

1 AN ACT relating to pretrial release.

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

3 ➔Section 1. KRS 431.066 is amended to read as follows:

4 (1) For purposes of this section and Section 2 of this Act:~~[,]~~

5 **(a) "Financial bail" means any financial condition of release whether secured,**
 6 **unsecured, or otherwise, including cash bail, percentages of cash bail, and**
 7 **real or personal property;**

8 **(b) "Standard conditions" means the following:**

9 **1. The defendant shall not commit a local, state, or federal offense;**

10 **2. The defendant shall appear for all required court appearances; and**

11 **3. The defendant shall avoid all contact with any alleged victim and any**
 12 **potential witness who may testify concerning the charge, unless or**
 13 **until the court removes this condition; and**

14 **(c) "Verified and eligible defendant" means a defendant who pretrial services is**
 15 **able to interview and assess, and whose identity pretrial services is able to**
 16 **confirm through investigation.**

17 (2) When a court considers pretrial release and bail for an arrested defendant, the court
 18 shall:

19 **(a) Consider whether the defendant poses a risk of failing**~~[constitutes a flight~~
 20 ~~risk, is unlikely]~~ to appear for **required court appearances**~~[trial,]~~ or **poses a**
 21 **risk of being**~~[is likely to be]~~ a danger to the public if released. In making this
 22 determination, the court shall consider the pretrial risk assessment for a
 23 verified and eligible defendant~~[along with the factors set forth in KRS~~
 24 ~~431.525];~~

25 **(b) 1. Not impose financial bail:**

26 **a. To ensure the safety of the public;**

27 **b. To ensure that the defendant will not obstruct or attempt to**

1 obstruct the criminal justice process; or

2 c. For the purpose of preventing the release of the defendant;

3 but may impose financial bail for the sole purpose of reasonably
 4 ensuring the verified and eligible defendant's appearance for all
 5 required court appearances.

6 2. In considering whether to impose financial bail under subparagraph
 7 1. of this paragraph, the court may upon its own motion, or shall upon
 8 the motion of the Commonwealth, conduct an inquiry into the source
 9 of the property to be designated for potential forfeiture or offered as
 10 collateral to secure a bond, and shall decline to accept the designation
 11 or the use as collateral of property that, because of its source, will not
 12 reasonably ensure the appearance of the defendant at required court
 13 appearances.

14 3. If imposed, the amount of the financial bail shall be set in accordance
 15 with Section 6 of this Act; and

16 (c) For all verified and eligible defendants the court determines to be a danger
 17 to the public if released, detain the defendant until a detention hearing can
 18 be held in accordance with Section 2 of this Act.

19 (3) (a) 1. If according to a validated pretrial risk assessment tool a verified and
 20 eligible defendant poses a low risk of failing to appear for required
 21 court appearances~~[flight, is likely to appear for trial, and is not likely to~~
 22 ~~be a danger to others]~~, the court may~~[shall]~~ order the defendant released
 23 on unsecured bond or on the defendant's own recognizance subject to
 24 standard conditions~~[such other conditions as the court may order].~~

25 2. If according to a validated pretrial risk assessment tool a verified and
 26 eligible defendant poses a low risk of being a danger to the public if
 27 released, the court may order the defendant released on the

1 defendant's own recognizance subject to standard conditions.

2 (b) If the court does not release the verified and eligible defendant as outlined
 3 in paragraph (a) of this subsection because the court determines the
 4 defendant to be a danger to the public if released, the court shall detain the
 5 defendant until a detention hearing can be held in accordance with Section
 6 2 of this Act.

7 (4) (a) 1. If according to a validated pretrial risk assessment tool a verified and
 8 eligible defendant poses a moderate risk of failing to appear for
 9 required court appearances, the court may release the defendant on
 10 unsecured bond or on the defendant's own recognizance subject to
 11 standard conditions and may impose additional conditions as outlined
 12 in KRS 431.064 and 431.518 and Section 5 of this Act.~~[flight, has a~~
 13 ~~moderate risk of not appearing for trial, or poses a moderate risk of]~~

14 2. If according to a validated pretrial risk assessment tool a verified and
 15 eligible defendant poses a moderate risk of danger to the public if
 16 released~~[others]~~, the court may~~[shall]~~ release the defendant on the
 17 defendant's own recognizance subject to standard conditions and may
 18 impose additional nonfinancial conditions as outlined in KRS 431.064
 19 and 431.518 and Section 5 of this Act~~[under the same conditions as in~~
 20 ~~subsection (3) of this section but shall consider ordering the defendant to~~
 21 ~~participate in global positioning system monitoring, controlled substance~~
 22 ~~testing, increased supervision, or such other conditions as the court may~~
 23 ~~order].~~

24 (b) If the court does not release the verified and eligible defendant as outlined
 25 in paragraph (a) of this subsection because the court determines the
 26 defendant to be a danger to the public if released, the court shall detain the
 27 defendant until a detention hearing can be held in accordance with Section

1 2 of this Act.

2 (5) If according to the validated pretrial risk assessment tool a verified and eligible
 3 defendant poses a high risk of failing to appear for required court appearances or
 4 poses a high risk of danger to the public if released, the court shall detain the
 5 defendant until a detention hearing can be held in accordance with Section 2 of
 6 this Act.

7 (6) (a) If financial bail is imposed, except as provided in paragraph (b) of this
 8 subsection, regardless of the amount of the bail set, the court shall permit the
 9 defendant a credit of one hundred dollars (\$100) per day as a payment toward
 10 the amount of the bail set for each day or portion of a day that the defendant
 11 remains in jail prior to trial. Upon the service of sufficient days in jail to have
 12 sufficient credit to satisfy the bail, the defendant shall be released from jail on
 13 the conditions specified in this section or in this chapter.

14 (b) The provisions of paragraph (a) of this subsection shall not apply to:

15 1. Any person convicted of, pleading guilty to, or entering an Alford plea
 16 to a felony offense under KRS Chapter 510, KRS 529.100 involving
 17 commercial sexual activity, KRS 530.020, 530.064(1)(a), 531.310, or
 18 531.320, or who is a violent offender as defined in KRS 439.3401; or

19 2. A defendant who is found by the court to present a ~~flight~~ risk of failing
 20 to appear for required court appearances or to be a danger to the
 21 public if released~~others~~.

22 (c) For purposes of this subsection, "a day or portion of a day" means any time
 23 spent in a detention facility following booking.

24 (d) A defendant shall not earn credit pursuant to paragraph (a) of this subsection
 25 while also earning credit pursuant to KRS 534.070.

26 ~~(7)(6)~~ If a court determines that a defendant shall not be released pursuant to
 27 subsection ~~(6)(5)~~ of this section, the court shall document the reasons for denying

1 the release in a written order.

2 ~~(8)~~~~(7)~~ The jailer shall be responsible for tracking the credit earned by a defendant
3 pursuant to subsection ~~(6)~~~~(5)~~ of this section.

4 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO
5 READ AS FOLLOWS:

6 *(1) A detention hearing shall be held within five (5) days of a verified and eligible*
7 *defendant being detained pursuant to Section 1 of this Act. The detention hearing*
8 *may be held at arraignment.*

9 *(2) (a) At the detention hearing, the court shall determine whether:*

10 *1. For verified and eligible defendants who pose a high risk of failing to*
11 *appear for required court appearances, any condition, or combination*
12 *of conditions, outlined in KRS 431.064 or 431.518 or Section 5 of this*
13 *Act shall reasonably ensure the appearance of the defendant for*
14 *required court appearances; and*

15 *2. For verified and eligible defendants determined by the court to be a*
16 *danger to the public if released, any nonfinancial condition, or*
17 *combination of conditions, outlined in KRS 431.064 or 431.518 or*
18 *Section 5 of this Act shall reasonably ensure the safety of the public.*

19 *(b) The court shall, in determining whether there are conditions of release that*
20 *will reasonably ensure the appearance of the defendant for required court*
21 *appearances and the safety of the public, consider the following:*

22 *1. Whether the offense involves violence, obstruction of public*
23 *administration under KRS Chapter 519, or interference with judicial*
24 *administration under KRS Chapter 524; and*

25 *2. The history and characteristics of the defendant, including:*

26 *a. The defendant's character, physical and mental condition,*
27 *family ties, employment, financial resources, length of residence*

1 in the community, community ties, past conduct, history relating
2 to drug or alcohol abuse, criminal history, and record
3 concerning appearance at court proceedings;

4 b. Whether, at the time of the current offense or arrest, the
5 defendant was on probation, on parole, on supervised release, or
6 on other release pending trial, sentencing, appeal, or completion
7 of sentence for an offense under local, state, or federal law; and

8 c. The nature and seriousness of the danger to any person or the
9 community that would be posed by the defendant's release.

10 (c) There shall be a rebuttable presumption that no condition or combination
11 of conditions of release will reasonably ensure the safety of the public if the
12 court finds by probable cause that the defendant:

13 1. Committed a violent or sexual offense while armed with a deadly
14 weapon or dangerous instrument;

15 2. Committed a violent or sexual offense and has previously been
16 convicted of a violent or sexual offense which was committed while on
17 release pending trial for a local, state, or federal offense;

18 3. Committed a violent or sexual offense while on release pending trial
19 for a local, state, or federal offense;

20 4. Committed two (2) or more violent or sexual offenses in separate
21 incidents that are joined in the case before the court; or

22 5. Committed a violent or sexual offense in which the victim sustained a
23 physical injury.

24 (d) After considering the information outlined in paragraph (b) of this
25 subsection and the existence, if any, of a rebuttable presumption under
26 paragraph (c) of this subsection, if the court finds by clear and convincing
27 evidence that:

- 1 1. No condition, or combination of conditions, outlined in KRS 431.064
2 or 431.518 or Section 5 of this Act shall reasonably ensure the
3 appearance of the defendant for required court appearances; and
- 4 2. No nonfinancial condition, or combination of conditions, outlined in
5 KRS 431.064 or 431.518 or Section 5 of this Act shall reasonably
6 ensure the safety of the public;
7 the court shall order the defendant detained before trial. If the court orders
8 the defendant detained before trial, the court shall make written findings of
9 fact and a written statement for the reasons for the detention.
- 10 (3) (a) At the detention hearing, if the defendant poses a high risk of failing to
11 appear for required court appearances but does not pose a risk of danger to
12 the public if released, the court may impose financial bail in addition to any
13 conditions outlined in KRS 431.064 or 431.518 or Section 5 of this Act for
14 the sole purpose of reasonably ensuring the appearance of the defendant for
15 required court appearances. The court shall not impose financial bail to
16 ensure the safety of the community, to ensure that the defendant will not
17 obstruct or attempt to obstruct the criminal justice process, or for the
18 purpose of preventing the release of the defendant.
- 19 (b) In considering whether to impose financial bail under paragraph (a) of this
20 subsection, the court may upon its own motion, or shall upon the motion of
21 the Commonwealth, conduct an inquiry into the source of the property to be
22 designated for potential forfeiture or offered as collateral to secure a bond,
23 and shall decline to accept the designation or the use as collateral of
24 property that, because of its source, will not reasonably ensure the
25 appearance of the defendant at required court appearances.
- 26 (c) If imposed, the amount of financial bail shall be set in accordance with
27 Section 6 of this Act.

1 (4) At the detention hearing, the defendant shall:

2 (a) Have the right to be represented by counsel and, if financially unable to
 3 obtain adequate representation, to have counsel appointed; and

4 (b) Be afforded an opportunity to testify. However, the defendant's testimony
 5 shall not be admissible on the issue of guilt in any other judicial
 6 proceedings, except for those proceedings under KRS 520.070 and 520.080,
 7 in revocation hearings, in perjury proceedings, and for the purpose of
 8 impeachment in any subsequent proceedings.

9 (5) After the court has determined pursuant to this section to either detain or release
 10 a defendant prior to trial, the determination may be reviewed at any time before
 11 trial by the court either upon its own motion or upon motion of either party if:

12 (a) The court finds that information exists that was not known to the movant at
 13 the time of the determination and that has a material bearing on the issue
 14 of whether there are conditions of release that will reasonably ensure the
 15 appearance of the defendant for required court appearances or the safety of
 16 the public; or

17 (b) Based on the Commonwealth's motion, the court finds probable cause that
 18 the defendant has failed to comply with the conditions of release. The court
 19 may either summon the defendant to appear at a hearing or issue a warrant
 20 for the defendant's arrest. If a defendant is arrested pursuant to this
 21 paragraph, a hearing shall be held within five (5) days of arrest.

22 (6) Nothing in this section shall be construed as modifying or limiting the
 23 defendant's presumption of innocence.

24 ➔Section 3. KRS 27A.360 is amended to read as follows:

25 The court disposition level of the system shall consist of at least the following
 26 information as relates to bond and pretrial release:

27 (1) Whether or not the defendant was released on financial bail or pretrial release;

- 1 (2) If released on financial bail under Section 1 or 2 of this Act:
- 2 (a) The amount of the bail;
- 3 (b) Whether the bail was cash, property, a percentage of cash bail, secured,
- 4 unsecured, or otherwise;
- 5 (c) Whether the conditions of bail were satisfied; and
- 6 (d) Whether or not the bail was returned, forfeited, credited to the public advocate
- 7 or otherwise; and
- 8 (3) If released on any other form of pretrial release:
- 9 (a) Whether or not released on own recognizance;
- 10 (b) Whether release was upon conditions, if so what conditions; and
- 11 (c) Whether the conditions of release were satisfied.

12 ➔Section 4. KRS 218A.135 is amended to read as follows:

- 13 (1) Any statute to the contrary notwithstanding, a defendant charged with an offense
- 14 under this chapter for which a conviction may result in presumptive probation shall
- 15 be placed on pretrial release on his or her own recognizance or on unsecured bond
- 16 by the court subject to any conditions, other than bail, specified in KRS 431.515 to
- 17 431.550.
- 18 (2) The provisions of this section shall not apply to a defendant who is found by the
- 19 court to present a risk of failing to appear for required court appearances~~[flight~~
- 20 ~~risk]~~ or to be a danger to the public if released~~[others]~~.
- 21 (3) If a court determines that a defendant shall not be released pursuant to subsection
- 22 (2) of this section, the court shall document the reasons for denying the release in a
- 23 written order.

24 ➔Section 5. KRS 222.204 is amended to read as follows:

- 25 (1) A person who has been arrested and placed in jail prior to trial for violation of KRS
- 26 222.202 and has not had two (2) prior convictions in the previous twelve (12)
- 27 months for violation of KRS 222.202 shall be released as set forth by the Supreme

1 Court Rule of Criminal Procedure **Authorization for the Non-Financial Uniform**
 2 **Schedule of Bail Administrative Release Program**~~[uniform schedule of bail:]~~

3 ~~(a) To an adult who is willing to accept responsibility for the defendant through a~~
 4 ~~signature verification on a form determined by the Administrative Office of~~
 5 ~~the Courts;~~

6 ~~(b) If he pays the requisite amount of bail on a bail schedule issued by the court;~~

7 ~~(c) At such time as he is able to safely care for himself but in no event shall he be~~
 8 ~~detained for more than eight (8) hours following his arrest;~~

9 ~~(d) If he is ordered released by a court of competent jurisdiction; or~~

10 ~~(e) Unless such person's release is precluded by other provisions of law].~~

11 (2) The jail or facility authorized by county or city ordinance agreeing to care for the
 12 person releasing the defendant shall be considered as acting in good faith and shall
 13 not be liable for subsequent acts of the defendant upon release.

14 ➔Section 6. KRS 431.520 is amended to read as follows:

15 (1) Any person charged with an offense shall be ordered released by a court of
 16 competent jurisdiction pending trial **in accordance with Sections 1 and 2 of this**
 17 **Act**~~[on his personal recognizance or upon the execution of an unsecured bail bond~~
 18 ~~in an amount set by the court or as fixed by the Supreme Court as provided by KRS~~
 19 ~~431.540, unless the court determines in the exercise of its discretion that such a~~
 20 ~~release will not reasonably assure the appearance of the person as required, or the~~
 21 ~~court determines the person is a flight risk or a danger to others].~~

22 (2) When **the court is determining whether any conditions, or combination of**
 23 **conditions, shall reasonably ensure the appearance of the defendant for required**
 24 **court appearances and the safety of the public**~~[such a determination is made], the~~
 25 court **may**~~[shall, either in lieu of or in addition to the above methods of release,]~~
 26 impose any of the following conditions of release:

27 (a)~~(1)~~ Place the person in the custody of a designated person or organization

1 agreeing to supervise him;

2 ~~(b)(2)~~ Place restrictions on the travel, association, or place of abode of the
3 person during the period of release;

4 ~~(c)(3)~~ **If for the sole purpose of reasonably ensuring the person's appearance**
5 **for all required court appearances in accordance with Sections 1 and 2 of**
6 **this Act**, require the execution of a **financial** bail bond:

7 ~~1.(a)~~ With sufficient personal surety or sureties acceptable to the court;
8 in determining the sufficiency of such surety or sureties, the court shall
9 consider his character, his place of residence, his relationship with the
10 defendant, and his financial and employment circumstances; or

11 ~~2.(b)~~ With the ten percent (10%) deposit as provided in KRS 431.530;
12 provided that if the defendant is permitted to earn credit toward bail
13 pursuant to KRS 431.066, that credit shall be applied to the ten percent
14 (10%) deposit; or

15 ~~3.(c)~~ With the deposit of cash equal to the amount of the bond or in lieu
16 thereof acceptable security as provided in KRS 431.535;

17 ~~(d)(4)~~ If the person's record indicates a history of controlled substance or
18 alcohol abuse:

19 ~~1.(a)~~ Order the person to submit to periodic testing for use of controlled
20 substances or alcohol and pay a reasonable fee, not to exceed the actual
21 cost of the test and analysis, as determined by the court with the fee to
22 be collected by the circuit clerk, held in an agency account, and
23 disbursed, on court order, solely to the agency or agencies responsible
24 for testing and analysis as compensation for the cost of the testing and
25 analysis performed under this subsection. If the person is declared
26 indigent, the testing fee may be waived by the court. The Administrative
27 Office of the Courts shall establish pilot projects to implement the

1 provisions of this subsection; or

2 ~~2.~~~~(b)~~ Order the person to use an alcohol monitoring device, as defined in
 3 KRS 431.068. All costs associated with the device, including
 4 administrative and operating costs, shall be paid by the defendant. If the
 5 court determines that the defendant is indigent, and a person, county, or
 6 other organization has not agreed to pay the costs for the defendant in an
 7 attempt to reduce incarceration expenses and increase public safety, the
 8 court shall consider other conditions of release provided for in this
 9 section;

10 ~~(e)~~~~(5)~~ ~~1.~~~~(a)~~ During all or part of a person's period of release pursuant to
 11 this section, order the person to participate in a global positioning
 12 monitoring system program operated by a county pursuant to KRS
 13 67.372 and 67.374 under the same terms and conditions provided under
 14 KRS 431.517.

15 ~~2.~~~~(b)~~ If the person is charged with a sex crime as defined in KRS
 16 17.500, consider requiring that he or she be monitored electronically,
 17 and shall consider requiring the person be subject to home incarceration;

18 **or**

19 ~~(f)~~~~(6)~~ ~~Impose~~ Any **nonfinancial conditions**~~[other—condition]~~ deemed
 20 reasonably necessary to **ensure**~~[assure]~~ appearance as required, including a
 21 condition requiring that the person return to custody after specified hours.~~[;]~~

22 ~~(3)~~~~(7)~~ A court authorizing the release of a person pursuant to this section shall cause
 23 the issuance of an appropriate order containing a statement of the conditions
 24 imposed, if any, shall cause such person to be informed of the penalties applicable
 25 to violations of the conditions of his release, and shall cause him to be informed that
 26 a warrant for his arrest will be issued immediately upon any such violation.~~[;]~~

27 ~~(4)~~~~(8)~~ A person for whom conditions of release are imposed and who after twenty-

1 four (24) hours from the time of the imposition of said conditions continues to be
 2 detained as a result of his inability to meet the conditions of release shall, upon
 3 written application or upon the court's own motion, be entitled to have the
 4 conditions reviewed by the court which imposed them. A person who is ordered
 5 released on a condition which requires that he return to custody after specified hours
 6 shall, upon written application or upon the court's own motion, be entitled to a
 7 review by the court which imposed the condition.~~[; or]~~

8 ~~(5)~~~~(9)~~ If at any time following release of a defendant and before he is required to
 9 appear for trial, the court is advised of a material change in the defendant's
 10 circumstances or that he has not complied with all conditions imposed upon his
 11 release, the court having jurisdiction may:

- 12 (a) Order the arrest of the defendant;
- 13 (b) Enter an order requiring the defendant, his surety or sureties to appear and
 14 show cause why the bail bond should not be forfeited or the conditions of his
 15 release be changed; or
- 16 (c) Both.

17 A copy of said order shall be served upon the defendant, his surety or sureties. If the
 18 defendant fails to appear before the court as ordered or if, after hearing, the court
 19 finds the conditions of release have not been complied with, the court may change
 20 the conditions imposed or forfeit the bail bond or any portion thereof and enter a
 21 judgment for the Commonwealth against the defendant and his surety or sureties for
 22 the amount of the bail bond or any portion thereof and cost of the proceedings.

23 ➔Section 7. KRS 431.525 is amended to read as follows:

24 (1) **If financial bail is imposed,** the amount of the **financial** bail shall be:

- 25 (a) Sufficient to **ensure**~~[insure]~~ compliance with the conditions of release set by
 26 the court;
- 27 (b) Not oppressive;

- 1 (c) Commensurate with the nature of the offense charged;
- 2 (d) Considerate of the past criminal acts and the reasonably anticipated conduct of
3 the defendant if released;~~[-and]~~
- 4 (e) Considerate of the financial ability of the defendant; **and**
- 5 **(f) In accordance with subsection (2)(b) of Section 1 of this Act.**
- 6 (2) When a person is **eligible for financial bail under Section 1 or 2 of this Act and is**
7 charged with an offense punishable by fine only, the amount of the **financial** bail
8 bond set shall not exceed the amount of the maximum penalty and costs.
- 9 (3) When a person **is eligible for financial bail under Section 1 or 2 of this Act and**
10 has been convicted of an offense and only a fine has been imposed, the amount of
11 the bail shall not exceed the amount of the fine.
- 12 (4) When a person **is eligible for financial bail under Section 1 or 2 of this Act and**
13 has been charged with one (1) or more misdemeanors, the amount of the bail for all
14 charges shall be encompassed by a single amount of bail that shall not exceed the
15 amount of the fine and court costs for the one (1) highest misdemeanor charged.
16 This subsection shall apply only to misdemeanor offenses not involving physical
17 injury or sexual contact.
- 18 (5) When a person **is eligible for financial bail under Section 1 or 2 of this Act and**
19 has been convicted of a misdemeanor offense and a sentence of jail, probation,
20 conditional discharge, or sentence other than a fine only has been imposed, the
21 amount of bail for release on appeal shall not exceed double the amount of the
22 maximum fine that could have been imposed for the one (1) highest misdemeanor
23 offense for which the person was convicted. This subsection shall apply only to
24 misdemeanors not involving physical injury or sexual contact.
- 25 (6) ~~{The provisions of this section shall not apply to a defendant who is found by the~~
26 ~~court to present a flight risk or to be a danger to others.~~
- 27 (7) ~~If a court determines that a defendant shall not be released pursuant to subsection~~

1 ~~(6) of this section, the court shall document the reasons for denying the release in a~~
2 ~~written order.~~

3 ~~(8)~~—]The Administrative Office of the Courts shall establish pilot projects to implement
4 controlled substance or alcohol abuse testing as specified under this subsection. If
5 the person's record indicates a history of controlled substance or alcohol abuse, the
6 court may order the person to submit to periodic testing for use of controlled
7 substances or alcohol and to pay a reasonable fee, not to exceed the actual cost of
8 the test and analysis, as determined by the court, with the fee to be collected by the
9 circuit clerk, held in an agency account, and disbursed, on court order, solely to the
10 agency or agencies responsible for testing and analysis as compensation for the cost
11 of the testing and analysis performed under this subsection. If the person is declared
12 indigent, the testing fee may be waived by the court. If the court finds the conditions
13 of release have not been complied with, the court may change the conditions
14 imposed or forfeit the bail bond or any portion thereof and enter a judgment for the
15 Commonwealth against the person and his surety or sureties for the amount of the
16 bail bond or any portion thereof and the cost of the proceedings.

17 ➔Section 8. KRS 431.530 is amended to read as follows:

- 18 (1) Any person who has been permitted to execute a bail bond in accordance with KRS
19 431.520~~(2)(c)2.~~~~(3)(b)~~ shall deposit with the clerk of the court before which the
20 action is pending a sum of money equal to ten percent (10%) of the bail, but in no
21 event shall such deposit be less than ten dollars (\$10) unless the defendant earned
22 full credit toward the applicable amount of bail pursuant to KRS 431.066, in which
23 case the defendant shall not be required to make a deposit with the clerk of the
24 court.
- 25 (2) Upon depositing said sum the defendant shall be released from custody subject to
26 all conditions of release imposed by the court.
- 27 (3) Except as provided in subsection (5) of this section, if the conditions of release have

1 been performed and the defendant has been discharged from all obligations in the
2 action the clerk of the court shall return to the defendant, unless the court orders
3 otherwise, ninety percent (90%) of the sum deposited and shall retain as bail costs
4 ten percent (10%) of the amount deposited; provided, however, in no event shall the
5 amount retained by the clerk as bail costs be less than five dollars (\$5). It is further
6 provided that the court shall order the clerk of court to pay into the public advocate
7 special account any amount of the sum deposited by the defendant, in excess of bail
8 costs, which in its sound discretion represents a reasonable fee for any public
9 advocate legal or investigative services provided for the defendant under KRS
10 Chapter 31, but in no event shall the amount so paid to the public advocate special
11 account as public advocate legal and investigative fees be less than five dollars (\$5)
12 per case. At the request of the defendant the court may order the amount repayable
13 to defendant from such deposit to be paid to defendant's attorney of record.

14 (4) Except as provided in subsection (5) of this section, if a final judgment for a fine
15 and court costs or either is entered in the prosecution of an action in which a deposit
16 has been made in accordance with subsection (1) of this section, the balance of such
17 deposit, after deduction of bail costs and public advocate fees as provided for in
18 subsection (3) of this section, shall be applied to the satisfaction of the judgment.

19 (5) If the defendant has performed all conditions of release and if the defendant is
20 found not guilty of the offense for which bail was posted, or if all charges against
21 him relating to the offense for which bail was posted are dropped or dismissed, then
22 all bail money deposited by the defendant or by another person on his behalf shall
23 be returned to him with no deductions therefrom as provided in subsection (3) or (4)
24 of this section.

25 ➔Section 9. KRS 431.535 is amended to read as follows:

26 (1) Any person who has been permitted to execute a bail bond in accordance with KRS
27 431.520(2)(c)3.~~[(3)(e)]~~ may secure such bond:

- 1 (a) By a deposit, with the clerk of the court, of cash, or stocks and bonds in which
2 trustees are authorized to invest funds under the laws of this Commonwealth
3 having an unencumbered market value of not less than the amount of the bail
4 bond; or
- 5 (b) By real estate situated in this Commonwealth with unencumbered equity, not
6 exempt and owned by the defendant or a surety or sureties having a fair
7 market value at least double the amount of the bail bond.
- 8 (2) If the bail bond is secured by stocks and bonds the defendant or the surety or
9 sureties shall file with the bond a sworn schedule which shall be approved by the
10 court and shall contain:
- 11 (a) A list of the stocks and bonds deposited describing each in sufficient detail
12 that they may be identified;
- 13 (b) The present market value of each stock and bond;
- 14 (c) The total market value of the stocks and bonds listed;
- 15 (d) A statement that the affiant or affiants is the sole owner or owners thereof and
16 that the stocks and bonds listed are not exempt from execution;
- 17 (e) A statement that such stocks and bonds have not previously been deposited or
18 accepted as bail in this Commonwealth during the 12 months preceding the
19 date of the bail bond; provided, however, this statement shall not be required
20 of the defendant using his own property as security; or if the surety or sureties
21 using their property as security are related to the defendant by consanguinity
22 no further removed than first cousin; or if the surety or sureties is either a
23 father-in-law, mother-in-law, son-in-law, or daughter-in-law of the defendant;
24 and
- 25 (f) A statement that such stocks and bonds are security for the appearance of the
26 defendant in accordance with the conditions of release imposed by the court.
- 27 (3) If the bail bond is secured by real estate the defendant or surety or sureties shall file

- 1 with the bond a sworn schedule which shall contain:
- 2 (a) A legal description of the real estate;
- 3 (b) A description of any and all encumbrances on the real estate including the
4 amount of each and the holder thereof;
- 5 (c) The market value of the unencumbered equity owned by the affiant or affiants;
- 6 (d) A statement that the affiant is the sole owner, or in the case of jointly owned
7 real estate, that affiants are the sole owners of such unencumbered equity and
8 that it is not exempt from execution;
- 9 (e) A statement that the real estate has not previously been used or accepted as
10 bail in this Commonwealth during the 12 months preceding the date of the
11 bail bond; provided, however, this statement shall not be required of the
12 defendant using his own property as security; or if the surety or sureties using
13 their property as security are related to the defendant by consanguinity no
14 further removed than first cousin; or if the surety or sureties is either a father-
15 in-law, mother-in-law, son-in-law or daughter-in-law of the defendant; and
- 16 (f) A statement that the real estate is security for the appearance of the defendant
17 in accordance with the conditions of release imposed by the court.
- 18 (4) The sworn schedule shall constitute a material part of the bail bond. An affiant shall
19 be subject to penalty of perjury if in the sworn schedule he makes a false statement
20 which he does not believe to be true.
- 21 (5) A certified copy of the bail bond and schedule of real estate accompanied by the
22 necessary recording fee which shall be paid by the affiant or affiants shall be filed
23 immediately by the clerk of the court requiring the bail bond in the office of the
24 county clerk of the county in which the real estate is situated. The county clerk
25 shall record such copies of said bail bonds and schedule and the Commonwealth
26 shall have a lien upon such real estate from the date and time of such recordation.
27 The instruments described herein shall be recorded in the miscellaneous

1 encumbrances book provided by the county clerk.

2 (6) If the conditions of release imposed by the court have been performed and the
3 defendant has been discharged from all obligations in the action, the clerk of the
4 court shall return to him or his sureties the deposit of any cash, stocks or bonds. If
5 the bail bond has been secured by real estate, the clerk of the court requiring the bail
6 bond shall forthwith notify in writing the county clerk of the county where the real
7 estate is situated and the lien on the real estate shall be discharged and the release
8 thereof recorded in the margin.

9 ➔Section 10. KRS 431.540 is amended to read as follows:

10 The Supreme Court may by rule or order prescribe a uniform schedule of amounts of bail
11 in designated nonviolent Class D felonies, misdemeanors, and violations *for those*
12 *eligible for financial bail under Section 1 or 2 of this Act;*

13 (1) Except as provided in subsection (2) of this section, when the amount of bail is
14 fixed by such rule or order of the Supreme Court for a particular offense, the clerk
15 of the court or other public officers so authorized by the court's order shall accept
16 cash bail in the prescribed amount or the deposit authorized by KRS 431.530 and
17 release the defendant to appear in accordance with the conditions of the bail bond.
18 A receipt shall be delivered to the defendant for the bail so taken and within a
19 reasonable time such bail shall be deposited with the clerk of the court having
20 jurisdiction of the offense.

21 (2) A court may, in the exercise of its reasonable discretion, refuse to set bail in the
22 amount prescribed by such rule or order of the Supreme Court, but, in so doing, the
23 court must set forth in writing its reasons for such refusal.

24 ➔Section 11. KRS 452.260 is amended to read as follows:

25 If the defendant is in custody, the order for the change of venue shall be accompanied by
26 an order for his removal by the sheriff or jailer of the county in which he is held, with
27 such sufficient guard as the court directs, and for his delivery to the jailer of the county

1 where the trial is to be held. If the defendant is under recognizance or bond for his
2 appearance, he shall ***be ordered to appear before*** ~~before the order is granted, give~~
3 ~~sufficient bail for his appearance at~~ the proper court~~, or be surrendered into the custody~~
4 ~~of the proper officer~~.

5 ➔Section 12. KRS 431.510 is amended to read as follows:

- 6 (1) It shall be unlawful for any person to engage in the business of bail bondsman as
7 defined in subsection (3) of this section, or to otherwise for compensation or other
8 consideration:
- 9 (a) Furnish bail or funds or property to serve as bail; or
10 (b) Make bonds or enter into undertakings as surety;
- 11 for the appearance of persons charged with any criminal offense or violation of law
12 or ordinance punishable by fine, imprisonment or death, before any of the courts of
13 this state, including city courts, or to secure the payment of fines imposed and of
14 costs assessed by such courts upon a final disposition.
- 15 (2) Nothing contained herein shall serve to release any bail bondsman heretofore
16 licensed by this state from the obligation of undischarged bail bond liability existing
17 on June 19, 1976.
- 18 (3) "Bail bondsman" shall mean any person, partnership, or corporation engaged for
19 profit in the business of furnishing bail, making bonds or entering into undertakings,
20 as surety, for the appearance of persons charged with any criminal offense or
21 violation of law or ordinance punishable by fine, imprisonment, or death, before any
22 of the courts of this state, or securing the payment of fines imposed and of costs
23 assessed by such courts upon final disposition thereof, and the business of a bail
24 bondsman shall be limited to the acts, transactions, and undertakings described in
25 this subsection and to no other.
- 26 (4) KRS 431.510 to 431.550 shall not be construed to ~~limit or repeal KRS 431.021 or~~
27 ~~to~~ prevent licensed insurers providing security required by Subtitle 39 of KRS

1 Chapter 304 and nonprofit associations from posting or causing to be posted by
2 licensed insurers security or acting as surety for their insureds or members for an
3 offense arising from the operation of a motor vehicle, provided that such posting of
4 security or acting as surety is merely incidental to the terms and conditions of an
5 insurance contract or a membership agreement and provided further that no separate
6 premium or charge therefor is required from the insureds or members.

7 ➔Section 13. The following KRS section is repealed:

8 431.021 Guaranteed arrest bond certificate of surety company to be accepted in lieu of
9 cash bail in traffic cases.

10 ➔Section 14. This Act takes effect January 1, 2020.