

1 AN ACT relating to juvenile justice.

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

3 ➔Section 1. KRS 635.020 is amended to read as follows:

- 4 (1) If, prior to an adjudicatory hearing, there is a reasonable cause to believe that a child  
5 before the court has committed a felony other than those described in subsections  
6 (2) and (3) of this section, a misdemeanor, or a violation, the court shall initially  
7 proceed in accordance with the provisions of this chapter.
- 8 (2) If a child charged with a capital offense, Class A felony, or Class B felony, had  
9 attained age fourteen (14) at the time of the alleged commission of the offense, the  
10 court shall, upon motion of the county attorney made prior to adjudication, and after  
11 the county attorney has consulted with the Commonwealth's attorney, that the child  
12 be proceeded against as a youthful offender, proceed in accordance with the  
13 provisions of KRS 640.010.
- 14 (3) If a child charged with a Class C or Class D felony has on one (1) prior separate  
15 occasion been adjudicated a public offender for a felony offense and had attained  
16 the age of sixteen (16) at the time of the alleged commission of the offense, the  
17 court shall, upon motion of the county attorney made prior to adjudication, and after  
18 the county attorney has consulted with the Commonwealth's attorney, that the child  
19 be proceeded against as a youthful offender, proceed in accordance with the  
20 provisions of KRS 640.010.
- 21 (4) ~~Any other provision of KRS Chapters 610 to 645 to the contrary notwithstanding,~~  
22 If a child charged with a felony in which a firearm, whether functional or not, was  
23 used ***by the child*** in the commission of the offense had attained the age of fourteen  
24 (14) years at the time of the commission of the alleged offense, ***the court shall,***  
25 ***upon motion of the county attorney made prior to adjudication, and after the***  
26 ***county attorney has consulted with the Commonwealth's attorney, that the child***  
27 ***be proceeded against as a youthful offender, proceed in accordance with the***

1        provisions of Section 2 of this Act~~he shall be transferred to the Circuit Court for~~  
2        ~~trial as an adult if, following a preliminary hearing, the District Court finds probable~~  
3        ~~cause to believe that the child committed a felony, that a firearm was used in the~~  
4        ~~commission of that felony, and that the child was fourteen (14) years of age or older~~  
5        ~~at the time of the commission of the alleged felony. If convicted in the Circuit~~  
6        ~~Court, he shall be subject to the same penalties as an adult offender, except that~~  
7        ~~until he reaches the age of eighteen (18) years, he shall be confined in a facility or~~  
8        ~~program for juveniles or for youthful offenders, unless the provisions of KRS~~  
9        ~~635.025 apply or unless he is released pursuant to expiration of sentence or parole,~~  
10       ~~and at age eighteen (18) he shall be returned to the sentencing Circuit Court for~~  
11       ~~proceedings consistent with KRS 640.030(2)].~~

12       (5) If a child previously convicted as a youthful offender under the provisions of KRS  
13       Chapter 640 is charged with a felony allegedly committed prior to his eighteenth  
14       birthday, the court shall, upon motion of the county attorney made prior to  
15       adjudication, and after the county attorney has consulted with the Commonwealth's  
16       attorney, that the child be proceeded against as a youthful offender, proceed in  
17       accordance with the provisions of KRS 640.010.

18       (6) A child who is charged as is provided in subsection (2) of this section and is also  
19       charged with a Class C or D felony, a misdemeanor, or a violation arising from the  
20       same course of conduct shall have all charges included in the same proceedings; and  
21       the court shall, upon motion of the county attorney made prior to adjudication, and  
22       after the county attorney has consulted with the Commonwealth's attorney, that the  
23       child be proceeded against as a youthful offender, proceed in accordance with the  
24       provisions of KRS 640.010.

25       (7) If a person who is eighteen (18) or older and before the court is charged with a  
26       felony that occurred prior to his eighteenth birthday, the court shall, upon motion of  
27       the county attorney made prior to adjudication, and after the county attorney has

1 consulted with the Commonwealth's attorney, that the child be proceeded against as  
2 a youthful offender, proceed in accordance with the provisions of KRS 640.010.

3 (8) All offenses arising out of the same course of conduct shall be tried with the felony  
4 arising from that course of conduct, whether the charges are adjudicated under this  
5 chapter or under KRS Chapter 640 and transferred to Circuit Court.

6 ➔Section 2. KRS 640.010 is amended to read as follows:

7 (1) For children who are alleged to be youthful offenders by falling in the purview of  
8 KRS 635.020(2) ~~to~~[(3), (5), (6), (7), or] (8), the court shall at arraignment ensure~~[~~  
9 ~~assure]~~ that the child's rights as specified in KRS 610.060 have been explained and  
10 followed.

11 (2) In the case of a child alleged to be a youthful offender by falling within the purview  
12 of KRS 635.020(2) ~~to~~[(3), (5), (6), (7), or] (8), the District Court shall, upon  
13 motion by the county attorney to proceed under this chapter, and after the county  
14 attorney has consulted with the Commonwealth's attorney, conduct a preliminary  
15 hearing to determine if the child should be transferred to Circuit Court as a youthful  
16 offender. The preliminary hearing shall be conducted in accordance with the Rules  
17 of Criminal Procedure.

18 (a) At the preliminary hearing, the court shall determine if there is probable cause  
19 to believe that an offense was committed, that the child committed the  
20 offense, and that the child is of sufficient age and has the requisite number of  
21 prior adjudications, if any, necessary to fall within the purview of KRS  
22 635.020.

23 (b) If the District Court determines probable cause exists, the court shall consider  
24 the following factors before determining whether the child's case shall be  
25 transferred to the Circuit Court:

- 26 1. The seriousness of the alleged offense;
- 27 2. Whether the offense was against persons or property, with greater

- 1 weight being given to offenses against persons;
- 2 3. The maturity of the child as determined by his environment;
- 3 4. The child's prior record;
- 4 5. The best interest of the child and community;
- 5 6. The prospects of adequate protection of the public;
- 6 7. The likelihood of reasonable rehabilitation of the child by the use of
- 7 procedures, services, and facilities currently available to the juvenile
- 8 justice system;~~and~~
- 9 8. Evidence of a child's participation in a gang; and

10 **9. Whether the child used a firearm in the commission of the offense.**

11 (c) If, following the completion of the preliminary hearing, the District Court  
 12 finds, after considering the factors enumerated in paragraph (b) of this  
 13 subsection, that two (2) or more of the factors specified in paragraph (b) of  
 14 this subsection are determined to favor transfer, **the court shall determine**  
 15 **whether or not the defendant is a defendant with a serious intellectual**  
 16 **disability in accordance with KRS 532.130. If the child is determined not to**  
 17 **be a defendant with a serious intellectual disability,** the child may be  
 18 transferred to Circuit Court, and if the child is transferred the District Court  
 19 shall issue an order transferring the child as a youthful offender and shall state  
 20 on the record the reasons for the transfer. The child shall then be proceeded  
 21 against in the Circuit Court as an adult, except as otherwise provided in this  
 22 chapter.

23 (d) If, following completion of the preliminary hearing, the District Court is of the  
 24 opinion, after considering the factors enumerated in paragraph (b) of this  
 25 subsection, that the child shall not be transferred to the Circuit Court, the case  
 26 shall be dealt with as provided in KRS Chapter 635.

27 (3) If the child is transferred to Circuit Court under this section and the grand jury does

1           not find that there is probable cause to indict the child as a youthful offender, as  
2           defined in KRS 635.020(2) ~~to~~, (3), (5), (6), (7), and (8) , but does find that there is  
3           probable cause to indict the child for another criminal offense, the child shall not be  
4           tried as a youthful offender in Circuit Court but shall be returned to District Court to  
5           be dealt with as provided in KRS Chapter 635.