

1 AN ACT relating to stalking.

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

3 ➔Section 1. KRS 508.130 is amended to read as follows:

4 As used in this section[KRS 508.130 to 508.150], unless the context requires otherwise:

5 (1) (a) ~~To "stalk" means to engage in an intentional course of conduct:~~

6 1. ~~Directed at a specific person or persons;~~

7 2. ~~Which seriously alarms, annoys, intimidates, or harasses the person or~~
8 ~~persons; and~~

9 3. ~~Which serves no legitimate purpose.~~

10 (b) ~~The course of conduct shall be that which would cause a reasonable person to~~
11 ~~suffer substantial mental distress.~~

12 (2)} **1.** "Course of conduct" means a pattern of conduct composed of two (2) or
13 more acts, evidencing a continuity of purpose. These acts may include
14 those in which a person directly or indirectly, by any means or
15 method:

16 **a.** Follows, monitors, observes, surveils, or threatens another
17 person; or

18 **b.** Interferes with another person's property.

19 **2.** One (1) or more of these acts may include:

20 **a.** Those by which a person, directly or indirectly, by any means or
21 method:

22 **i.** Follows, monitors, observes, surveils, or threatens another
23 person; or

24 **ii.** Interferes with another person's property; or

25 **b.** The use of any equipment, instrument, machine, or other device by
26 which communication or information is transmitted, including but
27 not limited to:

- 1 *i.* Computers;[.]
- 2 *ii.* The internet, internet applications, social media platforms,
3 email, text messages, instant messages, or any other
4 electronic network;[.]
- 5 *iii.* Cameras or other recording devices;[.]
- 6 *iv.* Telephones or other personal communications devices;[.]
- 7 *v.* Scanners or other copying devices;[.] and
- 8 *vi.* Any device that enables the use of a transmitting device.

9 **3.** Constitutionally protected activity is not included within the meaning of
10 "course of conduct." If the defendant claims that he or she was engaged
11 in constitutionally protected activity, the court shall determine the
12 validity of that claim as a matter of law and, if found valid, shall exclude
13 that activity from evidence;[.]

14 **(b)**[(3)] "Protective order" means:

15 **1.**[(a)] An emergency protective order or domestic violence order issued
16 under KRS 403.715 to 403.785;

17 **2.**[(b)] A foreign protective order, as defined in KRS 403.720 and
18 456.010;

19 **3.**[(c)] An order issued under KRS 431.064;

20 **4.**[(d)] An interpersonal protective[A restraining] order issued in
21 accordance with KRS 508.155 or 510.037;

22 **5.**[(e)] An order of protection as defined in KRS 403.720 and 456.010;[
23 and]

24 **6.** A civil restraining order issued by a court of this Commonwealth or
25 any other state; or

26 **7.**[(f)] Any condition of a bond, conditional release, probation, parole, or
27 pretrial diversion order designed to protect the victim from the offender;

1 and[.]

(c) "Social media platform" means a website or application that is open to the public, allows a user to create an account, and enables users to do all of the following:

1. Interact socially with other users within the confines of the website or application;

2. Construct a public or semipublic profile for the purpose of signing into and using the website or application;

3. Populate a list of other users with whom an individual shares or has the ability to share a social connection within the website or application; and

4. Create or post content viewable by others, including on message boards, chat rooms, video channels, direct or private messages, or chats, or on a landing page or main feed that presents the user with content generated by other users.

16 (2) *A person is guilty of stalking when he or she:*

(a) Knowingly engages in a course of conduct directed at another person or persons that:

1. Seriously alarms, annoys, intimidates, or harasses the other person or persons;

2. *Serves no legitimate purpose; and*

3. Causes the other person or persons to suffer substantial mental distress, including but not limited to interference with the person's sense of safety or well-being; and

(b) Consciously disregards a substantial and unjustifiable risk that the course of conduct would cause the other person to suffer substantial mental distress.

1 (3) *Stalking is a Class D felony unless:*

2 (a) *A protective order has been issued by the court to protect the same victim or*

3 *victims and the defendant has been served with the summons or order or*

4 *has been given actual notice;*

5 (b) *A criminal complaint is currently pending with a court, law enforcement*

6 *agency, or prosecutor by the same victim or victims and the defendant has*

7 *been served with a summons or warrant or has been given actual notice;*

8 (c) *The defendant has been convicted of or pled guilty within the previous five*

9 *(5) years to a felony or to a Class A misdemeanor against the same victim or*

10 *victims;*

11 (d) *The act or acts were committed while the defendant had a deadly weapon on*

12 *or about his or her person; or*

13 (e) *The defendant's act or acts place the victim or victims in reasonable fear of:*

14 1. *Sexual contact as defined in KRS 510.010;*

15 2. *Physical injury; or*

16 3. *Death;*

17 *in which case it is a Class C felony.*

18 ➔Section 2. KRS 14.300 is amended to read as follows:

19 As used in KRS 14.300 to 14.318 unless the context otherwise requires:

20 (1) "Address" means a residential street address, school address, or work address of an individual, as specified on the application of an individual to be a program participant under this section;

21 (2) "Applicant" means a person applying for certification in the Safe at Home Program under KRS 14.300 to 14.318;

22 (3) "Application assistant" means a private individual, employee or volunteer of a government agency, or an employee or volunteer of a nonprofit program that provides counseling, referral, shelter, or other specialized service to victims of

1 domestic violence, rape, sexual assault, human trafficking, stalking, or other crimes,
2 who has been designated by the respective agency or program, and who has been
3 trained and registered by the Secretary of State to assist individuals in establishing a
4 safety program and in the completion of program applications;

5 (4) "Criminal offense against a victim who is a minor" has the same meaning as in
6 KRS 17.500;

7 (5) "Domestic violence and abuse" has the same meaning as in KRS 403.720;

8 (6) "Human trafficking" means an offense or attempt to commit an offense as defined
9 in:

10 (a) KRS 529.100;

11 (b) 18 U.S.C. sec. 1589;

12 (c) 18 U.S.C. sec. 1592;

13 (d) 22 U.S.C. sec. 7102(8);

14 (e) 22 U.S.C. sec. 7102(11); or

15 (f) 22 U.S.C. sec. 7102(12);

16 (7) "Program participant" means a person certified as a program participant under KRS
17 14.300 to 14.318;

18 (8) "Sex crime" means an offense or an attempt to commit an offense defined in:

19 (a) KRS Chapter 510;

20 (b) KRS 530.020;

21 (c) KRS 530.064(1)(a);

22 (d) KRS 531.120;

23 (e) KRS 531.310;

24 (f) KRS 531.320; or

25 (g) Any criminal attempt to commit an offense specified in this subsection,
26 regardless of the penalty for the attempt;

27 (9) "Specified offense" means:

- 1 (a) Domestic violence and abuse;
- 2 (b) Stalking;
- 3 (c) A sex crime;
- 4 (d) Human trafficking;
- 5 (e) A criminal offense against a victim who is a minor;
- 6 (f) A similar federal offense; or
- 7 (g) A similar offense from another state or territory; and

8 (10) "Stalking" means conduct prohibited under Section 1 of this Act~~KRS 508.140 and 508.150~~.

10 ➔Section 3. KRS 23A.208 is amended to read as follows:

- 11 (1) In addition to fees created by KRS 23A.205, 23A.206, and 23A.2065, an administrative fee of thirty dollars (\$30) shall be added to the costs that the defendant is required to pay for the following crimes:
 - 14 (a) A sex crime, meaning an offense described in:
 - 15 1. KRS Chapter 510;
 - 16 2. KRS 530.020;
 - 17 3. KRS 530.064(1)(a);
 - 18 4. KRS 531.310; and
 - 19 5. KRS 531.320;
 - 20 (b) Stalking, meaning conduct prohibited under Section 1 of this Act~~KRS 508.140 and 508.150~~; and
 - 22 (c) A criminal attempt, conspiracy, facilitation, or solicitation to commit the crimes set forth in this subsection.
- 24 (2) The first one dollar and fifty cents (\$1.50) of each fee collected under this section shall be placed into the general fund, and the remainder of the fee shall be allocated by the clerk of the court on a quarterly basis to the Safe at Home Program fund established in KRS 14.260 to be used solely to establish, operate, and maintain the

1 Safe at Home Program established in KRS 14.302.

2 (3) The court may waive all or any portion of the fee required by this section if the
3 court finds that a person subject to the surcharge is indigent or financially unable to
4 pay all or any portion of the surcharge. The court may waive only the portion of the
5 surcharge that the court finds the person is financially unable to pay.

6 ➔Section 4. KRS 24A.178 is amended to read as follows:

7 (1) In addition to fees created by KRS 24A.175, 24A.176, and 24A.1765, an
8 administrative fee of thirty dollars (\$30) shall be added to the costs that the
9 defendant is required to pay for the following crimes:

10 (a) A sex crime, meaning an offense described in:

11 1. KRS Chapter 510;

12 2. KRS 530.020;

14 4. KRS 531.310; and

15 5. KRS 531.320:

16 (b) Stalking, meaning conduct prohibited under Section 1 of this Act[KRS
17 508.140 and 508.150]; and

18 (c) A criminal attempt, conspiracy, facilitation, or solicitation to commit the
19 crimes set forth in this subsection.

20 (2) The first one dollar and fifty cents (\$1.50) of each fee collected under this section
21 shall be placed into the general fund, and the remainder of the fee shall be allocated
22 by the clerk of the court on a quarterly basis to the Safe at Home Program fund
23 established in KRS 14.260 to be used solely to establish, operate, and maintain the
24 Safe at Home Program established in KRS 14.302.

25 (3) The court may waive all or any portion of the fee required by this section if the
26 court finds that a person subject to the surcharge is indigent or financially unable to
27 pay all or any portion of the surcharge. The court may waive only the portion of the

1 surcharge that the court finds the person is financially unable to pay.

2 ➔Section 5. KRS 431.005 is amended to read as follows:

3 (1) A peace officer may make an arrest:

4 (a) In obedience to a warrant; or

5 (b) Without a warrant when a felony is committed in his or her presence; or

6 (c) Without a warrant when he or she has probable cause to believe that the
7 person being arrested has committed a felony; or

8 (d) Without a warrant when a misdemeanor, as defined in KRS 431.060, has been
9 committed in his or her presence; or

10 (e) Without a warrant when a violation of KRS 189.290, 189.393, 189.520,
11 189.580, 511.080, or 525.070 has been committed in his or her presence,
12 except that a violation of KRS 189A.010 or KRS 281A.210 need not be
13 committed in his or her presence in order to make an arrest without a warrant
14 if the officer has probable cause to believe that the person being arrested has
15 violated KRS 189A.010 or KRS 281A.210;

16 (f) Without a warrant when a violation of KRS 508.030 has occurred in a hospital
17 without the officer's presence if the officer has probable cause to believe that
18 the person being arrested has violated KRS 508.030. As used in this
19 paragraph, "hospital" includes any property owned or used by a hospital as a
20 parking lot or parking garage; or

21 (g) Without a warrant when a violation of KRS 235.240(2) has occurred causing
22 an accident, occurring outside of the peace officer's presence, involving a
23 motorboat or vessel on the waters of the Commonwealth, and resulting in a
24 physical injury or property damage, and a commissioned peace officer has
25 probable cause to determine who the operator of the motorboat or vessel was
26 and that operator was intoxicated or under the influence of any substance that
27 impairs one's ability to operate the motorboat or vessel at the time of the

1 accident.

2 (2) (a) Any peace officer may arrest a person without warrant when the peace officer
3 has probable cause to believe that the person has intentionally or wantonly
4 caused physical injury to a family member, member of an unmarried couple,
5 or another person with whom the person was or is in a dating relationship.
6 (b) As used in this subsection, "dating relationship," "family member," and
7 "member of an unmarried couple" have the same meanings as ~~defined~~ in
8 KRS 403.720 and 456.010. {
9 (e) ~~For the purpose of this subsection, the term "member of an unmarried couple" has the same meaning as set out in KRS 403.720.}~~
10 (3) A peace officer may arrest a person without a warrant when the peace officer has
11 probable cause to believe that the person is a sexual offender who has failed to
12 comply with the Kentucky Sex Offender Registry requirements based upon
13 information received from the Law Information Network of Kentucky.
14 (4) For purposes of subsections (2) and (3) of this section, a "peace officer" is an
15 officer certified pursuant to KRS 15.380 **to 15.404**.
16 (5) If a law enforcement officer has probable cause to believe that a person has violated
17 a condition of release imposed in accordance with KRS 431.064 and verifies that
18 the alleged violator has notice of the conditions, the officer shall, without a warrant,
19 arrest the alleged violator whether the violation was committed in or outside the
20 presence of the officer.
21 (6) A private person may make an arrest when a felony has been committed in fact and
22 he or she has probable cause to believe that the person being arrested has committed
23 it.
24 (7) If a law enforcement officer has probable cause to believe that a person has violated
25 **an interpersonal protective**~~[a restraining]~~ order issued under KRS 508.155, then the
26 officer shall, without a warrant, arrest the alleged violator whether the violation was
27

1 committed in or outside the presence of the officer.

2 ➔Section 6. KRS 411.220 is amended to read as follows:

3 (1) A civil action may be maintained under this section against any person who
4 commits the conduct prohibited under Section 1 of this Act,~~KRS 508.140 or~~
5 ~~508.150. A civil action may be maintained under this section~~} whether or not the
6 individual who is alleged to have violated Section 1 of this Act~~KRS 508.140 or~~
7 ~~508.150~~} has been charged or convicted of the alleged crime.

8 (2) The action may be:

9 (a) Brought by a victim or a victim's parent or legal guardian on behalf of a
10 victim who is a minor; and

11 (b) Filed in a court of competent jurisdiction in the county where the alleged
12 violation occurred or the county where the victim resides.

13 (3) Liability under this section shall include the actual damages caused by the violation
14 and may include punitive damages, court costs, and reasonable attorney's fees.

15 (4) An action under this section shall be brought within two (2) years of the last act of
16 conduct in violation of this section.

17 ➔Section 7. KRS 456.010 is amended to read as follows:

18 As used in this chapter:

19 (1) "Dating relationship" means a relationship between individuals who have or have
20 had a relationship of a romantic or intimate nature. It does not include a casual
21 acquaintanceship or ordinary fraternization in a business or social context. The
22 following factors may be considered in addition to any other relevant factors in
23 determining whether the relationship is or was of a romantic or intimate nature:

24 (a) Declarations of romantic interest;

25 (b) The relationship was characterized by the expectation of affection;

26 (c) Attendance at social outings together as a couple;

27 (d) The frequency and type of interaction between the persons, including whether

1 the persons have been involved together over time and on a continuous basis
2 during the course of the relationship;

3 (e) The length and recency of the relationship; and

4 (f) Other indications of a substantial connection that would lead a reasonable

5 person to understand that a dating relationship existed;

6 (2) "Dating violence and abuse" means:

7 (a) Physical injury, serious physical injury, stalking, sexual assault, strangulation,
8 or the infliction of fear of imminent physical injury, serious physical injury,
9 sexual assault[~~abuse~~], strangulation, or assault occurring between persons
10 who are or have been in a dating relationship; or
11 (b) Any conduct prohibited by KRS 525.125, 525.130, 525.135, or 525.137, or
12 the infliction of fear of such imminent conduct, taken against a domestic
13 animal when used as a method of coercion, control, punishment, intimidation,
14 or revenge directed against a person with whom the perpetrator is or has been
15 in a dating relationship, when that person has a close bond of affection to the
16 domestic animal;

17 (3) "Domestic animal" means a dog, cat, or other animal that is domesticated and kept
18 as a household pet, but does not include animals normally raised for agricultural or
19 commercial purposes;

20 (4) "Foreign protective order" means any judgment, decree, or order of protection
21 which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 which was
22 not issued on the basis of domestic violence and abuse;

23 (5) "Global positioning monitoring system" means a system that electronically
24 determines a person's location through a device worn by the person which does not
25 invade his or her bodily integrity and which transmits the person's latitude and
26 longitude data to a monitoring entity;

27 (6) "Order of protection" means any interpersonal protective order, including those

1 issued on a temporary basis, and includes a foreign protective order;

2 (7) "Sexual assault" refers to conduct prohibited as any degree of rape, sodomy, or
3 sexual abuse under KRS Chapter 510 or a criminal attempt, conspiracy, facilitation,
4 or solicitation to commit any degree of rape, sodomy, or sexual abuse, or incest
5 under KRS 530.020;

6 (8) "Stalking" refers to conduct prohibited as stalking under Section 1 of this Act~~KRS~~
7 508.140 or 508.150, or a criminal attempt, conspiracy, facilitation, or solicitation
8 to commit the crime of stalking;

9 (9) "Strangulation" refers to conduct prohibited by KRS 508.170 and 508.175, or a
10 criminal attempt, conspiracy, facilitation, or solicitation to commit the crime of
11 strangulation; and

12 (10) "Substantial violation" means criminal conduct which involves actual or threatened
13 harm to the person, family, or property, including a domestic animal, of an
14 individual protected by an order of protection.

15 ➔Section 8. KRS 500.092 is amended to read as follows:

16 (1) (a) Notwithstanding KRS 500.090, all personal property which is not used as a
17 permanent residence in this state which is used in connection with or acquired
18 as a result of a violation or attempted violation of any of the statutes set out in
19 subsection (3) of this section shall be subject to forfeiture under the same
20 terms, conditions, and defenses and using the same process as set out in KRS
21 218A.405 to 218A.460 for property subject to forfeiture under that chapter.

22 (b) Notwithstanding KRS 500.090, all real and personal property in this state
23 which is used in connection with or acquired as a result of a violation or
24 attempted violation of KRS 531.310 or 531.320 shall be subject to forfeiture
25 under the same terms, conditions, and defenses and using the same process as
26 set out in KRS 218A.405 to 218A.460 for property subject to forfeiture under
27 that chapter.

- 1 (2) Administrative regulations promulgated under KRS 218A.420 shall govern
- 2 expenditures derived from forfeitures under this section to the same extent that they
- 3 govern expenditures from forfeitures under KRS 218A.405 to 218A.460.
- 4 (3) The following offenses may trigger forfeiture of personal property under subsection
- 5 (1)(a) of this section:
 - 6 (a) KRS 17.546;
 - 7 (b) Section 1 of this Act~~[KRS 508.140 and 508.150]~~ involving the use of any
 - 8 equipment, instrument, machine, or other device by which communication or
 - 9 information is transmitted, including computers, the internet or other
 - 10 electronic network, cameras or other recording devices, telephones or other
 - 11 personal communications devices, scanners or other copying devices, and any
 - 12 device that enables the use of a transmitting device;
 - 13 (c) KRS 510.155;
 - 14 (d) KRS 530.064(1)(a);
 - 15 (e) KRS 531.030;
 - 16 (f) KRS 531.040
 - 17 (g) KRS 531.310;
 - 18 (h) KRS 531.320;
 - 19 (i) KRS 531.335;
 - 20 (j) KRS 531.340;
 - 21 (k) KRS 531.350;
 - 22 (l) KRS 531.360; and
 - 23 (m) KRS 531.370.

24 ➔Section 9. KRS 500.120 is amended to read as follows:

- 25 (1) (a) In any investigation relating to an offense involving KRS 510.155,
- 26 530.064(1)(a), 531.030, 531.040, 531.310, 531.320, 531.335, 531.340,
- 27 531.350, 531.360, or 531.370, and upon reasonable cause to believe that an

1 internet service provider, social networking company, mobile payment
2 service, or cloud storage service has been used in the exploitation or
3 attempted exploitation of children, or in any investigation of a violation of
4 KRS 17.546, Section 1 of this Act~~[508.140, 508.150]~~, 525.070, or 525.080
5 where there is reasonable cause to believe that an internet service provider,
6 social networking company, mobile payment service, or cloud storage service
7 has been used in the commission of the offense, the Attorney General may
8 issue in writing and cause to be served a subpoena requiring the production
9 and testimony described in subsection (2) of this section.

10 (b) In any investigation relating to an offense involving KRS 510.155,
11 530.064(1)(a), 531.030, 531.040, 531.310, 531.320, 531.335, 531.340,
12 531.350, 531.360, or 531.370, and upon reasonable cause to believe that an
13 internet service provider, social networking company, mobile payment
14 service, or cloud storage service has been used in the exploitation or
15 attempted exploitation of children, the commissioner of the Department of
16 Kentucky State Police may issue in writing and cause to be served a subpoena
17 requiring the production and testimony described in subsection (2) of this
18 section.

19 (2) Except as provided in subsection (3) of this section, a subpoena issued under this
20 section may require the production of any records or other documentation relevant
21 to the investigation, including:

22 (a) Electronic mail address;
23 (b) Internet username;
24 (c) Internet protocol address;
25 (d) Name of account holder;
26 (e) Billing and service address;
27 (f) Telephone number;

1 (g) Account status;

2 (h) Method of access to the internet; and

3 (i) Automatic number identification records if access is by modem.

4 (3) The internet service provider, social networking company, mobile payment service,
5 cloud storage service, or provider of electronic communication service or remote
6 computing service shall not disclose the following pursuant to a subpoena issued
7 under this section but shall disclose the information in obedience to a warrant:

8 (a) In-transit electronic communications;

9 (b) Account memberships related to internet groups, newsgroups, mailing lists, or
10 specific areas of interest;

11 (c) Account passwords; and

12 (d) Account content including:

13 1. Electronic mail in any form;

14 2. Address books, contacts, or buddy lists;

15 3. Financial records;

16 4. Internet proxy content or web surfing history; and

17 5. Files or other digital documents stored with the account or pursuant to
18 use of the account.

19 (4) At any time before the return date specified on the subpoena, the person summoned
20 may, in the District Court in which the person resides or does business, petition for
21 an order modifying or setting aside the subpoena, or a prohibition of disclosure by a
22 court.

23 (5) A subpoena under this section shall describe the objects required to be produced
24 and shall prescribe a return date with a reasonable period of time within which the
25 objects can be assembled and made available.

26 (6) If no case or proceeding arises from the production of records or other
27 documentation pursuant to this section within a reasonable time after those records

1 or documentation ~~are~~is produced, the Attorney General shall either destroy the
2 records and documentation or return them to the person who produced them.

3 (7) A subpoena issued under this section may be served by any person who is at least
4 eighteen (18) years of age and who is designated in the subpoena to serve it. Service
5 upon a natural person may be made by personal delivery of the subpoena to him or
6 her. Service may be made upon a corporation or partnership or other unincorporated
7 association which is subject to suit under its common name, by delivering the
8 subpoena to an officer, to a managing or general agent, or to any other agent
9 authorized by appointment or by law to receive service of process. The affidavit of
10 the person serving the subpoena together with a true copy thereof shall be proof of
11 service.

12 (8) Except as provided in this section any information, records or data reported or
13 obtained pursuant to subpoena under this section shall remain confidential and shall
14 not be further disclosed unless in connection with a criminal case related to the
15 subpoenaed materials.

16 ➔Section 10. KRS 506.160 is amended to read as follows:

17 (1) If a defendant is alleged by the prosecuting attorney to have been a member of a
18 criminal gang as defined in KRS 506.135, at the time of the commission of the
19 offense, upon conviction of the offense there shall be a separate proceeding from
20 that proceeding which resulted in the defendant's conviction if the defendant was
21 convicted of:

22 (a) Assault in the fourth degree under KRS 508.030;
23 (b) Menacing under KRS 508.050;
24 (c) Wanton endangerment in the second degree under KRS 508.070;
25 (d) Terroristic threatening in the third degree under KRS 508.080;
26 (e) ~~[S]talking in the second degree under KRS 508.150;~~
27 (f) ~~[U]nlawful imprisonment in the second degree under KRS 509.030;~~

1 (f){(g)} Criminal coercion under KRS 509.080;

2 (g){(h)} Criminal mischief in the second degree under KRS 512.030;

3 (h){(i)} Obstructing governmental operations under KRS 519.020;

4 (i){(j)} Resisting arrest under KRS 520.090;

5 (j){(k)} Riot in the second degree under KRS 525.030;

6 (k){(l)} Inciting to riot under KRS 525.040;

7 (l){(m)} Harassment under KRS 525.070;

8 (m){(n)} Harassing communications under KRS 525.080;

9 (n){(o)} The misdemeanor offense of carrying a concealed deadly weapon in
10 violation of KRS 527.020; or

11 (o){(p)} Possession of a handgun by a minor as a first offense under KRS
12 527.100.

13 (2) The proceeding described in subsection (1) of this section shall be conducted before
14 the court sitting with the jury that found the defendant guilty of the offense unless
15 the court for good cause discharges that jury and impanels a new jury for that
16 purpose. If the jury determines beyond a reasonable doubt that the defendant is or
17 was a member of a criminal gang, acting for the purpose of benefitting, promoting,
18 or furthering the interest of a criminal gang at the time he or she committed the
19 offense, he or she shall not be released for a minimum of seventy-six (76) to ninety
20 (90) days of the sentence imposed if the offense he or she is convicted of is
21 classified as a Class B misdemeanor, or for a minimum of three hundred eleven
22 (311) to three hundred sixty-five (365) days if the offense he or she is convicted of
23 is classified as a Class A misdemeanor.

24 (3) This section shall not apply to a juvenile unless he or she has been transferred to
25 Circuit Court as a youthful offender pursuant to KRS 640.010 and has on at least
26 one (1) prior separate occasion been adjudicated a public offender for a felony
27 offense.

1 ➔Section 11. KRS 508.155 is amended to read as follows:

2 ~~[(1) (a) Before January 1, 2016, a verdict of guilty or a plea of guilty to KRS 508.140~~
3 ~~or 508.150 shall operate as an application for a restraining order utilizing the provisions~~
4 ~~of this section and limiting the contact of the defendant and the victim who was stalked,~~
5 ~~unless the victim requests otherwise.~~

6 (b) Beginning January 1, 2016, ~~]A verdict of guilty or a plea of guilty to Section 1 of~~
7 ~~this Act[KRS 508.140 or 508.150]~~ shall operate as an application for an interpersonal
8 protective order issued under KRS Chapter 456, unless the victim requests otherwise.

9 Notwithstanding the provisions of KRS Chapter 456:

10 (1)~~1.~~ An interpersonal protective order requested under this subsection may be
11 issued by the court that entered the judgment of conviction;

12 (2)~~2.~~ The judgment of conviction shall constitute sufficient cause for the entry of
13 the order without the necessity of further proof being taken; and

14 (3)~~3.~~ The order may be effective for up to ten (10) years, with further renewals in
15 increments of up to ten (10) years.~~]~~

16 (2) ~~The court shall give the defendant notice of his or her right to request a hearing on~~
17 ~~the application for a restraining order. If the defendant waives his or her right to a~~
18 ~~hearing on this matter, then the court may issue the restraining order without a~~
19 ~~hearing.~~

20 (3) ~~If the defendant requests a hearing, it shall be held at the time of the verdict or plea~~
21 ~~of guilty, unless the victim or defendant requests otherwise. The hearing shall be~~
22 ~~held in the court where the verdict or plea of guilty was entered.~~

23 (4) ~~A restraining order may grant the following specific relief:~~

24 (a) ~~An order restraining the defendant from entering the residence, property, school, or~~
25 ~~place of employment of the victim; or~~

26 (b) ~~An order restraining the defendant from making contact with the victim, including~~
27 ~~an order forbidding the defendant from personally, or through an agent, initiating~~

1 any communication likely to cause serious alarm, annoyance, intimidation, or
2 harassment, including but not limited to personal, written, telephonic, or any other
3 form of written or electronic communication or contact with the victim. An order
4 issued pursuant to this subsection relating to a school, place of business, or similar
5 nonresidential location shall be sufficiently limited to protect the stalking victim but
6 shall also protect the defendant's right to employment, education, or the right to do
7 legitimate business with the employer of a stalking victim as long as the defendant
8 does not have contact with the stalking victim. The provisions of this subsection
9 shall not apply to a contact by an attorney regarding a legal matter.

10 (5) A restraining order issued pursuant to this section shall be valid for a period of not
11 more than ten (10) years, the specific duration of which shall be determined by the
12 court. Any restraining order shall be based upon the seriousness of the facts before
13 the court, the probability of future violations, and the safety of the victim, his or her
14 immediate family, or both.

15 (6) Unless the defendant has been convicted of a felony, or is otherwise ineligible to
16 purchase or possess a firearm under federal law, a restraining order issued pursuant
17 to this section shall not operate as a ban on the purchase or possession of firearms
18 or ammunition by the defendant.

19 (7) The restraining order shall be issued on a form prescribed by the Administrative
20 Office of the Courts and may be lifted upon application of the stalking victim to the
21 court which granted the order.

22 (8) Within twenty four (24) hours of entry of a restraining order or entry of an order
23 rescinding a restraining order, the circuit clerk shall forward a copy of the order to
24 the Law Information Network of Kentucky (LINK).

25 (9) A restraining order issued under this section shall be enforced in any county of the
26 Commonwealth. Law enforcement officers acting in good faith in enforcing a
27 restraining order shall be immune from criminal and civil liability.

1 (10) ~~A violation by the defendant of an order issued pursuant to this section shall be a~~
2 ~~Class A misdemeanor. Nothing in this section shall preclude the filing of a criminal~~
3 ~~complaint for stalking based on the same act which is the basis for the violation of~~
4 ~~the restraining order.]~~

5 ➤Section 12. KRS 532.080 is amended to read as follows:

6 (1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the
7 sentence of imprisonment assessed under KRS 532.060 for the crime of which the
8 defendant~~[such person]~~ presently stands convicted, shall fix a sentence of
9 imprisonment as authorized by subsection (5) or (6) of this section. When a
10 defendant is charged with being a persistent felony offender, the determination of
11 whether or not he or she is such an offender and the punishment to be imposed
12 pursuant to subsection (5) or (6) of this section shall be determined in a separate
13 proceeding from that proceeding which resulted in his or her last conviction.
14 The~~[Such]~~ proceeding shall be conducted before the court sitting with the jury that
15 found the defendant guilty of his or her most recent offense unless the court for
16 good cause discharges that jury and impanels a new jury for that purpose.

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

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

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

26 (c) That the offender:

27 1. Completed service of the sentence imposed on the previous felony

1 conviction within five (5) years prior to the date of commission of the
2 felony for which he *or she* now stands convicted; ~~or~~

3 2. Was on probation, parole, postincarceration supervision, conditional
4 discharge, conditional release, furlough, appeal bond, or any other form
5 of legal release from any of the previous felony convictions at the time
6 of commission of the felony for which he or she now stands convicted;[
7 or]
8 3. Was discharged from probation, parole, postincarceration supervision,
9 conditional discharge, conditional release, or any other form of legal
10 release on any of the previous felony convictions within five (5) years
11 prior to the date of commission of the felony for which he or she now
12 stands convicted;[or]
13 4. Was in custody from the previous felony conviction at the time of
14 commission of the felony for which he or she now stands convicted; or
15 5. Had escaped from custody while serving any of the previous felony
16 convictions at the time of commission of the felony for which he or she
17 now stands convicted.

18 (3) A persistent felony offender in the first degree is a person who is more than twenty-
19 one (21) years of age and who stands convicted of a felony after having been
20 convicted of two (2) or more felonies, or one (1) or more felony sex crimes against
21 a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more
22 felonies. As used in this provision, a previous felony conviction is a conviction of a
23 felony in this state or conviction of a crime in any other jurisdiction provided:
24 (a) That a sentence to a term of imprisonment of one (1) year or more or a
25 sentence to death was imposed therefor;[and]
26 (b) That the offender was over the age of eighteen (18) years at the time the
27 offense was committed; and

1 (c) That the offender:

2 1. Completed service of the sentence imposed on any of the previous
3 felony convictions within five (5) years prior to the date of the
4 commission of the felony for which he or she now stands convicted; or

5 2. Was on probation, parole, postincarceration supervision, conditional
6 discharge, conditional release, furlough, appeal bond, or any other form
7 of legal release from any of the previous felony convictions at the time
8 of commission of the felony for which he or she now stands convicted; or

9 3. Was discharged from probation, parole, postincarceration supervision,
10 conditional discharge, conditional release, or any other form of legal
11 release on any of the previous felony convictions within five (5) years
12 prior to the date of commission of the felony for which he or she now
13 stands convicted; or

14 4. Was in custody from the previous felony conviction at the time of
15 commission of the felony for which he or she now stands convicted; or

16 5. Had escaped from custody while serving any of the previous felony
17 convictions at the time of commission of the felony for which he or she
18 now stands convicted.

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

24 (5) A person who is found to be a persistent felony offender in the second degree shall
25 be sentenced to an indeterminate term of imprisonment pursuant to the sentencing
26 provisions of KRS 532.060(2) for the next highest degree than the offense for

27

1 which convicted. A person who is found to be a persistent felony offender in the
2 second degree shall not be eligible for probation, shock probation, or conditional
3 discharge, unless all offenses for which the person stands convicted are Class D
4 felony offenses which do not involve a violent act against a person, in which case
5 probation, shock probation, or conditional discharge may be granted. A violent
6 offender who is found to be a persistent felony offender in the second degree shall
7 not be eligible for parole except as provided in KRS 439.3401.

8 (6) A person who is found to be a persistent felony offender in the first degree shall be
9 sentenced to imprisonment as follows:

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

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

22 (7) A person who is found to be a persistent felony offender in the first degree shall not
23 be eligible for probation, shock probation, or conditional discharge, unless all
24 offenses for which the person stands convicted are Class D felony offenses which
25 do not involve a violent act against a person or a sex crime as that term is defined in
26 KRS 17.500, in which case, probation, shock probation, or conditional discharge
27 may be granted. If the offense the person presently stands convicted of is a Class A,

1 B, or C felony, the person shall not be eligible for parole until the person has served
2 a minimum term of incarceration of not less than ten (10) years, unless another
3 sentencing scheme applies. A violent offender who is found to be a persistent
4 felony offender in the first degree shall not be eligible for parole except as provided
5 in KRS 439.3401.

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

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

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

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

21 1. A felony offense arising out of KRS 189A.010, 189A.090, 506.140,
22 508.032, Section 1 of this Act~~{508.140}~~, or 510.015; or

23 2. Any other felony offense if the penalty was not enhanced to a higher
24 level because the Commonwealth elected to prosecute the person as a
25 first-time violator of that offense.

26 ➔Section 13. The following KRS sections are repealed:

27 508.140 Stalking in the first degree.

1 508.150 Stalking in the second degree.

2 ➔Section 14. This Act shall not affect the validity of:

3 (1) A restraining order or interpersonal protective order issued under KRS 508.155
4 prior to the effective date of this Act. All such orders shall retain the full force of
5 law for the 10-year period following the date of issuance. Upon renewal of a
6 restraining order issued under Section 11 of this Act, it shall be converted to an
7 interpersonal protective order under KRS Chapter 456; or
8 (2) A domestic violence order issued under KRS Chapter 403 or an interpersonal
9 protective order issued under KRS Chapter 456 prior to the effective date of this
10 Act where the basis of the petition was stalking.