

1 AN ACT relating to persistent felony offenders.

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

3 ➔Section 1. KRS 532.080 is amended to read as follows:

4 (1) **As used in this section, "violent act against a person" means an offense of which**  
 5 **physical injury, serious physical injury, or death is an element.**

6 **(2) (a)** When a defendant is found to be a persistent felony offender, the jury, in lieu  
 7 of the sentence of imprisonment assessed under KRS 532.060 for the crime  
 8 ~~the~~~~[of which such]~~ person presently stands convicted, ~~may~~~~[shall]~~ fix **an**  
 9 **enhanced**~~[a]~~ sentence of imprisonment as authorized by subsection ~~[(5) or~~  
 10 ~~](6) or (7)~~ of this section.

11 **(b)** When a defendant is charged with being a persistent felony offender, the  
 12 determination of whether or not he **or she** is such an offender and the  
 13 punishment to be imposed pursuant to subsection ~~[(5) or ](6) or (7)~~ of this  
 14 section shall be determined in a separate proceeding from that proceeding  
 15 which resulted in his **or her** last conviction.

16 **(c) The**~~[Such]~~ proceeding shall be conducted before the court sitting with the jury  
 17 that found the defendant guilty of his **or her** most recent offense unless the  
 18 court for good cause discharges that jury and impanels a new jury for that  
 19 purpose.

20 **(3)**~~[(2)]~~ A persistent felony offender in the second degree is a person who is more than  
 21 twenty-one (21) years of age and who stands convicted of a felony after having  
 22 been convicted of one (1) previous felony. As used in this provision, a previous  
 23 felony conviction is a conviction of a felony in this state or conviction of a crime in  
 24 any other jurisdiction provided:

25 (a) That a sentence to a term of imprisonment of one (1) year or more or a  
 26 sentence to death was imposed~~[therefor];[and]~~

27 (b) That the offender was over the age of eighteen (18) years at the time the

1 offense was committed; and

2 (c) That the offender:

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

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

10 ~~[or~~

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

16 2.~~[4.]~~Was in custody from the previous felony conviction at the time of  
17 commission of the felony for which he or she now stands convicted; or

18 3.~~[5.]~~Had escaped from custody while serving any of the previous felony  
19 convictions at the time of commission of the felony for which he or she  
20 now stands convicted.

21 ~~(4)~~~~[(3)]~~ A persistent felony offender in the first degree is a person who is more than  
22 twenty-one (21) years of age and who stands convicted of a felony after having  
23 been convicted of two (2) or more felonies, or one (1) or more felony sex crimes  
24 against a minor as defined in KRS 17.500, and now stands convicted of any one (1)  
25 or more felonies. As used in this provision, a previous felony conviction is a  
26 conviction of a felony in this state or conviction of a crime in any other jurisdiction  
27 provided:

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

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

5 (c) That the offender:

6 1. ~~Completed service of the sentence imposed on any of the previous~~  
7 ~~felony convictions within five (5) years prior to the date of the~~  
8 ~~commission of the felony for which he now stands convicted; or~~

9 ~~2.~~ Was on probation, parole, postincarceration supervision, conditional  
10 discharge, conditional release, furlough, appeal bond, or any other form  
11 of legal release from any of the previous felony convictions at the time  
12 of commission of the felony for which he or she now stands convicted;  
13 ~~or~~

14 ~~3.~~ Was discharged from probation, parole, postincarceration supervision,  
15 conditional discharge, conditional release, or any other form of legal  
16 release on any of the previous felony convictions within five (5) years  
17 prior to the date of commission of the felony for which he now stands  
18 convicted; ~~or~~

19 ~~2.~~<sup>[4.]</sup> Was in custody from the previous felony conviction at the time of  
20 commission of the felony for which he or she now stands convicted; or

21 ~~3.~~<sup>[5.]</sup> Had escaped from custody while serving any of the previous felony  
22 convictions at the time of commission of the felony for which he or she  
23 now stands convicted.

24 ~~(5)~~<sup>[4]</sup> For the purpose of determining whether a person has two (2) or more previous  
25 felony convictions, two (2) or more convictions of crime for which that person  
26 served concurrent or uninterrupted consecutive terms of imprisonment shall be  
27 deemed to be only one (1) conviction, unless one (1) of the convictions was for an

1 offense committed while that person was imprisoned.

2 ~~(6)~~<sup>(5)</sup> **(a) If a jury elects to impose an enhanced sentence under subsection (2)**  
3 **of this section,** a person who is found to be a persistent felony offender in the  
4 second degree shall be sentenced to an indeterminate term of imprisonment  
5 pursuant to the sentencing provisions of KRS 532.060(2) for the next highest  
6 degree than the offense for which convicted.

7 **(b)** A person who is found to be a persistent felony offender in the second degree  
8 shall not be eligible for probation, shock probation, or conditional discharge,  
9 unless all offenses for which the person stands convicted are **Class C or** Class  
10 D felony offenses which do not involve a violent act against a person, in  
11 which case probation, shock probation, or conditional discharge may be  
12 granted.

13 **(c)** A Violent offender who is found to be a persistent felony offender in the  
14 second degree shall not be eligible for parole except as provided in KRS  
15 439.3401.

16 ~~(7)~~<sup>(6)</sup> **If a jury elects to impose an enhanced sentence under subsection (2) of this**  
17 **section,** a person who is found to be a persistent felony offender in the first degree  
18 shall be sentenced to imprisonment as follows:

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

27 (b) If the offense for which he **or she** presently stands convicted is a Class C or

1 Class D felony, a persistent felony offender in the first degree shall be  
2 sentenced to an indeterminate term of imprisonment, the maximum of which  
3 shall not be less than ten (10) years nor more than twenty (20) years.

4 ~~(8)~~~~(7)~~ **(a) If a jury elects to impose an enhanced sentence under subsection (2)**  
5 **of this section,** a person who is found to be a persistent felony offender in the  
6 first degree shall not be eligible for probation, shock probation, or conditional  
7 discharge, unless all offenses for which the person stands convicted are **Class**  
8 **C or** Class D felony offenses which do not involve a violent act against a  
9 person or a sex crime as that term is defined in KRS 17.500, in which case,  
10 probation, shock probation, or conditional discharge may be granted.

11 **(b)** If the offense the person presently stands convicted of is a Class A, B, or C  
12 felony **offense which involves a violent act against a person or a sex crime**  
13 **as defined in KRS 17.500,** the person shall not be eligible for parole until the  
14 person has served a minimum term of incarceration of not less than ten (10)  
15 years, unless another sentencing scheme applies.

16 **(c)** A violent offender who is found to be a persistent felony offender in the first  
17 degree shall not be eligible for parole except as provided in KRS 439.3401.

18 ~~(9)~~~~(8)~~ A conviction, plea of guilty, or Alford plea under KRS 218A.1415 shall not  
19 trigger the application of this section, regardless of the number or type of prior  
20 felony convictions that may have been entered against the defendant. ~~[A conviction,~~  
21 ~~plea of guilty, or Alford plea under KRS 218A.1415 may be used as a prior felony~~  
22 ~~offense allowing this section to be applied if he or she is subsequently convicted of~~  
23 ~~a different felony offense.]~~

24 ~~(10)~~~~(9)~~ **The provisions of this section shall be retroactive** ~~[The provisions of this~~  
25 ~~section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be retroactive].~~

26 ~~(11)~~~~(10)~~ (a) Except as provided in paragraph (b) of this subsection, this section shall  
27 not apply to a person convicted of a criminal offense if the penalty for that

1 offense was increased from a misdemeanor to a felony, or from a lower felony  
2 classification to a higher felony classification, because the conviction  
3 constituted a second or subsequent violation of that offense.

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

- 6 1. A felony offense arising out of KRS 189A.010, 189A.090, 506.140,  
7 508.032, 508.140, or 510.015; or
- 8 2. Any other felony offense if the penalty was not enhanced to a higher  
9 level because the Commonwealth elected to prosecute the person as a  
10 first-time violator of that offense.

11 ➔Section 2. KRS 439.3405 is amended to read as follows:

12 (1) Notwithstanding any statute eliminating parole or establishing minimum time for  
13 parole eligibility for a certain class or status of offender, including KRS  
14 439.340(11), 439.3401, 532.080(8)~~(7)~~, and 533.060, the board, with the written  
15 consent of a majority of the full board, may review the case of any prisoner and  
16 release that prisoner on parole despite any elimination of or minimum time for  
17 parole eligibility, when the prisoner has a documented terminal medical condition  
18 likely to result in death within one (1) year or severe chronic lung disease, end-  
19 stage heart disease, severe neuro-muscular disease such as multiple sclerosis; or has  
20 severely limited mobility as a result of stroke, disease, or trauma; or is dependent on  
21 external life support systems and would not pose a threat to society if paroled.

22 (2) Medical information considered under this section shall be limited to the medical  
23 findings supplied by Department of Corrections medical staff. The medical staff  
24 shall provide in writing the prisoner's diagnosis and prognosis in support of the  
25 conclusion that the prisoner suffers from a terminal medical condition likely to  
26 result in death within one (1) year or because of the conditions set forth in  
27 subsection (1) of this section he or she is substantially dependent on others for the

1 activities of daily living.

2 (3) The medical information prepared by the Department of Corrections medical staff  
3 under this section shall be forwarded to the medical director of the Department of  
4 Corrections who shall submit that information and a recommendation for or against  
5 parole review under this section to the commissioner of the Department of  
6 Corrections or his or her designee. With the approval of the commissioner of the  
7 Department of Corrections, a request for parole review under this section, along  
8 with the medical information and medical director's recommendation, shall be  
9 submitted to the board.

10 (4) Medical information presented under this section shall be considered along with  
11 other information relevant to a decision regarding the granting of parole and shall  
12 not constitute the only reason for granting parole.

13 (5) Notwithstanding KRS 439.340(5), in addition to or in conjunction with each review  
14 conducted under subsection (1) of this section for any prisoner convicted of a Class  
15 A or B felony, or of a Class C felony involving violence or a sexual offense and  
16 prior to the granting of parole to any such prisoner, the Parole Board shall conduct a  
17 hearing of which the following persons shall receive not less than fifteen (15) nor  
18 more than thirty (30) days' notice:

19 (a) The Commonwealth's attorney, who shall notify the sheriff of every county  
20 and the chief of police of every city and county in which the prisoner  
21 committed any Class A, B, or C felony for which he or she is imprisoned; and

22 (b) All identified victims of the crimes or the next of kin of any victim who is  
23 deceased.

24 Notice to the Commonwealth's attorney shall be by mail, fax, or electronic means,  
25 at the discretion of the board, and shall be in a manner that ensures receipt at the  
26 Commonwealth attorney's business office. Notices received by chiefs of police and  
27 sheriffs shall be posted in a conspicuous location where police employed by the

1 department may see it. Notices shall be posted in a manner and at a time that will  
2 allow officers to make comment thereon to the Parole Board. Notice to victims or  
3 their next of kin shall be made by mail, fax, or electronic means, at the discretion of  
4 the board, to their last known address or telephone number as provided by the  
5 Commonwealth's attorney to the Parole Board at the time of incarceration of the  
6 prisoner. Notice to the victim or the next of kin of subsequent considerations for  
7 parole after the initial consideration shall not be sent if the victim or the next of kin  
8 gives notice to the board that he or she no longer wants to receive such notices. The  
9 notice shall include the time, date, and place of the hearing provided for in this  
10 subsection, and the name and address of a person to write if the recipient of the  
11 notice desires to attend the hearing or to submit written comments.