

1 AN ACT relating to sentencing by juries.

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

3 ➔Section 1. KRS 532.055 is amended to read as follows:

- 4 (1) In all felony cases, the jury in its initial verdict will make a determination of not
5 guilty, guilty, guilty but mentally ill, or not guilty by virtue of insanity, and no more.
- 6 (2) Upon return of a verdict of guilty or guilty but mentally ill against a defendant, the
7 court shall conduct a sentencing hearing before the jury, if such case was tried
8 before a jury. In the hearing the jury will determine the punishment to be imposed
9 within the range provided elsewhere by law. The jury shall recommend whether the
10 sentences shall be served concurrently or consecutively.
- 11 (a) Evidence may be offered by the Commonwealth relevant to sentencing
12 including:
- 13 1. Minimum parole eligibility, prior convictions of the defendant, both
14 felony and misdemeanor;
 - 15 2. The nature of prior offenses for which he was convicted;
 - 16 3. The date of the commission, date of sentencing, and date of release from
17 confinement or supervision from all prior offenses;
 - 18 4. The maximum expiration of sentence as determined by the division of
19 probation and parole for all such current and prior offenses;
 - 20 5. The defendant's status if on probation, parole, postincarceration
21 supervision, conditional discharge, or any other form of legal release;
 - 22 6. Juvenile court records of adjudications of guilt of a child for an offense
23 that would be a felony if committed by an adult. Subject to the Kentucky
24 Rules of Evidence, these records shall be admissible in court at any time
25 the child is tried as an adult, or after the child becomes an adult, at any
26 subsequent criminal trial relating to that same person. Juvenile court
27 records made available pursuant to this section may be used for

- 1 impeachment purposes during a criminal trial and may be used during
2 the sentencing phase of a criminal trial; however, the fact that a juvenile
3 has been adjudicated delinquent of an offense that would be a felony if
4 the child had been an adult shall not be used in finding the child to be a
5 persistent felony offender based upon that adjudication. Release of the
6 child's treatment, medical, mental, or psychological records is prohibited
7 unless presented as evidence in Circuit Court. Release of any records
8 resulting from the child's prior abuse and neglect under Title IV-E or
9 Title IV-B of the federal Social Security Act is also prohibited; and
- 10 7. The impact of the crime upon the victim or victims, as defined in KRS
11 421.500, including a description of the nature and extent of any physical,
12 psychological, or financial harm suffered by the victim or victims;
- 13 (b) The defendant may introduce evidence in mitigation or in support of leniency;
14 and
- 15 (c) Upon conclusion of the proof, the court shall instruct the jury on the range of
16 punishment and counsel for the defendant may present arguments followed by
17 the counsel for the Commonwealth. The jury shall then retire and recommend
18 a sentence for the defendant.
- 19 (3) (a) When a verdict of guilty is returned for an offense classified as a Class D
20 felony, upon motion made by the Commonwealth or by the defendant, the
21 judge shall instruct the jury that if it finds by a preponderance of the
22 evidence, after consideration of the nature and circumstances of the crime
23 and the history and character of the convicted person, that a felony
24 conviction would be unduly harsh, the jury may recommend that the
25 offense be punished as a Class A misdemeanor.
- 26 (b) If the jury recommends that the Class D felony be punished as a Class A
27 misdemeanor, the offense shall be designated for all purposes as a Class A

1 *misdemeanor, and the offender shall have a definite term of imprisonment*
2 *fixed as authorized by this chapter.*

3 **(4)** All hearings held pursuant to this section shall be combined with any hearing
4 provided for by KRS 532.080.

5 ~~**(5)**~~~~**(4)**~~ In the event that the jury is unable to agree as to the sentence or any portion
6 thereof and so reports to the judge, the judge shall impose the sentence within the
7 range provided elsewhere by law.

8 ➔Section 2. KRS 532.080 is amended to read as follows:

9 (1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the
10 sentence of imprisonment assessed under KRS 532.060 for the crime of which such
11 person presently stands convicted, ~~may~~~~shall~~ fix a sentence of imprisonment as
12 authorized by subsection (5) or (6) of this section. When a defendant is charged
13 with being a persistent felony offender, the determination of whether or not *the*
14 *defendant*~~he~~ is such an offender and the punishment to be imposed pursuant to
15 subsection (5) or (6) of this section, *if any,* shall be determined in a separate
16 proceeding from that proceeding which resulted in *the defendant's*~~his~~ last
17 conviction. Such proceeding shall be conducted before the court sitting with the jury
18 that found the defendant guilty of his *or her* most recent offense unless the court for
19 good cause discharges that jury and impanels a new jury for that purpose.

20 (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 been
22 convicted of one (1) previous felony. As used in this provision, a previous felony
23 conviction is a conviction of a felony in this state or conviction of a crime in any
24 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 or she 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 or she now
15 stands convicted; or

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

27 (a) That a sentence to a term of imprisonment of one (1) year or more or a

1 sentence to death was imposed therefor;~~and~~

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

4 (c) That the offender:

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

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

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

18 4. Was in custody from the previous felony conviction at the time of
19 commission of the felony for which he or she now stands convicted; or

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

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

1 (5) (a) 1. A person who is found to be a persistent felony offender in the second
2 degree ~~may~~^{shall} be sentenced to an indeterminate term of
3 imprisonment pursuant to the sentencing provisions of KRS 532.060(2)
4 for the next highest degree than the offense for which convicted.

5 2. A person found to be a persistent felony offender in the second degree
6 who is not sentenced to an increased term under this subsection shall
7 be sentenced as authorized for the offense or offenses for which the
8 person presently stands convicted.

9 (b) 1. A person who is found to be a persistent felony offender in the second
10 degree and sentenced to an increased term of imprisonment under this
11 subsection shall not be eligible for probation, shock probation, or
12 conditional discharge, unless all offenses for which the person stands
13 convicted are Class D felony offenses which do not involve a violent act
14 against a person, in which case probation, shock probation, or
15 conditional discharge may be granted.

16 2. A violent offender who is found to be a persistent felony offender in the
17 second degree and sentenced to an increased term of imprisonment
18 under this subsection shall not be eligible for parole except as provided
19 in KRS 439.3401.

20 (6) (a) A person who is found to be a persistent felony offender in the first degree
21 ~~may~~^{shall} be sentenced to imprisonment as follows:

22 1. (a) If the offense for which the offender^{he} presently stands
23 convicted is a Class A or Class B felony, or if the person was previously
24 convicted of one (1) or more sex crimes committed against a minor as
25 defined in KRS 17.500 and presently stands convicted of a subsequent
26 sex crime, a persistent felony offender in the first degree ~~may~~^{shall} be
27 sentenced to an indeterminate term of imprisonment, the maximum of

1 which shall not be less than twenty (20) years nor more than fifty (50)
2 years, or life imprisonment, or life imprisonment without parole for
3 twenty-five (25) years for a sex crime committed against a minor;

4 ~~2.1(b)~~ If the offense for which the offender~~he~~ presently stands
5 convicted is a Class C or Class D felony, a persistent felony offender in
6 the first degree may~~shall~~ be sentenced to an indeterminate term of
7 imprisonment, the maximum of which shall not be less than ten (10)
8 years nor more than twenty (20) years.

9 **(b) If a person who is found to be a persistent felony offender in the first degree**
10 **is not sentenced to an indeterminate term of imprisonment under paragraph**
11 **(a) of this subsection:**

- 12 **1. The offender may be sentenced to an indeterminate term authorized**
13 **for a persistent felony offender in the second degree under subsection**
14 **(5) of this section for the offense or offenses for which the offender**
15 **presently stands convicted; or**
16 **2. The offender shall be sentenced as authorized for the offense or**
17 **offenses for which he or she presently stands convicted.**

- 18 (7) A person who is found to be a persistent felony offender in the first degree and who
19 is sentenced to an increased term of imprisonment under subsection (6) of this
20 section shall not be eligible for probation, shock probation, or conditional
21 discharge, unless all offenses for which the person stands convicted are Class D
22 felony offenses which do not involve a violent act against a person or a sex crime as
23 that term is defined in KRS 17.500, in which case, probation, shock probation, or
24 conditional discharge may be granted. If the offense the person presently stands
25 convicted of is a Class A, B, or C felony, the person sentenced to an increased
26 term of imprisonment under subsection (6) of this section shall not be eligible for
27 parole until the person has served a minimum term of incarceration of not less than

1 ten (10) years, unless another sentencing scheme applies. A violent offender who is
2 found to be a persistent felony offender in the first degree shall not be eligible for
3 parole except as provided in KRS 439.3401.

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

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

12 (10) (a) Except as provided in paragraph (b) of this subsection, this section shall not
13 apply to a person convicted of a criminal offense if the penalty for that offense
14 was increased from a misdemeanor to a felony, or from a lower felony
15 classification to a higher felony classification, because the conviction
16 constituted a second or subsequent violation of that offense.

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

- 19 1. A felony offense arising out of KRS 189A.010, 189A.090, 506.140,
20 508.032, 508.140, or 510.015; or
- 21 2. Any other felony offense if the penalty was not enhanced to a higher
22 level because the Commonwealth elected to prosecute the person as a
23 first-time violator of that offense.