

AN ACT relating to the abolition of the death penalty.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 132 IS CREATED TO READ AS FOLLOWS:

(1) Notwithstanding any provision of law to the contrary, capital punishment by means of the death penalty is abolished as of the effective date of this Act.

(2) The court having jurisdiction over a person sentenced to death before the effective date of this Act and for whom the death sentence had not been executed shall sentence that person to imprisonment for life without benefit of probation or parole.

➔Section 2. KRS 24A.110 is amended to read as follows:

- (1) The District Court shall have exclusive jurisdiction to make final disposition of all criminal matters, including violations of county, urban-county, or city ordinances or codes, except:
 - (a) Offenses denominated by statute as felonies or capital offenses; and
 - (b) Offenses punishable by death or imprisonment in the penitentiary.
- (2) The District Court has exclusive jurisdiction to make a final disposition of any charge or a public offense denominated as a misdemeanor or violation, except where the charge is joined with an indictment for a felony, and all violations of county, urban-county, or city ordinances and, prior to trial, to commit the defendant to jail or hold him or her to bail or other form of pretrial release.
- (3) The District Court has, concurrent with Circuit Court, jurisdiction to examine any charge of a public offense denominated as a felony~~[or capital offense]~~ or which may be punished by~~[death or]~~ imprisonment in the penitentiary and to commit the defendant to jail or hold him or her to bail or other form of pretrial release.
- (4) The District Court may, upon motion and for good cause shown, reduce a charge of a felony to a misdemeanor in accordance with the Rules of Criminal Procedure.

➔Section 3. KRS 27A.430 is amended to read as follows:

The institutional level of the system shall consist of at least the following information:

- (1) Date of institutionalization;
- (2) Type of incoming action;
- ~~(3) If defendant sentenced to death:~~
 - ~~(a) First scheduled date of execution;~~
 - ~~(b) Date defendant executed;~~
 - ~~(c) Date sentence commuted in lieu of execution;~~
 - ~~(d) Sentence to which sentence of death was commuted;~~
- ~~(4)~~ Date defendant released from institution;
- ~~(4)~~~~(5)~~ Type of release from institution;
- ~~(5)~~~~(6)~~ If the offender is released on parole:
 - (a) Offense for which convicted;
 - (b) Maximum expiration date;
 - (c) Minimum expiration date;
 - (d) Was the parole supervision fee imposed;
 - (e) What was the amount actually imposed for the parole supervision fee;
 - (f) What amount of the parole supervision fee was actually collected;
 - (g) Was restitution ordered as part of conditions of the parole;
 - (h) What amount of restitution was ordered;
 - (i) What amount of restitution has been paid;
 - (j) Was a victim impact statement presented to the parole board; did it favor the release of the offender;
 - (k) Did the prosecutor present a statement to the parole board; did it favor the release of the offender; and
 - (l) Did the victim or a representative of the victim appear before the parole board; did he or she favor the release of the offender;

~~(6)~~~~(7)~~ If the offender released on parole violates parole or is rearrested:

- (a) What was the specific parole violation;
- (b) Was the offender arrested for the violation;
- (c) What was the outcome of the parole violation hearing;
- (d) Was the offender reinstitutionalized;
- (e) If arrested for a new criminal offense, list the KRS number, name, and level of the offense;
- (f) Was the offender subsequently convicted thereof;
- (g) Was the offender reinstitutionalized for the offense; and
- (h) Was the offender placed on probation for the offense.

➔Section 4. KRS 431.060 is amended to read as follows:

Offenses are either felonies, misdemeanors, or violations:

- (1) Offenses punishable by ~~death or~~ confinement in the penitentiary, whether or not a fine or other penalty may also be assessed, are felonies.
- (2) Offenses punishable by confinement other than in the penitentiary, whether or not a fine or other penalty may also be assessed, are misdemeanors.
- (3) Offenses punishable by a fine only or by any other penalty not cited herein, whether in combination with a fine or not, are violations.

➔Section 5. KRS 431.215 is amended to read as follows:

- (1) If the judgment imposes a sentence of ~~death or~~ confinement in the penitentiary, county jail or other institution, two (2) certified copies thereof shall be furnished forthwith to the sheriff who shall execute the same by delivering the defendant and a certified copy of the judgment to the person in charge of the penitentiary, jail or institution of confinement and making a written return thereof in the office of the circuit clerk within ten (10) days after the execution.
- (2) When the judgment imposes a sentence of ~~death or~~ confinement in the penitentiary, the county in which the prisoner is incarcerated shall receive from the

State Treasury a fee per day beginning on the fifth day following the day on which judgment was rendered and ending the day that the defendant is delivered to the penitentiary. The fee shall be paid to the county treasurer for use for the incarceration of prisoners as provided in KRS 441.025.

➔Section 6. KRS 431.510 is amended to read as follows:

- (1) It shall be unlawful for any person to engage in the business of bail bondsman as defined in subsection (3) of this section, or to otherwise for compensation or other consideration:
 - (a) Furnish bail or funds or property to serve as bail; or
 - (b) Make bonds or enter into undertakings as surety;for the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine or imprisonment ~~or death~~ before any of the courts of this state, including city courts, or to secure the payment of fines imposed and of costs assessed by such courts upon a final disposition.
- (2) Nothing contained herein shall serve to release any bail bondsman heretofore licensed by this state from the obligation of undischarged bail bond liability existing on June 19, 1976.
- (3) "Bail bondsman" shall mean any person, partnership, or corporation engaged for profit in the business of furnishing bail, making bonds or entering into undertakings, as surety, for the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine or imprisonment ~~or death~~ before any of the courts of this state, or securing the payment of fines imposed and of costs assessed by such courts upon final disposition thereof, and the business of a bail bondsman shall be limited to the acts, transactions, and undertakings described in this subsection and to no other.
- (4) KRS 431.510 to 431.550 shall not be construed to limit or repeal KRS 431.021 or to prevent licensed insurers providing security required by Subtitle 39 of KRS Chapter

304 and nonprofit associations from posting or causing to be posted by licensed insurers security or acting as surety for their insureds or members for an offense arising from the operation of a motor vehicle, provided that such posting of security or acting as surety is merely incidental to the terms and conditions of an insurance contract or a membership agreement and provided further that no separate premium or charge therefor is required from the insureds or members.

➔Section 7. KRS 439.265 is amended to read as follows:

- (1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any Circuit Court may, upon motion of the defendant made not earlier than thirty (30) days nor later than one hundred eighty (180) days after the defendant has been incarcerated in a county jail following his or her conviction and sentencing pending delivery to the institution to which he or she has been sentenced, or delivered to the keeper of the institution to which he or she has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon terms the court determines. Time spent on any form of release following conviction shall not count toward time required under this section.
- (2) The court shall consider any motion filed in accordance with subsection (1) of this section within sixty (60) days of the filing date of that motion, and shall enter its ruling within ten (10) days after considering the motion. The defendant may, in the discretion of the trial court, have the right to a hearing on any motion he or she may file, or have filed for him or her, that would suspend further execution of sentence. Any court order granting or denying a motion to suspend further execution of sentence is not reviewable.
- (3) (a) During the period in which the defendant may file a motion pursuant to this statute, the sentencing judge, within his or her discretion, may order that the defendant be held in a local detention facility that is not at or above maximum capacity until such time as the court rules on said motion. During this period

of detention, and prior to the court's ruling on said motion, the court may require the defendant to participate in any approved community work program or other forms of work release. Persons held in the county jail pursuant to this subsection shall not be subject to transfer to a state correctional facility until the decision is made not to place the petitioner on shock probation.

- (b) The provisions concerning community work programs or other forms of work release shall apply only to persons convicted of Class C or Class D felonies, and may be granted only after a hearing at which the Commonwealth's attorney has the opportunity to present arguments in favor or opposition thereto.
- (4) If the defendant is a violent offender as defined in KRS 439.3401, the sentence shall not be probated under this section.
- (5) If the defendant has been convicted of an offense under KRS 510.050, 510.080, 530.020, 530.064(1)(a), or 531.310, or criminal attempt to commit any of these offenses under KRS 506.010, the sentence shall not be suspended, in accordance with KRS 532.045.
- (6) When a defendant has been convicted of a sex crime, as defined in KRS 17.500, the court shall order a comprehensive sex offender presentence evaluation, unless one has been provided within the past six (6) months, in which case the court may order an update of the comprehensive sex offender presentence evaluation of the defendant conducted by the sex offender treatment program operated or approved by the Department of Corrections or the Sex Offender Risk Assessment Advisory Board. The comprehensive sex offender presentence evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining whether to suspend the sentence. If the court suspends the sentence and places the defendant on probation, the provisions of KRS 532.045(3) to (7) shall

apply.

- (7) The authority granted in this section shall be exercised by the judge who imposed sentence on the defendant, unless he or she is unable to act and it appears that his or her inability to act should continue beyond the expiration of the term of the court. In such case, the judge who imposed sentence shall assign a judge to dispose of a motion filed under this section, or as prescribed by the rules and practices concerning the responsibility for disposition of criminal matters.

~~[(8) The provisions of this section shall not apply where a sentence of death has been imposed.]~~

➔Section 8. KRS 506.010 is amended to read as follows:

- (1) A person is guilty of criminal attempt to commit a crime when, acting with the kind of culpability otherwise required for commission of the crime, he or she:
- (a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he or she believes them to be; or
- (b) Intentionally does or omits to do anything which, under the circumstances as he or she believes them to be, is a substantial step in a course of conduct planned to culminate in his or her commission of the crime.
- (2) Conduct shall not be held to constitute a substantial step under subsection (1)(b) unless it is an act or omission which leaves no reasonable doubt as to the defendant's intention to commit the crime which he or she is charged with attempting.
- (3) A person is guilty of criminal attempt to commit a crime when he or she engages in conduct intended to aid another person to commit that crime, although the crime is not committed or attempted by the other person, provided that his or her conduct would establish complicity under KRS 502.020 if the crime were committed by the other person.
- (4) A criminal attempt is a:

- (a) Class C felony when the crime attempted is a violation of KRS 521.020 or 521.050;
- (b) Class B felony when the crime attempted is a Class A felony~~[-or-capital offense];~~];
- (c) Class C felony when the crime attempted is a Class B felony;
- (d) Class A misdemeanor when the crime attempted is a Class C or D felony;
- (e) Class B misdemeanor when the crime attempted is a misdemeanor.

➔Section 9. KRS 506.030 is amended to read as follows:

- (1) A person is guilty of criminal solicitation when, with the intent of promoting or facilitating the commission of a crime, he or she commands or encourages another person to engage in specific conduct which would constitute that crime or an attempt to commit that crime or which would establish the other's complicity in its commission or attempted commission.

- (2) A criminal solicitation is a:

- (a) Class C felony when the crime solicited is a violation of KRS 521.020 or 521.050;
- (b) Class B felony when the crime solicited is a Class A felony~~[-or-capital offense];~~];
- (c) Class C felony when the crime solicited is a Class B felony;
- (d) Class A misdemeanor when the crime solicited is a Class C or D felony;
- (e) Class B misdemeanor when the crime solicited is a misdemeanor.

➔Section 10. KRS 506.040 is amended to read as follows:

- (1) A person having the intention of promoting or facilitating the commission of a crime is guilty of criminal conspiracy when he or she:
 - (a) Agrees with one (1) or more persons that at least one (1) of them will engage in conduct constituting that crime or an attempt or solicitation to commit such a crime; or

- (b) Agrees to aid one or more persons in the planning or commission of that crime or an attempt or solicitation to commit such a crime.
- (2) Except as provided in a specific statute to the contrary, a criminal conspiracy is a:
- (a) Class C felony when the conspiratorial agreement is a violation of KRS 521.020 or 521.050;
 - (b) Class B felony when the object of the conspiratorial agreement is a Class A felony~~[-or capital offense]~~;
 - (c) Class C felony when the object of the conspiratorial agreement is a Class B felony;
 - (d) Class A misdemeanor when the object of the conspiratorial agreement is a Class C or D felony;
 - (e) Class B misdemeanor when the object of the conspiratorial agreement is a misdemeanor.

➔Section 11. KRS 506.080 is amended to read as follows:

- (1) A person is guilty of criminal facilitation when, acting with knowledge that another person is committing or intends to commit a crime, he ***or she*** engages in conduct which knowingly provides such person with means or opportunity for the commission of the crime and which in fact aids such person to commit the crime.
- (2) Criminal facilitation is a:
- (a) Class D felony when the crime facilitated is a Class A or Class B felony~~[-or capital offense]~~;
 - (b) Class A misdemeanor when the crime facilitated is a Class C or Class D felony;
 - (c) Class B misdemeanor when the crime facilitated is a misdemeanor.

➔Section 12. KRS 507.020 is amended to read as follows:

- (1) A person is guilty of murder when:
- (a) With intent to cause the death of another person, he ***or she*** causes the death of

such person or of a third person; except that in any prosecution a person shall not be guilty under this subsection if he or she acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. However, nothing contained in this section shall constitute a defense to a prosecution for or preclude a conviction of manslaughter in the first degree or any other crime; or

- (b) Including, but not limited to, the operation of a motor vehicle under circumstances manifesting extreme indifference to human life, he or she wantonly engages in conduct which creates a grave risk of death to another person and thereby causes the death of another person.

(2) Murder is a Class A felony~~[capital offense]~~.

➔Section 13. KRS 509.040 is amended to read as follows:

(1) A person is guilty of kidnapping when he or she unlawfully restrains another person and when his or her intent is:

- (a) To hold him or her for ransom or reward; or
- (b) To accomplish or to advance the commission of a felony; or
- (c) To inflict bodily injury or to terrorize the victim or another; or
- (d) To interfere with the performance of a governmental or political function; or
- (e) To use him or her as a shield or hostage; or
- (f) To deprive the parents or guardian of the custody of a minor, when the person taking the minor is not a person exercising custodial control or supervision of the minor as the term "person exercising custodial control or supervision" is defined in KRS 600.020.

(2) Kidnapping is a Class B felony when the victim is released alive and in a safe place prior to trial, except as provided in subsection (3) of this section.

(3) Kidnapping is a Class A felony when:

(a) The victim is released alive but the victim has suffered serious physical injury:

1. During the kidnapping; ~~or~~

2. As a result of not being released in a safe place; ~~or~~

3. As a result of being released in any circumstances which are intended, known or should have been known to cause or lead to serious physical injury; ~~or. Kidnapping is a capital offense when~~

(b) The victim is not released alive, ~~or when~~ the victim is released alive but subsequently dies as a result of:

1. ~~(a)~~ Serious physical injuries suffered during the kidnapping; or

2. ~~(b)~~ Not being released in a safe place; or

3. ~~(c)~~ Being released in any circumstances which are intended, known or should have been known to cause or lead to the victim's death.

➔Section 14. KRS 520.120 is amended to read as follows:

(1) A person is guilty of hindering prosecution or apprehension in the first degree when, with the intent to hinder the apprehension, prosecution, conviction or punishment of another whom he or she knows is being sought in connection with the commission of a ~~capital offense or~~ Class A felony, he or she renders assistance to such person.

(2) Hindering prosecution or apprehension in the first degree is a Class D felony.

➔Section 15. KRS 527.200 is amended to read as follows:

(1) A person is guilty of use of a weapon of mass destruction in the first degree when he or she intentionally, without lawful authority, places a weapon of mass destruction at any location in the Commonwealth and, as a result, any person other than the defendant is killed or receives serious physical injury.

(2) A weapon of mass destruction is used with lawful authority if it is used with the written permission of an agency of the Commonwealth or of a city, county, charter

county, or urban-county government having jurisdiction over the use of destructive devices as defined in KRS 237.030 or the use of explosives.

- (3) Use of a weapon of mass destruction in the first degree is a Class A felony~~[unless a person other than the defendant is killed as a result, in which case it is a capital offense].~~

➔Section 16. KRS 532.030 is amended to read as follows:

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

- ~~(2)]~~ When a person is convicted of a Class A felony, he or she shall have his or her 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 felony, he or she shall have his or her punishment fixed at:

- (a) A term of imprisonment authorized by this chapter; or
- (b) A fine authorized by KRS Chapter 534; or
- (c) Both imprisonment and a fine unless precluded by the provisions of KRS Chapter 534.

- (3) When a person is convicted of a Class A felony, he or she shall have his or her punishment fixed at imprisonment for life without benefit of probation or parole, or at imprisonment for life without benefit of probation or parole until he or she has served a minimum term of twenty-five (25) years, or to a term of not less than twenty (20) years nor more than fifty (50) years, when the person is convicted of any of the following:**

(a) Murder under KRS 507.020;

(b) Kidnapping under KRS 509.040 if the victim is not released alive or if the

victim is released alive but subsequently dies as a result of:

1. Serious physical injury suffered during the kidnapping;

2. Not being released in a safe place; or

3. Being released in any circumstances that are intended, known, or should have been known to cause or lead to the victim's death; or

(c) Use of a weapon of mass destruction under KRS 527.200 if a person other than a defendant is killed as a result of the use of the weapon.

- (4) When a person is convicted of a Class A felony not involving the offenses specified in subsection (3) of this section, he or she shall have his or her sentence fixed at~~[In all cases in which the death penalty may be authorized the judge shall instruct the jury in accordance with subsection (1) of this section. The instructions shall state, subject to the aggravating and mitigating limitations and requirements of KRS 532.025, that the jury may recommend upon a conviction for a capital offense a sentence of death, or at a term of imprisonment for life without benefit of probation or parole, or a term of imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty five (25) years of his sentence, or] a sentence of life[-] or to a term of not less than twenty (20) years nor more than fifty (50) years.~~

➔Section 17. KRS 532.040 is amended to read as follows:

When a person is convicted of an offense, other than~~[a capital offense or]~~ having been designated a violent offender as defined in KRS 439.3401, the court, where authorized by KRS Chapter 533 and where not prohibited by other provisions of applicable law, may sentence such person to a period of probation or to a period of conditional discharge as provided in that chapter. A sentence to probation or conditional discharge shall be deemed a tentative one to the extent that it may be altered or revoked in accordance with KRS Chapter 533, but for purposes of appeal shall be deemed to be a final judgment of conviction. In any case where the court imposes a sentence of probation or conditional

discharge, it may also impose a fine as authorized by KRS Chapter 534.

➔Section 18. KRS 532.050 is amended to read as follows:

- (1) No court shall impose sentence for conviction of a felony, ~~[other than a capital offense,]~~ without first ordering a presentence investigation after conviction and giving due consideration to a written report of the investigation. The presentence investigation report shall not be waived; however, the completion of the presentence investigation report may be delayed until after sentencing upon the written request of the defendant if the defendant is in custody.
- (2) The report shall be prepared and presented by a probation officer and shall include:
 - (a) The results of the defendant's risk and needs assessment;
 - (b) An analysis of the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits;
 - (c) A preliminary calculation of the credit allowed the defendant for time spent in custody prior to the commencement of a sentence under KRS 532.120; and
 - (d) Any other matters that the court directs to be included.
- (3) Before imposing sentence for a felony conviction, the court may order the defendant to submit to psychiatric observation and examination for a period not exceeding sixty (60) days. The defendant may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination.
- (4) If the defendant has been convicted of a sex crime, as defined in KRS 17.500, prior to determining the sentence or prior to final sentencing for youthful offenders, the court shall order a comprehensive sex offender presentence evaluation of the defendant to be conducted by an approved provider, as defined in KRS 17.500, the Department of Corrections, or the Department of Juvenile Justice if the defendant is a youthful offender. The comprehensive sex offender presentence evaluation shall

provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment and shall be considered by the court in determining the appropriate sentence. A copy of the comprehensive sex offender presentence evaluation shall be furnished to the court, the Commonwealth's attorney, and to counsel for the defendant. If the defendant is eligible and the court suspends the sentence and places the defendant on probation or conditional discharge, the provisions of KRS 532.045(3) to (8) shall apply. All communications relative to the comprehensive sex offender presentence evaluation and treatment of the sex offender shall fall under the provisions of KRS 197.440 and shall not be made a part of the court record subject to review in appellate proceedings. The defendant shall pay for any comprehensive sex offender presentence evaluation or treatment required pursuant to this section up to the defendant's ability to pay but no more than the actual cost of the comprehensive sex offender presentence evaluation or treatment.

- (5) The presentence investigation report shall identify the counseling treatment, educational, and rehabilitation needs of the defendant and identify community-based, ~~and~~ correctional-**based, and** institutional-based programs and resources available to meet those needs or shall identify the lack of programs and resources to meet those needs.
- (6) Before imposing sentence, the court shall advise the defendant or his or her counsel of the factual contents and conclusions of any presentence investigation or psychiatric examinations and afford a fair opportunity and a reasonable period of time, if the defendant so requests, to controvert them. The court shall provide the defendant's counsel a copy of the presentence investigation report. It shall not be necessary to disclose the sources of confidential information.

➔Section 19. KRS 532.100 is amended to read as follows:

- (1) When an indeterminate term of imprisonment is imposed, the court shall commit

the defendant to the custody of the Department of Corrections for the term of his or her sentence and until released in accordance with the law.

(2) When a definite term of imprisonment is imposed, the court shall commit the defendant to the county or city correctional institution or to a regional correctional institution for the term of his or her sentence and until released in accordance with the law.

~~(3) When a sentence of death is imposed, the court shall commit the defendant to the custody of the Department of Corrections with directions that the sentence be carried out according to law.~~

~~(4)~~ (a) The provisions of KRS 500.080(5) notwithstanding, if a Class D felon is sentenced to an indeterminate term of imprisonment of five (5) years or less, he or she shall serve that term in a county jail in a county in which the fiscal court has agreed to house state prisoners; except that, when an indeterminate sentence of two (2) years or more is imposed on a Class D felon convicted of a sexual offense enumerated in KRS 197.410(1), or a crime under KRS 17.510(11) or (12), the sentence shall be served in a state institution. Counties choosing not to comply with the provisions of this paragraph shall be granted a waiver by the commissioner of the Department of Corrections.

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

(c) 1. The provisions of KRS 500.080(5) notwithstanding, and except as provided in subparagraph 2. of this paragraph, a Class C or D felon with a sentence of more than five (5) years who is classified by the Department of Corrections as community custody shall serve that term

in a county jail in a county in which the fiscal court has agreed to house state prisoners if:

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

2. When an indeterminate sentence of two (2) years or more is imposed on a felon convicted of a sex crime, as defined in KRS 17.500, or any similar offense in another jurisdiction, the sentence shall be served in a state institution.
3. Counties choosing not to comply with the provisions of this paragraph shall be granted a waiver by the commissioner of the Department of Corrections.

(d) Any jail that houses state inmates under this subsection shall offer programs as recommended by the Jail Standards Commission. The Department of Corrections shall adopt the recommendations of the Jail Standards Commission and promulgate administrative regulations establishing required programs for a jail that houses state inmates under this subsection.

~~(4)~~~~(5)~~ The jailer of a county in which a Class D felon or a Class C felon is incarcerated may request the commissioner of the Department of Corrections to incarcerate the felon in a state corrections institution if the jailer has reasons to believe that the felon is an escape risk, a danger to himself, herself, or other inmates, an extreme security risk, or needs protective custody beyond that which can be provided in a county jail. The commissioner of the Department of Corrections shall evaluate the request and transfer the inmate if he or she deems it necessary. If the commissioner refuses to accept the felon inmate, and the Circuit Judge of the county that has jurisdiction of the offense charged is of the opinion that

the felon cannot be safely kept in a county jail, the Circuit Judge, with the consent of the Governor, may order the felon transferred to the custody of the Department of Corrections.

~~(5)~~~~(6)~~ Class D felons and Class C felons serving their time in a local jail shall be considered state prisoners, and the Department of Corrections shall pay the jail in which the prisoner is incarcerated a per diem amount determined according to KRS 431.215(2). For other state prisoners and parole violator prisoners, the per diem payments shall also begin on the date prescribed in KRS 431.215(2).

~~(6)~~~~(7)~~ State prisoners, excluding the Class D felons and Class C felons qualifying to serve time in county jails, shall be transferred to the state institution within forty-five (45) days of final sentencing.

➔Section 20. KRS 532.140 is amended to read as follows:

(1) ~~[KRS 532.010, 532.025, and 532.030 to the contrary notwithstanding, no offender who has been determined to be an offender with a serious intellectual disability under the provisions of KRS 532.135, shall be subject to execution. The same procedure as required in KRS 532.025 and 532.030 shall be utilized in determining the sentence of the offender with a serious intellectual disability under the provisions of KRS 532.135 and 532.140.~~

~~(2)~~ The provisions of KRS 532.135 and 532.140 do not preclude the sentencing of an offender with a serious intellectual disability to any other sentence authorized by KRS 532.010~~, 532.025,~~ or 532.030 for a crime which is a ***Class A felony***~~[capital offense].~~

~~(2)~~~~(3)~~ The provisions of KRS 532.135 ***shall apply only to trials commenced after July 13, 1990,*** and ***this section***~~[532.140]~~ shall apply only to trials commenced after ***the effective date of this Act***~~[July 13, 1990].~~

➔Section 21. KRS 533.010 is amended to read as follows:

(1) Any person who has been convicted of a crime and who has not been sentenced to

imprisonment for life without parole or life without parole for twenty-five (25) years~~[death]~~ may be sentenced to probation, probation with an alternative sentencing plan, or conditional discharge as provided in this chapter.

- (2) Before imposition of a sentence of imprisonment, the court shall consider probation, probation with an alternative sentencing plan, or conditional discharge. Unless the defendant is a violent felon as defined in KRS 439.3401 or a statute prohibits probation, shock probation, or conditional discharge, after due consideration of the defendant's risk and needs assessment, nature and circumstances of the crime, and the history, character, and condition of the defendant, probation or conditional discharge shall be granted, unless the court is of the opinion that imprisonment is necessary for protection of the public because:
 - (a) There is substantial risk that during a period of probation or conditional discharge the defendant will commit another crime;
 - (b) The defendant is in need of correctional treatment that can be provided most effectively by his *or her* commitment to a correctional institution; or
 - (c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.
- (3) In the event the court determines that probation is not appropriate after due consideration of the defendant's risk and needs assessment, nature and circumstances of the crime, and the history, character, and condition of the defendant, probation with an alternative sentencing plan shall be granted unless the court is of the opinion that imprisonment is necessary for the protection of the public because:
 - (a) There is a likelihood that during a period of probation with an alternative sentencing plan or conditional discharge the defendant will commit a Class D or Class C felony or a substantial risk that the defendant will commit a Class B or Class A felony;

- (b) The defendant is in need of correctional treatment that can be provided most effectively by commitment to a correctional institution; or
 - (c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.
- (4) The court shall not determine that there is a likelihood that the defendant will commit a Class C or Class D felony based upon the defendant's risk and needs assessment and the fact that:
- (a) The defendant has never been convicted of, pled guilty to, or entered an Alford plea to a felony offense;
 - (b) If convicted of, having pled guilty to, or entered an Alford plea to a felony offense, the defendant successfully completed probation more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period; or
 - (c) The defendant has been released from incarceration for the commission of a felony offense more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period.
- (5) In making a determination under subsection (4) of this section, the court may determine that the greater weight of the evidence indicates that there is a likelihood that the defendant will commit a Class C or Class D felony.
- (6) Upon initial sentencing of a defendant or upon modification or revocation of probation, when the court deems it in the best interest of the public and the defendant, the court may order probation with the defendant to serve one (1) of the following alternative sentences:
- (a) To a halfway house for no more than twelve (12) months;

- (b) To home incarceration with or without work release for no more than twelve (12) months;
 - (c) To jail for a period not to exceed twelve (12) months with or without work release, community service and other programs as required by the court;
 - (d) To a residential treatment program for the abuse of alcohol or controlled substances; or
 - (e) To any other specified counseling program, rehabilitation or treatment program, or facility.
- (7) If during the term of the alternative sentence the defendant fails to adhere to and complete the conditions of the alternative sentence, the court may modify the terms of the alternative sentence or may modify or revoke probation and alternative sentence and commit the defendant to an institution.
- (8) In addition to those conditions that the court may impose, the conditions of alternative sentence shall include the following and, if the court determines that the defendant cannot comply with them, then they shall not be made available:
- (a) A defendant sentenced to a halfway house shall:
 - 1. Be working or pursuing his or her education or be enrolled in a full-time treatment program;
 - 2. Pay restitution during the term of probation; and
 - 3. Have no contact with the victim of the defendant's crime;
 - (b) A defendant sentenced to home incarceration shall:
 - 1. Be employed by another person or self-employed at the time of sentencing to home incarceration and continue the employment throughout the period of home incarceration, unless the court determines that there is a compelling reason to allow home incarceration while the defendant is unemployed;
 - 2. Pay restitution during the term of home incarceration;

3. Enter a treatment program, if appropriate;
 4. Pay all or some portion of the cost of home incarceration as determined by the court;
 5. Comply with other conditions as specified; and
 6. Have no contact with the victim of the defendant's crime;
- (c) A defendant sentenced to jail with community service shall:
1. Pay restitution during all or some part of the defendant's term of probation; and
 2. Have no contact with the victim of the defendant's crime; or
- (d) A defendant sentenced to a residential treatment program for drug and alcohol abuse shall:
1. Undergo mandatory drug screening during term of probation;
 2. Be subject to active, supervised probation for a term of five (5) years;
 3. Undergo aftercare as required by the treatment program;
 4. Pay restitution during the term of probation; and
 5. Have no contact with the victim of the defendant's crime.
- (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) 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) 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) 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) The jailer in each county incarcerating Class C or Class 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.
- (14) The Department of Corrections shall, by administrative regulation, develop written criteria for work release privileges granted under this section.
- (15) Reimbursement of incarceration costs shall be paid directly to the jailer in the amount specified by written order of the court. Incarceration costs owed to the Department of Corrections shall be paid through the circuit clerk.
- (16) The court shall enter into the record written findings of fact and conclusions of law when considering implementation of any sentence under this section.

➔Section 22. KRS 610.265 is amended to read as follows:

- (1) Any child who is alleged to be a status offender or who is accused of being in contempt of court on an underlying finding that the child is a status offender may be detained in a nonsecure facility, a secure juvenile detention facility, or a juvenile holding facility for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays, pending a detention hearing. Any child who is accused of committing a public offense or of being in contempt of court on an underlying public offense may be detained in a secure juvenile detention facility or juvenile holding facility for a period of time not to exceed forty-eight (48) hours, exclusive of weekends and holidays or, if neither is reasonably available, an intermittent holding facility, for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays, pending a detention hearing.
- (2) Within the period of detention described in subsection (1) of this section, exclusive

of weekends and holidays, a detention hearing shall be held by the judge or trial commissioner of the court for the purpose of determining whether the child shall be further detained. At the hearing held pursuant to this subsection, the court shall consider the nature of the offense, the child's background and history, and other information relevant to the child's conduct or condition.

- (3) If the court orders a child detained, that detention shall be served as follows:
- (a) If the child is charged with a ~~capital offense,~~ Class A felony~~,~~ or Class B felony, detention shall occur in either a secure juvenile detention facility or a juvenile holding facility pending the child's next court appearance subject to the court's review of the detention order prior to that court appearance.
 - (b) Except as provided in KRS 630.080(2), if it is alleged that the child is a status offender, the child may be detained in a secure juvenile detention facility for a period not to exceed twenty-four (24) hours after which detention shall occur in a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance subject to the court's review of the detention order prior to the next court appearance.
 - (c) If a status offender or a child alleged to be a status offender is charged with violating a valid court order, the child may be detained in a secure juvenile detention facility, a juvenile holding facility, or in a nonsecure setting approved by the Department of Juvenile Justice, for a period not to exceed forty-eight (48) hours, exclusive of weekends and holidays, pending the child's next court appearance.
 - (d) Prior to ordering a status offender or alleged status offender who is subject to a valid court order securely detained because the child violated the valid court order, the court shall:
 - 1. Affirm that the requirements for a valid court order were met at the time the original order was issued;

2. Make a determination during the adjudicatory hearing that the child violated the valid court order; and
 3. Within forty-eight (48) hours after the adjudicatory hearing on the violation of a valid court order by the child, exclusive of weekends and holidays, receive and review a written report prepared by an appropriate public agency that reviews the behavior of the child and the circumstances under which the child was brought before the court, determines the reasons for the child's behavior, and determines whether all dispositions other than secure detention have been exhausted or are inappropriate. If a prior written report is included in the child's file, that report shall not be used to satisfy this requirement. The child may be securely detained for a period not to exceed forty-eight (48) hours, exclusive of weekends and holidays, pending receipt and review of the report by the court. The hearing shall be conducted in accordance with the provisions of KRS 610.060. The findings required by this subsection shall be included in any order issued by the court which results in the secure or nonsecure detention of a status offender.
- (e) If the child is charged with a public offense, or contempt of court on an underlying public offense, and the county in which the case is before the court is not served by a state operated secure detention facility under the statewide detention plan, detention may occur in a secure juvenile detention facility, juvenile holding facility, or a nonsecure setting approved by the Department of Juvenile Justice pending the child's next court appearance, subject to the court's review of the detention order prior to that court appearance.
- (f) If the child is charged with a public offense, or contempt on a public offense, and the county in which the case is before the court is served by a state operated secure detention facility under the statewide detention plan, the child

shall be referred to the Department of Juvenile Justice for a security assessment and placement in an approved detention facility or program pending the child's next court appearance.

- (4) If, at the hearing conducted under subsection (2) of this section, the court conducts an adjudicatory hearing on the merits of a violation of a valid court order, that hearing shall conform to the requirements of KRS 630.080.
- (5) If the detention hearing is not held as provided in subsection (1) of this section, the child shall be released as provided in KRS 610.290.
- (6) If the child is not released, the court-designated worker shall notify the parent, person exercising custodial control or supervision, a relative, guardian, or other responsible adult, and the Department of Juvenile Justice or the cabinet, as appropriate.

➔Section 23. KRS 635.020 is amended to read as follows:

- (1) If, prior to an adjudicatory hearing, there is a reasonable cause to believe that a child before the court has committed a felony other than those described in subsections (2) and (3) of this section, a misdemeanor, or a violation, the court shall initially proceed in accordance with the provisions of this chapter.
- (2) If a child charged with a ~~capital offense,~~ Class A felony~~,~~ or Class B felony, had attained age fourteen (14) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (3) If a child charged with a Class C or Class D felony has on one (1) prior separate occasion been adjudicated a public offender for a felony offense and had attained the age of sixteen (16) at the time of the alleged commission of the offense, the court shall, upon motion of the county attorney made prior to adjudication, and after

the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.

- (4) Any other provision of KRS Chapters 610 to 645 to the contrary notwithstanding, if a child charged with a felony in which a firearm, whether functional or not, was used in the commission of the offense had attained the age of fourteen (14) years at the time of the commission of the alleged offense, he or she shall be transferred to the Circuit Court for trial as an adult if, following a preliminary hearing, the District Court finds probable cause to believe that the child committed a felony, that a firearm was used in the commission of that felony, and that the child was fourteen (14) years of age or older at the time of the commission of the alleged felony. If convicted in the Circuit Court, he or she shall be subject to the same penalties as an adult offender, except that until he or she reaches the age of eighteen (18) years, he or she shall be confined in a facility or program for juveniles or for youthful offenders, unless the provisions of KRS 635.025 apply or unless he or she is released pursuant to expiration of sentence or parole, and at age eighteen (18) he or she shall be returned to the sentencing Circuit Court for proceedings consistent with KRS 640.030(2).
- (5) If a child previously convicted as a youthful offender under the provisions of KRS Chapter 640 is charged with a felony allegedly committed prior to his or her eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (6) A child who is charged as is provided in subsection (2) of this section and is also charged with a Class C or Class D felony, a misdemeanor, or a violation arising from the same course of conduct shall have all charges included in the same

proceedings; and the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.

- (7) If a person who is eighteen (18) or older and before the court is charged with a felony that occurred prior to his or her eighteenth birthday, the court shall, upon motion of the county attorney made prior to adjudication, and after the county attorney has consulted with the Commonwealth's attorney, that the child be proceeded against as a youthful offender, proceed in accordance with the provisions of KRS 640.010.
- (8) All offenses arising out of the same course of conduct shall be tried with the felony arising from that course of conduct, whether the charges are adjudicated under this chapter or under KRS Chapter 640 and transferred to Circuit Court.

➔Section 24. KRS 635.090 is amended to read as follows:

- (1) If the court chooses to treat the child as other than a youthful offender, if the Commonwealth fails to prove the criteria bringing a case under KRS Chapter 640, or if the county attorney elects not to proceed under KRS Chapter 640, the court may:
 - (a) If a child is fourteen (14) years of age or older and is adjudicated a public offender in the commission of a ~~capital offense,~~ Class A felony~~,~~ or Class B felony, the court in its discretion may commit the child to the Department of Juvenile Justice for purposes of treatment or placement in a facility or program for an indeterminate period of time not less than six (6) months. The Department of Juvenile Justice may petition the court to continue the commitment for the purpose of completing a treatment program but the commitment shall not extend past the child's nineteenth birthday; or
 - (b) If a child is sixteen (16) years of age or older and is adjudicated a public

offender in the commission of a felony offense and has previously been adjudicated delinquent of one (1) or more felony offenses not arising out of the same course of conduct in separate adjudications, or has previously been adjudicated a public offender for one (1) or more felony offenses not arising out of the same course of conduct in separate adjudications, the court in its discretion may commit the child to the Department of Juvenile Justice for purposes of treatment or placement in a facility or program for an indeterminate period of time not less than six (6) months. The Department of Juvenile Justice may petition the court to continue the commitment for the purpose of completing a treatment program, but the commitment shall not extend past the child's nineteenth birthday.

- (2) The Department of Juvenile Justice shall maintain jurisdiction over the child during the period of the commitment. The committing court may, upon motion of the Department of Juvenile Justice, order the child released from the facility or program operated by the Department of Juvenile Justice.
- (3) The Department of Juvenile Justice shall notify the committing court if it transfers the child to a different facility or program and note the reasons for the transfer.
- (4) The Department of Juvenile Justice shall notify the committing court prior to the termination of treatment or placement as to the future intentions of the Department of Juvenile Justice as they relate to continued treatment of the child.
- (5) The committing court may, upon motion of the child, grant shock probation to any child committed under this section after the child has been committed for a minimum of thirty (30) days.
- (6) After a child has been committed to the Department of Juvenile Justice as provided in this section, he *or she* may not then be transferred to the Circuit Court as provided for in KRS 640.020.

➔Section 25. KRS 640.040 is amended to read as follows:

- (1) ~~[No youthful offender who has been convicted of a capital offense who was under the age of sixteen (16) years at the time of the commission of the offense shall be sentenced to capital punishment. A youthful offender may be sentenced to capital punishment if he was sixteen (16) years of age or older at the time of the commission of the offense.]~~ A youthful offender convicted of a **Class A felony**,~~[capital offense]~~ regardless of age, may be sentenced to a term of imprisonment appropriate for one who has committed a Class A felony and may be sentenced to life imprisonment without benefit of parole for twenty-five (25) years, **but not to life imprisonment without benefit of parole.**
 - (2) No youthful offender shall be subject to persistent felony offender sentencing under the provisions of KRS 532.080 for offenses committed before the age of eighteen (18) years.
 - (3) No youthful offender shall be subject to limitations on probation, parole or conditional discharge as provided for in KRS 533.060.
 - (4) Any youthful offender convicted of a misdemeanor or any felony offense which would exempt him **or her** from KRS 635.020(2), (3), (4), (5), (6), (7), or (8) shall be disposed of by the Circuit Court in accordance with the provisions of KRS 635.060.
- ➔Section 26. KRS 17.176 is amended to read as follows:
- (1) In addition to the requirements specified in KRS 422.285, any evidence submitted for testing and analysis pursuant to KRS 422.285~~[or 422.287]~~ shall be of probative value. When the motion is filed with the court requesting testing and analysis of evidence pursuant to this section, the applicant shall include sufficient information about the evidence, the necessity for its testing and analysis, and its applicability to the proceeding for a court to make a determination of the probative value of the evidence proposed to be tested and analyzed.
 - (2) The prosecution, with a court order issued pursuant to this section, may submit not more than five (5) items of evidence for testing and analysis by the Department of

Kentucky State Police forensic laboratory or another laboratory selected by the Department of Kentucky State Police forensic laboratory. In capital cases, the tests shall be performed without charge to the prosecution. The cost of testing and analysis of any items of evidence in excess of the five (5) initial items to be tested and analyzed shall be borne by the agency or person requesting the testing and analysis. Any additional item of evidence submitted for testing and analysis shall be accompanied by the court order specified in subsection (1) of this section.

- (3) The defense, with a court order issued pursuant to this section, may submit not more than five (5) items of evidence for testing and analysis by the Department of Kentucky State Police forensic laboratory or another laboratory selected by the Department of Kentucky State Police forensic laboratory. In capital cases, the tests shall be performed without charge to the defense. The cost of testing and analysis of any item of evidence in excess of the five (5) initial items to be tested and analyzed shall be borne by the agency or person requesting the testing and analysis. Any additional item of evidence submitted for testing and analysis shall be accompanied by the court order specified in subsection (1) of this section.
- (4) Any other party in a criminal case, with permission of the court after a specific showing of necessity for testing and analysis, together with the items specified in subsection (1) of this section, may submit an item of evidence for testing and analysis by the Department of Kentucky State Police forensic laboratory or another laboratory selected by the Department of Kentucky State Police forensic laboratory for testing and analysis. The cost of testing and analysis of any item of evidence permitted to be submitted by the court shall be borne by the person or organization requesting the testing and analysis.
- (5) The Department of Kentucky State Police shall promulgate by administrative regulation a uniform schedule of fees to be charged for testing and analysis conducted pursuant to KRS 422.285~~[or 422.287]~~.

→Section 27. KRS 507A.020 is amended to read as follows:

- (1) A person is guilty of fetal homicide in the first degree when:
 - (a) With intent to cause the death of an unborn child or with the intent necessary to commit an offense under KRS 507.020(1)(a), he or she causes the death of an unborn child; except that in any prosecution, a person shall not be guilty under this subsection if he or she acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. However, nothing contained in this section shall constitute a defense to a prosecution for or preclude a conviction of fetal homicide in the second degree or any other crime; or
 - (b) Including but not limited to the operation of a motor vehicle under circumstances manifesting extreme indifference to human life, he or she wantonly engages in conduct which creates a grave risk of death to an unborn child and thereby causes the death of an unborn child.
- (2) Fetal homicide in the first degree is a Class A felony~~[capital offense]~~.

→Section 28. KRS 422.285 is amended to read as follows:

- (1) (a) Except as provided in paragraph (b) of this subsection, a person who was convicted of a capital offense, a Class A felony, a Class B felony, or any offense designated a violent offense under KRS 439.3401 prior to the effective date of this Act, who has since been sentenced by the court having jurisdiction to imprisonment for life without benefit of probation or parole, and who meets the requirements of this section may at any time request the forensic deoxyribonucleic acid (DNA) testing and analysis of any evidence that is in the possession or control of the court or Commonwealth, that is related to the investigation or prosecution that resulted in the judgment of

conviction and that may contain biological evidence.

- (b) This subsection shall not apply to offenses under KRS Chapter 218A, unless the offense was accompanied by another offense outside of that chapter for which testing is authorized by paragraph (a) of this subsection.
- (2) Upon receipt of a request under this section accompanied by a supporting affidavit containing sufficient factual averments to support the request from a person who meets the requirements of subsection (5)(f) of this section at the time the request is made for an offense to which the DNA relates, the court shall:
- (a) If the petitioner is not represented by counsel, appoint the Department for 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 for 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 for 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 for 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 for 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 and analysis to be conducted;
 - (c) The evidence was not previously subjected to DNA testing and analysis or was not subjected to the testing and analysis that is now requested and may resolve an issue not previously resolved by the previous testing and analysis;
 - (d) Except for a petitioner sentenced to death, the petitioner was convicted of the offense after a trial or after entering an Alford plea;
 - (e) Except for a petitioner sentenced to death, the testing is not sought for touch DNA, meaning casual or limited contact DNA; and
 - (f) The petitioner is still incarcerated or on probation, parole, or other form of correctional supervision, monitoring, or registration for the offense to which the DNA relates.
- (6) After due consideration of the request and any supplements and responses thereto, the court may order DNA testing and analysis if the court finds that all of the following apply:
- (a) A reasonable probability exists that either:
 - 1. The petitioner's verdict or sentence would have been more favorable if the results of DNA testing and analysis had been available at the trial leading to the judgment of conviction; or
 - 2. DNA testing and analysis will produce exculpatory evidence;

- (b) The evidence is still in existence and is in a condition that allows DNA testing and analysis to be conducted;
 - (c) The evidence was not previously subject to DNA testing and analysis or was not subjected to the testing and analysis that is now requested and that may resolve an issue not previously resolved by the previous testing and analysis;
 - (d) Except for a petitioner sentenced to death, the petitioner was convicted of the offense after a trial or after entering an Alford plea;
 - (e) Except for a petitioner sentenced to death, the testing is not sought for touch DNA, meaning casual or limited contact DNA; and
 - (f) The petitioner is still incarcerated or on probation, parole, or other form of correctional supervision, monitoring, or registration for the offense to which the DNA relates.
- (7) The provisions of KRS 17.176 to the contrary notwithstanding, the petitioner shall pay the costs of all testing and analysis ordered under this section. If the court determines that the petitioner is a needy person using the standards set out in KRS 31.120 and the Department for Public Advocacy so moves, the court shall treat the costs of testing and analysis as a direct expense of the defense for the purposes of authorizing payment under KRS 31.185.
- (8) If the prosecutor or defense counsel has previously subjected evidence to DNA testing and analysis, the court shall order the prosecutor or defense counsel to provide all the parties and the court with access to the laboratory reports that were prepared in connection with the testing and analysis, including underlying data and laboratory notes. If the court orders DNA testing and analysis pursuant to this section, the court shall order the production of any laboratory reports that are prepared in connection with the testing and analysis and may order the production of any underlying data and laboratory notes.
- (9) If a petition is filed pursuant to this section, the court shall order the state to

preserve during the pendency of the proceeding all evidence in the state's possession or control that could be subjected to DNA testing and analysis. The state shall prepare an inventory of the evidence and shall submit a copy of the inventory to the defense and the court. If the evidence is intentionally destroyed after the court orders its preservation, the court may impose appropriate sanctions, including criminal contempt.

- (10) The court may make any other orders that the court deems appropriate, including designating any of the following:
- (a) The preservation of some of the sample for replicating the testing and analysis; and
 - (b) Elimination samples from third parties.
- (11) If the results of the DNA testing and analysis are not favorable to the petitioner, the court shall dismiss the petition. The court may make further orders as it deems appropriate, including any of the following:
- (a) Notifying the Department of Corrections and the Parole Board;
 - (b) Requesting that the petitioner's sample be added to the Department of Kentucky State Police database; and
 - (c) Providing notification to the victim or family of the victim.
- (12) Notwithstanding any other provision of law that would bar a hearing as untimely, if the results of the DNA testing and analysis are favorable to the petitioner, the court shall order a hearing and make any further orders that are required pursuant to this section or the Kentucky Rules of Criminal Procedure.

➔Section 29. The following KRS sections are repealed:

422.287 Motion for DNA testing of evidence -- Court order -- Results -- Maintaining results.

431.213 Definitions for KRS 431.213, 431.2135, and 431.240.

431.2135 Procedure for challenging condemned person's sanity.

- 431.218 Date of execution of condemned -- Copy of mandate to proper officer.
- 431.220 Execution of death sentence.
- 431.223 Method of execution in event of unconstitutionality of KRS 431.220.
- 431.224 Retroactive applicability.
- 431.240 Time of execution -- Governor to fix time in case of insanity, pregnancy, or escape -- Administrative hearings -- Transfer to forensic psychiatric facility in case of insanity.
- 431.250 Persons who may attend executions.
- 431.260 Warden's return on judgment.
- 431.270 Delivery or burial of body.
- 507A.060 Death sentence prohibited.
- 532.025 Presentence hearings -- Use of juvenile court records -- Aggravating or mitigating circumstances -- Instruction to jury.
- 532.075 Review of death sentence by Supreme Court.
- 532.300 Prohibition against death sentence being sought or given on the basis of race -- Procedures for dealing with claims.
- 532.305 Application of KRS 532.300.
- 532.309 Short title for KRS 532.300 to 532.309.