

1 AN ACT relating to crimes affecting insurance.

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

3 ➔Section 1. KRS 304.47-020 is amended to read as follows:

4 (1) For the purposes of this subtitle, a person or entity commits a "fraudulent insurance  
5 act" if he or she engages in any of the following, including but not limited to matters  
6 relating to workers' compensation:

7 (a) Knowingly and with intent to defraud or deceive presents, causes to be  
8 presented, or prepares with knowledge or belief that it will be presented to an  
9 insurer, Kentucky Claims Commission, Special Fund, or any agent thereof; ~~;~~

10 1. Any written or oral statement as part of, or in support of, a claim for  
11 payment or other benefit pursuant to an insurance policy or from a "self-  
12 insurer" as defined by KRS Chapter 342, knowing that the statement  
13 contains any false, incomplete, or misleading information concerning  
14 any fact or thing material to a claim; or

15 ~~[(b) Knowingly and with intent to defraud or deceive presents, causes to be  
16 presented, or prepares with knowledge or belief that it will be presented to an  
17 insurer, Kentucky Claims Commission, or any agent thereof,]~~

18 2. Any statement as part of, or in support of, an application for an  
19 insurance policy, for renewal, reinstatement, or replacement of  
20 insurance, or in support of an application to a lender for money to pay a  
21 premium, knowing that the statement contains any false, incomplete, or  
22 misleading information concerning any fact or thing material to the  
23 application;

24 ~~(b)(e)~~ Knowingly and willfully transacts any contract, agreement, or  
25 instrument which violates this title;

26 ~~(c)(d)~~ Knowingly and with intent to defraud or deceive; ~~;~~

27 1. Receives money for the purpose of purchasing insurance, and fails to

1 obtain insurance;

2 ~~[(e) Knowingly and with intent to defraud or deceive,]~~

3 **2.** Fails to make payment or disposition of money or voucher as defined in  
4 KRS 304.17A-750, as required by agreement or legal obligation, that  
5 comes into his or her possession while acting as a licensee under this  
6 chapter;

7 **3.** **Presents, causes to be presented, or prepares with knowledge or belief**  
8 **that it will be presented to or by an insurer, or to the commissioner,**  
9 **any statement, knowing that the statement contains any false,**  
10 **incomplete, or misleading information concerning any material fact**  
11 **or thing, as part of, or in support of one (1) or more of the following:**

12 **a. The rating of an insurance policy;**

13 **b. The financial condition of an insurer;**

14 **c. The formation, acquisition, merger, reconsolidation, dissolution,**  
15 **or withdrawal from one (1) or more lines of insurance in all or**  
16 **part of this Commonwealth by an insurer; or**

17 **d. A document filed with the commissioner; or**

18 **4. Engages in any of the following:**

19 **a. Solicitation or acceptance of new or renewal insurance risks on**  
20 **behalf of an insolvent insurer; or**

21 **b. Removal, concealment, alteration, tampering, or destruction of**  
22 **money, records, or any other property or assets of an insurer;**

23 ~~(d)~~~~(f)~~ Issues or knowingly presents fake or counterfeit insurance policies,  
24 certificates of insurance, insurance identification cards, insurance binders, or  
25 any other documents that purport to evidence insurance;

26 ~~(e)~~~~(g)~~ Makes any false or fraudulent representation as to the death or disability  
27 of a policy or certificate holder in any written statement or certificate for the

1 purpose of fraudulently obtaining money or benefit from an insurer;

2 ~~(f)(h)~~ Engages in unauthorized insurance, as set forth~~[defined]~~ in KRS 304.11-  
3 030;

4 ~~[(i) Knowingly and with intent to defraud or deceive, presents, causes to be  
5 presented, or prepares with knowledge or belief that it will be presented to or  
6 by an insurer, or to the commissioner, any statement, knowing that the  
7 statement contains any false, incomplete, or misleading information  
8 concerning any material fact or thing, as part of, or in support of one (1) or  
9 more of the following:~~

10 1. ~~The rating of an insurance policy;~~

11 2. ~~The financial condition of an insurer;~~

12 3. ~~The formation, acquisition, merger, reconsolidation, dissolution, or  
13 withdrawal from one (1) or more lines of insurance in all or part of this  
14 Commonwealth by an insurer; or~~

15 4. ~~A document filed with the commissioner;~~

16 ~~(j) Knowingly and with intent to defraud or deceive, engages in any of the  
17 following:~~

18 1. ~~Solicitation or acceptance of new or renewal insurance risks on behalf of  
19 an insolvent insurer; or~~

20 2. ~~Removal, concealment, alteration, tampering, or destruction of money,  
21 records, or any other property or assets of an insurer;] or~~

22 ~~(g)(k)~~ Assists, abets, solicits, or conspires with another to commit a fraudulent  
23 insurance act in violation of this subtitle.

24 (2) (a) ~~[Except as provided in paragraphs (b) and (c) of this subsection, ]~~A person  
25 convicted of a violation of subsection (1) of this section shall be guilty of a  
26 **Class A** misdemeanor unless~~[where]~~ the aggregate of the claim, benefit, or  
27 money referred to in subsection (1) of this section is~~[less than or equal to five~~

1 hundred dollars (\$500), and shall be punished by]:

- 2 1. Five hundred dollars (\$500) or more but less than ten thousand  
 3 dollars (\$10,000), in which case it is a Class D felony;~~[Imprisonment~~  
 4 ~~for not more than one (1) year];~~
- 5 2. Ten thousand dollars (\$10,000) or more but less than one million  
 6 dollars (\$1,000,000), in which case it is a Class C felony~~[A fine, per~~  
 7 ~~occurrence, of not more than one thousand dollars (\$1,000) per~~  
 8 ~~individual nor five thousand dollars (\$5,000) per corporation or twice~~  
 9 ~~the amount of gain received as a result of the violation, whichever is~~  
 10 ~~greater]; or~~
- 11 3. One million dollars (\$1,000,000) or more, in which case it is a Class B  
 12 felony~~[Both imprisonment and a fine as set forth in subparagraphs 1.~~  
 13 ~~and 2. of this paragraph].~~

14 (b) ~~A~~~~[Except as provided in paragraph (c) of this subsection, where the claim,~~  
 15 ~~benefit, or money referred to in subsection (1) of this section exceeds an~~  
 16 ~~aggregate of five hundred dollars (\$500), a person convicted of a violation of~~  
 17 ~~subsection (1) of this section shall be guilty of a felony and shall be punished~~  
 18 ~~by:~~

- 19 1. ~~Imprisonment for not less than one (1) nor more than five (5) years;~~
- 20 2. ~~A fine, per occurrence, of not more than ten thousand dollars (\$10,000) per~~  
 21 ~~individual nor one hundred thousand dollars (\$100,000) per corporation or~~  
 22 ~~twice the amount of gain received as a result of the violation, whichever is~~  
 23 ~~greater; or~~
- 24 3. ~~Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this~~  
 25 ~~paragraph.~~

26 (c) ~~Any~~ person, with the purpose of establishing or maintaining~~[to establish or~~  
 27 ~~maintain]~~ a criminal syndicate~~[,]~~ or to facilitate any of its activities, convicted

1 of doing any act~~[as]~~ set forth in KRS 506.120(1)~~[,]~~ shall be guilty of  
 2 engaging in organized crime, a Class B felony.

3 (c) A person convicted of a crime set forth in this section~~[, and]~~ shall be  
 4 punished by:

5 1. Imprisonment for a term:

6 a. Not to exceed the period set forth in KRS 532.090 if the crime is  
 7 a Class A misdemeanor; or

8 b. Within the periods set forth in KRS 532.060 if the crime is a  
 9 Class D, C, or B felony~~[not less than ten (10) years nor more than~~  
 10 ~~twenty (20) years];~~

11 2. A fine, per occurrence, of:

12 a. For a misdemeanor, not more than one thousand dollars  
 13 (\$1,000) per individual nor five thousand dollars (\$5,000) per  
 14 corporation or twice the amount of gain received as a result of  
 15 the violation, whichever is greater; or

16 b. For a felony, not more than ten thousand dollars (\$10,000) per  
 17 individual nor one hundred thousand dollars (\$100,000) per  
 18 corporation, or twice the amount of gain received as a result of the  
 19 violation; whichever is greater; or

20 3. Both imprisonment and a fine, as set forth in subparagraphs 1. and 2. of  
 21 this paragraph.

22 (d) In addition to imprisonment, the assessment of a fine, or both, a person  
 23 convicted of a violation of paragraph (a) or~~[,]~~ (b)~~[, or (c)]~~ of subsection (2) of  
 24 this section may be ordered to make restitution to any victim, including an  
 25 insurer that has contracted to indemnify a victim, who suffered a monetary  
 26 loss due to any actions by that person which resulted in the adjudication of  
 27 guilt, and to the division for the cost of any investigation. The amount of

1           restitution shall equal the monetary value of the actual loss or twice the  
2           amount of gain received as a result of the violation, whichever is greater.

3 (3) Any person damaged as a result of a violation of any provision of this section~~[when~~  
4 ~~there has been a criminal adjudication of guilt]~~ shall have a cause of action to  
5 recover compensatory damages, plus all reasonable investigation and litigation  
6 expenses, including attorneys' fees, at the trial and appellate courts.

7 (4) The provisions of this section shall also apply to any agent, unauthorized insurer or  
8 its agents or representatives, or surplus lines carrier who, with intent, injures,  
9 defrauds, or deceives any claimant with regard to any claim. The claimant shall  
10 have the right to recover the damages provided in subsection (3) of this section.

11       ➔Section 2. KRS 431.200 is amended to read as follows:

12 Any person convicted of a misdemeanor or felony for taking, injuring, or destroying  
13 property shall restore the property or make reparation in damages **to the victim and to an**  
14 **insurer as defined in KRS 304.1-040 that has contracted to indemnify the victim** if not  
15 ordered as a condition of probation. The court in which the conviction is had, if applied to  
16 by verified petition made within ninety (90) days of the date the sentence was  
17 pronounced, may order restitution or give judgment against the defendant for reparation  
18 in damages, and enforce collection by execution or other process. In a petition for  
19 restitution or reparation, the court shall cause the defendant, if in custody, to be brought  
20 into court, and demand of him **or her** if he **or she** has any defense to make to the petition.  
21 If **the defendant**~~[he]~~ consents to the restitution or to reparation in damages in an agreed  
22 sum, the court shall give judgment accordingly. Otherwise a jury shall be impaneled to try  
23 the facts and ascertain the amount and the value of the property, or assess the damage, as  
24 the case may be. A failure to pursue this remedy shall not deprive the person aggrieved of  
25 his **or her** civil action for the injury sustained.

26       ➔Section 3. KRS 439.3107 is amended to read as follows:

27 (1) The department shall, by January 1, 2012, adopt a system of graduated sanctions for

1 violations of conditions of community supervision. Notwithstanding KRS Chapter  
2 533, the system shall set forth a menu of presumptive sanctions for the most  
3 common types of supervision violations, including but not limited to: failure to  
4 report; failure to pay fines, fees, and ~~victim~~ restitution; failure to participate in a  
5 required program or service; failure to complete community service; violation of a  
6 protective or no contact order; and failure to refrain from the use of alcohol or  
7 controlled substances. The system of sanctions shall take into account factors such  
8 as the severity of the current violation, the supervised individual's previous criminal  
9 record, the number and severity of any previous supervision violations, the  
10 supervised individual's assessed risk level, and the extent to which graduated  
11 sanctions were imposed for previous violations. The system also shall define  
12 positive reinforcements that supervised individuals may receive for compliance with  
13 conditions of supervision.

14 (2) The department shall establish by administrative regulation an administrative  
15 process to review and approve or reject, prior to imposition, graduated sanctions  
16 that deviate from those prescribed.

17 (3) The department shall establish by administrative regulation an administrative  
18 process to review graduated sanctions contested by supervised individuals under  
19 KRS 439.3108.

20 ➔Section 4. KRS 439.563 is amended to read as follows:

21 (1) When there is an identified victim of a defendant's crime to whom restitution has  
22 been ordered but not yet paid in full, or restitution has been ordered paid to a  
23 government agency or insurer and has not yet been paid in full, the Parole Board  
24 shall order the defendant to pay restitution as a condition of parole.

25 (2) When the Parole Board orders restitution, the board shall:

26 (a) Order the restitution to be paid to a specific person or organization through the  
27 Division of Probation and Parole, which shall disburse the moneys as ordered

- 1           by the board;
- 2           (b) Set the amount of restitution to be paid, if not already set;
- 3           (c) Set the amount and frequency of each restitution payment or require the
- 4           payment to be made in a lump sum.
- 5   (3) When the Parole Board orders restitution, the Department of Probation and Parole
- 6   shall:
- 7           (a) Monitor and oversee the collection of the restitution;
- 8           (b) Institute parole violation proceedings if the restitution is not being paid;
- 9           (c) Institute sanctions against the defendant if restitution is not being paid and
- 10          good cause is not shown for the nonpayment; and
- 11          (d) Maintain parole supervision over the defendant until restitution has been paid
- 12          in full.
- 13   (4) The board, in addition to any other sanctions which may be imposed on the
- 14   defendant, may ask a court to hold a defendant who is not paying restitution in the
- 15   manner or amount prescribed in contempt of court.
- 16   (5) Any statute relating to the length of parole supervision notwithstanding, the parole
- 17   for a person owing restitution shall be until the restitution is paid in full, even if this
- 18   would lengthen the period of supervision beyond the statutory limit of parole
- 19   supervision or the statutory limit for serving out the sentence imposed.
- 20   (6) Payment of restitution in full prior to the end of the period of parole supervision
- 21   shall not shorten the period of parole supervision.
- 22   ➔Section 5. KRS 532.032 is amended to read as follows:
- 23   (1) Restitution~~[ to a named victim, if there is a named victim,]~~ shall be ordered in a
- 24   manner consistent, insofar as possible, with the provisions of this section and KRS
- 25   439.563, 532.033, 533.020, and 533.030 in addition to any other part of the penalty
- 26   for any offense under this chapter. The provisions of this section shall not be subject
- 27   to suspension or nonimposition.



- 1 (2) If pretrial diversion is granted, restitution shall be a part of the diversion agreement.
- 2 (3) If probation, shock probation, conditional discharge, or other alternative sentence is  
3 granted, restitution shall be a condition of the sentence.
- 4 (4) If a person is sentenced to incarceration and paroled, restitution shall be made a  
5 condition of parole.
- 6 (5) Restitution payments ordered under this section shall be paid by the defendant to the  
7 clerk or a court-authorized program run by the county attorney or the  
8 Commonwealth's attorney of the county.

9 ➔Section 6. KRS 532.034 is amended to read as follows:

- 10 (1) A person found guilty of violating any provisions of KRS 434.872, 434.874,  
11 514.160, or 514.170 shall, in addition to any other punishment, be ordered to make  
12 restitution for financial loss sustained by a victim as a result of the violation.  
13 Financial loss may include any costs incurred by the victim in correcting the credit  
14 history of the victim or any costs incurred in connection with any civil or  
15 administrative proceeding to satisfy any debt or other obligation of such victim,  
16 including lost wages and attorney's fees.
- 17 (2) A person found guilty of violating any provisions of KRS 434.872, 434.874,  
18 514.160, or 514.170 shall pay restitution to the person or entity that suffers the  
19 financial loss. In addition to the financial loss detailed in subsection (1) of this  
20 section, the person or entity may include a financial institution, insurance company,  
21 or bonding association that suffers ~~direct~~ financial loss as a result of the violation.

22 ➔Section 7. KRS 532.160 is amended to read as follows:

- 23 (1) If a convicted person is unable to pay all court costs, fees, fines, and other monetary  
24 penalties at the time of sentencing, then the sentencing court may, consistent with  
25 KRS 23A.205, 24A.175, 534.020, and KRS 534.060, issue a criminal garnishment  
26 order for all fines under KRS Chapter 534 or KRS 49.480 and for court costs,  
27 restitution, and reimbursement charges in this chapter.

- 1 (2) A criminal garnishment applies to any of the following:
- 2 (a) A convicted person's earnings as defined in KRS 427.005;
- 3 (b) Indebtedness that is owed to a convicted person by a garnishee for amounts
- 4 that are not earnings;
- 5 (c) Money that is held by a garnishee on behalf of a convicted person;
- 6 (d) The convicted person's personal property that is in the possession of a
- 7 garnishee; or
- 8 (e) If the garnishee is a corporation, shares or securities of a corporation or a
- 9 proprietary interest in a corporation that belongs to a convicted person.
- 10 (3) The debt associated with a criminal garnishment shall constitute a charge against
- 11 the estate of any decedent owing moneys under this chapter.
- 12 (4) The sentencing court shall combine all fines, court costs, restitution, and
- 13 reimbursement charges in a single order of garnishment.
- 14 (5) The sentencing court shall require payment of restitution to the victim of the offense
- 15 before payments of any moneys to the government, ~~or~~ a government agency, **or an**
- 16 **insurer**.
- 17 (6) The court shall order payments made under this section to be paid by the defendant
- 18 directly to the person or organization specified by written order of the court. The
- 19 court shall not order payments of an order of criminal garnishment to be made
- 20 through the circuit clerk, except for those payments due from a person under the
- 21 supervision of the Department of Corrections.
- 22 ➔Section 8. KRS 532.162 is amended to read as follows:
- 23 (1) If the criminal garnishment is made upon the convicted person's earnings, the order
- 24 of garnishment shall be a lien upon the earnings from the date of service on the
- 25 garnishee until an order discontinuing the lien is entered. A convicted person may
- 26 challenge the garnishment by filing a challenge to the garnishment with the
- 27 sentencing court. The challenge shall be heard within ten (10) days of its filing or

1 the nearest court date thereafter. Before the hearing, garnishment shall continue.  
 2 Any moneys which the court determines were improperly garnished shall be repaid  
 3 to the garnishee not later than thirty (30) days after the determination.

4 (2) The circuit clerk's office shall disburse all collected reimbursement, restitution, and  
 5 fees **as ordered by the court**~~[to the victim, the Kentucky Claims Commission, or the~~  
 6 ~~local government, whichever is appropriate]~~. The clerk shall be entitled to collect a  
 7 fee of two dollars and fifty cents (\$2.50) from each account for which a  
 8 disbursement is made at the time of disbursement. In the event of challenge to a  
 9 garnishment, the appropriate clerk's office shall not disburse those sums associated  
 10 with the challenged garnishment until determination by the sentencing court  
 11 regarding the propriety of the garnishment.

12 ➔Section 9. KRS 532.350 is amended to read as follows:

13 As used in this chapter:

14 (1) (a) "Restitution" means any form of compensation paid by a convicted person to a  
 15 victim **or an insurer as defined in KRS 304.1-040 that has contracted to**  
 16 **indemnify the victim** for counseling, medical expenses, lost wages due to  
 17 injury,~~[or ]~~property damage, **or**~~[and]~~ other expenses **and losses** suffered~~[by a~~  
 18 ~~victim]~~ because of a criminal act;

19 (b) "Reimbursement" means payment of expenses associated with incarceration,  
 20 including but not limited to medical expenses, food, and lodging;

21 (c) "Sinking fund" means the fund created and used by local governments to  
 22 provide maintenance of jail facilities and capital construction; improvement of  
 23 law enforcement, jail, and judicial facilities; and other long-term expenditures  
 24 associated with those areas; and

25 (d) "Local government" means any county, urban-county, or charter county  
 26 government.

27 (2) Definitions in KRS 441.005 apply to this chapter.

1       ➔Section 10. KRS 532.356 is amended to read as follows:

- 2       (1) Upon a person's conviction and sentencing for any nonstatus juvenile offense,  
3       moving traffic violation, criminal violation, misdemeanor, or Class D felony  
4       offense, and, for the purposes of paragraph (b) of this subsection, any Class C  
5       felony offense listed in subsection (3) of this section, the court shall impose the  
6       following sanctions in addition to any imprisonment, fine, court cost, or community  
7       service:
- 8       (a) Reimbursement to the state or local government for the person's incarceration,  
9       determined by the per person, per diem, expenses of each prisoner  
10      incarcerated by the respective local government, times the number of days he  
11      has spent or shall spend in confinement, plus any medical services received by  
12      the prisoner, less copayments paid by the prisoner. The convicted person's  
13      ability to pay all or part of the reimbursement shall be considered by the  
14      sentencing court in imposing the sanction; and
- 15      (b) Restitution~~[to the crime victim]~~ as set out in KRS 439.563, 532.032, and  
16      532.033.
- 17      (2) In addition to any other penalty allowed by law, a court may declare the defendant  
18      ineligible to operate a motor vehicle for a period of up to sixty (60) days where the  
19      defendant is being sentenced for a conviction of KRS 514.030 involving the theft of  
20      gasoline or special fuels from a retail establishment and the defendant has been  
21      previously convicted of KRS 514.030 for a theft of gasoline or special fuels from a  
22      retail establishment. A retail establishment may post a sign at the location where the  
23      fuel is dispensed apprising the public of the sanctions available under this  
24      subsection.
- 25      (3) (a) In addition to any other penalty allowed by law, a court may declare the  
26      defendant ineligible to operate a motor vehicle for the period of time that any  
27      amount of restitution ordered under this section remains unpaid, where the

1 restitution is imposed as the result of the commission of the following  
2 offenses:

- 3 1. KRS 434.650;
- 4 2. KRS 434.655;
- 5 3. KRS 434.660;
- 6 4. KRS 434.670;
- 7 5. KRS 434.690;
- 8 6. KRS 514.030;
- 9 7. KRS 514.040;
- 10 8. KRS 514.050;
- 11 9. KRS 514.060;
- 12 10. KRS 514.070;
- 13 11. KRS 514.080;
- 14 12. KRS 514.090;
- 15 13. KRS 514.110;
- 16 14. KRS 514.120; or
- 17 15. KRS 506.120.

18 (b) Upon motion by the defendant with proper notice to the office of the attorney  
19 who represented the Commonwealth at sentencing, the court may authorize  
20 the defendant to obtain the hardship license authorized under KRS Chapter  
21 189A. The defendant shall be subject to the same operating restrictions and  
22 penalties for noncompliance as are set out for a hardship license in that  
23 chapter. The court may waive compliance with provisions of KRS Chapter  
24 189A relating to alcohol treatment, waiting periods, and ignition interlock  
25 installation for the purpose of authorizing issuance of a hardship license under  
26 this section.

27 (4) Sanctions imposed by the sentencing court shall become a judgment of the court.

1 Reimbursement of incarceration costs shall be paid by the defendant directly to the  
2 jailer in the amount specified by written order of the court. Incarceration costs owed  
3 to the Department of Corrections shall be paid through the circuit clerk.

4 ➔Section 11. KRS 532.358 is amended to read as follows:

5 Any prisoner who has completed his sentence in a county or regional jail or under  
6 condition of home incarceration shall, from the day incarceration ceases and within the  
7 time and amount designated by the sentencing court, pay restitution, ~~to his victim and~~  
8 ~~reimbursement for his incarceration to the state or local government and his or her home~~  
9 incarceration fees, and ~~in addition to~~ any other monetary and community service  
10 sanctions imposed by the sentencing court. The sentencing court may use its contempt  
11 sanctions to enforce its orders.

12 ➔Section 12. KRS 533.030 is amended to read as follows:

13 (1) The conditions of probation and conditional discharge shall be such as the court, in  
14 its discretion, deems reasonably necessary to insure that the defendant will lead a  
15 law-abiding life or to assist him to do so. The court shall provide as an explicit  
16 condition of every sentence to probation or conditional discharge that the defendant  
17 not commit another offense during the period for which the sentence remains  
18 subject to revocation.

19 (2) When imposing a sentence of probation or conditional discharge, the court may, in  
20 addition to any other reasonable condition, require that the defendant:

- 21 (a) Avoid injurious or vicious habits;
- 22 (b) Avoid persons or places of disreputable or harmful character;
- 23 (c) Work faithfully at suitable employment as far as possible;
- 24 (d) Undergo available medical or psychiatric treatment and remain in a specific  
25 institution as required for that purpose;
- 26 (e) Post a bond, without surety, conditioned on performance of any of the  
27 prescribed conditions;

- 1 (f) Support his dependents and meet other family responsibilities;
- 2 (g) Pay the cost of the proceeding as set by the court;
- 3 (h) Remain within a specified area;
- 4 (i) Report to the probation officer as directed;
- 5 (j) Permit the probation officer to visit him at his home or elsewhere;
- 6 (k) Answer all reasonable inquiries by the probation officer and promptly notify  
7 the probation officer of any change in address or employment;
- 8 (l) Submit to periodic testing for the use of controlled substances or alcohol, if  
9 the defendant's record indicates a controlled substance or alcohol problem,  
10 and to pay a reasonable fee, as determined by the court, which fee shall not  
11 exceed the actual cost of the test and analysis and shall be paid directly to the  
12 agency or agencies responsible for testing and analysis as compensation for  
13 the cost of the testing and analysis, as specified by written order of the court,  
14 performed under this subsection. For good cause shown, the testing fee may  
15 be waived by the court;
- 16 (m) Use an alcohol monitoring device, as defined in KRS 431.068. All costs  
17 associated with the device, including administrative and operating costs, shall  
18 be paid by the defendant. If the court determines that the defendant is indigent,  
19 and a person, county, or other organization has not agreed to pay the costs for  
20 the defendant in an attempt to reduce incarceration expenses and increase  
21 public safety, the court shall consider other conditions of probation or  
22 conditional discharge provided for in this section; or
- 23 (n) During all or part of the period of probation or conditional discharge,  
24 participate in a global positioning monitoring system program operated by a  
25 county pursuant to KRS 67.372 and 67.374 under the same terms and  
26 conditions as provided in KRS 431.517.
- 27 (3) (a) ~~[When imposing a sentence of probation or conditional discharge in a case~~

1 where a victim of a crime has suffered monetary damage as a result of the  
2 crime due to his property having been converted, stolen, or unlawfully  
3 obtained, or its value substantially decreased as a result of the crime, or where  
4 the victim suffered actual medical expenses, direct out-of-pocket losses, or  
5 loss of earning as a direct result of the crime, or where the victim incurred  
6 expenses in relocating for the purpose of the victim's safety or the safety of a  
7 member of the victim's household, or if as a direct result of the crime the  
8 victim incurred medical expenses that were paid by the Cabinet for Health and  
9 Family Services, the Kentucky Claims Commission, or any other  
10 governmental entity, ]The court shall order the defendant to make restitution  
11 in addition to any other penalty provided for the commission of the offense  
12 **when imposing a sentence of probation or conditional discharge in a case**  
13 **where:**

14 **1. The victim of a crime has suffered monetary damage as a result of the**  
15 **crime due to his or her property having been converted, stolen, or**  
16 **unlawfully obtained, or its value substantially decreased as a result of**  
17 **the crime;**

18 **2. The victim suffered actual medical expenses, direct out-of-pocket**  
19 **losses, or loss of earning as a direct result of the crime;**

20 **3. The victim incurred expenses in relocating for the purpose of the**  
21 **victim's safety or the safety of a member of the victim's household; or**

22 **4. As a direct result of the crime, the victim incurred:**

23 **a. Medical expenses that were paid by the Cabinet for Health and**  
24 **Family Services, the Kentucky Claims Commission, or any other**  
25 **governmental entity; or**

26 **b. Any losses that were paid by an insurer as defined in KRS 304.1-**  
27 **040.**



1       **(b)** Payment of restitution *shall be made to both the victim and to any*  
2       *government agency or insurer that made payment on behalf of the victim.*

3       *Payment* to the victim shall have priority over payment of restitution to any  
4       government agency *or insurer.*

5       **(c)** Restitution shall be ordered in the full amount of the damages, unless the  
6       damages exceed one hundred thousand dollars (\$100,000) or twice the amount  
7       of the gain from the commission of the offense, whichever is greater, in which  
8       case the higher of these two (2) amounts shall be awarded.

9       **(d)** The court may, in lieu of ordering monetary restitution, order the defendant to  
10       make restitution by working for or on behalf of the victim. The court shall  
11       determine the number of hours of work necessary by applying the then-  
12       prevailing federal minimum wage to the total amount of monetary damage  
13       caused by or incidental to the commission of the crime. The court may, with  
14       the consent of the agency, order the defendant to work as specified in KRS  
15       533.070. Any work ordered pursuant to this section shall not be deemed  
16       employment for any purpose, nor shall the person performing the work be  
17       deemed an employee for any purpose. Where there is more than one (1)  
18       defendant or more than one (1) victim, restitution may be apportioned.

19       **(e)** Restitution shall be subject to the following additional terms and conditions:

20       ~~1. (a)~~       Where property which is unlawfully in the possession of the  
21       defendant is in substantially undamaged condition from its condition at  
22       the time of the taking, return of the property shall be ordered in lieu of  
23       monetary restitution;

24       ~~2. (b)~~       The circuit clerk shall assess an additional fee of five percent (5%)  
25       to defray the administrative costs of collection of payments or property.  
26       This fee shall be paid by the defendant and shall inure to a trust and  
27       agency account which shall not lapse and which shall be used to hire

1 additional deputy clerks and office personnel or increase deputy clerk or  
2 office personnel salaries, or combination thereof;

3 ~~3.(c)~~ When a defendant fails to make restitution ordered to be paid  
4 through the circuit clerk or a court-authorized program run by the county  
5 attorney or the Commonwealth's attorney, the circuit clerk or court-  
6 authorized program shall notify the court; and

7 ~~4.(d)~~ An order of restitution shall not preclude the owner of property or  
8 the victim who suffered personal physical or mental injury or out-of-  
9 pocket loss of earnings or support or other damages from proceeding in  
10 a civil action to recover damages from the defendant. A civil verdict  
11 shall be reduced by the amount paid under the criminal restitution order.

12 (4) When requiring fees for controlled substances or alcohol tests, or other fees and  
13 payments authorized by this section or other statute, except restitution, to be paid by  
14 the defendant, the court shall not order the payments to be paid through the circuit  
15 clerk.

16 (5) When a defendant is sentenced to probation or conditional discharge, he shall be  
17 given a written statement explicitly setting forth the conditions under which he is  
18 being released.

19 (6) When imposing a sentence of probation or conditional discharge, the court, in  
20 addition to conditions imposed under this section, may require as a condition of the  
21 sentence that the defendant submit to a period of imprisonment in the county jail or  
22 to a period of home incarceration at whatever time or intervals, consecutive or  
23 nonconsecutive, the court shall determine. The time actually spent in confinement  
24 or home incarceration pursuant to this provision shall not exceed twelve (12)  
25 months or the maximum term of imprisonment assessed pursuant to KRS Chapter  
26 532, whichever is the shorter. Time spent in confinement or home incarceration  
27 under this subsection shall be credited against the maximum term of imprisonment

1 assessed for the defendant pursuant to KRS Chapter 532, if probation or conditional  
2 discharge is revoked and the defendant is sentenced to imprisonment. Any  
3 prohibitions against probation, shock probation, or conditional discharge under  
4 KRS 533.060(2) or 532.045 shall not apply to persons convicted of a misdemeanor  
5 or Class D felony and sentenced to a period of confinement or home incarceration  
6 under this section.

7 ➔Section 13. KRS 533.254 is amended to read as follows:

8 (1) The provisions of KRS 533.020 relating to the period of probation shall, in so far as  
9 possible, be applicable to the period of pretrial diversion except that supervision of  
10 the participants in the programs shall be done by the Division of Probation and  
11 Parole.

12 (2) The provisions of KRS 533.030 relating to conditions of probation and restitution  
13 shall, in so far as possible, be applicable to pretrial diversion. Restitution shall be  
14 ordered in all cases where a victim or an insurer as defined in KRS 304.1-040 that  
15 has contracted to indemnify the victim has suffered monetary damage as a result of  
16 the alleged crime. Restitution to the state, the insurer, or the victim, or to all~~both~~,  
17 may be ordered in any pretrial diversion program.

18 ➔Section 14. KRS 610.030 is amended to read as follows:

19 Except as otherwise provided in KRS Chapters 600 to 645:

20 (1) If any person files a complaint alleging that a child, except a child alleged to be  
21 neglected, abused, dependent or mentally ill who is subject to the jurisdiction of the  
22 court, may be within the purview of KRS Chapters 600 to 645, the court-designated  
23 worker shall make a preliminary determination as to whether the complaint is  
24 complete. In any case where the court-designated worker finds that the complaint is  
25 incomplete, the court-designated worker shall return the complaint without delay to  
26 the person or agency originating the complaint or having knowledge of the facts, or  
27 to the appropriate law enforcement agency having investigative jurisdiction of the

1 offense, and request additional information in order to complete the complaint. The  
2 complainant shall promptly furnish the additional information requested;

3 (2) (a) Upon receipt of a complaint which appears to be complete and which alleges  
4 that a child has committed a public offense, the court-designated worker shall  
5 refer the complaint to the county attorney for review pursuant to KRS  
6 635.010.

7 (b) If after review the county attorney elects to proceed, the court-designated  
8 worker shall conduct a preliminary intake inquiry to recommend whether the  
9 interests of the child or the public require that further action be taken or  
10 whether, in the interest of justice, the complaint can be resolved informally  
11 without the filing of a petition;

12 (3) Upon receipt of a complaint that appears to be complete and that alleges that the  
13 child has committed a status offense, the court-designated worker shall conduct a  
14 preliminary intake inquiry to determine whether the interests of the child or the  
15 public require that further action be taken;

16 (4) Prior to conducting a preliminary intake inquiry, the court-designated worker shall  
17 notify the child and the child's parent, guardian, or other person exercising custodial  
18 control or supervision of the child in writing:

19 (a) Of their opportunity to be present at the preliminary intake inquiry;

20 (b) That they may have counsel present during the preliminary intake inquiry as  
21 well as the formal conference thereafter;

22 (c) 1. That all information supplied by the child to a court-designated worker  
23 during any process prior to the filing of the petition shall be deemed  
24 confidential and shall not be subject to subpoena or to disclosure  
25 without the written consent of the child.

26 2. Information may be shared between treatment providers, the court-  
27 designated worker, and the family accountability, intervention, and

1 response team to enable the court-designated worker to facilitate  
2 services and facilitate compliance with the diversion agreement; and

3 (d) That the child has the right to deny the allegation and demand a formal court  
4 hearing;

5 (5) The preliminary intake inquiry shall include the administration of an evidence-based  
6 screening tool and, if appropriate and available, a validated risk and needs  
7 assessment, in order to identify whether the child and his or her family are in need  
8 of services and the level of intervention needed;

9 (6) Upon the completion of the preliminary intake inquiry, the court-designated worker  
10 may:

11 (a) If the complaint alleges a status offense, determine that no further action be  
12 taken subject to review by the family accountability, intervention, and  
13 response team;

14 (b) If the complaint alleges a public offense, refer the complaint to the county  
15 attorney;

16 (c) Refer a public offense complaint for informal adjustment; or

17 (d) Based upon the results of the preliminary intake inquiry, other information  
18 obtained, and a determination that the interests of the child and the public  
19 would be better served, and with the written approval of the county attorney  
20 for a public offense complaint, if necessary, conduct a formal conference and  
21 enter into a diversion agreement;

22 (7) Upon receiving written approval of the county attorney, if necessary, to divert a  
23 public offense complaint, and prior to conducting a formal conference, the court-  
24 designated worker shall advise in writing the complainant, the victim if any, and the  
25 law enforcement agency having investigative jurisdiction of the offense:

26 (a) Of the recommendation and the reasons therefor and that the complainant,  
27 victim, or law enforcement agency may submit within ten (10) days from

- 1 receipt of such notice a complaint to the county attorney for special review; or
- 2 (b) In the case of a misdemeanor diverted pursuant to KRS 635.010(4), of the fact
- 3 that the child was statutorily entitled to divert the case;
- 4 (8) A formal conference shall include the child and his or her parent, guardian, or other
- 5 person exercising custodial control or supervision. The formal conference shall be
- 6 used to:
- 7 (a) Present information obtained at the preliminary intake inquiry; and
- 8 (b) Develop a diversion agreement that shall require that the child regularly attend
- 9 school, shall not exceed six (6) months in duration, and may include:
- 10 1. Referral of the child, and family if appropriate, to a public or private
- 11 entity or person for the provision of identified services to address the
- 12 complaint or assessed needs;
- 13 2. Referral of the child, and family if appropriate, to a community service
- 14 program within the limitations provided under KRS 635.080(2);
- 15 3. Restitution, limited to the actual pecuniary loss suffered by the victim or
- 16 *an insurer as defined in KRS 304.1-040 that has contracted to*
- 17 *indemnify the victim*, if the child has the means or ability to make
- 18 restitution;
- 19 4. Notification that the court-designated worker may apply graduated
- 20 sanctions for failure to comply with the diversion agreement;
- 21 5. Any other program or effort which reasonably benefits the community
- 22 and the child; and
- 23 6. A plan for monitoring the child's progress and completion of the
- 24 agreement;
- 25 (9) (a) If a child successfully completes a diversion agreement, the underlying
- 26 complaint shall be dismissed and further action related to that complaint shall
- 27 be prohibited.

- 1 (b) If a child fails to appear for a preliminary intake inquiry, declines to enter into  
2 a diversion agreement, or fails to complete a diversion agreement, then:
- 3 1. For a public offense complaint, the matter shall be referred to the county  
4 attorney for formal court action and, if a petition is filed, the child may  
5 request that the court dismiss the complaint based upon his or her  
6 substantial compliance with the terms of diversion; and
- 7 2. For a status offense complaint, the court-designated worker shall refer  
8 the matter to the family accountability, intervention, and response team  
9 for review and further action;
- 10 (10) If a complaint is referred to the court, the complaint and findings of the court-  
11 designated worker's preliminary intake inquiry shall be submitted to the court for  
12 the court to determine whether process should issue; and
- 13 (11) At any stage in the proceedings described in this section, the court or the county  
14 attorney may review any decision of the court-designated worker. The court upon its  
15 own motion or upon written request of the county attorney may refer any complaint  
16 for a formal hearing.

17 ➔Section 15. KRS 446.010 is amended to read as follows:

18 As used in the statute laws of this state, unless the context requires otherwise:

- 19 (1) "Action" includes all proceedings in any court of this state;
- 20 (2) "Animal" includes every warm-blooded living creature except a human being;
- 21 (3) "Attorney" means attorney-at-law;
- 22 (4) "Bequeath" and "devise" mean the same thing;
- 23 (5) "Bequest" and "legacy" mean the same thing, and embrace either real or personal  
24 estate, or both;
- 25 (6) "Business trust" includes, except when utilized in KRS Chapter 386, a "statutory  
26 trust" as organized under KRS Chapter 386A;
- 27 (7) "Case plan" means an individualized accountability and behavior change strategy

- 1 for supervised individuals that:
- 2 (a) Targets and prioritizes the specific criminal risk factors of the individual  
3 based upon his or her assessment results;
- 4 (b) Matches the type and intensity of supervision and treatment conditions to the  
5 individual's level of risk, criminal risk factors, and individual characteristics,  
6 such as gender, culture, motivational stage, developmental stage, and learning  
7 style;
- 8 (c) Establishes a timetable for achieving specific behavioral goals, including a  
9 schedule for payment of ~~victim~~ restitution, child support, and other financial  
10 obligations; and
- 11 (d) Specifies positive and negative actions that will be taken in response to the  
12 supervised individual's behaviors;
- 13 (8) "Certified mail" means any method of governmental, commercial, or electronic  
14 delivery that allows a document or package to have proof of:
- 15 (a) Sending the document or package;
- 16 (b) The date the document or package was delivered or delivery was attempted;  
17 and
- 18 (c) The signature of the receipt of the document or package;
- 19 (9) "Company" may extend and be applied to any corporation, company, person,  
20 partnership, joint stock company, or association;
- 21 (10) "Corporation" may extend and be applied to any corporation, company, partnership,  
22 joint stock company, or association;
- 23 (11) "Criminal risk factors" are characteristics and behaviors that, when addressed or  
24 changed, affect a person's risk for committing crimes. The characteristics may  
25 include but are not limited to the following risk and criminogenic need factors:  
26 antisocial behavior; antisocial personality; criminal thinking; criminal associates;  
27 dysfunctional family; low levels of employment or education; poor use of leisure



- 1           and recreation; and substance abuse;
- 2   (12) "Cruelty" as applied to animals includes every act or omission whereby unjustifiable
- 3           physical pain, suffering, or death is caused or permitted;
- 4   (13) "Directors," when applied to corporations, includes managers or trustees;
- 5   (14) "Domestic," when applied to a corporation, partnership, business trust, or limited
- 6           liability company, means all those incorporated or formed by authority of this state;
- 7   (15) "Domestic animal" means any animal converted to domestic habitat;
- 8   (16) "Evidence-based practices" means policies, procedures, programs, and practices
- 9           proven by scientific research to reliably produce reductions in recidivism when
- 10          implemented competently;
- 11   (17) "Federal" refers to the United States;
- 12   (18) "Foreign," when applied to a corporation, partnership, limited partnership, business
- 13          trust, statutory trust, or limited liability company, includes all those incorporated or
- 14          formed by authority of any other state;
- 15   (19) "Generally accepted accounting principles" are those uniform minimum standards
- 16          of and guidelines to financial accounting and reporting as adopted by the National
- 17          Council on Governmental Accounting, under the auspices of the Municipal Finance
- 18          Officers Association and by the Financial Accounting Standards Board, under the
- 19          auspices of the American Institute of Certified Public Accountants;
- 20   (20) "Graduated sanction" means any of a wide range of accountability measures and
- 21          programs for supervised individuals, including but not limited to electronic
- 22          monitoring; drug and alcohol testing or monitoring; day or evening reporting
- 23          centers; restitution centers; reentry centers; disallowance of future earned
- 24          compliance credits; rehabilitative interventions such as substance abuse or mental
- 25          health treatment; reporting requirements to probation and parole officers;
- 26          community service or work crews; secure or unsecure residential treatment facilities
- 27          or halfway houses; and short-term or intermittent incarceration;

- 1 (21) "Humane society," "society," or "Society for the Prevention of Cruelty to Animals,"  
2 means any nonprofit corporation, organized under the laws of this state and having  
3 as its primary purpose the prevention of cruelty to animals;
- 4 (22) "Issue," as applied to the descent of real estate, includes all the lawful lineal  
5 descendants of the ancestors;
- 6 (23) "Land" or "real estate" includes lands, tenements, and hereditaments and all rights  
7 thereto and interest therein, other than a chattel interest;
- 8 (24) "Legatee" and "devisee" convey the same idea;
- 9 (25) "Livestock" means cattle, sheep, swine, goats, horses, alpacas, llamas, buffaloes, or  
10 any other animals of the bovine, ovine, porcine, caprine, equine, or camelid species;
- 11 (26) "May" is permissive;
- 12 (27) "Month" means calendar month;
- 13 (28) "Oath" includes "affirmation" in all cases in which an affirmation may be  
14 substituted for an oath;
- 15 (29) "Owner" when applied to any animal, means any person having a property interest  
16 in such animal;
- 17 (30) "Partnership" includes both general and limited partnerships;
- 18 (31) "Peace officer" includes sheriffs, constables, coroners, jailers, metropolitan and  
19 urban-county government correctional officers, marshals, policemen, and other  
20 persons with similar authority to make arrests;
- 21 (32) "Penitentiary" includes all of the state penal institutions except the houses of  
22 reform;
- 23 (33) "Person" may extend and be applied to bodies-politic and corporate, societies,  
24 communities, the public generally, individuals, partnerships, joint stock companies,  
25 and limited liability companies;
- 26 (34) "Personal estate" includes chattels, real and other estate that passes to the personal  
27 representative upon the owner dying intestate;

- 1 (35) "Pretrial risk assessment" means an objective, research-based, validated assessment  
2 tool that measures a defendant's risk of flight and risk of anticipated criminal  
3 conduct while on pretrial release pending adjudication;
- 4 (36) "Registered mail" means any governmental, commercial, or electronic method of  
5 delivery that allows a document or package to have:
- 6 (a) Its chain of custody recorded in a register to enable its location to be tracked;
  - 7 (b) Insurance available to cover its loss; and
  - 8 (c) The signature of the recipient of the document or package available to the  
9 sender;
- 10 (37) "Regular election" means the election in even-numbered years at which members of  
11 Congress are elected and the election in odd-numbered years at which state officers  
12 are elected;
- 13 (38) "Risk and needs assessment" or "validated risk and needs assessment" means an  
14 actuarial tool scientifically proven to determine a person's risk to reoffend and  
15 criminal risk factors, that when properly addressed, can reduce that person's  
16 likelihood of committing future criminal behavior;
- 17 (39) "Shall" is mandatory;
- 18 (40) "State" when applied to a part of the United States, includes territories, outlying  
19 possessions, and the District of Columbia; "any other state" includes any state,  
20 territory, outlying possession, the District of Columbia, and any foreign government  
21 or country;
- 22 (41) "State funds" or "public funds" means sums actually received in cash or negotiable  
23 instruments from all sources unless otherwise described by any state agency, state-  
24 owned corporation, university, department, cabinet, fiduciary for the benefit of any  
25 form of state organization, authority, board, bureau, interstate compact,  
26 commission, committee, conference, council, office, or any other form of  
27 organization whether or not the money has ever been paid into the Treasury and

1 whether or not the money is still in the Treasury if the money is controlled by any  
2 form of state organization, except for those funds the management of which is to be  
3 reported to the Legislative Research Commission pursuant to KRS 42.600, 42.605,  
4 and 42.615;

5 (42) "Supervised individual" means an individual placed on probation by a court or  
6 serving a period of parole or post-release supervision from prison or jail;

7 (43) "Sworn" includes "affirmed" in all cases in which an affirmation may be substituted  
8 for an oath;

9 (44) "Treatment" when used in a criminal justice context, means targeted interventions  
10 that focus on criminal risk factors in order to reduce the likelihood of criminal  
11 behavior. Treatment options may include but shall not be limited to community-  
12 based programs that are consistent with evidence-based practices; cognitive-  
13 behavioral programs; faith-based programs; inpatient and outpatient substance  
14 abuse or mental health programs; and other available prevention and intervention  
15 programs that have been scientifically proven to produce reductions in recidivism  
16 when implemented competently. "Treatment" does not include medical services;

17 (45) "United States" includes territories, outlying possessions, and the District of  
18 Columbia;

19 (46) "Vacancy in office," or any equivalent phrase, means such as exists when there is an  
20 unexpired part of a term of office without a lawful incumbent therein, or when the  
21 person elected or appointed to an office fails to qualify according to law, or when  
22 there has been no election to fill the office at the time appointed by law; it applies  
23 whether the vacancy is occasioned by death, resignation, removal from the state,  
24 county or district, or otherwise;

25 (47) "Violate" includes failure to comply with;

26 (48) "Will" includes codicils; "last will" means last will and testament;

27 (49) "Year" means calendar year;

- 1 (50) "City" includes town;
- 2 (51) Appropriation-related terms are defined as follows:
- 3 (a) "Appropriation" means an authorization by the General Assembly to expend,  
4 from public funds, a sum of money not in excess of the sum specified, for the  
5 purposes specified in the authorization and under the procedure prescribed in  
6 KRS Chapter 48;
- 7 (b) "Appropriation provision" means a section of any enactment by the General  
8 Assembly which is not provided for by KRS Chapter 48 and which authorizes  
9 the expenditure of public funds other than by a general appropriation bill;
- 10 (c) "General appropriation bill" means an enactment by the General Assembly  
11 that authorizes the expenditure of public funds in a branch budget bill as  
12 provided for in KRS Chapter 48;
- 13 (52) "Mediation" means a nonadversarial process in which a neutral third party  
14 encourages and helps disputing parties reach a mutually acceptable agreement.  
15 Recommendations by mediators are not binding on the parties unless the parties  
16 enter into a settlement agreement incorporating the recommendations;
- 17 (53) "Biennium" means the two (2) year period commencing on July 1 in each even-  
18 numbered year and ending on June 30 in the ensuing even-numbered year;
- 19 (54) "Branch budget bill" or "branch budget" means an enactment by the General  
20 Assembly which provides appropriations and establishes fiscal policies and  
21 conditions for the biennial financial plan for the judicial branch, the legislative  
22 branch, and the executive branch, which shall include a separate budget bill for the  
23 Transportation Cabinet;
- 24 (55) "AVIS" means the automated vehicle information system established and  
25 maintained by the Transportation Cabinet to collect titling and registration  
26 information on vehicles and boats and information on holders of motor vehicle  
27 operator's licenses and personal identification cards; and

1 (56) "Cooperative," except in KRS Chapter 272, includes a limited cooperative  
2 association.