

1 AN ACT relating to life imprisonment for persistent felony offenders.

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

3 ➔Section 1. KRS 532.080 is amended to read as follows:

4 (1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the
5 sentence of imprisonment assessed under KRS 532.060 for the crime of which such
6 person presently stands convicted, shall fix a sentence of imprisonment as authorized
7 by subsection (5) or (6) of this section. When a defendant is charged with being a
8 persistent felony offender, the determination of whether or not he is such an offender
9 and the punishment to be imposed pursuant to subsection (5) or (6) of this section
10 shall be determined in a separate proceeding from that proceeding which resulted in
11 his last conviction. Such proceeding shall be conducted before the court sitting with
12 the jury that found the defendant guilty of his most recent offense unless the court
13 for good cause discharges that jury and impanels a new jury for that purpose.

14 (2) A persistent felony offender in the second degree is a person who is more than
15 twenty-one (21) years of age and who stands convicted of a felony after having been
16 convicted of one (1) previous felony. As used in this provision, a previous felony
17 conviction is a conviction of a felony in this state or conviction of a crime in any
18 other jurisdiction provided:

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

21 (b) That the offender was over the age of eighteen (18) years at the time the
22 offense was committed; and

23 (c) That the offender:

24 1. Completed service of the sentence imposed on the previous felony
25 conviction within five (5) years prior to the date of commission of the
26 felony for which he now stands convicted; or

27 2. Was on probation, parole, postincarceration supervision, conditional

- 1 discharge, conditional release, furlough, appeal bond, or any other form
 2 of legal release from any of the previous felony convictions at the time of
 3 commission of the felony for which he now stands convicted; or
- 4 3. Was discharged from probation, parole, postincarceration supervision,
 5 conditional discharge, conditional release, or any other form of legal
 6 release on any of the previous felony convictions within five (5) years
 7 prior to the date of commission of the felony for which he now stands
 8 convicted; or
- 9 4. Was in custody from the previous felony conviction at the time of
 10 commission of the felony for which he now stands convicted; or
- 11 5. Had escaped from custody while serving any of the previous felony
 12 convictions at the time of commission of the felony for which he now
 13 stands convicted.
- 14 (3) A persistent felony offender in the first degree is a person who is more than twenty-
 15 one (21) years of age and who stands convicted of a felony after having been
 16 convicted of two (2) or more felonies, or one (1) or more felony sex crimes against a
 17 minor as defined in KRS 17.500, and now stands convicted of any one (1) or more
 18 felonies. As used in this provision, a previous felony conviction is a conviction of a
 19 felony in this state or conviction of a crime in any other jurisdiction provided:
- 20 (a) That a sentence to a term of imprisonment of one (1) year or more or a
 21 sentence to death was imposed therefor; and
- 22 (b) That the offender was over the age of eighteen (18) years at the time the
 23 offense was committed; and
- 24 (c) That the offender:
- 25 1. Completed service of the sentence imposed on any of the previous felony
 26 convictions within five (5) years prior to the date of the commission of
 27 the felony for which he now stands convicted; or

- 1 2. Was on probation, parole, postincarceration supervision, conditional
2 discharge, conditional release, furlough, appeal bond, or any other form
3 of legal release from any of the previous felony convictions at the time of
4 commission of the felony for which he now stands convicted; or
- 5 3. Was discharged from probation, parole, postincarceration supervision,
6 conditional discharge, conditional release, or any other form of legal
7 release on any of the previous felony convictions within five (5) years
8 prior to the date of commission of the felony for which he now stands
9 convicted; or
- 10 4. Was in custody from the previous felony conviction at the time of
11 commission of the felony for which he now stands convicted; or
- 12 5. Had escaped from custody while serving any of the previous felony
13 convictions at the time of commission of the felony for which he now
14 stands convicted.
- 15 (4) For the purpose of determining whether a person has two (2) or more previous
16 felony convictions, two (2) or more convictions of crime for which that person
17 served concurrent or uninterrupted consecutive terms of imprisonment shall be
18 deemed to be only one (1) conviction, unless one (1) of the convictions was for an
19 offense committed while that person was imprisoned.
- 20 (5) A person who is found to be a persistent felony offender in the second degree shall
21 be sentenced to an indeterminate term of imprisonment pursuant to the sentencing
22 provisions of KRS 532.060(2) for the next highest degree than the offense for which
23 convicted. A person who is found to be a persistent felony offender in the second
24 degree shall not be eligible for probation, shock probation, or conditional discharge,
25 unless all offenses for which the person stands convicted are Class D felony offenses
26 which do not involve a violent act against a person, in which case probation, shock
27 probation, or conditional discharge may be granted. A violent offender who is found

1 to be a persistent felony offender in the second degree shall not be eligible for parole
2 except as provided in KRS 439.3401.

3 (6) A person who is found to be a persistent felony offender in the first degree shall be
4 sentenced to imprisonment as follows:

5 (a) *If the offense for which the person presently stands convicted is a capital*
6 *offense or a Class A or B felony and the person was previously convicted of*
7 *two (2) or more capital offenses, Class A or B felonies, or any combination*
8 *thereof, a persistent felony offender in the first degree shall be sentenced to*
9 *a term of life imprisonment without the possibility of parole;*

10 (b) If the offense for which he presently stands convicted is a Class A or Class B
11 felony, or if the person was previously convicted of one (1) or more sex crimes
12 committed against a minor as defined in KRS 17.500 and presently stands
13 convicted of a subsequent sex crime, a persistent felony offender in the first
14 degree shall be sentenced to an indeterminate term of imprisonment, the
15 maximum of which shall not be less than twenty (20) years nor more than fifty
16 (50) years, or life imprisonment, or life imprisonment without parole for
17 twenty-five (25) years for a sex crime committed against a minor; *and*

18 ~~(c)~~ If the offense for which he presently stands convicted is a Class C or
19 Class D felony, a persistent felony offender in the first degree shall be
20 sentenced to an indeterminate term of imprisonment, the maximum of which
21 shall not be less than ten (10) years nor more than twenty (20) years.

22 (7) A person who is found to be a persistent felony offender in the first degree shall not
23 be eligible for probation, shock probation, or conditional discharge, unless all
24 offenses for which the person stands convicted are Class D felony offenses which do
25 not involve a violent act against a person or a sex crime as that term is defined in
26 KRS 17.500, in which case, probation, shock probation, or conditional discharge
27 may be granted. If the offense the person presently stands convicted of is a Class A,

1 B, or C felony, the person shall not be eligible for parole until the person has served
2 a minimum term of incarceration of not less than ten (10) years, unless another
3 sentencing scheme applies. A violent offender who is found to be a persistent felony
4 offender in the first degree shall not be eligible for parole except as provided in KRS
5 439.3401.

6 (8) A conviction, plea of guilty, or Alford plea under KRS 218A.1415 shall not trigger
7 the application of this section, regardless of the number or type of prior felony
8 convictions that may have been entered against the defendant. A conviction, plea of
9 guilty, or Alford plea under KRS 218A.1415 may be used as a prior felony offense
10 allowing this section to be applied if he or she is subsequently convicted of a
11 different felony offense.

12 (9) The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be
13 retroactive.

14 (10) (a) Except as provided in paragraph (b) of this subsection, this section shall not
15 apply to a person convicted of a criminal offense if the penalty for that offense
16 was increased from a misdemeanor to a felony, or from a lower felony
17 classification to a higher felony classification, because the conviction
18 constituted a second or subsequent violation of that offense.

19 (b) This subsection shall not prohibit the application of this section to a person
20 convicted of:

21 1. A felony offense arising out of KRS 189A.010, 189A.090, 506.140,
22 508.032, 508.140, or 510.015; or

23 2. Any other felony offense if the penalty was not enhanced to a higher level
24 because the Commonwealth elected to prosecute the person as a first-
25 time violator of that offense.