

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 or*
10 *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4 writing or if the Department of Public Advocacy has previously withdrawn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
12 determines that it is not a proceeding that a reasonable person with adequate means
13 would be willing to bring at his or her own expense. If the Department of Public
14 Advocacy moves to withdraw as counsel for petitioner and the court grants the
15 motion, the 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
24 possession or control that could be subjected to DNA testing and analysis. The state
25 shall prepare an inventory of the evidence and shall submit a copy of the inventory
26 to the 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
20 presentence investigation report may be delayed until after sentencing upon the
21 written request 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
4 defendant to submit to psychiatric observation and examination for a period not
5 exceeding sixty (60) days. The defendant may be remanded for this purpose to any
6 available clinic or mental hospital or the court may appoint a qualified psychiatrist
7 to make 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(12) or
3 (13), 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
9 served, may serve the remainder of his or her term in a jail in a county in
10 which the 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
15 occupancy issued each year to the jail by the Department of
16 Corrections.
- 17 b. The Department of Corrections shall choose which state prisoners
18 are eligible for transfer based on the security level of the vacant
19 bed at the receiving jail or state institution.
- 20 c. State prisoners who are approved for transfer to a Department of
21 Corrections facility for necessary medical treatment and care
22 pursuant to KRS 441.560 shall not be transferred to another jail.
- 23 d. State prisoners enrolled in a Department of Corrections approved
24 program pursuant to KRS 197.045 shall not be transferred.
- 25 e. State prisoners awaiting trial in the county they are being housed
26 shall not be transferred.
- 27 f. Jails that receive state prisoners pursuant to this subparagraph shall

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

1 requests the transfer of a specified number of state prisoners, the
2 Department of Corrections may, if vacant beds are available at other
3 jails, direct the transfer in accordance with subparagraph 1. of this
4 paragraph.

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

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

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

25 (b) 1. The per diem amount paid to the jail shall be increased by two dollars
26 (\$2) per day of program attendance for those inmates enrolled in and
27 attending evidence-based programs approved by the department and that

1 do not require instructors to have completed any postsecondary
2 education.

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

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

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

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

18 (b) The authority to release an inmate to work under this subsection may be
19 exercised at any time during the inmate's sentence, including the period when
20 the court has concurrent authority to permit work release pursuant to KRS
21 439.265.

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

1 to pay for any drug testing performed on the inmate as a requirement of the
2 community work program or work release participation.

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

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

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

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

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

- 22 (a) There is substantial risk that during a period of probation or conditional
23 discharge the defendant will commit another crime;
- 24 (b) The defendant is in need of correctional treatment that can be provided most
25 effectively by his or her commitment to a correctional institution; or
- 26 (c) A disposition under this chapter will unduly depreciate the seriousness of the
27 defendant's crime.

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

1 has had no intervening convictions, pleas of guilty, or Alford pleas to any
2 criminal offense during that period.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 amount specified by written order of the court. Incarceration costs owed to the
2 Department of Corrections shall be paid through the circuit clerk.

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

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

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

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

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

19 (4) Any youthful offender convicted of a misdemeanor or any felony offense which
20 would exempt him ***or her*** from KRS 635.020(2) ***to***~~[(3), (4), (5), (6), (7), or] (8)~~
21 shall be disposed of by the Circuit Court in accordance with the provisions of KRS
22 635.060.

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

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

27 (2) (a) In the case of a child alleged to be a youthful offender by falling within the

1 purview of KRS 635.020(2) to (8), the District Court shall, upon motion by
2 the county attorney to proceed under this chapter, and after the county
3 attorney has consulted with the Commonwealth's attorney, conduct a
4 preliminary hearing to determine if the child should be transferred to Circuit
5 Court as a youthful offender. The preliminary hearing shall be conducted in
6 accordance with the Rules of Criminal Procedure.

7 (b) At the preliminary hearing, the court shall determine if there is probable cause
8 to believe that an offense was committed, that the child committed the
9 offense, and that the child is of sufficient age and has the requisite number of
10 prior adjudications, if any, necessary to fall within the purview of KRS
11 635.020.

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

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

1 ~~532.130~~; and

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

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

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

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

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

22 **(a) "Serious intellectual disability" means significantly subaverage general**
23 **intellectual functioning existing concurrently with substantial deficits in**
24 **adaptive behavior and manifested during the developmental period; and**

25 **(b) "Significantly subaverage general intellectual functioning" means an**
26 **intelligence quotient or I.Q. of seventy (70) or below.**

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

- 1 532.025 Presentence hearings -- Use of juvenile court records -- Aggravating or
2 mitigating circumstances -- Instruction to jury.
- 3 431.213 Definitions for KRS 431.213, 431.2135, and 431.240.
- 4 431.2135 Procedure for challenging condemned person's sanity.
- 5 431.218 Date of execution of condemned -- Copy of mandate to proper officer.
- 6 431.220 Execution of death sentence.
- 7 431.223 Method of execution in event of unconstitutionality of KRS 431.220.
- 8 431.224 Retroactive applicability.
- 9 431.240 Time of execution -- Governor to fix time in case of insanity, pregnancy, or
10 escape -- Administrative hearings -- Transfer to forensic psychiatric facility in case
11 of insanity.
- 12 431.250 Persons who may attend executions.
- 13 431.260 Warden's return on judgment.
- 14 431.270 Delivery or burial of body.
- 15 507A.060 Death sentence prohibited.
- 16 532.075 Review of death sentence by Supreme Court.
- 17 532.130 Definitions for KRS 532.135 and 532.140.
- 18 532.135 Determination by court that defendant has a serious intellectual disability or
19 serious mental illness.
- 20 532.140 Defendant with a serious intellectual disability or serious mental illness not
21 subject to execution -- Authorized sentences.
- 22 532.300 Prohibition against death sentence being sought or given on the basis of race --
23 Procedures for dealing with claims.
- 24 532.305 Application of KRS 532.300.
- 25 532.309 Short title for KRS 532.300 to 532.309.