

1 AN ACT relating to crimes and punishments.

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

3 ➔Section 1. KRS 635.020 is amended to read as follows:

- 4 (1) If, prior to an adjudicatory hearing, there is a reasonable cause to believe that a  
5 child before the court has committed a felony other than those described in  
6 subsections (2) and (3) of this section, a misdemeanor, or a violation, the court shall  
7 initially proceed in accordance with the provisions of this chapter.
- 8 (2) If a child charged with a capital offense, Class A felony, or Class B felony, had  
9 attained age fourteen (14) at the time of the alleged commission of the offense, the  
10 court shall, upon motion of the county attorney made prior to adjudication, and after  
11 the county attorney has consulted with the Commonwealth's attorney, that the child  
12 be proceeded against as a youthful offender, proceed in accordance with the  
13 provisions of KRS 640.010.
- 14 (3) If a child charged with a Class C or Class D felony has on one (1) prior separate  
15 occasion been adjudicated a public offender for a felony offense and had attained  
16 the age of sixteen (16) at the time of the alleged commission of the offense, the  
17 court shall, upon motion of the county attorney made prior to adjudication, and after  
18 the county attorney has consulted with the Commonwealth's attorney, that the child  
19 be proceeded against as a youthful offender, proceed in accordance with the  
20 provisions of KRS 640.010.
- 21 (4) **(a)** If a child charged with a felony~~[ in which a firearm, whether functional or not,~~  
22 ~~was used by the child in the commission of the offense]~~ had attained the age  
23 of fourteen (14) years at the time of the commission of the alleged offense ***in***  
24 ***which a firearm, whether functional or not, was used by the child in the***  
25 ***commission of the offense***, the court shall, upon motion of the county  
26 attorney made prior to adjudication, and after the county attorney has  
27 consulted with the Commonwealth's attorney, that the child be proceeded

1 against as a youthful offender, proceed in accordance with KRS 640.010.

2 (b) 1. Any other provision of KRS Chapters 610 to 645 to the contrary  
3 notwithstanding, if a child charged with a Class A, B, or C felony had  
4 attained the age of fifteen (15) years at the time of the commission of  
5 the alleged offense in which a firearm, whether functional or not, was  
6 used by the child in the commission of the offense, the court shall,  
7 upon motion of the county attorney made prior to adjudication and  
8 after consultation with the Commonwealth's attorney, that the child be  
9 proceeded against as a youthful offender, proceed in accordance with  
10 subparagraph 2. of this paragraph.

11 2. The child shall be transferred to the Circuit Court for trial as an adult  
12 if, following a preliminary hearing, the District Court finds probable  
13 cause to believe that:

14 a. The child committed a Class A, B, or C felony;

15 b. A firearm was used by the child in the commission of that felony;  
16 and

17 c. The child was fifteen (15) years of age or older at the time of the  
18 commission of the alleged felony.

19 3. a. After consulting with the county attorney, the Commonwealth's  
20 attorney may transfer the child back to District Court if the  
21 Commonwealth's attorney determines that it is in the best  
22 interest of the public and the child to do so.

23 b. After considering the factors in KRS 640.010(2)(c), the Circuit  
24 Court may transfer the child back to District Court if the Circuit  
25 Court finds that less than two (2) factors specified in KRS  
26 640.010(2)(c) favor keeping the child in Circuit Court.

27 4. If convicted in the Circuit Court, he or she shall be subject to the same

1 penalties as an adult offender, except that until he or she reaches the  
2 age of eighteen (18) years, he or she shall be confined in a facility for  
3 juveniles or for youthful offenders, unless the provisions of KRS  
4 635.025 apply or unless he or she is released pursuant to expiration of  
5 sentence or parole, and at age eighteen (18) he or she shall be  
6 returned to the sentencing Circuit Court for proceedings consistent  
7 with KRS 640.030(2).

8 5. If convicted in the Circuit Court and he or she is returned to the  
9 sentencing Circuit Court for proceedings consistent with KRS  
10 640.030(2), he or she shall not be eligible for probation or conditional  
11 discharge.

12 (5) If a child previously convicted as a youthful offender under the provisions of KRS  
13 Chapter 640 is charged with a felony allegedly committed prior to his or her  
14 eighteenth birthday, the court shall, upon motion of the county attorney made prior  
15 to adjudication, and after the county attorney has consulted with the  
16 Commonwealth's attorney, that the child be proceeded against as a youthful  
17 offender, proceed in accordance with the provisions of KRS 640.010.

18 (6) A child who is charged as is provided in subsection (2) of this section and is also  
19 charged with a Class C or D felony, a misdemeanor, or a violation arising from the  
20 same course of conduct shall have all charges included in the same proceedings;  
21 and the court shall, upon motion of the county attorney made prior to adjudication,  
22 and after the county attorney has consulted with the Commonwealth's attorney, that  
23 the child be proceeded against as a youthful offender, proceed in accordance with  
24 the provisions of KRS 640.010.

25 (7) If a person who is eighteen (18) or older and before the court is charged with a  
26 felony that occurred prior to his or her eighteenth birthday, the court shall, upon  
27 motion of the county attorney made prior to adjudication, and after the county

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

4 (8) All offenses arising out of the same course of conduct shall be tried with the felony  
5 arising from that course of conduct, whether the charges are adjudicated under this  
6 chapter or under KRS Chapter 640 and transferred to Circuit Court.