

# KENTUCKY LAW UPDATE



# 2024

ADVANCING THE PROFESSION THROUGH EDUCATION

## **HB 5: The Safer Kentucky Act**

1 CLE Credit

Sponsor: KBA Criminal Law Section

**Compiled and Edited by:  
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This outline maintains the bill-writing conventions used by the Legislative Research Commission when drafting bills, but uses the authors' own numbering system, for ease of presentation purposes [and uses brackets wherever comments are made or examples given by the authors of this outline]:

- Whenever a new section is added to existing Kentucky Revised Statutes, the section of the bill is introduced in ALL CAPITAL LETTERS; and the new language is **bolded, underlined, and italicized**.
- Whenever an existing statute is amended, the section of the bill which introduces the amendment is introduced in regular, non-capitalized letters, and the newly added language is **bolded, underlined, and italicized** while the language it is replacing (if any) is stricken through.

## I. UNLAWFUL CAMPING

SECTION 17. A NEW SECTION OF [KRS CHAPTER 511](#) IS CREATED TO READ AS FOLLOWS:

**(1) For purposes of this section:**

**(a) "Camp" means to pitch, erect, or occupy camp facilities, or to use camp paraphernalia;**

**(b) "Camp facilities" means structures for the use of camping, including but not limited to tents, huts, temporary shelters, and vehicles; and**

**(c) "Camp paraphernalia" means items used for camping purposes, including but not limited to cots, beds, sleeping bags, and hammocks.**

**(2) A person is guilty of unlawful camping when he or she knowingly enters or remains on a public or private street, sidewalk, area under a bridge or underpass, path, park, cemetery, or other area designated for use by pedestrians or vehicles, including areas used for ingress or egress to businesses, homes, or public buildings, with the intent to sleep or camp in that area, when the area has not been designated for the purpose of sleeping or camping or the individual lacks authorization to sleep or camp in the area.**

**(3) Unlawful camping is a:**

**(a) Violation for the first offense; and**

**(b) Class B misdemeanor for the second and each subsequent offense, or if during the first offense the individual refuses to cease the offense.**

**(4) Nothing in this section shall be construed to prohibit the customary and temporary use of recreational camping areas, rest areas, or other properties that are specifically designated for purposes of resting or sleeping.**

**(5) Nothing in this section shall prevent a person from sleeping temporarily in his or her vehicle parked lawfully on a public road, street, or parking lot, where the sleeping and parking of the vehicle at the location occur for a period of less than twelve (12) hours.**

[SECTIONS 18, 19 and 20 flesh out the rest of the camping restrictions placed upon cities and municipalities.]

## II. INVOLUNTARY COMMITMENT UNDER [KRS CHAPTER 202C](#)

Section 22. [KRS 202C.050](#) is amended to read as follows:

- (1) No respondent shall be involuntarily committed under this chapter unless there is a determination that:
  - (a) The respondent presents a danger to self or others as a result of his or her mental condition;
  - (b) The respondent needs care, training, or treatment in order to mitigate or prevent substantial physical harm to self or others;
  - (c) The respondent has a demonstrated history **or recent manifestation** of criminal behavior that has endangered or caused injury to others or has a substantial history of involuntary hospitalizations under [KRS Chapter 202A](#) or [202B](#) prior to the commission of the charged crime; **or**~~and~~
  - (d) A less restrictive alternative mode of treatment would endanger the safety of the respondent or others.

## III. OFFENSES AGAINST FIRST RESPONDERS

### A. Murder of a First Responder

SECTION 25. A NEW SECTION OF [KRS CHAPTER 507](#) IS CREATED TO READ AS FOLLOWS:

**(1) As used in this section, "first responder" means:**

**(a) A peace officer;**

**(b) Paid or volunteer emergency medical services or rescue personnel;**

**(c) A paid or volunteer member of an organized fire department;**  
**or**

(d) Personnel of a private nonprofit organization providing fire, rescue, or emergency medical services; engaged at the time of the act in the lawful performance of his or her duties.

(2) A person is guilty of murder of a first responder when, with the intent to cause the death of a first responder, he or she causes the death of a first responder.

(3) Notwithstanding [KRS Chapter 532](#), murder of a first responder is a capital offense and the person shall be sentenced to death or imprisonment for life without benefit of probation or parole.

[Practice commentary: The offense ALONE calls for death or LWOP so notice of intention to seek death penalty or enhanced penalties is not required! Indictment under this offense is sufficient to give notice, as these are the only penalties available under the statute! For a penalty other than death or LWOP, the charge would have to be amended to a different homicide statute in [KRS Chapter 507](#).]

B. Attempted Murder of a First Responder

Section 26. [KRS 506.010](#) is amended to read as follows:

(5) Notwithstanding [KRS Chapter 532](#), a person who has been convicted of, or entered a plea of guilty or nolo contendere to, criminal attempt to commit murder of a first responder shall be sentenced to imprisonment for:

(a) At least twenty (20) years;

(b) Life; or

(c) Life without benefit of probation or parole until the person has served a minimum of twenty-five (25) years.

IV. VIOLENT OFFENDER CHANGES: NO LONGER IS THERE ANY DISTINCTION BETWEEN "VIOLENT OFFENSES"; ALL ARE TREATED THE SAME

Section 32. [KRS 439.3401](#) is amended to read as follows:

(4) ~~[(3)] [(a)]~~ A violent offender ~~[who has been convicted of a capital offense or Class A felony]~~ with a sentence of a term of years ~~[or Class B felony]~~ shall not be released on probation, **shock probation**, ~~[or]~~ parole, **conditional discharge, or other form of early release** until he or she has served at least eighty-five percent (85%) of the sentence imposed.

~~[(b) A violent offender who has been convicted of a violation of [KRS 507.040](#) where the victim of the offense was clearly identifiable as a peace officer, a firefighter, or emergency medical services personnel, and the victim was acting in the line of duty shall not be released on probation or parole until he or she has served at least eighty-five percent (85%) of the sentence imposed.~~

~~(c) A violent offender who has been convicted of a violation of [KRS 507.040](#) or [507.050](#) where the victim of the offense was a peace officer, a firefighter, or emergency medical services personnel, and the victim was acting in the line of duty shall not be released on probation or parole until he or she has served at least fifty percent (50%) of the sentence imposed.~~

~~(d) Any offender who has been convicted of a homicide or fetal homicide offense under [KRS Chapter 507](#) or [507A](#) in which the victim of the offense died as the result of an overdose of a Schedule I controlled substance and who is not otherwise subject to paragraph (a), (b), or (c) of this subsection shall not be released on probation, shock probation, parole, conditional discharge, or other form of early release until he or she has served at least fifty percent (50%) of the sentence imposed.]~~

~~**(5)** [(4)] A violent offender shall only [not] be awarded [any] credit on his or her sentence authorized by [KRS 197.045\(1\)\(a\)1](#). [(b)1. In no event shall a violent offender be given credit on his or her sentence if the credit reduces the term of imprisonment to less than eighty-five percent (85%) of the sentence.]~~

[Authors' commentary: Are the violent offender statute changes "retroactive" or "retrospective"? The author believes the answer is "no" for the following reasons:

*Pate v. Department of Corrections*, 466 S.W.3d 480, 486-88 (Ky. 2015), *overruled on other grounds by Lee v. Kentucky Dept. of Corrections*, 610 S.W.3d 254 (Ky. 2020), is instructive. In that case, the Court of Appeals and then the Supreme Court affirmed that the new changes in the violent offender statute were not *ex post facto* under a two-pronged analysis. Under the first prong, the Court ruled that the 2006 changes to the violent offender statute were not *ex post facto* because the changes did not increase his punishment; the years to which he was sentenced did not change, only his parole eligibility changed. Since parole is a matter of grace, not right, it was not a roll back of rights.

However, the second prong concerned whether the new statute was retrospective, meaning, whether it changed the legal consequences of acts committed before its effective date. This prong, if proven, would have found the law to be *ex post facto* as applied to Pate. The Supreme Court examined whether Pate was classified as "nonviolent" at time of the "acts completed," but classified as violent after the 2006 changes. In other words, the Court looked at the time of the *commission of the offense*, and whether he was violent or non-violent at the time of the commission. The statute before the Court was ultimately deemed NOT retrospective because Pate was convicted of a crime that was violent *even under the old version* of the violent offender statute. The only change that had occurred was the DOC's (and then the Supreme Court's) interpretation of the old statute due to the placement of a comma. But the statutory language affecting Pate itself did not change, so the 2006 amendments were not retrospective in that regard. The relevant language of *Pate* is as follows, with highlights supplied by the authors, not the Supreme Court:

In determining whether a statute violates the *ex post facto* prohibition, we must consider whether the law "imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed." *Id.* at 28, 101 S. Ct. 960 (*quoting Cummings v. Mo.*, 4 Wall. 277, 325-326, 18 L.Ed. 356 (1866)). **Thusly, our**

**analysis is two-fold. We must not only determine if the 2006 amendment to KRS 439.3401 is “retrospective,” but we must also decide whether the statute imposes upon Appellant an “increased punishment.”** See *Martin v. Chandler*, 122 S.W.3d 540, 547 (Ky. 2003) [citations omitted].

\* \* \*

#### *Increased Sentence.*

There is no doubt that Appellant has been negatively affected by his reclassification as a violent offender. However, whether his actual sentence has been lengthened is debatable. As noted, prior to being classified a violent offender, Appellant was eligible for parole after serving eight years of his sentence. See [501 KAR 1:030 §3\(1\)\(c\)](#). Yet as a violent offender, Appellant must serve twenty years in prison before becoming parole eligible. See [KRS 439.3401\(3\)](#); [501 KAR 1:030 §3\(1\)\(e\)](#). While the twelve-year increase in time Appellant must serve before becoming eligible for parole is significant, we agree with the Court of Appeals that it does not necessarily elongate Appellant's sentence. *Cf. Purvis v. Commonwealth*, 14 S.W.3d 21, 23 (Ky. 2000) (holding that an increase in the length of post-release conditional discharge impermissibly increased the offender's total punishment). **As the Court of Appeals opined in *Garland*, Appellant does not have a right to parole, nor is parole guaranteed. 997 S.W.2d at 490. Thusly, we concur with the Court of Appeals that increasing the time one must serve prior to becoming parole eligible does not have a “very real and direct effect on the actual time the prisoner remains behind bars...”** *Hyatt v. Commonwealth*, 72 S.W.3d 566, 571 (Ky. 2002).

In addition to affecting Appellant's parole eligibility, [KRS 439.3401](#) also prohibits him from obtaining certain good time credits or other credits that reduce the term of imprisonment to less than eighty-five percent of the sentence. See [KRS 439.3401\(4\)](#). By his calculation, Appellant's violent offender status has increased his minimum “serve out date” by at least ten percent. As a result, the amount of time Appellant must spend behind bars is lengthened by the loss of sentence reducing credits. See *Weaver*, 450 U.S. at 33, 101 S. Ct. 960 (holding that a retrospective reduction in gain time credits constituted an *ex post facto* law because it lengthened the period that a prisoner must spend in prison).

#### *Retrospective Application.*

Our analysis now turns to the other *ex post facto* requirement – whether the pertinent 2006 amendment to [KRS 439.3401](#) is retrospective. A law is retrospective if it “changes the legal consequences of **acts completed** before its effective date.” *Weaver*, 450 U.S. at 31, 101 S. Ct. 960. Appellant argues that [KRS 439.3401\(1\)](#) is retrospective because the 2006 amendment reclassified him as a violent offender, whereas he was not considered to be one when he committed the criminal act of manufacturing methamphetamine in 2002. The DOC, on the other hand, claims that [KRS](#)

[439.3401\(1\)](#) has always classified all Class A felonies as violent offenses, including Appellant's crime in 2002. The DOC maintains the 2006 amendment to subsection (1) did not substantively alter the violent offender definition; rather, the amendment was merely a textual modification to clarify its applicability. **Our inquiry, therefore, is to determine if the pre-2006 version of KRS 439.3401(1) rendered Appellant a non-violent offender. If so, then the 2006 amendment reclassifying Appellant as a violent offender was retrospectively applied and in violation of the constitutional bar against ex post facto laws.**

Thus, under this test pronounced by the Supreme Court in *Pate*, the issue is whether a defendant would have been classified as a non-violent offender before [HB 5](#), but a violent offender after [HB 5](#). If so, it is *ex post facto*. By our analysis, the changes which make an already-violent offense subject to 85 percent parole eligibility when prior to [HB 5](#) it would be 50 percent are NOT *ex post facto*. Conversely, any crime which was not violent before, but is violent now, cannot be retrospectively made to be subject to the 85 percent rule. This would include wanton endangerment 1st, Class C, discharge of a firearm.]

SECTION 1. A NEW SECTION OF [KRS CHAPTER 532](#) IS CREATED TO READ AS FOLLOWS:

- (1) As used in this section, "violent felony" means a felony that would classify a person as a violent offender under Section 32 of this Act.**
- (2) Notwithstanding any other provision of this chapter, a person convicted of a violent felony who has previously been convicted of two (2) separate violent felonies shall be sentenced to:**
  - (a) A term of imprisonment for life without benefit of probation or parole, if the felony is not a capital offense; or**
  - (b) Death, or a term of imprisonment for life without benefit of probation or parole, if the felony is a capital offense.**
- (3) For the purpose of determining whether a person has two (2) or more separate violent felony convictions, two (2) or more convictions for which the person served concurrent or uninterrupted consecutive terms of imprisonment shall be deemed to be only one (1) conviction, unless one (1) of the convictions was for an offense committed while that person was imprisoned.**

[Authors' Examples:

2000: Convicted of Robbery 1st Degree;  
2015: Convicted of Sex Abuse 1st Degree;  
2025: Convicted of Assault 1st Degree  
*Penalty is Life without Possibility of Parole*

2000: Convicted of Robbery 1st Degree;  
2015: Convicted of Sex Abuse 1st Degree;  
2025: Convicted of Murder (without any other aggravator)  
*Penalty is Life without Possibility of Parole or Death]*

Section 32. [KRS 439.3401](#) is amended to read as follows:

(1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to:

(a) The commission **or attempted commission** of:

1. [(a)] A capital offense;

2. [(b)] A Class A felony; or

3. **A felony sexual offense described in [KRS Chapter 510](#); or**

**(b) Commission of:**

~~1. [(c)]~~—A [Class B] felony involving the death of the victim or serious physical injury to a victim;

\* \* \*

**9. Burglary in the first degree as described in [KRS 511.020](#), if a person other than a participant in the crime was present in the building during the commission of the offense; ....**

**11. [(e)] Robbery in the second degree as described in [KRS 515.030](#); ....**

**13. Arson in the first degree as described in [KRS 513.020](#);**

**14. Strangulation in the first degree as described in [KRS 508.170](#);**

**15. Carjacking as described in Section 9 of this Act;**

## V. CARJACKING

SECTION 9. A NEW SECTION OF [KRS CHAPTER 515](#) IS CREATED TO READ AS FOLLOWS:

**(1) A person is guilty of carjacking when he or she takes a motor vehicle in the possession of another without lawful authority or ownership, from the possessor's person or immediate presence, or from the person or immediate presence of a passenger of the motor vehicle, against the possessor's or passenger's will and with the intent to either permanently or temporarily deprive the possessor of the motor vehicle of his or her possession, accomplished by means of force or intimidation.**

**(2) Carjacking is a Class B felony.**

**(3) A person shall not be convicted of a violation of this section and a violation of [KRS 515.020](#) or [KRS Chapter 514](#) arising from the same act.**

[Practice commentary: Note that carjacking is a Class B felony, just as Robbery 1st Degree (often used currently whenever there is physical force or threat of physical force used to take the vehicle). Such persons who were charged with Robbery 1st Degree for acts completed before the effective date of the statute (July 15, 2024), may want to “opt in” the new carjacking statute.

[KRS 446.110](#) provides in pertinent part: “If any penalty, forfeiture or punishment is mitigated by any provision of the new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect.” Under this provision and *Shouse v. Commonwealth*, 481 S.W.3d 480 (Ky. 2015), defendants should be able to argue that with carjacking facts, the General Assembly selected a special penalty for this special set of circumstances. The impact of doing so would be potentially three-fold:

First, the Commonwealth cannot seek BOTH theft and robbery 1st, because [HB 5](#) makes it clear that you can only get a carjacking offense, not theft or robbery. Prior case law already holds that theft is a lesser-included offense of robbery, so that may not be an issue in your case; nevertheless, in the event that the Commonwealth argues that there is a distinguishable reason why the state can seek both robbery and theft convictions, this new offense makes clear the state cannot.

Second, since “carjacking” did not exist at the time of the commission, it was by definition, not a violent offense, and hence, the penalty is not violent for anyone who opts in to carjacking where the acts were completed before the effective date of the statute. The argument against would be that it was covered by robbery 1st degree, which was violent, so that violent characterization carries forward. Nevertheless, it is an argument worth making, since [KRS 446.110](#) anticipates that a new statute could be mitigating, and the fact that carjacking was not a violent offense at the time of commission would certainly be mitigating.

Finally, note that if a carjacking occurred during a public emergency and is charged as a robbery 1st, the penalty is an A felony. Opting in to carjacking would make the offense a B felony, as it has no public emergency enhancement.]

## VI. GUN CRIMES

### A. Wanton Endangerment 1st Degree

Section 32. [KRS 439.3401](#) is amended to read as follows:

- (1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to:

\* \* \*

#### **(b) Commission of:**

- 17. Wanton endangerment in the first degree as described in Section 40 of this Act involving the discharge of a firearm.**

Section 40. [KRS 508.060](#) is amended to read as follows:

- (2) Wanton endangerment in the first degree is a Class D felony, **unless the person discharges a firearm in the commission of the offense, in which case it is a Class C felony.**

[Authors' commentary: Note that this is now included in the list of violent offenses under [KRS 439.3401](#).]

B. Possession of a Gun during Commission of a Crime

SECTION 2. A NEW SECTION OF [KRS CHAPTER 532](#) IS CREATED TO READ AS FOLLOWS:

**Notwithstanding any other provision of this chapter, or Section 32 of this Act, a person shall not be eligible for probation, parole, conditional discharge, conditional release, or any other form of release prior to the completion of his or her sentence if, in the commission of the offense, he or she utilized a firearm in furtherance of the crime, and:**

- (1) Was previously convicted of a felony;**
- (2) Knew or should have known that the firearm was stolen; or**
- (3) Was on probation, parole, conditional discharge, conditional release, or any other form of release after conviction of a violent felony offense as defined in [KRS 532.200](#).**

[Author's Examples:

2000: Convicted of Flagrant Non-Support;  
2024: Convicted of Receiving Stolen Property (a gun), bought for \$2.00 at a local flea market;  
*Penalty is a D felony, and the Defendant must serve out the sentence.*

2000: Convicted of Flagrant Non-Support;  
2024: Convicted of Wanton Endangerment 1st Degree, discharging a firearm;  
*Penalty is a C felony, which is violent (85 percent rule), more than serve out.*

2000: Convicted of Robbery 1st Degree;  
2015: Convicted of Sex Abuse 1st Degree;  
2025: Convicted of Wanton Endangerment 1st Degree, discharging a firearm;  
*Penalty is Life without Possibility of Parole.]*

VII. FENTANYL OFFENSES

A. Class C Promoting Dangerous Contraband (Fentanyl)

Section 15. [KRS 520.050](#) is amended to read as follows:

- (1) A person is guilty of promoting contraband in the first degree when:
  - (a) He or she knowingly introduces dangerous contraband into a detention facility or a penitentiary; or
  - (b) Being a person confined in a detention facility or a penitentiary, he or she knowingly makes, obtains, or possesses dangerous contraband.
- (2) Promoting contraband in the first degree is a Class D felony, **unless the dangerous contraband is fentanyl, carfentanil, or a fentanyl derivative, in which case it is a Class C felony.**

Section 32. [KRS 439.3401](#) is amended to read as follows:

- (1) As used in this section, "violent offender" means any person who has been convicted of or pled guilty to:

\* \* \*

**(b) Commission of:**

\* \* \*

**16. A Class C felony violation of promoting contraband in the first degree as described in Section 15 of this Act; or**

B. Fentanyl Trafficking

Section 8. [KRS 218A.1412](#) is amended to read as follows:

(3)....

- (c) **If the substance is fentanyl or a fentanyl derivative, and the injection, ingestion, inhalation, or other introduction of the fentanyl or fentanyl derivative causes the death of a person, the penalty for the offense shall be one (1) level higher than the level otherwise specified in this section.**

C. Fentanyl Manslaughter

Section 5. [KRS 507.030](#) is amended to read as follows:

- (1) A person is guilty of manslaughter in the first degree when:

\* \* \*

**(d) He or she knowingly sells fentanyl or a fentanyl derivative to another person, and the injection, ingestion, inhalation, or other introduction of the fentanyl or fentanyl derivative causes the death of the person.**

(2) Manslaughter in the first degree is a Class B felony.

Section 6. [KRS 507.040](#) is amended to read as follows:

**(1) A person is guilty of manslaughter in the second degree when he or she wantonly causes the death of another person, including but not limited to situations where the death results from the person's:**

\* \* \*

**(d) Knowing distribution of fentanyl or a fentanyl derivative to another person without remuneration, and the injection, ingestion, inhalation, or other introduction of the fentanyl or fentanyl derivative causes the death of the person.**

(2) Manslaughter in the second degree is a Class C felony.

[Authors' commentary: Some of you may have a client charged with wanton murder where the allegation is that the client wantonly, with aggravation, gave fentanyl, carfentanil, or a fentanyl derivative to another person, whether by sale or by transfer. In that event, [KRS 446.110](#) provides in pertinent part: "If any penalty, forfeiture or punishment is mitigated by any provision of the new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect." Under this provision, your client should be able to "opt in" to the new manslaughter provisions.

Also, do not forget the application of *Shouse v. Commonwealth*, 481 S.W.3d 480, 485 (Ky. 2015). In that case, the Kentucky Supreme Court addressed the impact of the General Assembly passing a specific homicide statute for leaving a child in a vehicle who eventually dies from being left in the vehicle:

[KRS 507.040\(1\)\(b\)](#) is more specific than the wanton-murder statute. It specifically applies only when the death is caused to a child (under age 8) by leaving the child in a motor vehicle. While these same facts could also be covered by the wanton murder statute, which is broad and does not limit its applicability, the very fact that the circumstances of these cases are specifically described in [KRS 507.040\(1\)\(b\)](#) distinguishes the offenses.

As this Court has noted on repeated occasions when resolving conflicts in statutes, "the more specific statute controls over the more general statute." *Light v. City of Louisville*, 248 S.W.3d 559, 563 (Ky. 2008). We have also noted that in dealing with conflicts in

criminal statutes, “the ‘rule of lenity’ is applicable.” *Commonwealth v. Lundergan*, 847 S.W.2d 729, 731 (Ky. 1993).

Section 7. [KRS 218A.133](#) is amended to read as follows:

- (2) A person shall not be charged with or prosecuted for a criminal offense prohibiting the possession of a controlled substance or the possession of drug paraphernalia, **for a violation of subsection (1)(d) of Section 5 of this Act or subsection (1)(d) of Section 6 of this Act, or for an offense punishable under subsection (3)(c) of Section 8 of this Act** if...

[Practice commentary: The fentanyl manslaughter provisions do not apply if the person meets the “good Samaritan” provisions of [KRS 218A.133](#).]

## VIII. JUVENILE LAW

### A. Attendance of Parent/Guardian at Proceedings

Section 3. [KRS 610.070](#) is amended to read as follows:

- (4) The court ~~shall~~<sup>may</sup> order **at least one (1) parent, guardian, or person**~~[the parents, guardians, or persons]~~ exercising custodial control over the child to be present at any hearing or other proceeding involving the child. **The court shall make accommodations necessary to allow the person to attend, including but not limited to allowing remote attendance or holding hearings outside the court's normal operating hours.**

SECTION 4. A NEW SECTION OF [KRS CHAPTER 610](#) IS CREATED TO READ AS FOLLOWS:

- (1) At any hearing or other proceeding under [KRS Chapters 630 to 645](#), at least one (1) person ordered by the court, pursuant to subsection (4) of Section 3 of this Act, to attend hearings or proceedings involving the child shall be present. The court shall make reasonable accommodations to allow the person to attend.**
- (2) A person who has been excluded from a hearing pursuant to subsection (3) of Section 3 of this Act and has not subsequently been ordered by the court to be present at future proceedings shall not be charged under this section.**
- (3) If a violation of subsection (1) of this section occurs, any parent, guardian, or other person who was ordered, pursuant to subsection (4) of Section 3 of this Act, to attend hearings or proceedings involving the child shall be fined not more than five hundred dollars (\$500) or ordered to participate in up to forty (40) hours of community service.**

B. School Employee Reporting Responsibilities

Section 36. [KRS 158.155](#) is amended to read as follows:

(1) Any school employee who knows or has reasonable cause to believe that a person has made threats or plans of violence which are intended to target a school or students or who knows that a firearm is present on school property in violation of [KRS 527.070](#) shall immediately cause a report to be made pursuant to subsection (10) of this section.

(2) Any school employee shall immediately report pursuant to subsection (10) of this section any act which the employee has a reasonable cause to believe has occurred on school property or at a school-sponsored or sanctioned event involving:

(a) Assault resulting in serious physical injury;

(b) A sexual offense;

(c) Kidnapping;

(d) Assault with the use of a weapon;

(e) Possession of a firearm or deadly weapon in violation of the law;

(f) The use, possession, or sale of a controlled substance in violation of the law; or

(g) Damage to property.

(3) Any school employee who receives information from a student or other person of conduct which is required to be reported under subsection (1) or (2) of this section shall report the conduct pursuant to subsection (10) of this section.

\* \* \*

(10) Notice required pursuant to this section shall be given to any law enforcement agency created by the local board of education, and to:

(a) A local law enforcement agency not created by the local board of education; or

(b) The Department of Kentucky State Police.

(11) Any person who intentionally violates the provisions of this section shall be guilty of a:

(a) Class B misdemeanor for the first offense;

**(b) Class A misdemeanor for the second offense; and**

**(c) Class D felony for the third or subsequent offense.**

C. Local Juvenile Restorative Justice Advisory Committees

SECTION 53. A NEW SECTION OF [KRS CHAPTER 15A](#) IS CREATED TO READ AS FOLLOWS:

**(1) The Department of Juvenile Justice shall establish in each county, or assign to an existing body the responsibilities of, a local juvenile restorative justice advisory committee. For counties within the same judicial district, the requirements of this subsection may be satisfied through a joint committee.**

**(2) The membership of each committee shall include the following:**

**(a) The Chief District Judge;**

**(b) The county attorney;**

**(c) An assistant public advocate;**

**(d) A representative from the Department for Community Based Services;**

**(e) A representative from the Department of Juvenile Justice;**

**(f) A representative from a local law enforcement agency;**

**(g) A representative from each local school district;**

**(h) Community members reflecting the racial, socioeconomic, and other diversity of the county or, in the case of a joint committee, the counties; and**

**(i) A representative from a victims advocacy group.**

**(3) Each committee shall:**

**(a) Establish sustainable programs that employ restorative practices to identify the underlying causes of negative behavior and empower children, families, and communities to address and prevent issues surrounding incidents of negative behavior; and**

**(b) Develop and implement local restorative justice programs with an established organization to serve children, youth, and families through referrals from the court, the court-designated worker, the Department of Juvenile Justice, public schools, or other social service agencies, ...**

**(4) Restorative justice programs established pursuant to this section shall not allow participation by a child accused or adjudicated of an offense which would classify him or her as a violent offender under Section 32 of this Act.**

**(5) Each committee shall meet at least quarterly, and shall report to the Department of Juvenile Justice, Office of Community and Mental Health Services.**

D. Conspiracy with a Minor [Applies to adults who conspire with juveniles]

Section 38. [KRS 506.040](#) is amended to read as follows:

**(3) Any person who is eighteen (18) years of age or older who engages in a criminal conspiracy with a minor shall be charged one (1) level higher than the level provided for the offense which is the object of the conspiratorial agreement.**

[Author's example:

Eighteen-year-old Bill and 17-year-old Sluggo decide to rob a liquor store. They text their plan back and forth. Sluggo brings the gun and Bill drives them to the store. It's Sunday! The store is closed! Thwarted! But Sluggo's father later reads the texts on Bill's phone and turns the phone over to the police. No actual robbery has been committed.

Sluggo: Conspiracy to Robbery 1st Degree  
*Penalty is a Class C Felony*

Bill: Conspiracy to Robbery 1st Degree  
*Penalty is a Class A Felony*  
*Violent (85 percent)*  
*Involved a gun: Must serve out; not parole eligible at 20 years*

Practice commentary: So, how does the criminal defense practitioner protect clients from this harsher sentencing?

### ***Gross Disproportionate Sentencing Argument***

In determining whether this principle has been breached in a particular case,

A court must begin by comparing the gravity of the offense and the severity of the sentence... “[I]n the rare case in which [this] threshold comparison ... leads to an inference of gross disproportionality” the court should then compare the defendant's sentence with the sentences received by other offenders in the same jurisdiction and with the sentences imposed for the same crime in other jurisdictions.... *Turpin v. Commonwealth*, 350 S.W.3d 444 (Ky. 2011), quoting [Graham v. Florida](#), [560 U.S. 48] (2010).]

IX. CHARITABLE BAIL ORGANIZATIONS

Section 24. [KRS 431.510](#) is amended to read as follows:

**(3) It shall be unlawful for any charitable bail organization to:**

**(a) Furnish bail or funds or property to serve as bail in an amount of five thousand dollars (\$5,000) or more; or**

**(b) Make bonds or enter into undertakings as surety in an amount of five thousand dollars (\$5,000) or more;**

**for the appearance of persons charged with any criminal offense or violation of law or ordinance punishable by fine or imprisonment before any of the courts of this state, or to secure the payment of fines imposed and of costs assessed by those courts upon a final disposition.**

**(4) Notwithstanding subsection (3) of this section, it shall be unlawful for any charitable bail organization to furnish bail or funds or property to serve as bail, or to make bonds or enter into undertakings as surety, regardless of amount, for any person:**

**(a) Alleged to have committed an offense:**

**1. Of domestic violence and abuse as defined in [KRS 403.720](#);**

**2. Of dating violence and abuse as defined in [KRS 456.010](#); or**

**3. That would classify the person as a violent offender under Section 32 of this Act;**

**(b) Held under a civil court order or warrant issued under [KRS 222.430](#) to [222.437](#); or**

**(c) Who has previously received bail or funds or property to serve as bail from a charitable bail organization.**

\* \* \*

**(6) A charitable bail organization shall maintain and annually report the following information to the Legislative Research Commission for referral to the Interim Joint Committee on Judiciary no later than October 31 of each year, and shall make publicly available on the organization's website, or by publishing in a newspaper of general circulation that complies with the requirements of [KRS 424.120](#) if the organization does not maintain a website:**

**(a) The expenditures of the organization, including a separate reporting of the amount furnished for bail, or funds or property to serve as bail; and**

**(b) The number of individuals and classification of offenses for those individuals for which any bail, or funds or property to serve as bail, has been provided.**

**(7) Any bond posted by a charitable organization under this section that is ordered forfeited as a result of the commission of a new criminal offense shall be distributed to the victim of the new criminal offense, if a victim is identified.**

[Practice commentary: Only persons without financial means for bail rely upon charitable bail, and most charitable bail organizations require some sort of proof of indigency (or at least inability to make bail based upon the person's income). Where that is the case, it is the author's opinion that this part of the statute may be unconstitutional under the Equal Protection Clause of the [Fourteenth Amendment](#) of the United States Constitution.

File a motion that this statute is unconstitutional because the impact of the statute by definition falls more harshly and without discretion upon the indigent. Ordinarily, neither prisoners nor indigents constitute a suspect class; but heightened scrutiny is required when criminal laws detain poor defendants because of their indigence. See, e.g., [Tate v. Short](#), 401 U.S. 395, 397-99 (1971), and [Williams v. Illinois](#), 399 U.S. 235, 241-42 (1970).]

## X. CRIMINAL MISCHIEF

### A. Criminal Mischief in the 1st Degree

Section 10. [KRS 512.020](#) is amended to read as follows:

(1) A person is guilty of criminal mischief in the first degree when, having no right to do so or any reasonable ground to believe that he or she has such right, he or she intentionally or wantonly:

(a) Defaces, destroys, or damages any property causing pecuniary loss of ~~five hundred dollars (\$500)~~ **one thousand dollars (\$1,000)** or more;

\*\*\*

(c) As a tenant, intentionally or wantonly defaces, destroys, or damages residential rental property causing pecuniary loss of ~~five hundred dollars (\$500)~~ **one thousand dollars (\$1,000)** or more.

(2) Criminal mischief in the first degree is a Class D felony, unless:

\*\*\*

**(b) For the first offense, if the defendant at any time prior to trial effects repair or replacement of the defaced, destroyed, or damaged property, makes complete restitution in the amount of the damage, or performs community service as required by the court, in which case it is a Class B misdemeanor. The court shall determine the number of hours of community service**

commensurate with the total amount of monetary damage caused by or incidental to the commission of the crime, of not less than sixty (60) hours; or

(c) For the second or subsequent offense, if the defendant at any time prior to trial effects repair or replacement of the defaced, destroyed, or damaged property, makes complete restitution in the amount of the damage, or performs community service as required by the court, in which case it is a Class A misdemeanor. The court shall determine the number of hours of community service commensurate with the total amount of monetary damage caused by or incidental to the commission of the crime, of not less than sixty (60) hours.

B. Criminal Mischief 2nd Degree

Section 11. [KRS 512.030](#) is amended to read as follows:

- (1) A person is guilty of criminal mischief in the second degree when, having no right to do so or any reasonable ground to believe that he or she has such right, he or she:
  - (a) Intentionally or wantonly defaces, destroys, or damages any property causing pecuniary loss of [~~five hundred dollars (\$500) or more but~~ **less than five hundred dollars (\$500)** [~~one thousand dollars (\$1,000)~~]; or
  - (b) As a tenant, intentionally or wantonly defaces, destroys, or damages residential rental property causing pecuniary loss of [~~five hundred dollars (\$500) or more but~~] **less than five hundred dollars (\$500)** [~~one thousand dollars (\$1,000)~~].
- (2) Criminal mischief in the second degree is a Class A misdemeanor, unless:

\* \* \*

(b) The defendant at any time prior to trial effects repair or replacement of the defaced, destroyed, or damaged property, makes complete restitution in the amount of the damage, or performs community service as required by the court, in which case it is a Class B misdemeanor. The court shall determine the number of hours of community service commensurate with the total amount of monetary damage caused by or incidental to the commission of the crime, of not less than fifteen (15) hours.

[Practice commentary: In this author's opinion, any criminal penalty which builds wealth (or lack of it) into the penalty is unconstitutional under the Equal Protection Clause of the [Fourteenth Amendment](#) of the United States Constitution.

File a motion that this statute is unconstitutional because the impact of the statute by definition falls more harshly and without discretion upon the indigent. Ordinarily, neither prisoners nor indigents constitute a suspect class; but heightened scrutiny is required when criminal laws detain poor defendants because of their indigence. See, e.g., *Tate v. Short*, 401 U.S. 395, 397-99 (1971), and *Williams v. Illinois*, 399 U.S. 235, 241-42 (1970).]

## XI. THEFT

### A. Multiple Thefts

Section 51. [KRS 514.030](#) is amended to read as follows:

- (4) If any person commits two (2) or more separate offenses of theft by unlawful taking or disposition within **one (1) year**~~[ninety (90) days]~~, the offenses may be combined and treated as a single offense, and the value of the property in each offense may be aggregated for the purpose of determining the appropriate charge. **Offenses committed in different jurisdictions within the Commonwealth may be combined pursuant to this subsection and tried in any jurisdiction in which venue would be proper for at least one (1) of the offenses. A defendant shall not be tried in more than one (1) jurisdiction for the same offense or offenses.**

### B. Theft of Leased Property

Section 45. [KRS 514.020](#) is amended to read as follows:

- (3) It shall be prima facie evidence of intent to commit theft by deception when one who has leased or rented the personal property of another fails to return the personal property to its owner within **four (4)**~~[ten (10)]~~ days after the lease or rental agreement has expired....

### C. Shopkeeper's Privilege

Section 31. [KRS 433.236](#) is amended to read as follows:

- (1) A peace officer, security agent of a mercantile establishment, merchant, or merchant's employee who has probable cause **to believe**~~[for believing]~~ that goods held for sale by the merchant have been unlawfully taken by a person may take the person into custody and detain him or her in a reasonable manner for a reasonable length of time, on the premises of the mercantile establishment or off the premises of the mercantile establishment, if the persons enumerated in this section are in fresh pursuit, for any~~[or all]~~ of the following purposes: ...
- (2) Any person exercising any authority granted in subsection (1) of this section may use a reasonable amount of force necessary to protect himself or herself and to prevent the escape of the person detained or the loss of goods for sale. Except as provided in [KRS Chapter 503](#), deadly force shall not be justified solely to protect property.**

\* \* \*

~~(4)(3)~~ **Any person enumerated in subsection (1) of this section shall be immune from criminal liability and shall only be subject to civil liability for failing to exercise reasonable care for any authority granted under this section.**

## XII. TERRORISTIC THREATENING

### A. Terroristic Threatening 1st Degree

Section 34. [KRS 508.075](#) is amended to read as follows:

- (1) A person is guilty of terroristic threatening in the first degree when he or she:
  - (a) Intentionally makes false statements that he or she or another person has placed a weapon of mass destruction on:

\* \* \*

6. **Any workplace; or**

7. **The real property or any building public or private that is the site of any gathering of three (3) or more persons;**

### B. Terroristic Threatening 2nd Degree

Section 35. [KRS 508.078](#) is amended to read as follows:

- (1) A person is guilty of terroristic threatening in the second degree when, other than as provided in [KRS 508.075](#), he or she intentionally:
  - (a) With respect to any scheduled, publicly advertised event open to the public, any place of worship, ~~[ or ]~~ **any school function, any workplace, or any gathering of three (3) or more persons,** threatens to commit **by any means, including by use of a firearm,** any act likely to result in death or serious physical injury to any person ~~[ at a scheduled, publicly advertised event open to the public, any person at a place of worship, or any student group, teacher, volunteer worker, or employee of a public or private elementary or secondary school, vocational school, or institution of postsecondary education, or to any other person reasonably expected to lawfully be on school property or at a school-sanctioned activity, if the threat is related to their employment by a school, or work or attendance at school, or a school function].~~ A threat directed at a person or persons at a scheduled, publicly advertised event open to the public, place of worship, ~~[ or ]~~ school, **workplace, or gathering of three (3) or more persons** does not need to identify a specific person or persons or school in order for a violation of this section to occur;

### XIII. FLEEING, EVADING AND ESCAPE

#### A. Fleeing and Evading

Section 47. [KRS 520.095](#) is amended to read as follows:

- (2) Fleeing or evading police in the first degree is a **Class C**~~[Class-D]~~ felony **and the defendant shall not be released on probation, shock probation, conditional discharge, or parole until he or she has served at least fifty percent (50%) of the sentence imposed.**

Section 48. [KRS 520.100](#) is amended to read as follows:

- (2) Fleeing or evading police in the second degree is a **Class D felony**~~[Class A misdemeanor]~~ **and the defendant shall not be released on probation, shock probation, conditional discharge, or parole until he or she has served at least fifty percent (50%) of the sentence imposed.**

SECTION 49. A NEW SECTION OF [KRS CHAPTER 520](#) IS CREATED TO READ AS FOLLOWS:

- (1) A person is guilty of fleeing or evading police in the third degree when, as a pedestrian and with intent to elude or flee, the person knowingly or wantonly disobeys a direction to stop given by a person recognized to be a peace officer, and in fleeing or eluding the person creates a substantial risk of physical injury to any person.**
- (2) No offense is committed under this section when the conduct involved constitutes a failure to comply with a directive of a traffic control officer.**
- (3) Fleeing or evading police in the third degree is a Class A misdemeanor.**

#### B. Escape

Section 52. [KRS 520.015](#) is amended to read as follows:

- (1) A person is guilty of attempting to escape from the penitentiary when he or she:
- (a) Conceals himself or herself within the walls of the penitentiary;[ ~~or~~ ]
  - (b) Attempts to scale the enclosure surrounding the penitentiary;[ ~~or~~ ]
  - (c) Flees from whatever bounds he or she may be assigned, whether under guard or as a trusty;[ ~~or~~ ]
  - (d) Escapes from a locked cell, dormitory, hospital, or other lockup in the penitentiary;[ ~~or~~ ]

- (e) Escapes from one part of the penitentiary to another;[ or ]
- (f) Does any other act in furtherance of an escape from the penitentiary;[ or ]
- (g) **Obstructs, disables, tampers with, removes, damages, or destroys any video recording or monitoring device within the penitentiary; or**
- (h) Does any act or omission constituting criminal attempt under [KRS 506.010](#).

#### XIV. PAROLE BOARD

Section 29. [KRS 439.320](#) is amended to read as follows:

- (3) **(b) The members of the board shall serve at the pleasure of the Governor, but for no more than four (4) years without reappointment**~~[Their terms of office shall be four (4) years and until their successors are appointed and have qualified].~~ Their successors shall be appointed thereafter as provided in this section.~~[ for terms of four (4) years, and]~~ A vacancy occurring before expiration of the term of office shall be similarly filled for the unexpired term.

\* \* \*

- (5) Parole and final parole revocation hearings may be done by panels of the board, subject to the following requirements:
  - (a) **A panel shall consist of not less than three (3) and not more than six (6) members**~~[If a two (2) member panel is utilized, both members of the panel shall agree on the decision or the matter shall be referred to the full board];~~ **and**
  - (b) **All members of the panel shall agree on a decision or the matter shall be referred to the full board**~~[If a three (3) member panel is utilized, two (2) of the three (3) members of the panel shall agree on a decision or the matter shall be referred to the full board; and~~
  - (c) ~~— If a panel of four (4) or more members is utilized, a majority of the panel shall agree on a decision or the matter shall be referred to the full board].~~

Section 30. [KRS 439.330](#) is amended to read as follows:

- (1) The board shall:

\* \* \*

- (d) Order the granting of parole **upon a two-thirds (2/3) vote of the membership of the full board, or pursuant to subsection (5) of Section 29 of this Act;**

**XV. INTIMIDATING A PARTICIPANT IN THE LEGAL PROCESS**

Section 41. [KRS 524.040](#) is amended to read as follows:

- (1) A person is guilty of intimidating a participant in the legal process when, by use of **harassing communications as described in [KRS 525.080](#)**, physical force, or a threat directed to a person he or she believes to be a participant in the legal process, he or she: ....

**XVI. VIOLENCE REDUCTION PROGRAM**

Section 42. [KRS 439.340](#) is amended to read as follows:

- (15) When an order for parole is issued, it shall recite the conditions thereof, **which may include requiring the person to participate in a specific evidence-based program designed to reduce violence.**

Section 43. [KRS 533.030](#) is amended to read as follows:

- (2) When imposing a sentence of probation or conditional discharge, the court may, in addition to any other reasonable condition, require that the defendant:

\* \* \*

**(o) Participate in a specific evidence-based program designed to reduce violence.**

**XVII. SERIOUS PHYSICAL INJURY DEFINITION**

Section 44. [KRS 500.080](#) is amended to read as follows:

**(19)**~~(18)~~ "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, prolonged loss or impairment of the function of any bodily organ, or eye damage or visual impairment. For a child twelve (12) years of age or less at the time of the injury, **or for any person if the relationship between the perpetrator and the victim meets the definition of a family member or member of an unmarried couple as defined in [KRS 403.720](#), or a dating relationship as defined in [KRS 456.010](#)**, a serious physical injury includes but is not limited to the following:...

**XVIII. PURCHASE OF A HOMICIDE-USED FIREARM**

Section 16. [KRS 16.220](#) is amended to read as follows:

- (1) Subject to the duty to return confiscated firearms to innocent owners pursuant to [KRS 500.090](#), all firearms confiscated by the Department of Kentucky State Police and not retained for official use pursuant to [KRS 500.090](#) shall be sold at public auction to:

(a) Federally licensed firearms dealers holding a license appropriate for the type of firearm sold; or

(b) *For a firearm which was used in a homicide, any person who certifies on a form provided by the Department of Kentucky State Police prior to placing a bid that he or she will, upon completion of the auction, leave the firearm with the Department of Kentucky State Police for destruction. A state or local government or agency thereof shall not purchase a firearm under this paragraph.*

## XIX. FELONY OFFENDER ID

Section 23. [KRS 186.417](#) is amended to read as follows:

- (1) The Transportation Cabinet shall issue to any felony offender, if the felony offender is eligible, released from the Kentucky Department of Corrections, *a county jail or other local or regional correctional facility, if and when funds are available,* or a Federal Bureau of Prisons facility located in Kentucky on home incarceration, parole, completed service of sentence, shock probation, or pardon, a personal identification card or, if the felony offender is eligible, an operator's license. An offender who wishes to obtain a personal identification card or operator's license shall provide proper documentation to comply with the provisions of this section.

## FOR YOUR INFORMATION ...

### The Kentucky Law Update: Continuing Legal Education for All Kentucky Lawyers

The Supreme Court of Kentucky established the Kentucky Law Update Program as an element of the minimum continuing legal education system adopted by Kentucky attorneys in 1984. The KLU program is now offered in a hybrid format. The 2024 Kentucky Law Update is offered as a one-day, in-person program at nine different locations across the state. The 2024 On-Demand Kentucky Law Update is offered virtually on the Kentucky Bar Association website from September 1st until December 31st. These two programs offer every Kentucky attorney the opportunity to meet the 12 credit CLE requirement, including the 2 ethics credit requirement, **close to home and at no cost!** Judges can also earn continuing judicial education credits at the Kentucky Law Update.

This program was designed as a service to all Kentucky attorneys regardless of level of experience. This service is supported by membership dues and is, therefore, each member's program. The program is a survey of current issues, court decisions, ethical opinions, legislative and rule changes, and other legal topics of general interest that are faced by the Kentucky practitioner on a daily basis. As such, the program serves both the general practitioner and the practitioner who limits his or her practice to a particular field of the law. The Kentucky Law Update program is not intended, nor designed, to be an in-depth analysis of a particular topic. It is designed to alert the lawyers of Kentucky to changes in the law and rules of practice that impact the daily practice of law.

### About the Handbooks and Presentations

Handbook materials are the result of the combined efforts of numerous dedicated professionals from around Kentucky and elsewhere. The KBA gratefully acknowledges the following individuals who graciously contributed to this publication:

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KBA AI Task Force	KBA Office of Bar Counsel
KBA Alternative Dispute Resolution Section	KBA Well Being Committee
KBA Criminal Law Section	Kentucky Court of Appeals
KBA Elder Law Section	Kentucky Lawyer Assistance Program
KBA Ethics Committee	Lawyers Mutual of Kentucky
KBA Family Law Section	Legislative Research Commission
KBA Law Practice Committee	NAELA – Kentucky Chapter
KBA Military Law Committee	Supreme Court of Kentucky

Presentations are also made on a voluntary basis. To the individuals who volunteer in this capacity, special gratitude is owed. Individuals contributing to this program are contributing to the professional development of all members of the Kentucky Bar Association. We wish to express our gratitude in advance to these individuals.

A special thank you to all of the organizations, authors, presenters, moderators, and other 2024 Kentucky Law Update program volunteers will appear in the January 2025 issue of the *Bench & Bar*.

### **CLE and Ethics Credit**

The one-day, in-person 2024 Kentucky Law Update Program is accredited for 7 CLE credits, including 2 ethics credits. The 2024 On-Demand Kentucky Law Update is accredited for 7.75 CLE credits, including 3 ethics credits. One credit is awarded for each 60 minutes of actual instruction as noted on the agendas provided on the KBA website.

The Kentucky Bar Association 2024 Kentucky Law Update programs are accredited CLE activities in numerous other jurisdictions. Credit categories and credit calculations vary from state-to-state. CLE reporting information for other states will be provided at the registration desk at the in-person programs. The out of state information for the on-demand sessions will be available on the program website.

Kentucky Judges, don't forget you can claim CJE credit for attending this program.

**REMEMBER!** Reporting attendance credits is now online. Reporting information and activity numbers will be available at each respective in-person event. The on-demand reporting information and activity number will be located on the program website.

### **Evaluations**

The 2024 Kentucky Law Update is *your* program and your input *is* valued and needed. Links to the program evaluations for the live, in-person programs and the on-demand program will be provided to all registrants via email. PLEASE take a few minutes to complete the evaluation questionnaire upon receipt. We appreciate your assistance in improving this service.

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