

1 AN ACT relating to sentencing by juries.

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

3 ➔Section 1. KRS 532.055 is amended to read as follows:

- 4 (1) In all felony cases, the jury in its initial verdict will make a determination of not  
5 guilty, guilty, guilty but mentally ill, or not guilty by virtue of insanity, and no more.
- 6 (2) Upon return of a verdict of guilty or guilty but mentally ill against a defendant, the  
7 court shall conduct a sentencing hearing before the jury, if such case was tried  
8 before a jury. In the hearing the jury will determine the punishment to be imposed  
9 within the range provided elsewhere by law. The jury shall recommend whether the  
10 sentences shall be served concurrently or consecutively.
- 11 (a) Evidence may be offered by the Commonwealth relevant to sentencing  
12 including:
- 13 1. Minimum parole eligibility, prior convictions of the defendant, both  
14 felony and misdemeanor;
  - 15 2. The nature of prior offenses for which he was convicted;
  - 16 3. The date of the commission, date of sentencing, and date of release from  
17 confinement or supervision from all prior offenses;
  - 18 4. The maximum expiration of sentence as determined by the division of  
19 probation and parole for all such current and prior offenses;
  - 20 5. The defendant's status if on probation, parole, postincarceration  
21 supervision, conditional discharge, or any other form of legal release;
  - 22 6. Juvenile court records of adjudications of guilt of a child for an offense  
23 that would be a felony if committed by an adult. Subject to the Kentucky  
24 Rules of Evidence, these records shall be admissible in court at any time  
25 the child is tried as an adult, or after the child becomes an adult, at any  
26 subsequent criminal trial relating to that same person. Juvenile court  
27 records made available pursuant to this section may be used for

1           impeachment purposes during a criminal trial and may be used during  
2           the sentencing phase of a criminal trial; however, the fact that a juvenile  
3           has been adjudicated delinquent of an offense that would be a felony if  
4           the child had been an adult shall not be used in finding the child to be a  
5           persistent felony offender based upon that adjudication. Release of the  
6           child's treatment, medical, mental, or psychological records is prohibited  
7           unless presented as evidence in Circuit Court. Release of any records  
8           resulting from the child's prior abuse and neglect under Title IV-E or  
9           Title IV-B of the federal Social Security Act is also prohibited; and

10          7.    The impact of the crime upon the victim or victims, as defined in KRS  
11            421.500, including a description of the nature and extent of any physical,  
12            psychological, or financial harm suffered by the victim or victims;

13          (b)   The defendant may introduce evidence in mitigation or in support of leniency;  
14            and

15          (c)   Upon conclusion of the proof, the court shall instruct the jury on the range of  
16            punishment and counsel for the defendant may present arguments followed by  
17            the counsel for the Commonwealth. The jury shall then retire and recommend  
18            a sentence for the defendant.

19          (3)   *(a) When a verdict of guilty is returned for an offense classified as a Class D*  
20            *felony, upon motion made by the Commonwealth or by the defendant, the*  
21            *judge shall instruct the jury that if it finds by a preponderance of the*  
22            *evidence, after consideration of the nature and circumstances of the crime*  
23            *and the history and character of the convicted person, that a felony*  
24            *conviction would be unduly harsh, the jury may recommend that the*  
25            *offense be punished as a Class A misdemeanor.*

26          *(b) If the jury recommends that the Class D felony be punished as a Class A*  
27            *misdemeanor, the offense shall be designated for all purposes as a Class A*

1                   *misdemeanor, and the offender shall have a definite term of imprisonment*  
 2                   *fixed as authorized by this chapter.*

3     (4) All hearings held pursuant to this section shall be combined with any hearing  
 4       provided for by KRS 532.080.

5     ~~(5)~~~~(4)~~ In the event that the jury is unable to agree as to the sentence or any portion  
 6       thereof and so reports to the judge, the judge shall impose the sentence within the  
 7       range provided elsewhere by law.

8       ➔Section 2. KRS 532.080 is amended to read as follows:

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

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

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

27       (b) That the offender was over the age of eighteen (18) years at the time the

1 offense was committed; and

2 (c) That the offender:

3 1. Completed service of the sentence imposed on the previous felony  
4 conviction within five (5) years prior to the date of commission of the  
5 felony for which he or she now stands convicted; ~~{or}~~

6 2. Was on probation, parole, postincarceration supervision, conditional  
7 discharge, conditional release, furlough, appeal bond, or any other form  
8 of legal release from any of the previous felony convictions at the time  
9 of commission of the felony for which he or she now stands convicted;  
10 ~~{or}~~

11 3. Was discharged from probation, parole, postincarceration supervision,  
12 conditional discharge, conditional release, or any other form of legal  
13 release on any of the previous felony convictions within five (5) years  
14 prior to the date of commission of the felony for which he or she now  
15 stands convicted;~~{or}~~

16 4. Was in custody from the previous felony conviction at the time of  
17 commission of the felony for which he or she now stands convicted; or

18 5. Had escaped from custody while serving any of the previous felony  
19 convictions at the time of commission of the felony for which he or she  
20 now stands convicted.

21 (3) A persistent felony offender in the first degree is a person who is more than twenty-  
22 one (21) years of age and who stands convicted of a felony after having been  
23 convicted of two (2) or more felonies, or one (1) or more felony sex crimes against  
24 a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more  
25 felonies. As used in this provision, a previous felony conviction is a conviction of a  
26 felony in this state or conviction of a crime in any other jurisdiction provided:

27 (a) That a sentence to a term of imprisonment of one (1) year or more or a

1 sentence to death was imposed therefor;~~and~~

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

4 (c) That the offender:

5 1. Completed service of the sentence imposed on any of the previous  
6 felony convictions within five (5) years prior to the date of the  
7 commission of the felony for which he or she now stands convicted; or

8 2. Was on probation, parole, postincarceration supervision, conditional  
9 discharge, conditional release, furlough, appeal bond, or any other form  
10 of legal release from any of the previous felony convictions at the time  
11 of commission of the felony for which he or she now stands convicted;  
12 or

13 3. Was discharged from probation, parole, postincarceration supervision,  
14 conditional discharge, conditional release, or any other form of legal  
15 release on any of the previous felony convictions within five (5) years  
16 prior to the date of commission of the felony for which he or she now  
17 stands convicted; or

18 4. Was in custody from the previous felony conviction at the time of  
19 commission of the felony for which he or she now stands convicted; or

20 5. Had escaped from custody while serving any of the previous felony  
21 convictions at the time of commission of the felony for which he or she  
22 now stands convicted.

23 (4) For the purpose of determining whether a person has two (2) or more previous  
24 felony convictions, two (2) or more convictions of crime for which that person  
25 served concurrent or uninterrupted consecutive terms of imprisonment shall be  
26 deemed to be only one (1) conviction, unless one (1) of the convictions was for an  
27 offense committed while that person was imprisoned.

1 (5) (a) 1. A person who is found to be a persistent felony offender in the second  
 2 degree ~~may~~~~shall~~ be sentenced to an indeterminate term of  
 3 imprisonment pursuant to the sentencing provisions of KRS 532.060(2)  
 4 for the next highest degree than the offense for which convicted.

5 2. *A person found to be a persistent felony offender in the second degree*  
 6 *who is not sentenced to an increased term under this subsection shall*  
 7 *be sentenced as authorized for the offense or offenses for which the*  
 8 *person presently stands convicted.*

9 (b) 1. A person who is found to be a persistent felony offender in the second  
 10 degree *and sentenced to an increased term of imprisonment under this*  
 11 *subsection* shall not be eligible for probation, shock probation, or  
 12 conditional discharge, unless all offenses for which the person stands  
 13 convicted are Class D felony offenses which do not involve a violent act  
 14 against a person, in which case probation, shock probation, or  
 15 conditional discharge may be granted.

16 2. A violent offender who is found to be a persistent felony offender in the  
 17 second degree *and sentenced to an increased term of imprisonment*  
 18 *under this subsection* shall not be eligible for parole except as provided  
 19 in KRS 439.3401.

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

22 1.~~(a)~~ If the offense for which *the offender*~~he~~ presently stands  
 23 convicted is a Class A or Class B felony, or if the person was previously  
 24 convicted of one (1) or more sex crimes committed against a minor as  
 25 defined in KRS 17.500 and presently stands convicted of a subsequent  
 26 sex crime, a persistent felony offender in the first degree ~~may~~~~shall~~ be  
 27 sentenced to an indeterminate term of imprisonment, the maximum of

1 which shall not be less than twenty (20) years nor more than fifty (50)  
 2 years, or life imprisonment, or life imprisonment without parole for  
 3 twenty-five (25) years for a sex crime committed against a minor;

4 ~~2.[(b)]~~ If the offense for which the offender~~[he]~~ presently stands  
 5 convicted is a Class C or Class D felony, a persistent felony offender in  
 6 the first degree may~~[shall]~~ be sentenced to an indeterminate term of  
 7 imprisonment, the maximum of which shall not be less than ten (10)  
 8 years nor more than twenty (20) years.

9 **(b) If a person who is found to be a persistent felony offender in the first degree**  
 10 **is not sentenced to an indeterminate term of imprisonment under paragraph**  
 11 **(a) of this subsection:**

- 12 **1. The offender may be sentenced to an indeterminate term authorized**  
 13 **for a persistent felony offender in the second degree under subsection**  
 14 **(5) of this section for the offense or offenses for which the offender**  
 15 **presently stands convicted; or**
- 16 **2. The offender shall be sentenced as authorized for the offense or**  
 17 **offenses for which he or she presently stands convicted.**

18 (7) A person who is found to be a persistent felony offender in the first degree and who  
 19 is sentenced to an increased term of imprisonment under subsection (6) of this  
 20 section shall not be eligible for probation, shock probation, or conditional  
 21 discharge, unless all offenses for which the person stands convicted are Class D  
 22 felony offenses which do not involve a violent act against a person or a sex crime as  
 23 that term is defined in KRS 17.500, in which case, probation, shock probation, or  
 24 conditional discharge may be granted. If the offense the person presently stands  
 25 convicted of is a Class A, B, or C felony, the person sentenced to an increased  
 26 term of imprisonment under subsection (6) of this section shall not be eligible for  
 27 parole until the person has served a minimum term of incarceration of not less than

1 ten (10) years, unless another sentencing scheme applies. A violent offender who is  
2 found to be a persistent felony offender in the first degree shall not be eligible for  
3 parole except as provided in KRS 439.3401.

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

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

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

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

- 19 1. A felony offense arising out of KRS 189A.010, 189A.090, 506.140,  
20 508.032, 508.140, or 510.015; or
- 21 2. Any other felony offense if the penalty was not enhanced to a higher  
22 level because the Commonwealth elected to prosecute the person as a  
23 first-time violator of that offense.