

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

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

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

18 (2) **(a)** A persistent felony offender in the second degree is a person who:

19 **1.** Is more than twenty-one (21) years of age; and

20 **2. a.** ~~who~~Stands convicted of a felony after having been convicted of
21 one (1) previous felony; **and**

22 **b.** **The previous felony conviction is within the same chapter of the**
23 **Kentucky Revised Statutes as the present offense.**

24 **(b)** 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 **1.**~~(a)~~ That a sentence to a term of imprisonment of one (1) year or more
27 or a sentence to death was imposed~~therefor~~; ~~and~~

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

3 ~~3.~~~~(c)~~ That the offender:

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

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

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

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

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

23 (3) (a) A persistent felony offender in the first degree is a person who:

24 1. Is more than twenty-one (21) years of age; and

25 2. a. Who stands convicted of a felony after having been convicted of
26 two (2) or more felonies, or one (1) or more felony sex crimes
27 against a minor as defined in KRS 17.500, and now stands

1 convicted of any one (1) or more felonies; and

2 *b. The previous felony conviction or convictions are within the*
3 *same chapter of the Kentucky Revised Statutes as the present*
4 *offense.*

5 (b) As used in this provision, a previous felony conviction is a conviction of a
6 felony in this state or conviction of a crime in any other jurisdiction provided:

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

9 2.[(b)] That the offender was over the age of eighteen (18) years at the
10 time the offense was committed; and

11 3.[(c)] That the offender:
12 a. [1.] Completed service of the sentence imposed on any of the previous
13 felony convictions within five (5) years prior to the date of the
14 commission of the felony for which he or she now stands
15 convicted; ~~or~~

16 b. [2.] Was on probation, parole, postincarceration supervision,
17 conditional discharge, conditional release, furlough, appeal bond,
18 or any other form of legal release from any of the previous felony
19 convictions at the time of commission of the felony for which he
20 or she now stands convicted; ~~or~~

21 c. [3.] Was discharged from probation, parole, postincarceration
22 supervision, conditional discharge, conditional release, or any
23 other form of legal release on any of the previous felony
24 convictions within five (5) years prior to the date of commission of
25 the felony for which he or she now stands convicted; ~~or~~

26 d. [4.] Was in custody from the previous felony conviction at the time of
27 commission of the felony for which he or she now stands

1 convicted; or

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

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

10 (5) (a) A person who is found to be a persistent felony offender in the second degree
11 shall be sentenced to an indeterminate term of imprisonment pursuant to the
12 sentencing provisions of KRS 532.060(2) for the next highest degree than the
13 offense for which convicted.

14 (b) A person who is found to be a persistent felony offender in the second degree
15 shall not be eligible for probation, shock probation, or conditional discharge,
16 unless all offenses for which the person stands convicted are Class D felony
17 offenses which do not involve a violent act against a person, in which case
18 probation, shock probation, or conditional discharge may be granted.

19 (c) A violent offender who is found to be a persistent felony offender in the
20 second degree shall not be eligible for parole except as provided in KRS
21 439.3401.

22 (6) A person who is found to be a persistent felony offender in the first degree shall be
23 sentenced to imprisonment as follows:

24 (a) If the offense for which he or she presently stands convicted is a Class A or
25 Class B felony, or if the person was previously convicted of one (1) or more
26 sex crimes committed against a minor as defined in KRS 17.500 and presently
27 stands convicted of a subsequent sex crime, a persistent felony offender in the

- 1 first degree shall be sentenced to an indeterminate term of imprisonment, the
2 maximum of which shall not be less than twenty (20) years nor more than
3 fifty (50) years, or life imprisonment, or life imprisonment without parole for
4 twenty-five (25) years for a sex crime committed against a minor;
- 5 (b) If the offense for which he *or she* presently stands convicted is a Class C or
6 Class D felony, a persistent felony offender in the first degree shall be
7 sentenced to an indeterminate term of imprisonment, the maximum of which
8 shall not be less than ten (10) years nor more than twenty (20) years.
- 9 (7) (a) A person who is found to be a persistent felony offender in the first degree
10 shall not be eligible for probation, shock probation, or conditional discharge,
11 unless all offenses for which the person stands convicted are Class D felony
12 offenses which do not involve a violent act against a person or a sex crime as
13 that term is defined in KRS 17.500, in which case, probation, shock probation,
14 or conditional discharge may be granted.
- 15 (b) If the offense the person presently stands convicted of is a Class A, B, or C
16 felony, the person shall not be eligible for parole until the person has served a
17 minimum term of incarceration of not less than ten (10) years, unless another
18 sentencing scheme applies.
- 19 (c) A violent offender who is found to be a persistent felony offender in the first
20 degree shall not be eligible for parole except as provided in KRS 439.3401.
- 21 (8) A conviction, plea of guilty, or Alford plea under KRS 218A.1415 shall not trigger
22 the application of this section, regardless of the number or type of prior felony
23 convictions that may have been entered against the defendant. A conviction, plea of
24 guilty, or Alford plea under KRS 218A.1415 may be used as a prior felony offense
25 allowing this section to be applied if he or she is subsequently convicted of a
26 different felony offense under KRS Chapter 218A.
- 27 (9) The provisions of this section shall be retroactive ~~The provisions of this section~~

1 ~~amended by 1994 Ky. Acts ch. 396, sec. 11, shall be retroactive].~~

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

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.