

1 AN ACT relating to 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, ~~may~~^{shall} fix an enhanced~~a~~ sentence of
7 imprisonment as authorized by subsection (5) or (6) of this section. When a
8 defendant is charged with being a persistent felony offender, the determination of
9 whether or not he or she is such an offender and the punishment to be imposed
10 pursuant to subsection (5) or (6) of this section shall be determined in a separate
11 proceeding from that proceeding which resulted in his or her last conviction. Such
12 proceeding shall be conducted before the court sitting with the jury that found the
13 defendant guilty of his or her most recent offense unless the court for good cause
14 discharges that jury and impanels a new jury for that purpose.

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

- 1 felony convictions within five (5) years prior to the date of the
 2 commission of the felony for which he or she now stands convicted;~~[-or]~~
- 3 2. Was on probation, parole, postincarceration supervision, conditional
 4 discharge, conditional release, furlough, appeal bond, or any other form
 5 of legal release from any of the previous felony convictions at the time
 6 of commission of the felony for which he or she now stands convicted;~~[-~~
 7 ~~or]~~
- 8 3. Was discharged from probation, parole, postincarceration supervision,
 9 conditional discharge, conditional release, or any other form of legal
 10 release on any of the previous felony convictions within five (5) years
 11 prior to the date of commission of the felony for which he or she now
 12 stands convicted;~~[-or]~~
- 13 4. Was in custody from the previous felony conviction at the time of
 14 commission of the felony for which he or she now stands convicted; or
- 15 5. Had escaped from custody while serving any of the previous felony
 16 convictions at the time of commission of the felony for which he or she
 17 now stands convicted.
- 18 (4) For the purpose of determining whether a person has two (2) or more previous
 19 felony convictions, two (2) or more convictions of crime for which that person
 20 served concurrent or uninterrupted consecutive terms of imprisonment shall be
 21 deemed to be only one (1) conviction, unless one (1) of the convictions was for an
 22 offense committed while that person was imprisoned.
- 23 (5) ***If a jury elects to impose an enhanced sentence under subsection (1) of this***
 24 ***section,*** a person who is found to be a persistent felony offender in the second
 25 degree shall be sentenced to an indeterminate term of imprisonment pursuant to the
 26 sentencing provisions of KRS 532.060(2) for the next highest degree than the
 27 offense for which convicted. A person who is found to be a persistent felony

1 offender in the second degree shall not be eligible for probation, shock probation, or
2 conditional discharge, unless all offenses for which the person stands convicted are
3 Class D felony offenses which do not involve a violent act against a person, in
4 which case probation, shock probation, or conditional discharge may be granted. A
5 violent offender who is found to be a persistent felony offender in the second degree
6 shall not be eligible for parole except as provided in KRS 439.3401.

7 (6) **If a jury elects to impose an enhanced sentence under subsection (1) of this**
8 **section,** a person who is found to be a persistent felony offender in the first degree
9 shall be sentenced to imprisonment as follows:

10 (a) If the offense for which he **or she** presently stands convicted is a Class A or
11 Class B felony, or if the person was previously convicted of one (1) or more
12 sex crimes committed against a minor as defined in KRS 17.500 and presently
13 stands convicted of a subsequent sex crime, a persistent felony offender in the
14 first 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;

18 (b) If the offense for which he **or she** 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) **If a jury elects to impose an enhanced sentence under subsection (1) of this**
23 **section,** a person who is found to be a persistent felony offender in the first degree
24 shall not be eligible for probation, shock probation, or conditional discharge, unless
25 all offenses for which the person stands convicted are Class D felony offenses
26 which do not involve a violent act against a person or a sex crime as that term is
27 defined in KRS 17.500, in which case, probation, shock probation, or conditional

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

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

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

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

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

22 1. A felony offense arising out of KRS 189A.010, 189A.090, 506.140,
23 508.032, 508.140, or 510.015; or

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