correctional facility is closed while the transportation officer is performing job-related duties;

(9) A public or private elementary or secondary school or school district classified or certified employee, school bus driver, or other school employee acting in the course and scope of the employee's employment;

(10) A public or private elementary or secondary school or school district volunteer acting in the course and scope of that person's volunteer service for the school or school district; or

(11) In relation to the person, a family member or member of an unmarried couple, as defined in KRS 403.720.

➔Section 4. KRS 439.3401 is amended to read as follows:

- (1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to the commission of:
 - (a) A capital offense;
 - (b) A Class A felony;
 - (c) A Class B felony involving the death of the victim or serious physical injury to a victim;
 - (d) An offense described in KRS 507.040 or 507.050 where the offense involves the killing of a peace officer or firefighter while the officer or firefighter was acting in the line of duty;
 - (e) The commission or attempted commission of a felony sexual offense described in KRS Chapter 510;

- (f) Use of a minor in a sexual performance as described in KRS 531.310;
- (g) Promoting a sexual performance by a minor as described in KRS 531.320;
- (h) Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a);
- (i) Human trafficking under KRS 529.100 involving commercial sexual activity where the victim is a minor;
- (j) Criminal abuse in the first degree as described in KRS 508.100;
- (k) Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, ~~508.032,~~ or 508.060, **or subject to an enhanced penalty pursuant to subsection (11) of Section 3 of this Act;**
- (l) Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or
- (m) Robbery in the first degree.

The court shall designate in its judgment if the victim suffered death or serious physical injury.

- (2) A violent offender who has been convicted of a capital offense and who has received a life sentence (and has not been sentenced to twenty-five (25) years without parole or imprisonment for life without benefit of probation or parole), or a Class A felony and receives a life sentence, or to death and his or her sentence is commuted to a life sentence shall not be released on probation or parole until he or she has served at least twenty (20) years in the penitentiary. Violent offenders may have a greater minimum parole eligibility date than other offenders who receive longer sentences, including a sentence of life imprisonment.
- (3) (a) A violent offender who has been convicted of a capital offense or Class A felony with a sentence of a term of years or Class B felony shall not be released on probation or parole until he has served at least eighty-five percent

- (85%) of the sentence imposed.
- (b) A violent offender who has been convicted of a violation of KRS 507.040 where the victim of the offense was clearly identifiable as a peace officer or a firefighter and the victim was acting in the line of duty shall not be released on probation or parole until he or she has served at least eighty-five percent (85%) of the sentence imposed.
- (c) A violent offender who has been convicted of a violation of KRS 507.040 or 507.050 where the victim of the offense was a peace officer or a firefighter and the victim was acting in the line of duty shall not be released on probation or parole until he or she has served at least fifty percent (50%) of the sentence imposed.
- (d) Any offender who has been convicted of a homicide or fetal homicide offense under KRS Chapter 507 or 507A in which the victim of the offense died as the result of an overdose of a Schedule I controlled substance and who is not otherwise subject to paragraph (a), (b), or (c) of this subsection shall not be released on probation, shock probation, parole, conditional discharge, or other form of early release until he or she has served at least fifty percent (50%) of the sentence imposed.
- (4) A violent offender shall not be awarded any credit on his sentence authorized by KRS 197.045(1)(b)1. In no event shall a violent offender be given credit on his or her sentence if the credit reduces the term of imprisonment to less than eighty-five percent (85%) of the sentence.
- (5) This section shall not apply to a person who has been determined by a court to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or serious physical injury to the victim. The provisions of this subsection shall not extend to rape in the first degree or sodomy in the first degree by the defendant.

- (6) This section shall apply only to those persons who commit offenses after July 15, 1998.
- (7) For offenses committed prior to July 15, 1998, the version of this statute in effect immediately prior to that date shall continue to apply.
- (8) The provisions of subsection (1) of this section extending the definition of "violent offender" to persons convicted of or pleading guilty to robbery in the first degree shall apply only to persons whose crime was committed after July 15, 2002.

➔Section 5. KRS 532.080 is amended to read as follows:

- (1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the sentence of imprisonment assessed under KRS 532.060 for the crime of which such person presently stands convicted, shall fix a sentence of imprisonment as authorized by subsection (5) or (6) of this section. When a defendant is charged with being a persistent felony offender, the determination of whether or not he is such an offender and the punishment to be imposed pursuant to subsection (5) or (6) of this section shall be determined in a separate proceeding from that proceeding which resulted in his last conviction. Such proceeding shall be conducted before the court sitting with the jury that found the defendant guilty of his most recent offense unless the court for good cause discharges that jury and impanels a new jury for that purpose.
- (2) A persistent felony offender in the second degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of one (1) previous felony. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:
 - (a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and
 - (b) That the offender was over the age of eighteen (18) years at the time the

offense was committed; and

(c) That the offender:

1. Completed service of the sentence imposed on the previous felony conviction within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
2. Was on probation, parole, postincarceration supervision, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
3. Was discharged from probation, parole, postincarceration supervision, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or
5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.

(3) A persistent felony offender in the first degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of two (2) or more felonies, or one (1) or more felony sex crimes against a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more felonies. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

- (a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and

- (b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and
- (c) That the offender:
 - 1. Completed service of the sentence imposed on any of the previous felony convictions within five (5) years prior to the date of the commission of the felony for which he now stands convicted; or
 - 2. Was on probation, parole, postincarceration supervision, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
 - 3. Was discharged from probation, parole, postincarceration supervision, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
 - 4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or
 - 5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.
- (4) For the purpose of determining whether a person has two (2) or more previous felony convictions, two (2) or more convictions of crime for which that person served concurrent or uninterrupted consecutive terms of imprisonment shall be deemed to be only one (1) conviction, unless one (1) of the convictions was for an offense committed while that person was imprisoned.
- (5) A person who is found to be a persistent felony offender in the second degree shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing

provisions of KRS 532.060(2) for the next highest degree than the offense for which convicted. A person who is found to be a persistent felony offender in the second degree shall not be eligible for probation, shock probation, or conditional discharge, unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person, in which case probation, shock probation, or conditional discharge may be granted. A violent offender who is found to be a persistent felony offender in the second degree shall not be eligible for parole except as provided in KRS 439.3401.

- (6) A person who is found to be a persistent felony offender in the first degree shall be sentenced to imprisonment as follows:
 - (a) If the offense for which he presently stands convicted is a Class A or Class B felony, or if the person was previously convicted of one (1) or more sex crimes committed against a minor as defined in KRS 17.500 and presently stands convicted of a subsequent sex crime, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than twenty (20) years nor more than fifty (50) years, or life imprisonment, or life imprisonment without parole for twenty-five (25) years for a sex crime committed against a minor;
 - (b) If the offense for which he presently stands convicted is a Class C or Class D felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten (10) years nor more than twenty (20) years.
- (7) A person who is found to be a persistent felony offender in the first degree shall not be eligible for probation, shock probation, or conditional discharge, unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person or a sex crime as that term is defined in KRS 17.500, in which case, probation, shock probation, or conditional discharge

may be granted. If the offense the person presently stands convicted of is a Class A, B, or C felony, the person shall not be eligible for parole until the person has served a minimum term of incarceration of not less than ten (10) years, unless another sentencing scheme applies. A violent offender who is found to be a persistent felony offender in the first degree shall not be eligible for parole except as provided in KRS 439.3401.

- (8) A conviction, plea of guilty, or Alford plea under KRS 218A.1415 shall not trigger the application of this section, regardless of the number or type of prior felony convictions that may have been entered against the defendant. A conviction, plea of guilty, or Alford plea under KRS 218A.1415 may be used as a prior felony offense allowing this section to be applied if he or she is subsequently convicted of a different felony offense.
- (9) The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be retroactive.
- (10) (a) Except as provided in paragraph (b) of this subsection, this section shall not apply to a person convicted of a criminal offense if the penalty for that offense was increased from a misdemeanor to a felony, or from a lower felony classification to a higher felony classification, because the conviction constituted a second or subsequent violation of that offense.
- (b) This subsection shall not prohibit the application of this section to a person convicted of:
1. A felony offense arising out of KRS 189A.010, 189A.090, 506.140, ~~508.032,~~ 508.140, or 510.015; or
 2. Any other felony offense if the penalty was not enhanced to a higher level because the Commonwealth elected to prosecute the person as a first-time violator of that offense.

➔Section 6. The following KRS section is repealed:

508.032 Assault of family member or member of an unmarried couple -- Enhancement of penalty.