

1 AN ACT relating to crimes and punishments.

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

3 ➔Section 1. KRS 520.010 is amended to read as follows:

4 The following definitions apply in this chapter, unless the context otherwise requires:

5 (1) "Contraband" means any article or thing which a person confined in a detention
6 facility is prohibited from obtaining or possessing by statute, departmental
7 regulation, or posted institutional rule or order;

8 (2) "Custody" means restraint by a public servant pursuant to a lawful arrest, detention,
9 or an order of court for law enforcement purposes, but does not include supervision
10 of probation or parole or constraint incidental to release on bail;

11 ~~[(3) "Dangerous contraband" means contraband which is capable of use to endanger the
12 safety or security of a detention facility or persons therein, including, but not limited
13 to, dangerous instruments as defined in KRS 500.080, any controlled substances,
14 any quantity of an alcoholic beverage, and any quantity of marijuana, cell phones,
15 and saws, files, and similar metal cutting instruments;]~~

16 ~~(3)~~~~[(4)]~~ "Detention facility" means any building and its premises used for the
17 confinement of a person:

18 (a) Charged with or convicted of an offense;

19 (b) Alleged or found to be delinquent;

20 (c) Held for extradition or as a material witness; or

21 (d) Otherwise confined pursuant to an order of court for law enforcement
22 purposes;

23 ~~(4)~~~~[(5)]~~ "Escape" means departure from custody or the detention facility in which a
24 person is held or detained when the departure is unpermitted, or failure to return to
25 custody or detention following a temporary leave granted for a specific purpose or
26 for a limited period; and

27 ~~(5)~~~~[(6)]~~ As used in this section and KRS 520.015, "penitentiary" includes any facility

1 operated by the Department of Corrections and the confines of any work detail or
2 other detail, whether under guard or not, under the custody and control of the
3 Department of Corrections.

4 ➔Section 2. KRS 520.050 is amended to read as follows:

- 5 (1) A person is guilty of promoting contraband ~~[in the first degree]~~ when:
- 6 (a) He knowingly introduces ~~[dangerous]~~ contraband into a detention facility or a
7 penitentiary; or
- 8 (b) Being a person confined in a detention facility or a penitentiary, he knowingly
9 makes, obtains, or possesses ~~[dangerous]~~ contraband.
- 10 (2) Promoting contraband ~~[in the first degree]~~ is a Class D felony.

11 **(3) Any person convicted under this section shall not be released on probation, shock**
12 **probation, parole, conditional discharge, or other form of early release until he**
13 **or she has served at least eighty-five percent (85%) of the sentence imposed.**

14 ➔Section 3. KRS 532.045 is amended to read as follows:

- 15 (1) As used in this section:
- 16 (a) "Position of authority" means but is not limited to the position occupied by a
17 biological parent, adoptive parent, stepparent, foster parent, relative,
18 household member, adult youth leader, recreational staff, or volunteer who is
19 an adult, adult athletic manager, adult coach, teacher, classified school
20 employee, certified school employee, counselor, staff, or volunteer for either a
21 residential treatment facility or a detention facility as defined in KRS
22 520.010~~[(4)]~~, staff or volunteer with a youth services organization, religious
23 leader, health-care provider, or employer;
- 24 (b) "Position of special trust" means a position occupied by a person in a position
25 of authority who by reason of that position is able to exercise undue influence
26 over the minor; and
- 27 (c) "Substantial sexual conduct" means penetration of the vagina or rectum by the

1 penis of the offender or the victim, by any foreign object; oral copulation; or
2 masturbation of either the minor or the offender.

3 (2) Notwithstanding other provisions of applicable law, probation shall not be granted
4 to, nor shall the execution or imposition of sentence be suspended for, nor shall a
5 finding bringing the defendant within the provision of this section be stricken for a
6 person convicted of violating KRS 510.050, 510.080, 529.040, 529.070, 529.100
7 where the offense involves commercial sexual activity, 530.020, 531.310, 531.320,
8 or 531.370, or criminal attempt to commit any of these offenses under KRS
9 506.010, and, who meets one (1) or more of the following criteria:

10 (a) A person who commits any of the offenses enumerated in this subsection
11 against a minor by the use of force, violence, duress, menace, or threat of
12 bodily harm;

13 (b) A person who, in committing any of the offenses enumerated in this
14 subsection, caused bodily injury to the minor;

15 (c) A person convicted of any of the offenses enumerated in this subsection and
16 who was a stranger to the minor or made friends with the minor for the
17 purpose of committing an act constituting any of the offenses enumerated in
18 this subsection, unless the defendant honestly and reasonably believed the
19 minor was eighteen (18) years old or older;

20 (d) A person who used a dangerous instrument or deadly weapon against a minor
21 during the commission of any of the offenses enumerated in this subsection;

22 (e) A person convicted of any of the offenses enumerated in this subsection and
23 who has had a prior conviction of assaulting a minor, with intent to commit an
24 act constituting any of the offenses enumerated in this subsection;

25 (f) A person convicted of kidnapping a minor in violation of the Kentucky Penal
26 Code and who kidnapped the minor for the purpose of committing an act
27 constituting any of the offenses enumerated in this subsection;

- 1 (g) A person who is convicted of committing any of the offenses enumerated in
2 this subsection on more than one (1) minor at the same time or in the same
3 course of conduct;
- 4 (h) A person who in committing any of the offenses enumerated in this subsection
5 has substantial sexual conduct with a minor under the age of fourteen (14)
6 years; or
- 7 (i) A person who occupies a position of special trust and commits an act of
8 substantial sexual conduct.

9 Nothing in this section shall be construed to prohibit the additional period of five
10 (5) years' postincarceration supervision required by KRS 532.043.

11 (3) If a person is not otherwise prohibited from obtaining probation or conditional
12 discharge under subsection (2), the court may impose on the person a period of
13 probation or conditional discharge. Probation or conditional discharge shall not be
14 granted until the court is in receipt of the comprehensive sex offender presentence
15 evaluation of the offender performed by an approved provider, as defined in KRS
16 17.500 or the Department of Corrections. The court shall use the comprehensive sex
17 offender presentence evaluation in determining the appropriateness of probation or
18 conditional discharge.

19 (4) If the court grants probation or conditional discharge, the offender shall be required,
20 as a condition of probation or conditional discharge, to successfully complete a
21 community-based sexual offender treatment program operated or approved by the
22 Department of Corrections or the Sex Offender Risk Assessment Advisory Board.

23 (5) The offender shall pay for any evaluation or treatment required pursuant to this
24 section up to the offender's ability to pay but not more than the actual cost of the
25 comprehensive sex offender presentence evaluation or treatment.

26 (6) Failure to successfully complete the sexual offender treatment program constitutes
27 grounds for the revocation of probation or conditional discharge.

1 (7) The comprehensive sex offender presentence evaluation and all communications
2 relative to the comprehensive sex offender presentence evaluation and treatment of
3 a sexual offender shall fall under the provisions of KRS 197.440. The
4 comprehensive sex offender presentence evaluation shall be filed under seal and
5 shall not be made a part of the court record subject to review in appellate
6 proceedings and shall not be made available to the public.

7 (8) Before imposing sentence, the court shall advise the defendant or his counsel of the
8 contents and conclusions of any comprehensive sex offender presentence evaluation
9 performed pursuant to this section and afford a fair opportunity and a reasonable
10 period of time, if the defendant so requests, to controvert them. The court shall
11 provide the defendant's counsel and the Commonwealth's attorney a copy of the
12 comprehensive sex offender presentence evaluation. It shall not be necessary to
13 disclose the sources of confidential information.

14 (9) To the extent that this section conflicts with KRS 533.010, this section shall take
15 precedence.

16 ➔Section 4. The following KRS section is repealed:

17 520.060 Promoting contraband in the second degree.