

1 AN ACT relating to aggravating circumstances.

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

3 ➔Section 1. KRS 532.025 is amended to read as follows:

4 (1) (a) Upon conviction of a defendant in cases where the death penalty may be  
5 imposed, a hearing shall be conducted. In such hearing, the judge shall hear  
6 additional evidence in extenuation, mitigation, and aggravation of  
7 punishment, including the record of any prior criminal convictions and pleas  
8 of guilty or pleas of nolo contendere of the defendant, or the absence of any  
9 prior conviction and pleas; provided, however, that only such evidence in  
10 aggravation as the state has made known to the defendant prior to his ***or her***  
11 trial shall be admissible. Subject to the Kentucky Rules of Evidence, juvenile  
12 court records of adjudications of guilt of a child for an offense that would be a  
13 felony if committed by an adult shall be admissible in court at any time the  
14 child is tried as an adult, or after the child becomes an adult, at any  
15 subsequent criminal trial relating to that same person. Juvenile court records  
16 made available pursuant to this section may be used for impeachment  
17 purposes during a criminal trial and may be used during the sentencing phase  
18 of a criminal trial; however, the fact that a juvenile has been adjudicated  
19 delinquent of an offense that would be a felony if the child had been an adult  
20 shall not be used in finding the child to be a persistent felony offender based  
21 upon that adjudication. Release of the child's treatment, medical, mental, or  
22 psychological records is prohibited unless presented as evidence in Circuit  
23 Court. Release of any records resulting from the child's prior abuse and  
24 neglect under Title IV-E or IV-B of the Federal Social Security Act is also  
25 prohibited. The judge shall also hear argument by the defendant or his ***or her***  
26 counsel and the prosecuting attorney, as provided by law, regarding the  
27 punishment to be imposed. The prosecuting attorney shall open and the

1 defendant shall conclude the argument. In cases in which the death penalty  
2 may be imposed, the judge when sitting without a jury shall follow the  
3 additional procedure provided in subsection (2) of this section. Upon the  
4 conclusion of the evidence and arguments, the judge shall impose the sentence  
5 or shall recess the trial for the purpose of taking the sentence within the limits  
6 prescribed by law. If the trial court is reversed on appeal because of error only  
7 in the presentence hearing, the new trial which may be ordered shall apply  
8 only to the issue of punishment;

9 (b) In all cases in which the death penalty may be imposed and which are tried by  
10 a jury, upon a return of a verdict of guilty by the jury, the court shall resume  
11 the trial and conduct a presentence hearing before the jury. Such hearing shall  
12 be conducted in the same manner as presentence hearings conducted before  
13 the judge as provided in paragraph (a) of this subsection, including the record  
14 of any prior criminal convictions and pleas of guilty or pleas of nolo  
15 contendere of the defendant. Upon the conclusion of the evidence and  
16 arguments, the judge shall give the jury appropriate instructions, and the jury  
17 shall retire to determine whether any mitigating or aggravating circumstances,  
18 as defined in subsection (2) of this section, exist and to recommend a sentence  
19 for the defendant. Upon the findings of the jury, the judge shall fix a sentence  
20 within the limits prescribed by law.

21 (2) In all cases of offenses for which the death penalty may be authorized, the judge  
22 shall consider, or he or she shall include in his instructions to the jury for it to  
23 consider, any mitigating circumstances or aggravating circumstances otherwise  
24 authorized by law and any of the following statutory aggravating or mitigating  
25 circumstances which may be supported by the evidence:

26 (a) Aggravating circumstances:

27 1. The offense of murder or kidnapping was committed by a person with a

- 1 prior record of conviction for a capital offense, or the offense of murder  
2 was committed by a person who has a substantial history of serious  
3 assaultive criminal convictions;
- 4 2. The offense of murder or kidnapping was committed while the offender  
5 was engaged in the commission of arson in the first degree, robbery in  
6 the first degree, burglary in the first degree, rape in the first degree, or  
7 sodomy in the first degree;
- 8 3. The offender by his or her act of murder, armed robbery, or kidnapping  
9 knowingly created a great risk of death to more than one (1) person in a  
10 public place by means of a weapon of mass destruction, weapon, or  
11 other device which would normally be hazardous to the lives of more  
12 than one (1) person;
- 13 4. The offender committed the offense of murder for himself, herself, or  
14 another, for the purpose of receiving money or any other thing of  
15 monetary value, or for other profit;
- 16 5. The offense of murder was committed by a person who was a prisoner  
17 and the victim was a prison employee engaged at the time of the act in  
18 the performance of his or her duties;
- 19 6. The offender's act or acts of killing were intentional and resulted in  
20 multiple deaths;
- 21 7. The offender's act of killing was intentional and the victim was a state or  
22 local public official or police officer, sheriff, or deputy sheriff engaged  
23 at the time of the act in the lawful performance of his or her duties;†  
24 ~~and~~
- 25 8. The offender murdered the victim when an emergency protective order  
26 or a domestic violence order was in effect, or when any other order  
27 designed to protect the victim from the offender, such as an order issued

1 as a condition of a bond, conditional release, probation, parole, or  
2 pretrial diversion, was in effect; and

3 9. The offender's act of killing was intentional and resulted in the death  
4 of a child under twelve (12) years old.

5 (b) Mitigating circumstances:

- 6 1. The defendant has no significant history of prior criminal activity;
- 7 2. The capital offense was committed while the defendant was under the  
8 influence of extreme mental or emotional disturbance even though the  
9 influence of extreme mental or emotional disturbance is not sufficient to  
10 constitute a defense to the crime;
- 11 3. The victim was a participant in the defendant's criminal conduct or  
12 consented to the criminal act;
- 13 4. The capital offense was committed under circumstances which the  
14 defendant believed to provide a moral justification or extenuation for his  
15 or her conduct even though the circumstances which the defendant  
16 believed to provide a moral justification or extenuation for his or her  
17 conduct are not sufficient to constitute a defense to the crime;
- 18 5. The defendant was an accomplice in a capital offense committed by  
19 another person and his or her participation in the capital offense was  
20 relatively minor;
- 21 6. The defendant acted under duress or under the domination of another  
22 person even though the duress or the domination of another person is not  
23 sufficient to constitute a defense to the crime;
- 24 7. At the time of the capital offense, the capacity of the defendant to  
25 appreciate the criminality of his or her conduct to the requirements of  
26 law was impaired as a result of mental illness or an intellectual disability  
27 or intoxication even though the impairment of the capacity of the

1                   defendant to appreciate the criminality of his or her conduct or to  
2                   conform the conduct to the requirements of law is insufficient to  
3                   constitute a defense to the crime; and

4                   8.     The youth of the defendant at the time of the crime.

5     (3)   The instructions as determined by the trial judge to be warranted by the evidence or  
6           as required by KRS 532.030(4) shall be given in charge and in writing to the jury  
7           for its deliberation. The jury, if its verdict be a recommendation of death, or  
8           imprisonment for life without benefit of probation or parole, or imprisonment for  
9           life without benefit of probation or parole until the defendant has served a minimum  
10          of twenty-five (25) years of his or her sentence, shall designate in writing, signed  
11          by the foreman of the jury, the aggravating circumstance or circumstances which it  
12          found beyond a reasonable doubt. In nonjury cases, the judge shall make such  
13          designation. In all cases unless at least one (1) of the statutory aggravating  
14          circumstances enumerated in subsection (2) of this section is so found, the death  
15          penalty, or imprisonment for life without benefit of probation or parole, or the  
16          sentence to imprisonment for life without benefit of probation or parole until the  
17          defendant has served a minimum of twenty-five (25) years of his or her sentence,  
18          shall not be imposed.

19          ➔Section 2. Subsection (2)(a)9. of Section 1 of this Act may be cited as Kimber's  
20          Law.