

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 that would classify a person as a violent offender~~[designated a~~
15 ~~violent offense]~~ under KRS 439.3401 and who meets the requirements of this
16 section may at any time request the forensic deoxyribonucleic acid (DNA)
17 testing and analysis of any evidence that is in the possession or control of the
18 court or Commonwealth, that is related to the investigation or prosecution that
19 resulted in the judgment of conviction and that may contain biological
20 evidence.

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

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

- (a) If the petitioner is not represented by counsel, appoint the Department of Public Advocacy to represent the petitioner for purposes of the request, pursuant to KRS 31.110(2)(c); or
- (b) If the petitioner is represented by counsel or waives appointment of counsel in writing or if the Department of Public Advocacy has previously withdrawn from representation of the petitioner for purposes of the request, require the petitioner to deposit an amount certain with the court sufficient to cover the reasonable costs of the testing being requested.

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

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

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

- (a) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing and analysis;
- (b) The evidence is still in existence and is in a condition that allows DNA testing;

1 and analysis to be conducted;

2 (c) The evidence was not previously subjected to DNA testing and analysis or

3 was not subjected to the testing and analysis that is now requested and may

4 resolve an issue not previously resolved by the previous testing and analysis;

5 (d) Except for a petitioner sentenced to death **prior to the effective date of this**

6 **Act**, the petitioner was convicted of the offense after a trial or after entering an

7 Alford plea;

8 (e) Except for a petitioner sentenced to death **prior to the effective date of this**

9 **Act**, the testing is not sought for touch DNA, meaning casual or limited

10 contact DNA; and

11 (f) The petitioner is still incarcerated or on probation, parole, or other form of

12 correctional supervision, monitoring, or registration for the offense to which

13 the DNA relates.

14 (6) After due consideration of the request and any supplements and responses thereto,

15 the court may order DNA testing and analysis if the court finds that all of the

16 following apply:

17 (a) A reasonable probability exists that either:

18 1. The petitioner's verdict or sentence would have been more favorable if

19 the results of DNA testing and analysis had been available at the trial

20 leading to the judgment of conviction; or

21 2. DNA testing and analysis will produce exculpatory evidence;

22 (b) The evidence is still in existence and is in a condition that allows DNA testing

23 and analysis to be conducted;

24 (c) The evidence was not previously subject to DNA testing and analysis or was

25 not subjected to the testing and analysis that is now requested and that may

26 resolve an issue not previously resolved by the previous testing and analysis;

27 (d) Except for a petitioner sentenced to death **prior to the effective date of this**

1 Act, the petitioner was convicted of the offense after a trial or after entering an
2 Alford plea;

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

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

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

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

23 (9) If a petition is filed pursuant to this section, the court shall order the
24 Commonwealth~~state~~ to preserve during the pendency of the proceeding all
25 evidence in the Commonwealth's~~state's~~ possession or control that could be
26 subjected to DNA testing and analysis. The Commonwealth~~state~~ shall prepare an
27 inventory of the evidence and shall submit a copy of the inventory to the defense

1 and the court. If the evidence is intentionally destroyed after the court orders its
2 preservation, the court may impose appropriate sanctions, including criminal
3 contempt.

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

6 (a) The preservation of some of the sample for replicating the testing and
7 analysis; and
8 (b) Elimination samples from third parties.

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

12 (a) Notifying the Department of Corrections and the Parole Board;
13 (b) Requesting that the petitioner's sample be added to the Department of
14 Kentucky State Police database; and
15 (c) Providing notification to the victim or family of the victim.

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

20 ➤Section 3. KRS 532.030 is amended to read as follows:

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

27 (2) When a person is convicted of a Class A felony, he or she shall have his or her

1 punishment fixed at imprisonment in accordance with KRS 532.060.

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

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

4 (a) A term of imprisonment authorized by this chapter; or

5 (b) A fine authorized by KRS Chapter 534; or

6 (c) Both imprisonment and a fine unless precluded by the provisions of KRS

7 Chapter 534.}

8 (4) ~~In all cases in which the death penalty may be authorized the judge shall instruct the~~

9 ~~jury in accordance with subsection (1) of this section. The instructions shall state,~~

10 ~~subject to the aggravating and mitigating limitations and requirements of KRS~~

11 ~~532.025, that the jury may recommend upon a conviction for a capital offense a~~

12 ~~sentence of death, or at a term of imprisonment for life without benefit of probation~~

13 ~~or parole, or a term of imprisonment for life without benefit of probation or parole~~

14 ~~until the defendant has served a minimum of twenty five (25) years of his sentence,~~

15 ~~or a sentence of life, or to a term of not less than twenty (20) years nor more than~~

16 ~~fifty (50) years.]~~

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

18 (1) ~~A[No]~~ court shall not impose sentence for conviction of a felony~~, other than a~~

19 ~~capital offense,}~~ without first ordering a presentence investigation after conviction

20 and giving due consideration to a written report of the investigation. The

21 presentence investigation report shall not be waived; however, the completion of

22 the presentence investigation report may be delayed until after sentencing upon the

23 written request of the defendant if the defendant is in custody.

24 (2) The report shall be prepared and presented by a probation officer and shall include:

25 (a) The results of the defendant's risk and needs assessment;

26 (b) An analysis of the defendant's history of delinquency or criminality, physical

27 and mental condition, family situation and background, economic status,

1 defendant's ability to pay but no more than the actual cost of the comprehensive sex
2 offender presentence evaluation or treatment.

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

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

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

15 (1) As used in this section, "jail" means a "jail" or "regional jail" as defined in KRS
16 441.005.

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

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

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

26 (5) (a) The provisions of KRS 500.080(5) notwithstanding, if a Class D felon is
27 sentenced to an indeterminate term of imprisonment of five (5) years or less,

1 he or she shall serve that term in a jail in a county in which the fiscal court has
2 agreed to house state prisoners; except that, when an indeterminate sentence
3 of two (2) years or more is imposed on a Class D felon convicted of a sexual
4 offense enumerated in KRS 197.410(1), or a crime under KRS 17.510(12) or
5 (13), the sentence shall be served in a state institution. Counties choosing not
6 to comply with the provisions of this paragraph shall be granted a waiver by
7 the commissioner of the Department of Corrections.

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

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

19 a. Beds are available in the jail;
20 b. State facilities are at capacity; and
21 c. Halfway house beds are being utilized at the contract level as of
22 July 15, 2000.

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

27 3. Counties choosing not to comply with the provisions of this paragraph

1 shall be granted a waiver by the commissioner of the Department of
2 Corrections.

3 (d) Any jail that houses state inmates under this subsection shall offer programs
4 as recommended by the Jail Standards Commission. The Department of
5 Corrections shall adopt the recommendations of the Jail Standards
6 Commission and promulgate administrative regulations establishing required
7 programs for a jail that houses state inmates under this subsection. The
8 Department of Corrections shall approve programming offered by jails to state
9 inmates for sentencing credits in accordance with KRS 197.045.

10 (e) Before housing any female state inmate, a jail shall be certified pursuant to
11 KRS 197.020.

12 (f) 1. a. If a jail is at or over one hundred fifty percent (150%) capacity, the
13 Department of Corrections may direct the jail to transfer a
14 specified number of state prisoners to vacant beds at other
15 designated jails or state institutions. As used in this paragraph,
16 "capacity" means the capacity listed on the certificate of
17 occupancy issued each year to the jail by the Department of
18 Corrections.

19 b. The Department of Corrections shall choose which state prisoners
20 are eligible for transfer based on the security level of the vacant
21 bed at the receiving jail or state institution.

22 c. State prisoners who are approved for transfer to a Department of
23 Corrections facility for necessary medical treatment and care
24 pursuant to KRS 441.560 shall not be transferred to another jail.

25 d. State prisoners enrolled in a Department of Corrections approved
26 program pursuant to KRS 197.045 shall not be transferred.

27 e. State prisoners awaiting trial in the county they are being housed

1 shall not be transferred.

2 f. Jails that receive state prisoners pursuant to this subparagraph shall
3 be responsible for the transportation of those prisoners to the jail.

4 2. If the Department of Corrections directs the transfer of a state prisoner
5 pursuant to subparagraph 1. of this paragraph, the jailer has fourteen
6 (14) days to transfer the state prisoner. If the jailer refuses to release
7 custody of the state prisoner to the receiving jail within fourteen (14)
8 days, the department shall reduce the per diem for the jail for an amount
9 equal to the per diem of that prisoner for each day the jailer refuses to
10 comply with the direction.

11 3. If the Department of Corrections directs the transfer of a state prisoner
12 pursuant to subparagraph 1. of this paragraph, the jailer of the receiving
13 jail shall accept the transfer and transport the state prisoner in
14 accordance with subparagraph 1.f. of this paragraph. If, after receiving a
15 copy of the direction, the jailer refuses to accept and transport the state
16 prisoner, the Department of Corrections shall reduce the per diem for the
17 receiving jail for an amount equal to the per diem of that prisoner for
18 each day the jailer refuses to comply with the direction.

19 4. If a jail has a vacant bed and has a Class C or Class D felon who, based
20 on the Department of Corrections classification system, is eligible to be
21 housed in that vacant bed, the department may direct the jail to transfer
22 the state prisoner to that bed. If the jailer refuses to transfer the state
23 prisoner to the vacant bed, the Department of Corrections shall reduce
24 the per diem for the jail for an amount equal to the per diem of that
25 prisoner for each day the jailer refuses to comply with the direction.

26 5. The per diem reduced pursuant to subparagraph 2., 3., or 4. of this
27 paragraph shall be enforced by withholding the amount from the per

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

27 (b) 1. The per diem amount paid to the jail shall be increased by two dollars

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

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

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

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

20 (b) The authority to release an inmate to work under this subsection may be
21 exercised at any time during the inmate's sentence, including the period when
22 the court has concurrent authority to permit work release pursuant to KRS
23 439.265.

24 (c) The warden or jailer may require an inmate participating in the program to
25 pay a fee to reimburse the warden or jailer for the cost of operating the
26 community work program or any other work release program. The fee shall
27 not exceed the lesser of fifty-five dollars (\$55) per week or twenty percent

(20%) of the prisoner's weekly net pay earned from the community work program or work release participation. In addition, the inmate may be required to pay for any drug testing performed on the inmate as a requirement of the community work program or work release participation.

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

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

12 → Section 6. KRS 533.010 is amended to read as follows:

13 (1) Any person who has been convicted of a crime and who has not been sentenced to
14 imprisonment for life without parole or life without parole for twenty-five (25)
15 years[death] may be sentenced to probation, probation with an alternative
16 sentencing plan, or conditional discharge as provided in this chapter.

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

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

27 (b) The defendant is in need of correctional treatment that can be provided most

1 effectively by his or her commitment to a correctional institution; or

2 (c) A disposition under this chapter will unduly depreciate the seriousness of the

3 defendant's crime.

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

5 consideration of the defendant's risk and needs assessment, nature and

6 circumstances of the crime, and the history, character, and condition of the

7 defendant, probation with an alternative sentencing plan shall be granted unless the

8 court is of the opinion that imprisonment is necessary for the protection of the

9 public because:

10 (a) There is a likelihood that during a period of probation with an alternative

11 sentencing plan or conditional discharge the defendant will commit a Class D

12 or Class C felony or a substantial risk that the defendant will commit a Class

13 B or Class A felony;

14 (b) The defendant is in need of correctional treatment that can be provided most

15 effectively by commitment to a correctional institution; or

16 (c) A disposition under this chapter will unduly depreciate the seriousness of the

17 defendant's crime.

18 (4) The court shall not determine that there is a likelihood that the defendant will

19 commit a Class C or Class D felony based upon the defendant's risk and needs

20 assessment and the fact that:

21 (a) The defendant has never been convicted of, pled guilty to, or entered an

22 Alford plea to a felony offense;

23 (b) If convicted of, having pled guilty to, or entered an Alford plea to a felony

24 offense, the defendant successfully completed probation more than ten (10)

25 years immediately prior to the date of the commission of the felony for which

26 the defendant is now being sentenced and has had no intervening convictions,

27 pleas of guilty, or Alford pleas to any criminal offense during that period; or

- 1 (c) The defendant has been released from incarceration for the commission of a
- 2 felony offense more than ten (10) years immediately prior to the date of the
- 3 commission of the felony for which the defendant is now being sentenced and
- 4 has had no intervening convictions, pleas of guilty, or Alford pleas to any
- 5 criminal offense during that period.
- 6 (5) In making a determination under subsection (4) of this section, the court may
- 7 determine that the greater weight of the evidence indicates that there is a likelihood
- 8 that the defendant will commit a Class C or Class D felony.
- 9 (6) Upon initial sentencing of a defendant or upon modification or revocation of
- 10 probation, when the court deems it in the best interest of the public and the
- 11 defendant, the court may order probation with the defendant to serve one (1) of the
- 12 following alternative sentences:
 - 13 (a) To a halfway house for no more than twelve (12) months;
 - 14 (b) To home incarceration with or without work release for no more than twelve
 - 15 (12) months;
 - 16 (c) To jail for a period not to exceed twelve (12) months with or without work
 - 17 release, community service, and other programs as required by the court;
 - 18 (d) To a residential treatment program for the abuse of alcohol or controlled
 - 19 substances;
 - 20 (e) To a reentry center for no more than twelve (12) months; or
 - 21 (f) To any other specified counseling program, rehabilitation or treatment
 - 22 program, or facility.
- 23 (7) If during the term of the alternative sentence the defendant fails to adhere to and
- 24 complete the conditions of the alternative sentence, the court may modify the terms
- 25 of the alternative sentence or may modify or revoke probation and alternative
- 26 sentence and commit the defendant to an institution.
- 27 (8) In addition to those conditions that the court may impose, the conditions of

1 alternative sentence shall include the following and, if the court determines that the
2 defendant cannot comply with them, then they shall not be made available:

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

4 1. Be working or pursuing his or her education or be enrolled in a full-time
5 treatment program;

6 2. Pay restitution during the term of probation; and

7 3. Have no contact with the victim of the defendant's crime;

8 (b) A defendant sentenced to home incarceration shall:

9 1. Be employed by another person or self-employed at the time of
10 sentencing to home incarceration and continue the employment
11 throughout the period of home incarceration, unless the court determines
12 that there is a compelling reason to allow home incarceration while the
13 defendant is unemployed;

14 2. Pay restitution during the term of home incarceration;

15 3. Enter a treatment program, if appropriate;

16 4. Pay all or some portion of the cost of home incarceration as determined
17 by the court;

18 5. Comply with other conditions as specified; and

19 6. Have no contact with the victim of the defendant's crime;

20 (c) A defendant sentenced to jail with community service shall:

21 1. Pay restitution during all or some part of the defendant's term of
22 probation; and

23 2. Have no contact with the victim of the defendant's crime;

24 (d) A defendant sentenced to a residential treatment program for drug and alcohol
25 abuse shall:

26 1. Undergo mandatory drug screening during term of probation;

27 2. Be subject to active, supervised probation for a term of five (5) years;

- 1 3. Undergo aftercare as required by the treatment program;
- 2 4. Pay restitution during the term of probation; and
- 3 5. Have no contact with the victim of the defendant's crime; or
- 4 (e) A defendant sentenced to a reentry center shall:
 - 5 1. Be employed in the community or working in a vocational program at the reentry center;
 - 6 2. Be enrolled in a treatment program;
 - 7 3. Pay restitution, fees, and fines during the term of probation; and
 - 8 4. Comply with other conditions as specified.
- 9 (9) When the court deems it in the best interest of the defendant and the public, the court may order the person to work at community service related projects under the terms and conditions specified in KRS 533.070. Work at community service related projects shall be considered~~as~~ a form of conditional discharge.
- 10 (10) Probation with alternative sentence shall not be available as set out in KRS 532.045 and 533.060, except as provided in KRS 533.030(6).
- 11 (11) The court may utilize a community corrections program authorized or funded under KRS Chapter 196 to provide services to any person released under this section.
- 12 (12) When the court deems it in the best interest of the defendant and the public, the court may order the defendant to placement for probation monitoring by a private agency. The private agency shall report to the court on the defendant's compliance with his or her terms of probation or conditional discharge. The defendant shall be responsible for any reasonable charges which the private agency charges.
- 13 (13) The jailer in each county incarcerating Class C or D felons may deny work release privileges to any defendant for violating standards of discipline or other jail regulations. The jailer shall report the action taken and the details of the violation on which the action was based to the court of jurisdiction within five (5) days of the violation.

1 (14) The Department of Corrections shall, by administrative regulation, develop written
2 criteria for work release privileges granted under this section.

3 (15) Reimbursement of incarceration costs shall be paid directly to the jailer in the
4 amount specified by written order of the court. Incarceration costs owed to the
5 Department of Corrections shall be paid through the circuit clerk.

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

8 ➔Section 7. KRS 640.010 is amended to read as follows:

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

12 (2) (a) In the case of a child alleged to be a youthful offender by falling within the
13 purview of KRS 635.020(2) to (8), the District Court shall, upon motion by
14 the county attorney to proceed under this chapter, and after the county
15 attorney has consulted with the Commonwealth's attorney, conduct a
16 preliminary hearing to determine if the child should be transferred to Circuit
17 Court as a youthful offender. The preliminary hearing shall be conducted in
18 accordance with the Rules of Criminal Procedure.

19 (b) At the preliminary hearing, the court shall determine if there is probable cause
20 to believe that an offense was committed, that the child committed the
21 offense, and that the child is of sufficient age and has the requisite number of
22 prior adjudications, if any, necessary to fall within the purview of KRS
23 635.020.

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

27 1. The seriousness of the alleged offense;

- 1 2. Whether the offense was against persons or property, with greater
- 2 weight being given to offenses against persons;
- 3 3. The maturity of the child as determined by his *or her* environment;
- 4 4. The child's prior record;
- 5 5. The best interest of the child and community;
- 6 6. The prospects of adequate protection of the public;
- 7 7. The likelihood of reasonable rehabilitation of the child by the use of
- 8 procedures, services, and facilities currently available to the juvenile
- 9 justice system;
- 10 8. Evidence of a child's participation in a gang;
- 11 9. Whether the child is a defendant with a serious intellectual disability *as*
- 12 *defined in subsection (4) of this section*~~in accordance with KRS~~
- 13 532.130}; and
- 14 10. Whether the child used a firearm in the commission of the offense.

15 (d) If, following the completion of the preliminary hearing, the District Court

16 finds, after considering the factors enumerated in paragraph (c) of this

17 subsection, that two (2) or more of the factors specified in paragraph (c) of

18 this subsection are determined to favor transfer, the child may be transferred

19 to Circuit Court, and if the child is transferred the District Court shall issue an

20 order transferring the child as a youthful offender and shall state on the record

21 the reasons for the transfer. The child shall then be proceeded against in the

22 Circuit Court as an adult, except as otherwise provided in this chapter.

23 (e) If, following completion of the preliminary hearing, the District Court is of

24 the opinion, after considering the factors enumerated in paragraph (c) of this

25 subsection, that the child shall not be transferred to the Circuit Court, the case

26 shall be dealt with as provided in KRS Chapter 635.

27 (3) If the child is transferred to Circuit Court under this section and the grand jury does

1 not find that there is probable cause to indict the child as a youthful offender, as
2 defined in KRS 635.020(2) to (8), but does find that there is probable cause to
3 indict the child for another criminal offense, the child shall not be tried as a
4 youthful offender in Circuit Court but shall be returned to District Court to be dealt
5 with as provided in KRS Chapter 635.

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

7 (a) "Serious intellectual disability" means significantly subaverage general
8 intellectual functioning existing concurrently with substantial deficits in
9 adaptive behavior and manifested during the developmental period; and

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

12 ➔ Section 8. KRS 640.040 is amended to read as follows:

13 (1) A[No] youthful offender who has been convicted of a capital offense ~~[who was~~
14 ~~under the age of sixteen (16) years at the time of the commission of the offense~~
15 ~~shall be sentenced to capital punishment. A youthful offender may be sentenced to~~
16 ~~capital punishment if he was sixteen (16) years of age or older at the time of the~~
17 ~~commission of the offense. A youthful offender convicted of a capital offense~~
18 ~~regardless of age may be sentenced to a term of imprisonment appropriate for one~~
19 ~~who has committed a Class A felony and]may not be sentenced to life~~
20 ~~imprisonment without benefit of parole[for twenty five (25) years].~~

21 (2) A[No] youthful offender shall not be subject to persistent felony offender
22 sentencing under the provisions of KRS 532.080 for offenses committed before the
23 age of eighteen (18) years.

24 (3) A[No] youthful offender shall not be subject to limitations on probation, parole or
25 conditional discharge as provided for in KRS 533.060.

26 (4) Any youthful offender convicted of a misdemeanor or any felony offense which
27 would exempt him or her from KRS 635.020(2) to[, (3), (4), (5), (6), (7), or] (8)

1 shall be disposed of by the Circuit Court in accordance with the provisions of KRS
2 635.060.

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

4 431.213 Definitions for KRS 431.213, 431.2135, and 431.240.

5 431.2135 Procedure for challenging condemned person's sanity.

6 431.218 Date of execution of condemned -- Copy of mandate to proper officer.

7 431.220 Execution of death sentence.

8 431.223 Method of execution in event of unconstitutionality of KRS 431.220.

9 431.224 Retroactive applicability.

10 431.240 Time of execution -- Governor to fix time in case of insanity, pregnancy, or
11 escape -- Administrative hearings -- Transfer to forensic psychiatric facility in case
12 of insanity.

13 431.250 Persons who may attend executions.

14 431.260 Warden's return on judgment.

15 431.270 Delivery or burial of body.

16 507A.060 Death sentence prohibited.

17 532.025 Presentence hearings -- Use of juvenile court records -- Aggravating or
18 mitigating circumstances -- Instructions to jury.

19 532.075 Review of death sentence by Supreme Court.

20 532.130 Definitions for KRS 532.135 and 532.140.

21 532.135 Determination by court that defendant has a serious intellectual disability or
22 serious mental illness.

23 532.140 Defendant with a serious intellectual disability or serious mental illness not
24 subject to execution -- Authorized sentences.

25 532.300 Prohibition against death sentence being sought or given on the basis of race --
26 Procedures for dealing with claims.

27 532.305 Application of KRS 532.300.

- 1 532.309 Short title for KRS 532.300 to 532.309.