

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, shall fix a sentence of
9 imprisonment as authorized by subsection ~~[(5) or]~~(6) **or (7)** of this section.

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

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

19 **(3)**~~[(2)]~~ A persistent felony offender in the second degree is a person who is more than
20 twenty-one (21) years of age and who stands convicted of a felony after having been
21 convicted of one (1) previous felony. As used in this provision, a previous felony
22 conviction is a conviction of a felony in this state or conviction of a crime in any
23 other jurisdiction provided:

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

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

1 (c) That the offender:

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

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

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

15 2.~~[4.]~~ Was in custody from the previous felony conviction at the time of
16 commission of the felony for which he or she now stands convicted; or

17 3.~~[5.]~~ Had escaped from custody while serving any of the previous felony
18 convictions at the time of commission of the felony for which he or she
19 now stands convicted.

20 ~~(4)~~~~[(3)]~~ A persistent felony offender in the first degree is a person who is more than
21 twenty-one (21) years of age and who stands convicted of a felony after having been
22 convicted of two (2) or more felonies, or one (1) or more felony sex crimes against
23 a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more
24 felonies. As used in this provision, a previous felony conviction is a conviction of a
25 felony in this state or conviction of a crime in any other jurisdiction provided:

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

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

3 (c) That the offender:

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

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

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

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

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

22 (5)[(4)] For the purpose of determining whether a person has two (2) or more previous
23 felony convictions, two (2) or more convictions of crime for which that person
24 served concurrent or uninterrupted consecutive terms of imprisonment shall be
25 deemed to be only one (1) conviction, unless one (1) of the convictions was for an
26 offense committed while that person was imprisoned.

27 (6)[(5)] (a) *Notwithstanding KRS Chapter 532,* a person who is found to be a

1 persistent felony offender in the second degree shall be sentenced to an
2 indeterminate term of imprisonment that shall be no less than the minimum
3 term of imprisonment for the underlying conviction nor more than the
4 maximum term of imprisonment for the next highest degree [pursuant to the
5 sentencing provisions of KRS 532.060(2) for the next highest degree than the
6 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 ~~(Z)~~~~(6)~~ A person who is found to be a persistent felony offender in the first degree
17 shall be sentenced to imprisonment as follows:

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

26 (b) If the offense for which he or she presently stands convicted is a Class C or
27 Class D felony, a persistent felony offender in the first degree shall be

1 sentenced to an indeterminate term of imprisonment, the maximum of which
2 shall not be less than ten (10) years nor more than twenty (20) years.

3 ~~(8)~~~~(7)~~ **(a)** A person who is found to be a persistent felony offender in the first
4 degree shall not be eligible for probation, shock probation, or conditional
5 discharge, unless all offenses for which the person stands convicted are **Class**
6 **C or** Class D felony offenses which do not involve a violent act against a
7 person or a sex crime as that term is defined in KRS 17.500, in which case,
8 probation, shock probation, or conditional discharge may be granted.

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

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

16 ~~(9)~~~~(8)~~ A conviction, plea of guilty, or Alford plea under KRS 218A.1415 shall not
17 trigger the application of this section, regardless of the number or type of prior
18 felony convictions that may have been entered against the defendant. A conviction,
19 plea of guilty, or Alford plea under KRS 218A.1415 **shall not**~~may~~ be used as a
20 prior felony offense allowing this section to be applied if he or she is subsequently
21 convicted of a different felony offense.

22 ~~(10)~~~~(9)~~ The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11,
23 shall be retroactive.

24 ~~(11)~~~~(10)~~ (a) Except as provided in paragraph (b) of this subsection, this section shall
25 not apply to a person convicted of a criminal offense if the penalty for that
26 offense was increased from a misdemeanor to a felony, or from a lower felony
27 classification to a higher felony classification, because:

- 1 1. The conviction constituted a second or subsequent violation of that
2 offense; or
- 3 2. *The conviction was enhanced because the offense occurred during a*
4 *declared emergency as defined by KRS 39A.020 arising from a natural*
5 *or man-made disaster, within the area covered by the emergency*
6 *declaration and within the area impacted by the disaster.*

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

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

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

- 15 (1) Notwithstanding any statute eliminating parole or establishing minimum time for
16 parole eligibility for a certain class or status of offender, including KRS
17 439.340(11), 439.3401, 532.080(~~8~~)(~~7~~), and 533.060, the board, with the written
18 consent of a majority of the full board, may review the case of any prisoner and
19 release that prisoner on parole despite any elimination of or minimum time for
20 parole eligibility, when the prisoner has a documented terminal medical condition
21 likely to result in death within one (1) year or severe chronic lung disease, end-stage
22 heart disease, severe neuro-muscular disease such as multiple sclerosis; or has
23 severely limited mobility as a result of stroke, disease, or trauma; or is dependent on
24 external life support systems and would not pose a threat to society if paroled.
- 25 (2) Medical information considered under this section shall be limited to the medical
26 findings supplied by Department of Corrections medical staff. The medical staff
27 shall provide in writing the prisoner's diagnosis and prognosis in support of the

1 conclusion that the prisoner suffers from a terminal medical condition likely to
2 result in death within one (1) year or because of the conditions set forth in
3 subsection (1) of this section he or she is substantially dependent on others for the
4 activities of daily living.

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

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

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

- 22 (a) The Commonwealth's attorney, who shall notify the sheriff of every county
23 and the chief of police of every city and county in which the prisoner
24 committed any Class A, B, or C felony for which he or she is imprisoned; and
25 (b) All identified victims of the crimes or the next of kin of any victim who is
26 deceased.

27 Notice to the Commonwealth's attorney shall be by mail, fax, or electronic means,

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