

1 AN ACT relating to the abolition of the death penalty.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 532 IS CREATED TO  
4 READ AS FOLLOWS:

5 *(1) Notwithstanding any provision of law to the contrary, capital punishment by*  
6 *means of the death penalty is abolished as of the effective date of this Act.*

7 *(2) The court having jurisdiction over a person sentenced to death before the*  
8 *effective date of this Act and for whom the death sentence has not been executed*  
9 *shall sentence that person to imprisonment for life without benefit of probation*  
10 *or parole.*

11 ➔Section 2. KRS 422.285 is amended to read as follows:

12 (1) (a) Except as provided in paragraph (b) of this subsection, a person who was  
13 convicted of a capital offense, a Class A felony, a Class B felony, or any  
14 offense designated a violent offense under KRS 439.3401 and who meets the  
15 requirements of this section may at any time request the forensic  
16 deoxyribonucleic acid (DNA) testing and analysis of any evidence that is in  
17 the possession or control of the court or Commonwealth, that is related to the  
18 investigation or prosecution that resulted in the judgment of conviction and  
19 that may contain biological evidence.

20 (b) This subsection shall not apply to offenses under KRS Chapter 218A, unless  
21 the offense was accompanied by another offense outside of that chapter for  
22 which testing is authorized by paragraph (a) of this subsection.

23 (2) Upon receipt of a request under this section accompanied by a supporting affidavit  
24 containing sufficient factual averments to support the request from a person who  
25 meets the requirements of subsection (5)(f) of this section at the time the request is  
26 made for an offense to which the DNA relates, the court shall:

27 (a) If the petitioner is not represented by counsel, appoint the Department of

1 Public Advocacy to represent the petitioner for purposes of the request,  
2 pursuant to KRS 31.110(2)(c); or

3 (b) If the petitioner is represented by counsel or waives appointment of counsel in  
4 writing or if the Department of Public Advocacy has previously withdrawn  
5 from representation of the petitioner for purposes of the request, require the  
6 petitioner to deposit an amount certain with the court sufficient to cover the  
7 reasonable costs of the testing being requested.

8 (3) Counsel representing the petitioner shall be provided a reasonable opportunity to  
9 investigate the petitioner's request and shall be permitted to supplement the request.  
10 Pursuant to KRS 31.110(2)(c), the petitioner shall have no further right to counsel  
11 provided by the Department of Public Advocacy on the matter if counsel determines  
12 that it is not a proceeding that a reasonable person with adequate means would be  
13 willing to bring at his or her own expense. If the Department of Public Advocacy  
14 moves to withdraw as counsel for petitioner and the court grants the motion, the  
15 court shall proceed as directed under subsection (2)(b) of this section.

16 (4) Upon receipt of the deposit required under subsection (2)(b) of this section or a  
17 motion from counsel provided by the Department of Public Advocacy to proceed,  
18 the court shall provide notice to the prosecutor and an opportunity to respond to the  
19 petitioner's request.

20 (5) After due consideration of the request and any supplements and responses thereto,  
21 the court shall order DNA testing and analysis if the court finds that all of the  
22 following apply:

23 (a) A reasonable probability exists that the petitioner would not have been  
24 prosecuted or convicted if exculpatory results had been obtained through  
25 DNA testing and analysis;

26 (b) The evidence is still in existence and is in a condition that allows DNA testing  
27 and analysis to be conducted;

- 1 (c) The evidence was not previously subjected to DNA testing and analysis or  
2 was not subjected to the testing and analysis that is now requested and may  
3 resolve an issue not previously resolved by the previous testing and analysis;
- 4 (d) Except for a petitioner sentenced to death *prior to the effective date of this*  
5 *Act*, the petitioner was convicted of the offense after a trial or after entering an  
6 Alford plea;
- 7 (e) Except for a petitioner sentenced to death *prior to the effective date of this*  
8 *Act*, the testing is not sought for touch DNA, meaning casual or limited  
9 contact DNA; and
- 10 (f) The petitioner is still incarcerated or on probation, parole, or other form of  
11 correctional supervision, monitoring, or registration for the offense to which  
12 the DNA relates.
- 13 (6) After due consideration of the request and any supplements and responses thereto,  
14 the court may order DNA testing and analysis if the court finds that all of the  
15 following apply:
- 16 (a) A reasonable probability exists that either:
- 17 1. The petitioner's verdict or sentence would have been more favorable if  
18 the results of DNA testing and analysis had been available at the trial  
19 leading to the judgment of conviction; or
- 20 2. DNA testing and analysis will produce exculpatory evidence;
- 21 (b) The evidence is still in existence and is in a condition that allows DNA testing  
22 and analysis to be conducted;
- 23 (c) The evidence was not previously subject to DNA testing and analysis or was  
24 not subjected to the testing and analysis that is now requested and that may  
25 resolve an issue not previously resolved by the previous testing and analysis;
- 26 (d) Except for a petitioner sentenced to death *prior to the effective date of this*  
27 *Act*, the petitioner was convicted of the offense after a trial or after entering an

1 Alford plea;

2 (e) Except for a petitioner sentenced to death prior to the effective date of this  
3 Act, the testing is not sought for touch DNA, meaning casual or limited  
4 contact DNA; and

5 (f) The petitioner is still incarcerated or on probation, parole, or other form of  
6 correctional supervision, monitoring, or registration for the offense to which  
7 the DNA relates.

8 (7) The provisions of KRS 17.176 to the contrary notwithstanding, the petitioner shall  
9 pay the costs of all testing and analysis ordered under this section. If the court  
10 determines that the petitioner is a needy person using the standards set out in KRS  
11 31.120 and the Department of Public Advocacy so moves, the court shall treat the  
12 costs of testing and analysis as a direct expense of the defense for the purposes of  
13 authorizing payment under KRS 31.185.

14 (8) If the prosecutor or defense counsel has previously subjected evidence to DNA  
15 testing and analysis, the court shall order the prosecutor or defense counsel to  
16 provide all the parties and the court with access to the laboratory reports that were  
17 prepared in connection with the testing and analysis, including underlying data and  
18 laboratory notes. If the court orders DNA testing and analysis pursuant to this  
19 section, the court shall order the production of any laboratory reports that are  
20 prepared in connection with the testing and analysis and may order the production  
21 of any underlying data and laboratory notes.

22 (9) If a petition is filed pursuant to this section, the court shall order the state to  
23 preserve during the pendency of the proceeding all evidence in the state's possession  
24 or control that could be subjected to DNA testing and analysis. The state shall  
25 prepare an inventory of the evidence and shall submit a copy of the inventory to the  
26 defense and the court. If the evidence is intentionally destroyed after the court  
27 orders its preservation, the court may impose appropriate sanctions, including

1 criminal contempt.

2 (10) The court may make any other orders that the court deems appropriate, including  
3 designating any of the following:

4 (a) The preservation of some of the sample for replicating the testing and  
5 analysis; and

6 (b) Elimination samples from third parties.

7 (11) If the results of the DNA testing and analysis are not favorable to the petitioner, the  
8 court shall dismiss the petition. The court may make further orders as it deems  
9 appropriate, including any of the following:

10 (a) Notifying the Department of Corrections and the Parole Board;

11 (b) Requesting that the petitioner's sample be added to the Department of  
12 Kentucky State Police database; and

13 (c) Providing notification to the victim or family of the victim.

14 (12) Notwithstanding any other provision of law that would bar a hearing as untimely, if  
15 the results of the DNA testing and analysis are favorable to the petitioner, the court  
16 shall order a hearing and make any further orders that are required pursuant to this  
17 section or the Kentucky Rules of Criminal Procedure.

18 ➔Section 3. KRS 532.030 is amended to read as follows:

19 (1) When a person is convicted of a capital offense, he or she shall have his or her  
20 punishment fixed ~~[at death, or]~~ at a term of imprisonment for life without benefit of  
21 probation or parole, or at a term of imprisonment for life without benefit of  
22 probation or parole until he or she has served a minimum of twenty-five (25) years  
23 of his or her sentence, or to a sentence of life, or to a term of not less than twenty  
24 (20) years nor more than fifty (50) years.

25 (2) When a person is convicted of a Class A felony, he or she shall have his or her  
26 punishment fixed at imprisonment in accordance with KRS 532.060.

27 (3) When a person is convicted of an offense other than a capital offense or Class A

1 felony, he *or she* shall have his *or her* punishment fixed at:

- 2 (a) A term of imprisonment authorized by this chapter; or  
3 (b) A fine authorized by KRS Chapter 534; or  
4 (c) Both imprisonment and a fine unless precluded by the provisions of KRS  
5 Chapter 534.

6 ~~[(4) In all cases in which the death penalty may be authorized the judge shall instruct the  
7 jury in accordance with subsection (1) of this section. The instructions shall state,  
8 subject to the aggravating and mitigating limitations and requirements of KRS  
9 532.025, that the jury may recommend upon a conviction for a capital offense a  
10 sentence of death, or at a term of imprisonment for life without benefit of probation  
11 or parole, or a term of imprisonment for life without benefit of probation or parole  
12 until the defendant has served a minimum of twenty five (25) years of his sentence,  
13 or a sentence of life, or to a term of not less than twenty (20) years nor more than  
14 fifty (50) years.]~~

15 ➔Section 4. KRS 532.050 is amended to read as follows:

- 16 (1) No court shall impose sentence for conviction of a felony~~[, other than a capital  
17 offense,]~~ without first ordering a presentence investigation after conviction and  
18 giving due consideration to a written report of the investigation. The presentence  
19 investigation report shall not be waived; however, the completion of the presentence  
20 investigation report may be delayed until after sentencing upon the written request  
21 of the defendant if the defendant is in custody.
- 22 (2) The report shall be prepared and presented by a probation officer and shall include:
- 23 (a) The results of the defendant's risk and needs assessment;  
24 (b) An analysis of the defendant's history of delinquency or criminality, physical  
25 and mental condition, family situation and background, economic status,  
26 education, occupation, and personal habits;  
27 (c) A preliminary calculation of the credit allowed the defendant for time spent in

1 custody prior to the commencement of a sentence under KRS 532.120; and

2 (d) Any other matters that the court directs to be included.

3 (3) Before imposing sentence for a felony conviction, the court may order the defendant  
4 to submit to psychiatric observation and examination for a period not exceeding  
5 sixty (60) days. The defendant may be remanded for this purpose to any available  
6 clinic or mental hospital or the court may appoint a qualified psychiatrist to make  
7 the examination.

8 (4) If the defendant has been convicted of a sex crime, as defined in KRS 17.500, prior  
9 to determining the sentence or prior to final sentencing for youthful offenders, the  
10 court shall order a comprehensive sex offender presentence evaluation of the  
11 defendant to be conducted by an approved provider, as defined in KRS 17.500, the  
12 Department of Corrections, or the Department of Juvenile Justice if the defendant is  
13 a youthful offender. The comprehensive sex offender presentence evaluation shall  
14 provide to the court a recommendation related to the risk of a repeat offense by the  
15 defendant and the defendant's amenability to treatment and shall be considered by  
16 the court in determining the appropriate sentence. A copy of the comprehensive sex  
17 offender presentence evaluation shall be furnished to the court, the  
18 Commonwealth's attorney, and to counsel for the defendant. If the defendant is  
19 eligible and the court suspends the sentence and places the defendant on probation  
20 or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All  
21 communications relative to the comprehensive sex offender presentence evaluation  
22 and treatment of the sex offender shall fall under the provisions of KRS 197.440  
23 and shall not be made a part of the court record subject to review in appellate  
24 proceedings. The defendant shall pay for any comprehensive sex offender  
25 presentence evaluation or treatment required pursuant to this section up to the  
26 defendant's ability to pay but no more than the actual cost of the comprehensive sex  
27 offender presentence evaluation or treatment.

1 (5) The presentence investigation report shall identify the counseling treatment,  
2 educational, and rehabilitation needs of the defendant and identify community-  
3 based, ~~and~~ correctional-based, and institutional-based programs and resources  
4 available to meet those needs or shall identify the lack of programs and resources to  
5 meet those needs.

6 (6) Before imposing sentence, the court shall advise the defendant or his or her counsel  
7 of the factual contents and conclusions of any presentence investigation or  
8 psychiatric examinations and afford a fair opportunity and a reasonable period of  
9 time, if the defendant so requests, to controvert them. The court shall provide the  
10 defendant's counsel a copy of the presentence investigation report. It shall not be  
11 necessary to disclose the sources of confidential information.

12 ➔Section 5. KRS 532.100 is amended to read as follows:

13 (1) As used in this section, "jail" means a "jail" or "regional jail" as defined in KRS  
14 441.005.

15 (2) When an indeterminate term of imprisonment is imposed, the court shall commit  
16 the defendant to the custody of the Department of Corrections for the term of his or  
17 her sentence and until released in accordance with the law.

18 (3) When a definite term of imprisonment is imposed, the court shall commit the  
19 defendant to a jail for the term of his or her sentence and until released in  
20 accordance with the law.

21 ~~(4) When a sentence of death is imposed, the court shall commit the defendant to the~~  
22 ~~custody of the Department of Corrections with directions that the sentence be~~  
23 ~~carried out according to law.~~

24 ~~(5)}~~ (a) The provisions of KRS 500.080(5) notwithstanding, if a Class D felon is  
25 sentenced to an indeterminate term of imprisonment of five (5) years or less,  
26 he or she shall serve that term in a jail in a county in which the fiscal court has  
27 agreed to house state prisoners; except that, when an indeterminate sentence

1 of two (2) years or more is imposed on a Class D felon convicted of a sexual  
2 offense enumerated in KRS 197.410(1), or a crime under KRS 17.510(11) or  
3 (12), the sentence shall be served in a state institution. Counties choosing not  
4 to comply with the provisions of this paragraph shall be granted a waiver by  
5 the commissioner of the Department of Corrections.

6 (b) The provisions of KRS 500.080(5) notwithstanding, a Class D felon who  
7 received a sentence of more than five (5) years for nonviolent, nonsexual  
8 offenses, but who currently has less than five (5) years remaining to be served,  
9 may serve the remainder of his or her term in a jail in a county in which the  
10 fiscal court has agreed to house state prisoners.

11 (c) 1. The provisions of KRS 500.080(5) notwithstanding, and except as  
12 provided in subparagraph 2. of this paragraph, a Class C or D felon with  
13 a sentence of more than five (5) years who is classified by the  
14 Department of Corrections as community custody shall serve that term  
15 in a jail in a county in which the fiscal court has agreed to house state  
16 prisoners if:

17 a. Beds are available in the jail;

18 b. State facilities are at capacity; and

19 c. Halfway house beds are being utilized at the contract level as of  
20 July 15, 2000.

21 2. When an indeterminate sentence of two (2) years or more is imposed on  
22 a felon convicted of a sex crime, as defined in KRS 17.500, or any  
23 similar offense in another jurisdiction, the sentence shall be served in a  
24 state institution.

25 3. Counties choosing not to comply with the provisions of this paragraph  
26 shall be granted a waiver by the commissioner of the Department of  
27 Corrections.

- 1 (d) Any jail that houses state inmates under this subsection shall offer programs  
2 as recommended by the Jail Standards Commission. The Department of  
3 Corrections shall adopt the recommendations of the Jail Standards  
4 Commission and promulgate administrative regulations establishing required  
5 programs for a jail that houses state inmates under this subsection. The  
6 Department of Corrections shall approve programming offered by jails to state  
7 inmates for sentencing credits in accordance with KRS 197.045.
- 8 (e) Before housing any female state inmate, a jail shall be certified pursuant to  
9 KRS 197.020.
- 10 (f) 1. a. If a jail is at or over one hundred fifty percent (150%) capacity, the  
11 Department of Corrections may direct the jail to transfer a  
12 specified number of state prisoners to vacant beds at other  
13 designated jails or state institutions. As used in this paragraph,  
14 "capacity" means the capacity listed on the certificate of occupancy  
15 issued each year to the jail by the Department of Corrections.
- 16 b. The Department of Corrections shall choose which state prisoners  
17 are eligible for transfer based on the security level of the vacant  
18 bed at the receiving jail or state institution.
- 19 c. State prisoners who are approved for transfer to a Department of  
20 Corrections facility for necessary medical treatment and care  
21 pursuant to KRS 441.560 shall not be transferred to another jail.
- 22 d. State prisoners enrolled in a Department of Corrections approved  
23 program pursuant to KRS 197.045 shall not be transferred.
- 24 e. State prisoners awaiting trial in the county they are being housed  
25 shall not be transferred.
- 26 f. Jails that receive state prisoners pursuant to this subparagraph shall  
27 be responsible for the transportation of those prisoners to the jail.

- 1           2. If the Department of Corrections directs the transfer of a state prisoner  
2           pursuant to subparagraph 1. of this paragraph, the jailer has fourteen (14)  
3           days to transfer the state prisoner. If the jailer refuses to release custody  
4           of the state prisoner to the receiving jail within fourteen (14) days, the  
5           department shall reduce the per diem for the jail for an amount equal to  
6           the per diem of that prisoner for each day the jailer refuses to comply  
7           with the direction.
- 8           3. If the Department of Corrections directs the transfer of a state prisoner  
9           pursuant to subparagraph 1. of this paragraph, the jailer of the receiving  
10          jail shall accept the transfer and transport the state prisoner in  
11          accordance with subparagraph 1.f. of this paragraph. If, after receiving a  
12          copy of the direction, the jailer refuses to accept and transport the state  
13          prisoner, the Department of Corrections shall reduce the per diem for the  
14          receiving jail for an amount equal to the per diem of that prisoner for  
15          each day the jailer refuses to comply with the direction.
- 16          4. If a jail has a vacant bed and has a Class C or Class D felon who, based  
17          on the Department of Corrections classification system, is eligible to be  
18          housed in that vacant bed, the department may direct the jail to transfer  
19          the state prisoner to that bed. If the jailer refuses to transfer the state  
20          prisoner to the vacant bed, the Department of Corrections shall reduce  
21          the per diem for the jail for an amount equal to the per diem of that  
22          prisoner for each day the jailer refuses to comply with the direction.
- 23          5. The per diem reduced pursuant to subparagraph 2., 3., or 4. of this  
24          paragraph shall be enforced by withholding the amount from the per  
25          diem paid to the jail pursuant to KRS 431.215(2).
- 26          6. If a jail that is at or over one hundred fifty percent (150%) capacity  
27          requests the transfer of a specified number of state prisoners, the

1 Department of Corrections may, if vacant beds are available at other  
2 jails, direct the transfer in accordance with subparagraph 1. of this  
3 paragraph.

4 (g) If a jail has vacant beds in an area of the jail usually reserved for state  
5 prisoners, the jail may house county prisoners in that area.

6 ~~(5)~~~~(6)~~ The jailer of a county in which a Class D felon or a Class C felon is  
7 incarcerated may request the commissioner of the Department of Corrections to  
8 incarcerate the felon in a state corrections institution if the jailer has reasons to  
9 believe that the felon is an escape risk, a danger to himself or herself or other  
10 inmates, an extreme security risk, or needs protective custody beyond that which  
11 can be provided in a jail. The commissioner of the Department of Corrections shall  
12 evaluate the request and transfer the inmate if he or she deems it necessary. If the  
13 commissioner refuses to accept the felon inmate, and the Circuit Judge of the  
14 county that has jurisdiction of the offense charged is of the opinion that the felon  
15 cannot be safely kept in a jail, the Circuit Judge, with the consent of the Governor,  
16 may order the felon transferred to the custody of the Department of Corrections.

17 ~~(6)~~~~(7)~~ (a) Class D felons and Class C felons serving their time in a jail shall be  
18 considered state prisoners, and, except as provided in subsection ~~(4)~~~~(5)~~(f) of  
19 this section, the Department of Corrections shall pay the jail in which the  
20 prisoner is incarcerated a per diem amount determined according to KRS  
21 431.215(2). For other state prisoners and parole violator prisoners, the per  
22 diem payments shall also begin on the date prescribed in KRS 431.215(2),  
23 except as provided in subsection ~~(4)~~~~(5)~~(f) of this section.

24 (b) 1. The per diem amount paid to the jail shall be increased by two dollars  
25 (\$2) per day of program attendance for those inmates enrolled in and  
26 attending evidence-based programs approved by the department and that  
27 do not require instructors to have completed any postsecondary

1 education.

2 2. The per diem amount paid to the jail shall be increased by ten dollars  
3 (\$10) per day of program attendance for those inmates enrolled in and  
4 attending evidence-based programs approved by the department and that  
5 require instructors to have completed particular postsecondary courses.

6 (c) Any amount beyond the base per diem paid under paragraph (a) of this  
7 subsection that is paid under a contract to the jail for an inmate's attendance at  
8 an evidence-based program shall be credited toward the ten dollars (\$10)  
9 increase in per diem required under paragraph (b) of this subsection.

10 ~~(7)~~~~(8)~~ State prisoners, excluding the Class D felons and Class C felons qualifying to  
11 serve time in jails, shall be transferred to the state institution within forty-five (45)  
12 days of final sentencing.

13 ~~(8)~~~~(9)~~ (a) Class D felons eligible for placement in a jail may be permitted by the  
14 warden or jailer to participate in any approved community work program or  
15 other form of work release with the approval of the commissioner of the  
16 Department of Corrections.

17 (b) The authority to release an inmate to work under this subsection may be  
18 exercised at any time during the inmate's sentence, including the period when  
19 the court has concurrent authority to permit work release pursuant to KRS  
20 439.265.

21 (c) The warden or jailer may require an inmate participating in the program to pay  
22 a fee to reimburse the warden or jailer for the cost of operating the community  
23 work program or any other work release program. The fee shall not exceed the  
24 lesser of fifty-five dollars (\$55) per week or twenty percent (20%) of the  
25 prisoner's weekly net pay earned from the community work program or work  
26 release participation. In addition, the inmate may be required to pay for any  
27 drug testing performed on the inmate as a requirement of the community work

1 program or work release participation.

2 (d) This subsection shall not apply to an inmate who:

- 3 1. Is not eligible for work release pursuant to KRS 197.140;
- 4 2. Has a maximum or close security classification as defined by  
5 administrative regulations promulgated by the Department of  
6 Corrections;
- 7 3. Is subject to the provisions of KRS 532.043; or
- 8 4. Is in a reentry center as defined in KRS 441.005.

9 ➔Section 6. KRS 533.010 is amended to read as follows:

10 (1) Any person who has been convicted of a crime ~~and who has not been sentenced to~~  
11 ~~death~~ may be sentenced to probation, probation with an alternative sentencing plan,  
12 or conditional discharge as provided in this chapter.

13 (2) Before imposition of a sentence of imprisonment, the court shall consider probation,  
14 probation with an alternative sentencing plan, or conditional discharge. Unless the  
15 defendant is a violent offender~~felon~~ as defined in KRS 439.3401 or a statute  
16 prohibits probation, shock probation, or conditional discharge, after due  
17 consideration of the defendant's risk and needs assessment, nature and  
18 circumstances of the crime, and the history, character, and condition of the  
19 defendant, probation or conditional discharge shall be granted, unless the court is of  
20 the opinion that imprisonment is necessary for protection of the public because:

21 (a) There is substantial risk that during a period of probation or conditional  
22 discharge the defendant will commit another crime;

23 (b) The defendant is in need of correctional treatment that can be provided most  
24 effectively by his or her commitment to a correctional institution; or

25 (c) A disposition under this chapter will unduly depreciate the seriousness of the  
26 defendant's crime.

27 (3) In the event the court determines that probation is not appropriate after due

1 consideration of the defendant's risk and needs assessment, nature and  
2 circumstances of the crime, and the history, character, and condition of the  
3 defendant, probation with an alternative sentencing plan shall be granted unless the  
4 court is of the opinion that imprisonment is necessary for the protection of the  
5 public because:

- 6 (a) There is a likelihood that during a period of probation with an alternative  
7 sentencing plan or conditional discharge the defendant will commit a Class D  
8 or Class C felony or a substantial risk that the defendant will commit a Class  
9 B or Class A felony;
- 10 (b) The defendant is in need of correctional treatment that can be provided most  
11 effectively by commitment to a correctional institution; or
- 12 (c) A disposition under this chapter will unduly depreciate the seriousness of the  
13 defendant's crime.
- 14 (4) The court shall not determine that there is a likelihood that the defendant will  
15 commit a Class C or Class D felony based upon the defendant's risk and needs  
16 assessment and the fact that:
- 17 (a) The defendant has never been convicted of, pled guilty to, or entered an  
18 Alford plea to a felony offense;
- 19 (b) If convicted of, having pled guilty to, or entered an Alford plea to a felony  
20 offense, the defendant successfully completed probation more than ten (10)  
21 years immediately prior to the date of the commission of the felony for which  
22 the defendant is now being sentenced and has had no intervening convictions,  
23 pleas of guilty, or Alford pleas to any criminal offense during that period; or
- 24 (c) The defendant has been released from incarceration for the commission of a  
25 felony offense more than ten (10) years immediately prior to the date of the  
26 commission of the felony for which the defendant is now being sentenced and  
27 has had no intervening convictions, pleas of guilty, or Alford pleas to any

1 criminal offense during that period.

2 (5) In making a determination under subsection (4) of this section, the court may  
3 determine that the greater weight of the evidence indicates that there is a likelihood  
4 that the defendant will commit a Class C or Class D felony.

5 (6) Upon initial sentencing of a defendant or upon modification or revocation of  
6 probation, when the court deems it in the best interest of the public and the  
7 defendant, the court may order probation with the defendant to serve one (1) of the  
8 following alternative sentences:

9 (a) To a halfway house for no more than twelve (12) months;

10 (b) To home incarceration with or without work release for no more than twelve  
11 (12) months;

12 (c) To jail for a period not to exceed twelve (12) months with or without work  
13 release, community service and other programs as required by the court;

14 (d) To a residential treatment program for the abuse of alcohol or controlled  
15 substances;

16 (e) To a reentry center for no more than twelve (12) months; or

17 (f) To any other specified counseling program, rehabilitation or treatment  
18 program, or facility.

19 (7) If during the term of the alternative sentence the defendant fails to adhere to and  
20 complete the conditions of the alternative sentence, the court may modify the terms  
21 of the alternative sentence or may modify or revoke probation and alternative  
22 sentence and commit the defendant to an institution.

23 (8) In addition to those conditions that the court may impose, the conditions of  
24 alternative sentence shall include the following and, if the court determines that the  
25 defendant cannot comply with them, then they shall not be made available:

26 (a) A defendant sentenced to a halfway house shall:

27 1. Be working or pursuing his or her education or be enrolled in a full-time

- 1 treatment program;
- 2 2. Pay restitution during the term of probation; and
- 3 3. Have no contact with the victim of the defendant's crime;
- 4 (b) A defendant sentenced to home incarceration shall:
- 5 1. Be employed by another person or self-employed at the time of
- 6 sentencing to home incarceration and continue the employment
- 7 throughout the period of home incarceration, unless the court determines
- 8 that there is a compelling reason to allow home incarceration while the
- 9 defendant is unemployed;
- 10 2. Pay restitution during the term of home incarceration;
- 11 3. Enter a treatment program, if appropriate;
- 12 4. Pay all or some portion of the cost of home incarceration as determined
- 13 by the court;
- 14 5. Comply with other conditions as specified; and
- 15 6. Have no contact with the victim of the defendant's crime;
- 16 (c) A defendant sentenced to jail with community service shall:
- 17 1. Pay restitution during all or some part of the defendant's term of
- 18 probation; and
- 19 2. Have no contact with the victim of the defendant's crime;
- 20 (d) A defendant sentenced to a residential treatment program for drug and alcohol
- 21 abuse shall:
- 22 1. Undergo mandatory drug screening during term of probation;
- 23 2. Be subject to active, supervised probation for a term of five (5) years;
- 24 3. Undergo aftercare as required by the treatment program;
- 25 4. Pay restitution during the term of probation; and
- 26 5. Have no contact with the victim of the defendant's crime; or
- 27 (e) A defendant sentenced to a reentry center shall:

- 1           1. Be employed in the community or working in a vocational program at
  - 2           the reentry center;
  - 3           2. Be enrolled in a treatment program;
  - 4           3. Pay restitution, fees, and fines during the term of probation; and
  - 5           4. Comply with other conditions as specified.
- 6 (9) When the court deems it in the best interest of the defendant and the public, the
- 7 court may order the person to work at community service related projects under the
- 8 terms and conditions specified in KRS 533.070. Work at community service related
- 9 projects shall be considered as a form of conditional discharge.
- 10 (10) Probation with alternative sentence shall not be available as set out in KRS 532.045
- 11 and 533.060, except as provided in KRS 533.030(6).
- 12 (11) The court may utilize a community corrections program authorized or funded under
- 13 KRS Chapter 196 to provide services to any person released under this section.
- 14 (12) When the court deems it in the best interest of the defendant and the public, the
- 15 court may order the defendant to placement for probation monitoring by a private
- 16 agency. The private agency shall report to the court on the defendant's compliance
- 17 with his or her terms of probation or conditional discharge. The defendant shall be
- 18 responsible for any reasonable charges which the private agency charges.
- 19 (13) The jailer in each county incarcerating Class C or D felons may deny work release
- 20 privileges to any defendant for violating standards of discipline or other jail
- 21 regulations. The jailer shall report the action taken and the details of the violation
- 22 on which the action was based to the court of jurisdiction within five (5) days of the
- 23 violation.
- 24 (14) The Department of Corrections shall, by administrative regulation, develop written
- 25 criteria for work release privileges granted under this section.
- 26 (15) Reimbursement of incarceration costs shall be paid directly to the jailer in the
- 27 amount specified by written order of the court. Incarceration costs owed to the

1 Department of Corrections shall be paid through the circuit clerk.

2 (16) The court shall enter into the record written findings of fact and conclusions of law  
3 when considering implementation of any sentence under this section.

4 ➔Section 7. KRS 640.040 is amended to read as follows:

5 (1) No youthful offender who has been convicted of a capital offense ~~[who was under~~  
6 ~~the age of sixteen (16) years at the time of the commission of the offense shall be~~  
7 ~~sentenced to capital punishment. A youthful offender may be sentenced to capital~~  
8 ~~punishment if he was sixteen (16) years of age or older at the time of the~~  
9 ~~commission of the offense. A youthful offender convicted of a capital offense~~  
10 ~~regardless of age may be sentenced to a term of imprisonment appropriate for one~~  
11 ~~who has committed a Class A felony and ]~~may be sentenced to life imprisonment  
12 without benefit of parole~~[ for twenty five (25) years].~~

13 (2) No youthful offender shall be subject to persistent felony offender sentencing under  
14 the provisions of KRS 532.080 for offenses committed before the age of eighteen  
15 (18) years.

16 (3) No youthful offender shall be subject to limitations on probation, parole or  
17 conditional discharge as provided for in KRS 533.060.

18 (4) Any youthful offender convicted of a misdemeanor or any felony offense which  
19 would exempt him ***or her*** from KRS 635.020(2), (3), (4), (5), (6), (7), or (8) shall be  
20 disposed of by the Circuit Court in accordance with the provisions of KRS 635.060.

21 ➔Section 8. KRS 640.010 is amended to read as follows:

22 (1) For children who are alleged to be youthful offenders by falling in the purview of  
23 KRS 635.020(2) to (8), the court shall at arraignment ensure that the child's rights as  
24 specified in KRS 610.060 have been explained and followed.

25 (2) (a) In the case of a child alleged to be a youthful offender by falling within the  
26 purview of KRS 635.020(2) to (8), the District Court shall, upon motion by  
27 the county attorney to proceed under this chapter, and after the county attorney

1 has consulted with the Commonwealth's attorney, conduct a preliminary  
2 hearing to determine if the child should be transferred to Circuit Court as a  
3 youthful offender. The preliminary hearing shall be conducted in accordance  
4 with the Rules of Criminal Procedure.

5 (b) At the preliminary hearing, the court shall determine if there is probable cause  
6 to believe that an offense was committed, that the child committed the  
7 offense, and that the child is of sufficient age and has the requisite number of  
8 prior adjudications, if any, necessary to fall within the purview of KRS  
9 635.020.

10 (c) If the District Court determines probable cause exists, the court shall consider  
11 the following factors before determining whether the child's case shall be  
12 transferred to the Circuit Court:

- 13 1. The seriousness of the alleged offense;
- 14 2. Whether the offense was against persons or property, with greater  
15 weight being given to offenses against persons;
- 16 3. The maturity of the child as determined by his environment;
- 17 4. The child's prior record;
- 18 5. The best interest of the child and community;
- 19 6. The prospects of adequate protection of the public;
- 20 7. The likelihood of reasonable rehabilitation of the child by the use of  
21 procedures, services, and facilities currently available to the juvenile  
22 justice system;
- 23 8. Evidence of a child's participation in a gang;
- 24 9. Whether the child is a defendant with a serious intellectual disability as  
25 defined in subsection (4) of this section~~[in accordance with KRS~~  
26 ~~532.130]~~; and
- 27 10. Whether the child used a firearm in the commission of the offense.

1 (d) If, following the completion of the preliminary hearing, the District Court  
2 finds, after considering the factors enumerated in paragraph (c) of this  
3 subsection, that two (2) or more of the factors specified in paragraph (c) of  
4 this subsection are determined to favor transfer, the child may be transferred  
5 to Circuit Court, and if the child is transferred the District Court shall issue an  
6 order transferring the child as a youthful offender and shall state on the record  
7 the reasons for the transfer. The child shall then be proceeded against in the  
8 Circuit Court as an adult, except as otherwise provided in this chapter.

9 (e) If, following completion of the preliminary hearing, the District Court is of the  
10 opinion, after considering the factors enumerated in paragraph (c) of this  
11 subsection, that the child shall not be transferred to the Circuit Court, the case  
12 shall be dealt with as provided in KRS Chapter 635.

13 (3) If the child is transferred to Circuit Court under this section and the grand jury does  
14 not find that there is probable cause to indict the child as a youthful offender, as  
15 defined in KRS 635.020(2) to (8), but does find that there is probable cause to indict  
16 the child for another criminal offense, the child shall not be tried as a youthful  
17 offender in Circuit Court but shall be returned to District Court to be dealt with as  
18 provided in KRS Chapter 635.

19 **(4) As used in this section:**

20 **(a) "Serious intellectual disability" means significant subaverage intellectual**  
21 **functioning existing concurrently with substantial deficits in adaptive**  
22 **behavior and manifested during the developmental period; and**

23 **(b) "Significantly subaverage general intellectual functioning" means an**  
24 **intelligence quotient (I.O.) of seventy (70) or below.**

25 ➔Section 9. The following KRS sections are repealed:

26 431.213 Definitions for KRS 431.213, 431.2135, and 431.240.

27 431.2135 Procedure for challenging condemned person's sanity.

- 1 431.218 Date of execution of condemned -- Copy of mandate to proper officer.
- 2 431.220 Execution of death sentence.
- 3 431.223 Method of execution in event of unconstitutionality of KRS 431.220.
- 4 431.224 Retroactive applicability.
- 5 431.240 Time of execution -- Governor to fix time in case of insanity, pregnancy, or
- 6 escape -- Administrative hearings -- Transfer to forensic psychiatric facility in case
- 7 of insanity.
- 8 431.250 Persons who may attend executions.
- 9 431.260 Warden's return on judgment.
- 10 431.270 Delivery or burial of body.
- 11 507A.060 Death sentence prohibited.
- 12 532.025 Presentence hearings -- Use of juvenile court records -- Aggravating or
- 13 mitigating circumstances -- Instruction to jury.
- 14 532.075 Review of death sentence by Supreme Court.
- 15 532.130 Definitions for KRS 532.135 and 532.140.
- 16 532.135 Determination by court that defendant has a serious intellectual disability.
- 17 532.140 Offender with a serious intellectual disability not subject to execution --
- 18 Authorized sentences.
- 19 532.300 Prohibition against death sentence being sought or given on the basis of race --
- 20 Procedures for dealing with claims.
- 21 532.305 Application of KRS 532.300.
- 22 532.309 Short title for KRS 532.300 to 532.309.