

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:

17 1. Is in the possession or control of the court or Commonwealth; ~~that~~

18 2. Is related to the investigation or prosecution that resulted in the
19 judgment of conviction; ~~and that~~

20 3. May contain biological 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:

- 1 (a) If the petitioner is not represented by counsel, appoint the Department of
2 Public Advocacy to represent the petitioner for purposes of the request,
3 pursuant to KRS 31.110(2)(c); or
- 4 (b) If the petitioner is represented by counsel, ~~for~~ waives appointment of counsel
5 in writing, or if the Department of Public Advocacy has previously withdrawn
6 from representation of the petitioner for purposes of the request, require the
7 petitioner to deposit an amount certain with the court sufficient to cover the
8 reasonable costs of the testing being requested.
- 9 (3) Counsel representing the petitioner shall be provided a reasonable opportunity to
10 investigate the petitioner's request and shall be permitted to supplement the request.
11 Pursuant to KRS 31.110(2)(c), the petitioner shall have no further right to counsel
12 provided by the Department of Public Advocacy on the matter if counsel
13 determines that it is not a proceeding that a reasonable person with adequate means
14 would be willing to bring at his or her own expense. If the Department of Public
15 Advocacy moves to withdraw as counsel for petitioner and the court grants the
16 motion, the court shall proceed as directed under subsection (2)(b) of this section.
- 17 (4) Upon receipt of the deposit required under subsection (2)(b) of this section or a
18 motion from counsel provided by the Department of Public Advocacy to proceed,
19 the court shall provide notice to the prosecutor and an opportunity to respond to the
20 petitioner's request.
- 21 (5) After due consideration of the request and any supplements and responses to the
22 request ~~there to~~, the court shall order DNA testing and analysis if the court finds
23 that all of the following apply:
- 24 (a) A reasonable probability exists that the petitioner would not have been
25 prosecuted or convicted if exculpatory results had been obtained through
26 DNA testing and analysis;
- 27 (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 *to the*
15 *request*~~thereof~~, the court may order DNA testing and analysis if the court finds
16 that all of the 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 using the standards set out in KRS
12 31.120 and the Department of Public Advocacy so moves, the court shall treat the
13 costs of testing and analysis as a direct expense of the defense for the purposes of
14 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 education, occupation, and personal habits;
- 2 (c) A preliminary calculation of the credit allowed the defendant for time spent in
3 custody prior to the commencement of a sentence under KRS 532.120; and
- 4 (d) Any other matters that the court directs to be included.
- 5 (3) Before imposing sentence for a felony conviction, the court may order the
6 defendant to submit to psychiatric observation and examination for a period not
7 exceeding sixty (60) days. The defendant may be remanded for this purpose to any
8 available clinic or mental hospital or the court may appoint a qualified psychiatrist
9 to make the examination.
- 10 (4) If the defendant has been convicted of a sex crime, as defined in KRS 17.500, prior
11 to determining the sentence or prior to final sentencing for youthful offenders, the
12 court shall order a comprehensive sex offender presentence evaluation of the
13 defendant to be conducted by an approved provider~~[,]~~ as defined in KRS 17.500,
14 the Department of Corrections, or the Department of Juvenile Justice if the
15 defendant is a youthful offender. The comprehensive sex offender presentence
16 evaluation shall provide to the court a recommendation related to the risk of a
17 repeat offense by the defendant and the defendant's amenability to treatment and
18 shall be considered by the court in determining the appropriate sentence. A copy of
19 the comprehensive sex offender presentence evaluation shall be furnished to the
20 court, the Commonwealth's attorney, and ~~to~~ counsel for the defendant. If the
21 defendant is eligible and the court suspends the sentence and places the defendant
22 on probation or conditional discharge, ~~the provisions of~~ KRS 532.045(3) to (8)
23 shall apply. All communications relative to the comprehensive sex offender
24 presentence evaluation and treatment of the sex offender shall fall under ~~the~~
25 ~~provisions of~~ KRS 197.440 and shall not be made a part of the court record subject
26 to review in appellate proceedings. The defendant shall pay for any comprehensive
27 sex offender presentence evaluation or treatment required pursuant to this section

1 up to the defendant's ability to pay but no more than the actual cost of the
2 comprehensive sex 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)~~ Notwithstanding ~~The provisions of~~ KRS 500.080(5) ~~notwithstanding~~, if a
27 Class D felon is sentenced to an indeterminate term of imprisonment of five

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

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

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

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

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

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

- 1 program pursuant to KRS 197.045 shall not be transferred.
- 2 e. State prisoners awaiting trial in the county they are being housed
- 3 shall not be transferred.
- 4 f. Jails that receive state prisoners pursuant to this subparagraph shall
- 5 be responsible for the transportation of those prisoners to the jail.
- 6 2. If the Department of Corrections directs the transfer of a state prisoner
- 7 pursuant to subparagraph 1. of this paragraph, the jailer has fourteen
- 8 (14) days to transfer the state prisoner. If the jailer refuses to release
- 9 custody of the state prisoner to the receiving jail within fourteen (14)
- 10 days, the department shall reduce the per diem for the jail for an amount
- 11 equal to the per diem of that prisoner for each day the jailer refuses to
- 12 comply with the direction.
- 13 3. If the Department of Corrections directs the transfer of a state prisoner
- 14 pursuant to subparagraph 1. of this paragraph, the jailer of the receiving
- 15 jail shall accept the transfer and transport the state prisoner in
- 16 accordance with subparagraph 1.f. of this paragraph. If, after receiving a
- 17 copy of the direction, the jailer refuses to accept and transport the state
- 18 prisoner, the Department of Corrections shall reduce the per diem for the
- 19 receiving jail for an amount equal to the per diem of that prisoner for
- 20 each day the jailer refuses to comply with the direction.
- 21 4. If a jail has a vacant bed and has a Class C or Class D felon who, based
- 22 on the Department of Corrections classification system, is eligible to be
- 23 housed in that vacant bed, the department may direct the jail to transfer
- 24 the state prisoner to that bed. If the jailer refuses to transfer the state
- 25 prisoner to the vacant bed, the Department of Corrections shall reduce
- 26 the per diem for the jail for an amount equal to the per diem of that
- 27 prisoner for each day the jailer refuses to comply with the direction.

1 5. The per diem reduced pursuant to subparagraph 2., 3., or 4. of this
2 paragraph shall be enforced by withholding the amount from the per
3 diem paid to the jail pursuant to KRS 431.215(2).

4 6. If a jail that is at or over one hundred fifty percent (150%) capacity
5 requests the transfer of a specified number of state prisoners, the
6 Department of Corrections may, if vacant beds are available at other
7 jails, direct the transfer in accordance with subparagraph 1. of this
8 paragraph.

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

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

23 ~~(6)(7)~~ (a) Class D felons and Class C felons serving their time in a jail shall be
24 considered state prisoners, and, except as provided in subsection ~~(4)(5)~~(f) of
25 this section, the Department of Corrections shall pay the jail in which the
26 prisoner is incarcerated a per diem amount determined according to KRS
27 431.215(2). For other state prisoners and parole violator prisoners, the per

1 diem payments shall also begin on the date prescribed in KRS 431.215(2),
2 except as provided in subsection ~~(4)~~~~(5)~~(f) of this section.

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

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

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

16 ~~(7)~~~~(8)~~ State prisoners, excluding the Class D felons and Class C felons qualifying to
17 serve time in jails, shall be transferred to the state institution within forty-five (45)
18 days of final sentencing.

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

23 (b) The authority to release an inmate to work under this subsection may be
24 exercised at any time during the inmate's sentence, including the period when
25 the court has concurrent authority to permit work release pursuant to KRS
26 439.265.

27 (c) The warden or jailer may require an inmate participating in the program to

1 pay a fee to reimburse the warden or jailer for the cost of operating the
 2 community work program or any other work release program. The fee shall
 3 not exceed the lesser of fifty-five dollars (\$55) per week or twenty percent
 4 (20%) of the prisoner's weekly net pay earned from the community work
 5 program or work release participation. In addition, the inmate may be required
 6 to pay for any drug testing performed on the inmate as a requirement of the
 7 community work program or work release participation.

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

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

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

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

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

- 1 (a) There is substantial risk that during a period of probation or conditional
2 discharge the defendant will commit another crime;
- 3 (b) The defendant is in need of correctional treatment that can be provided most
4 effectively by his or her commitment to a correctional institution; or
- 5 (c) A disposition under this chapter will unduly depreciate the seriousness of the
6 defendant's crime.
- 7 (3) In the event the court determines that probation is not appropriate after due
8 consideration of the defendant's risk and needs assessment, nature and
9 circumstances of the crime, and the history, character, and condition of the
10 defendant, probation with an alternative sentencing plan shall be granted unless the
11 court determines~~[is of the opinion]~~ that imprisonment is necessary for the
12 protection of the public because:
- 13 (a) There is a likelihood that during a period of probation with an alternative
14 sentencing plan or conditional discharge the defendant will commit a Class D
15 or Class C felony or a substantial risk that the defendant will commit a Class
16 B or Class A felony;
- 17 (b) The defendant is in need of correctional treatment that can be provided most
18 effectively by commitment to a correctional institution; or
- 19 (c) A disposition under this chapter will unduly depreciate the seriousness of the
20 defendant's crime.
- 21 (4) The court shall not determine that there is a likelihood that the defendant will
22 commit a Class C or Class D felony based upon the defendant's risk and needs
23 assessment and the fact that:
- 24 (a) The defendant has never been convicted of, pled guilty to, or entered an
25 Alford plea to a felony offense;
- 26 (b) If convicted of, having pled guilty to, or entered an Alford plea to a felony
27 offense, the defendant successfully completed probation more than ten (10)

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

1 of the alternative sentence or may modify or revoke probation and alternative
2 sentence and commit the defendant to an institution.

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

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

- 7 1. Be working or pursuing his or her education or be enrolled in a full-time
8 treatment program;
- 9 2. Pay restitution during the term of probation; and
- 10 3. Have no contact with the victim of the defendant's crime;

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

- 12 1. Be employed by another person or self-employed at the time of
13 sentencing to home incarceration and continue the employment
14 throughout the period of home incarceration, unless the court determines
15 that there is a compelling reason to allow home incarceration while the
16 defendant is unemployed;
- 17 2. Pay restitution during the term of home incarceration;
- 18 3. Enter a treatment program, if appropriate;
- 19 4. Pay all or some portion of the cost of home incarceration as determined
20 by the court;
- 21 5. Comply with other conditions as specified; and
- 22 6. Have no contact with the victim of the defendant's crime;

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

- 24 1. Pay restitution during all or some part of the defendant's term of
25 probation; and
- 26 2. Have no contact with the victim of the defendant's crime;

27 (d) A defendant sentenced to a residential treatment program for drug and alcohol

1 abuse shall:

- 2 1. Undergo mandatory drug screening during term of probation;
- 3 2. Be subject to active, supervised probation for a term of five (5) years;
- 4 3. Undergo aftercare as required by the treatment program;
- 5 4. Pay restitution during the term of probation; and
- 6 5. Have no contact with the victim of the defendant's crime; or

7 (e) A defendant sentenced to a reentry center shall:

- 8 1. Be employed in the community or working in a vocational program at
9 the reentry center;
- 10 2. Be enrolled in a treatment program;
- 11 3. Pay restitution, fees, and fines during the term of probation; and
- 12 4. Comply with other conditions as specified.

13 (9) When the court deems it in the best interest of the defendant and the public, the
14 court may order the person to work at community service related projects under the
15 terms and conditions specified in KRS 533.070. Work at community service related
16 projects shall be considered ~~as~~ a form of conditional discharge.

17 (10) Probation with alternative sentence shall not be available as set out in KRS 532.045
18 and 533.060, except as provided in KRS 533.030(6).

19 (11) The court may utilize a community corrections program authorized or funded under
20 KRS Chapter 196 to provide services to any person released under this section.

21 (12) When the court deems it in the best interest of the defendant and the public, the
22 court may order the defendant to placement for probation monitoring by a private
23 agency. The private agency shall report to the court on the defendant's compliance
24 with his or her terms of probation or conditional discharge. The defendant shall be
25 responsible for any reasonable charges which the private agency charges.

26 (13) The jailer in each county incarcerating Class C or D felons may deny work release
27 privileges to any defendant for violating standards of discipline or other jail

1 regulations. The jailer shall report the action taken and the details of the violation
2 on which the action was based to the court of jurisdiction within five (5) days of the
3 violation.

4 (14) The Department of Corrections shall, by administrative regulation *promulgated in*
5 *accordance with KRS Chapter 13A*, develop written criteria for work release
6 privileges granted under this section.

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

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

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

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

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

23 (b) At the preliminary hearing, the court shall determine if there is probable cause
24 to believe that an offense was committed, that the child committed the
25 offense, and that the child is of sufficient age and has the requisite number of
26 prior adjudications, if any, necessary to fall within the purview of KRS
27 635.020.

- 1 (c) If the District Court determines probable cause exists, the court shall consider
2 the following factors before determining whether the child's case shall be
3 transferred to the Circuit Court:
- 4 1. The seriousness of the alleged offense;
 - 5 2. Whether the offense was against persons or property, with greater
6 weight being given to offenses against persons;
 - 7 3. The maturity of the child as determined by his or her environment;
 - 8 4. The child's prior record;
 - 9 5. The best interests~~[interest]~~ of the child and community;
 - 10 6. The prospects of adequate protection of the public;
 - 11 7. The likelihood of reasonable rehabilitation of the child by the use of
12 procedures, services, and facilities currently available to the juvenile
13 justice system;
 - 14 8. Evidence of a child's participation in a gang;
 - 15 9. Whether the child is a defendant with a serious intellectual disability as
16 defined in subsection (4) of this section~~[in accordance with KRS~~
17 ~~532.130]~~; and
 - 18 10. Whether the child used a firearm in the commission of the offense.
- 19 (d) If, following the completion of the preliminary hearing, the District Court
20 finds, after considering the factors enumerated in paragraph (c) of this
21 subsection, that two (2) or more of the factors specified in paragraph (c) of
22 this subsection are determined to favor transfer, the child may be transferred
23 to Circuit Court, and if the child is transferred the District Court shall issue an
24 order transferring the child as a youthful offender and shall state on the record
25 the reasons for the transfer. The child shall then be proceeded against in the
26 Circuit Court as an adult, except as otherwise provided in this chapter.
- 27 (e) If, following completion of the preliminary hearing, the District Court

1 determines~~[is of the opinion]~~, after considering the factors enumerated in
 2 paragraph (c) of this subsection, that the child shall not be transferred to the
 3 Circuit Court, the case shall proceed under~~[be dealt with as provided in]~~ KRS
 4 Chapter 635.

5 (3) If the child is transferred to Circuit Court under this section and the grand jury does
 6 not find that there is probable cause to indict the child as a youthful offender, as
 7 defined in KRS 635.020(2) to (8), but does find that there is probable cause to
 8 indict the child for another criminal offense, the child shall not be tried as a
 9 youthful offender in Circuit Court but shall be returned to District Court to
 10 proceed~~[be dealt with]~~ as provided in KRS Chapter 635.

11 (4) As used in this section:

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

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

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

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

26 (2) A~~[No]~~ youthful offender shall not be subject to persistent felony offender
 27 sentencing under ~~[the provisions of]~~KRS 532.080 for offenses committed before

1 the age of eighteen (18) years.

2 (3) ~~A~~~~No~~ youthful offender shall **not** be subject to limitations on probation, parole or
3 conditional discharge as provided ~~for~~ in KRS 533.060.

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

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

9 431.213 Definitions for KRS 431.213, 431.2135, and 431.240.

10 431.2135 Procedure for challenging condemned person's sanity.

11 431.218 Date of execution of condemned -- Copy of mandate to proper officer.

12 431.220 Execution of death sentence.

13 431.223 Method of execution in event of unconstitutionality of KRS 431.220.

14 431.224 Retroactive applicability.

15 431.240 Time of execution -- Governor to fix time in case of insanity, pregnancy, or
16 escape -- Administrative hearings -- Transfer to forensic psychiatric facility in case
17 of insanity.

18 431.250 Persons who may attend executions.

19 431.260 Warden's return on judgment.

20 431.270 Delivery or burial of body.

21 507A.060 Death sentence prohibited.

22 532.025 Presentence hearings -- Use of juvenile court records -- Aggravating or
23 mitigating circumstances -- Instructions to jury.

24 532.075 Review of death sentence by Supreme Court.

25 532.130 Definitions for KRS 532.135 and 532.140.

26 532.135 Determination by court that defendant has a serious intellectual disability or
27 serious mental illness.

- 1 532.140 Defendant with a serious intellectual disability or serious mental illness not
- 2 subject to execution -- Authorized sentences.
- 3 532.300 Prohibition against death sentence being sought or given on the basis of race --
- 4 Procedures for dealing with claims.
- 5 532.305 Application of KRS 532.300.
- 6 532.309 Short title for KRS 532.300 to 532.309.