

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) (a) When a defendant is found to be a persistent felony offender, the jury, in lieu  
5 of the sentence of imprisonment assessed under KRS 532.060 for the crime of  
6 which ~~the~~<sup>[such]</sup> person presently stands convicted, ~~may~~<sup>[shall]</sup> fix a sentence  
7 of imprisonment as authorized by subsection ~~(4)~~<sup>[(5) or (6)]</sup> of this section.

8 (b) When a defendant is charged with being a persistent felony offender, the  
9 determination of whether or not he is such an offender and the punishment to  
10 be imposed pursuant to subsection ~~(4)~~<sup>[(5) or (6)]</sup> of this section shall be  
11 determined in a separate proceeding from that proceeding which resulted in  
12 his last conviction.

13 (c) ~~The~~<sup>[Such]</sup> proceeding shall be conducted before the court sitting with the jury  
14 that found the defendant guilty of his most recent offense unless the court for  
15 good cause discharges that jury and impanels a new jury for that purpose.

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

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

23 (b) ~~That the offender was over the age of eighteen (18) years at the time the~~  
24 ~~offense was committed; and~~

25 (c) ~~That the offender:~~

26 1. ~~Completed service of the sentence imposed on the previous felony~~  
27 ~~conviction within five (5) years prior to the date of commission of the~~

- 1                   felony for which he now stands convicted; or
- 2                   ~~2. Was on probation, parole, postincarceration supervision, conditional~~
- 3                   ~~discharge, conditional release, furlough, appeal bond, or any other form~~
- 4                   ~~of legal release from any of the previous felony convictions at the time~~
- 5                   ~~of commission of the felony for which he now stands convicted; 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 now stands~~
- 10                  ~~convicted; or~~
- 11                  ~~4. Was in custody from the previous felony conviction at the time of~~
- 12                  ~~commission of the felony for which he 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 now~~
- 15                  ~~stands convicted.~~

16   ~~(3)~~—A persistent felony offender ~~[in the first degree]~~ is a person who is more than  
 17   twenty-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 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 now stands convicted;~~[-or]~~
- 7           3. Was discharged from probation, parole, postincarceration supervision,  
 8           conditional discharge, conditional release, or any other form of legal  
 9           release on any of the previous felony convictions within five (5) years  
 10          prior to the date of commission of the felony for which he now stands  
 11          convicted;~~[-or]~~
- 12          4. Was in custody from the previous felony conviction at the time of  
 13          commission of the felony for which he now stands convicted; or
- 14          5. Had escaped from custody while serving any of the previous felony  
 15          convictions at the time of commission of the felony for which he now  
 16          stands convicted.

17   (3)~~[(4)]~~ For the purpose of determining whether a person has two (2) or more previous  
 18   felony convictions, two (2) or more convictions of crime for which that person  
 19   served concurrent or uninterrupted consecutive terms of imprisonment shall be  
 20   deemed to be only one (1) conviction, unless one (1) of the convictions was for an  
 21   offense committed while that person was imprisoned.

22   ~~[(5) A person who is found to be a persistent felony offender in the second degree shall~~  
 23   ~~be sentenced to an indeterminate term of imprisonment pursuant to the sentencing~~  
 24   ~~provisions of KRS 532.060(2) for the next highest degree than the offense for which~~  
 25   ~~convicted. A person who is found to be a persistent felony offender in the second~~  
 26   ~~degree shall not be eligible for probation, shock probation, or conditional discharge,~~  
 27   ~~unless all offenses for which the person stands convicted are Class D felony~~

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

5 ~~(4)~~<sup>(6)</sup> A person who is found to be a persistent felony offender ~~in the first degree~~  
 6 ~~]shall be sentenced to imprisonment as follows:~~

7 (a) If the offense for which he presently stands convicted is a Class A or Class B  
 8 felony, or if the person was previously convicted of one (1) or more sex  
 9 crimes committed against a minor as defined in KRS 17.500 and presently  
 10 stands convicted of a subsequent sex crime, a persistent felony offender ~~in~~  
 11 ~~the first degree]shall be sentenced to an indeterminate term of imprisonment,~~  
 12 the maximum of which shall not be less than twenty (20) years nor more than  
 13 fifty (50) years, or life imprisonment, or life imprisonment without parole for  
 14 twenty-five (25) years for a sex crime committed against a minor;

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

19 ~~(5)~~<sup>(7)</sup> A person who is found to be a persistent felony offender ~~in the first degree~~  
 20 ~~]shall not be eligible for probation, shock probation, or conditional discharge,~~  
 21 unless all offenses for which the person stands convicted are Class D felony  
 22 offenses which do not involve a violent act against a person or a sex crime as that  
 23 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 shall not be eligible for parole  
 26 until the person has served a minimum term of incarceration of not less than ten  
 27 (10) years, unless another sentencing scheme applies. A violent offender who is

1 found to be a persistent felony offender ~~[in the first degree]~~ shall not be eligible for  
2 parole except as provided in KRS 439.3401.

3 ~~(6)~~~~(8)~~ A conviction, plea of guilty, or Alford plea under KRS 218A.1415 shall not  
4 trigger the application of this section, regardless of the number or type of prior  
5 felony convictions that may have been entered against the defendant. A conviction,  
6 plea of guilty, or Alford plea under KRS 218A.1415 may be used as a prior felony  
7 offense allowing this section to be applied if he or she is subsequently convicted of  
8 a different felony offense.

9 ~~(7)~~~~(9)~~ The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11,  
10 shall be retroactive.

11 ~~(8)~~~~(10)~~ (a) Except as provided in paragraph (b) of this subsection, this section shall  
12 not apply to a person convicted of a criminal offense if the penalty for that  
13 offense was increased from a misdemeanor to a felony, or from a lower felony  
14 classification to a higher felony classification, because the conviction  
15 constituted a second or subsequent violation of that offense.

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

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

23 ➔Section 2. KRS 439.3405 is amended to read as follows:

24 (1) Notwithstanding any statute eliminating parole or establishing minimum time for  
25 parole eligibility for a certain class or status of offender, including KRS  
26 439.340(11), 439.3401, 532.080~~(5)~~~~(7)~~, and 533.060, the board, with the written  
27 consent of a majority of the full board, may review the case of any prisoner and

1 release that prisoner on parole despite any elimination of or minimum time for  
2 parole eligibility, when the prisoner has a documented terminal medical condition  
3 likely to result in death within one (1) year or severe chronic lung disease, end-stage  
4 heart disease, severe neuro-muscular disease such as multiple sclerosis; or has  
5 severely limited mobility as a result of stroke, disease, or trauma; or is dependent on  
6 external life support systems and would not pose a threat to society if paroled.

7 (2) Medical information considered under this section shall be limited to the medical  
8 findings supplied by Department of Corrections medical staff. The medical staff  
9 shall provide in writing the prisoner's diagnosis and prognosis in support of the  
10 conclusion that the prisoner suffers from a terminal medical condition likely to  
11 result in death within one (1) year or because of the conditions set forth in  
12 subsection (1) of this section he or she is substantially dependent on others for the  
13 activities of daily living.

14 (3) The medical information prepared by the Department of Corrections medical staff  
15 under this section shall be forwarded to the medical director of the Department of  
16 Corrections who shall submit that information and a recommendation for or against  
17 parole review under this section to the commissioner of the Department of  
18 Corrections or his or her designee. With the approval of the commissioner of the  
19 Department of Corrections, a request for parole review under this section, along  
20 with the medical information and medical director's recommendation, shall be  
21 submitted to the board.

22 (4) Medical information presented under this section shall be considered along with  
23 other information relevant to a decision regarding the granting of parole and shall  
24 not constitute the only reason for granting parole.

25 (5) Notwithstanding KRS 439.340(5), in addition to or in conjunction with each review  
26 conducted under subsection (1) of this section for any prisoner convicted of a Class  
27 A or B felony, or of a Class C felony involving violence or a sexual offense and

1 prior to the granting of parole to any such prisoner, the Parole Board shall conduct a  
2 hearing of which the following persons shall receive not less than fifteen (15) nor  
3 more than thirty (30) days' notice:

- 4 (a) The Commonwealth's attorney, who shall notify the sheriff of every county  
5 and the chief of police of every city and county in which the prisoner  
6 committed any Class A, B, or C felony for which he or she is imprisoned; and  
7 (b) All identified victims of the crimes or the next of kin of any victim who is  
8 deceased.

9 Notice to the Commonwealth's attorney shall be by mail, fax, or electronic means,  
10 at the discretion of the board, and shall be in a manner that ensures receipt at the  
11 Commonwealth attorney's business office. Notices received by chiefs of police and  
12 sheriffs shall be posted in a conspicuous location where police employed by the  
13 department may see it. Notices shall be posted in a manner and at a time that will  
14 allow officers to make comment thereon to the Parole Board. Notice to victims or  
15 their next of kin shall be made by mail, fax, or electronic means, at the discretion of  
16 the board, to their last known address or telephone number as provided by the  
17 Commonwealth's attorney to the Parole Board at the time of incarceration of the  
18 prisoner. Notice to the victim or the next of kin of subsequent considerations for  
19 parole after the initial consideration shall not be sent if the victim or the next of kin  
20 gives notice to the board that he or she no longer wants to receive such notices. The  
21 notice shall include the time, date, and place of the hearing provided for in this  
22 subsection, and the name and address of a person to write if the recipient of the  
23 notice desires to attend the hearing or to submit written comments.