

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

18 ~~(b)~~[(a)] At the preliminary hearing, the court shall determine if there is probable
19 cause 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 ~~(c)~~[(b)] If the District Court determines probable cause exists, the court shall
24 consider the following factors before determining whether the child's case
25 shall be 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;

10 **9. Whether the child is a defendant with a serious intellectual disability**
 11 **in accordance with KRS 532.130; and**

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

13 ~~(d)~~~~(e)~~ If, following the completion of the preliminary hearing, the District
 14 Court finds, after considering the factors enumerated in paragraph (b) of this
 15 subsection, that two (2) or more of the factors specified in paragraph (b) of
 16 this subsection are determined to favor transfer, the child may be transferred
 17 to Circuit Court, and if the child is transferred the District Court shall issue an
 18 order transferring the child as a youthful offender and shall state on the record
 19 the reasons for the transfer. The child shall then be proceeded against in the
 20 Circuit Court as an adult, except as otherwise provided in this chapter.

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

25 (3) If the child is transferred to Circuit Court under this section and the grand jury does
 26 not find that there is probable cause to indict the child as a youthful offender, as
 27 defined in KRS 635.020(2) ~~to~~~~(3)~~~~(5)~~~~(6)~~~~(7)~~~~and~~ (8) , but does find that there is

1 probable cause to indict the child for another criminal offense, the child shall not be
2 tried as a youthful offender in Circuit Court but shall be returned to District Court to
3 be dealt with as provided in KRS Chapter 635.