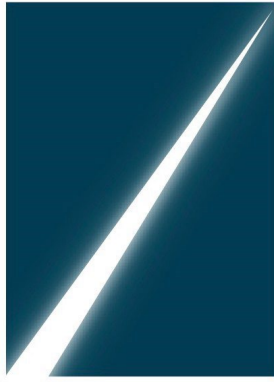


The Safer Kentucky Act: A Summary and Analysis



A Bluegrass Institute Policy Brief

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The Safer Kentucky Act: A Summary and Analysis

A Policy Brief

Bluegrass Institute for Public Policy Solutions

January 2024

EXECUTIVE SUMMARY

The Safer Kentucky Act, presently under consideration by the Kentucky General Assembly, expands the reach of the Commonwealth’s criminal code in a variety of ways.¹ It creates new offenses, broadens elements, raises offense levels, increases sentences, reduces sentencing discretion, and restricts opportunities for early release.

An objective of the Bluegrass Institute is to ensure that lawmakers and their constituents – as well as all stakeholders – understand the contents of this bill.

This Bluegrass Institute Policy Brief offers a summary and analysis of each part of the Act as filed in [House Bill 5](#).

INTRODUCTION

The Safer Kentucky Act (“Act”) reforms the Kentucky Revised Statutes (“KRS”) in relation to the following subjects:

- [Punishing Violent Crime \(Generally\)](#)
- [Fentanyl](#)
- [Firearms](#)
- [Protecting Law Enforcement](#)
- [Carjacking](#)
- [Workplace Violence](#)
- [Domestic Violence](#)
- [Homelessness](#)
- [Involuntary Commitment](#)
- [Juveniles](#)

¹ The bill was introduced on January 9, 2024. [H.B. 5](#), 2024 Reg. Sess. (Ky. 2024).

- [Criminal Mischief](#)
- [Charitable Bail Organizations](#)
- [Intimidating Participants in the Legal Process](#)
- [Offender Re-Entry](#)

I. PUNISHING VIOLENT CRIME (GENERALLY)

The Act includes provisions lengthening the imprisonment of repeat “violent offenders.” Specifically, the Act increases sentences for three-time “violent offenders,” and restricts opportunities for early release for a particular class of two-time “violent offenders.”

A. Increasing Sentences of Three-Time “Violent Offenders”

The Act increases sentences of persons convicted of a “violent felony” with two or more prior “violent felony” convictions. If the current “violent felony” conviction is a capital offense, the Act mandates a sentence of death or life without parole. If the current “violent felony” conviction is not a capital offense, the Act mandates a sentence of life without parole.

“Violent felony” is defined by the Act as a “felony that would classify a person as a ‘violent offender’ under Section 31.” Section 31, in turn, defines “violent offender” as a person who is convicted or pleaded guilty to one of the following:

- (a) A capital offense
- (b) A Class A felony
- (c) A Class B felony involving the death of the victim or serious physical injury to a victim
- (d) Manslaughter involving the killing of a peace officer, firefighter, or emergency medical services personnel
- (e) A Class B felony involving attempted murder
- (f) The commission or attempted commission of a felony sexual offense
- (g) Use of a minor in a sexual performance
- (h) Promoting a sexual performance by a minor
- (i) Unlawful transaction with a minor in the first degree
- (j) Human trafficking involving commercial sexual activity where the victim is a minor
- (k) Criminal abuse in the first degree
- (l) Burglary in the first degree accompanied by the commission or attempted commission of an assault
- (m) Burglary in the first degree accompanied by commission or attempted commission of kidnapping

- (n) Robbery in the first degree
- (o) Incest
- (p) Carjacking
- (q) A Class B felony violation of promoting contraband in the first degree
- (r) Wanton endangerment in the first degree²

The Act's three-time "violent offender" provision increases sentences in two conceptual ways: it heightens sentencing ranges, and it restricts sentencing discretion.

B. Restricting Early Release of Two-Time "Violent Offenders"

In addition to increasing sentences for three-time "violent offenders," the Act restricts opportunities for early release for a particular class of two-time "violent offenders." As it stands, the KRS provides that a person convicted of a Class A or B felony that classifies him or her as a "violent offender" must serve 85% of an imposed term of imprisonment.

The Act extends the requirement to serve 85% of an imposed term of imprisonment to a person convicted of a Class C or D felony if two conditions are met: (a) the offense of conviction classifies the person as a "violent offender"; and (b) the person was previously convicted of an offense classifying him or her as a "violent offender."

C. Practical Impact in Relation to the PFO Statute

In sum, the Act speaks to both two-time and three-time "violent offenders." To understand the Act's practical impact on lengths of imprisonment, one must take into account how the Act interplays with the existing KRS statute for Persistent Felony Offenders (PFOs).

The PFO statute differs from the Act's provisions on "violent offenders" in two important ways. First, the PFO statute incorporates a different set of prior felony convictions. Unlike the Act's "violent offender" provisions, the PFO statute: (a) is not limited to "violent" felonies; and (b) includes a sunset provision, exempting felony convictions whose related term of imprisonment (and period of supervised release) ended five or more years prior to the commission of the offense of the current conviction. Second, the implications of the PFO statute are, on balance, less severe than the Act's "violent offender" provisions.

The PFO statute requires an increase in the level of the offense of the current conviction,³ and prohibits early release. Unlike the Act's provisions on "violent offenders," the PFO statute does not mandate a sentence of death or life without parole.

As a matter of practice, and taking into account the existing PFO statute, the marginal impact of the Act's "violent offender" provisions on lengths of imprisonment will be contextual, depending on a

² In addition to increasing sentences for three-time "violent offenders" and restricting eligibility for early release of two-time "violent offenders," the Act adds to the enumerated list of offenses that classify a person as a "violent offender." In particular, the Act adds subsections (p), (q), and (r), and broadens the text of subsection (e) to cover all attempted murders.

³ The PFO statute typically raises the level of a person's offense of conviction by one. But under certain circumstances, the PFO statute will raise an offense level by two. For example, a PFO in the First Degree convicted of a Class D felony will be sentenced in the range otherwise designated for Class B felonies.

defendant's number of "violent offender" convictions, his or her PFO status, and the offense level of the current conviction.

Here are several examples:

Example 1: Two-time "violent offender" and a PFO

For a two-time "violent offender" whose current "violent offender" conviction is, say, a Class C felony and who qualifies as a PFO, the Act has no impact on length of imprisonment.

Current law: 5-10 year term of imprisonment and not eligible for early release

The Act: 5-10 year term of imprisonment and not eligible for early release

[Note: The Act's requirement that a two-time "violent offender" serve 85% of an imposed term of imprisonment is absorbed by the existing requirements of the PFO statute (i.e., prohibiting early release).]

Example 2: Two-time "violent offender" but not a PFO

For a two-time "violent offender" whose current "violent offender" conviction is, say, a Class C felony and who does not, for whatever reason, qualify as a PFO (say, because his or her prior felony convictions expired under the sunset clause of the PFO statute), the Act's impact is significant.

Current law: 5-10 year term of imprisonment and eligible for early release

The Act: 5-10 year term of imprisonment and must serve 85% of an imposed term of imprisonment

Example 3: Three-time "violent offender" and a PFO

a. Non-capital offense: For a three-time "violent offender" whose current "violent offender" conviction is, say, a Class C felony and who qualifies as a PFO, the Act's impact is significant.

Current law: 10-20 year term of imprisonment and not eligible for early release

The Act: Life without parole

b. Capital offense: For a three-time "violent offender" whose current conviction is a capital offense and who qualifies as a PFO, the Act's impact is significant.

Current law: Death, life without parole, life without parole for 25 years, or a term of imprisonment of 20-50 years (if the latter, the person is not eligible for early release)

The Act: Death or life without parole

Example 4: Three-time "violent offender" but not a PFO

a. Non-capital offense: For a three-time "violent offender" whose current "violent offender" conviction is, say, a Class C felony and who does not, for whatever reason, qualify as a PFO (say, because his or her prior felony convictions expired under the sunset clause of the PFO statute), the Act's impact is significant.

Current law: 5-10 year term of imprisonment and eligible for early release

The Act: Life without parole

- b. Capital offense: For a three-time “violent offender” whose current conviction is a capital offense and who does not, for whatever reason, qualify as a PFO (say, because his or her prior felony convictions expired under the sunset clause of the PFO statute), the Act’s impact is significant.

Current law: Death, life without parole, life without parole for 25 years, or a term of imprisonment of 20-50 years (if the latter, the person must serve 85% of the imposed term of imprisonment)

The Act: Death or life without parole

[Note: These examples provide only a basic description of the interplay between the Act’s “violent offender” provisions and the existing PFO statute. It’s also important to note that institutional players have significant discretion (*de facto* if not *de jure*) to apply the KRS in selective ways to secure preferred outcomes in particular cases.]

II. FENTANYL

The Act contains several provisions combatting fentanyl distribution.

A. Murder

The Act broadens Murder to include a person who “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.”

Fentanyl-related Murder requires a “sale.” Mere “distribution” will not suffice. Moreover, a strict reading of the text suggests that a seller is only culpable for the death of “the person” (i.e., the person who “bought” the fentanyl or fentanyl derivative).

Fentanyl-related Murder is a “strict liability” crime. The term “strict liability” means that one or more of the elements necessary for criminal liability does not require *mens rea* (a culpable state of mind). To be guilty of fentanyl-related Murder, a person need only know he or she is selling fentanyl (or a fentanyl derivative) to another person. He or she need not know that death will occur.

Under current law, a person who sells fentanyl (or a fentanyl derivative) and thereby causes the buyer’s death can typically only be charged with Manslaughter in the Second Degree (where the buyer’s death need only be the product of the seller’s “wantonness,” i.e., the seller’s conscious disregard of a substantial and unjustifiable risk of death). Manslaughter in the Second Degree is a Class C felony (punishable by a 5-10 year term of imprisonment).

Under the Act, the same person will be guilty of a far more serious crime (Murder, a capital offense) and will receive a far more severe sentence (either death, life without parole, life without parole for 25 years, or a 20-50 year term of imprisonment).

B. Manslaughter in the First Degree

In addition to fentanyl-related Murder, the Act creates the crime of fentanyl-related Manslaughter in the First Degree. The Act broadens Manslaughter in the First Degree to include a person who “knowingly distributes 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.” Fentanyl-related Manslaughter in the First Degree does not require a “sale.” Mere “distribution” will suffice.

Under current law, a person who distributes fentanyl (or a fentanyl derivative) and thereby causes the recipient’s death can typically only be charged with Manslaughter in the Second Degree, a Class C felony (punishable by a 5-10 year term of imprisonment). Under the Act, the same person will be guilty of a more serious offense (Manslaughter in the First Degree, a Class B felony) and will receive a more severe sentence (a 10-20 year term of imprisonment).

C. Trafficking

The Act increases the offense level of fentanyl trafficking crimes in situations where the trafficked fentanyl caused the death of another person. Under current law, the level of a fentanyl trafficking offense is not increased simply because the trafficked fentanyl caused death. The Act changes this, providing that a person trafficking in fentanyl will have the level of his or her trafficking offense increased by one in situations where the trafficked fentanyl caused the death of another person.

For a first-time offender of the trafficking laws, the level of the fentanyl trafficking offense will be increased from a Class C felony (punishable by a 5-10 year term of imprisonment) to a Class B felony (10-20 years imprisonment). For a repeat offender of the trafficking laws, the level of the fentanyl trafficking offense will be increased from a Class B felony (punishable by a 10-20 year term of imprisonment) to a Class A felony (life or a 20-50 year term of imprisonment).⁴

D. Promoting Contraband

Under current law, the offense of Promoting Contraband in the First Degree prohibits a person from “knowingly introduc[ing] dangerous contraband into a detention facility or a penitentiary,” or when confined in a detention facility or a penitentiary, “knowingly mak[ing], obtain[ing], or possess[ing] dangerous contraband.” The offense is a Class D felony (punishable by a 1-5 year term of imprisonment). The Act provides that in a situation where the “dangerous contraband” is “fentanyl, carfentanil, or a fentanyl derivative,” the offense is increased to a Class B felony (punishable by a 10-20 year term of imprisonment), and the person is classified as a “violent offender” (meaning the person must serve 85% of an imposed term of imprisonment).

III. FIREARMS

The Act includes several provisions relating to firearms.

A. Wanton Endangerment

Under current law, a person is guilty of the offense of Wanton Endangerment in the First Degree “when, under circumstances manifesting extreme indifference to the value of human life, he or she wantonly engages in conduct which creates a substantial danger of death or serious physical injury to another person.”

⁴ Defendants sentenced to life imprisonment for a Class A felony are eligible for release after twenty years.

This offense is a Class D felony (punishable by a 1-5 year term of imprisonment). The Act provides that in situations where the “person discharges a firearm in the commission of the offense,” Wanton Endangerment in the First Degree is increased to a Class C felony (punishable by a 5-10 year term of imprisonment), and the person is classified as a “violent offender” (meaning the person must serve 85% of an imposed term of imprisonment).

B. Auctions for Confiscated Firearms

The current law provides that firearms lawfully confiscated during criminal investigations shall be sold at public auctions to “licensed firearms dealers.” The Act sets forth an alternative option, expanding the list of eligible auction bidders to “any person” who certifies prior to bid that he or she will leave the firearm with State Police for destruction. The Act clarifies that the provision is limited to firearms used in homicides and that bids may not be made by a “state or local government or agency.”

C. Restricting Early Release

The Act prohibits early release from a term of imprisonment for certain crimes involving firearms. It provides that there shall be no early release if “in the commission of an offense” the defendant “used a firearm which was possessed in violation of state law, including firearms which are stolen, defaced, or loaded with restricted ammunition.”

It is important to note that the “use” of a firearm requires more than simple possession. *See Darden v. Commonwealth*, 52 S.W.3d 574, 577 (Ky. 2001). (“We believe the terms ‘possession of a weapon’ and ‘use of a weapon’ are two entirely different concepts.”)

IV. PROTECTING LAW ENFORCEMENT

The Act includes several provisions protecting law enforcement.

A. Murder of a First Responder

The Act creates the crime of Murder of a First Responder. 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 the first responder.”

Under current law, an act causing the death of another person with intent is Murder, which is a capital offense (and as such, punishable by death, life without parole, life without parole for 25 years, or a 20-50 year term of imprisonment). The crime of Murder of a First Responder marginally expands the overall reach of the criminal code, inasmuch as it restricts sentencing discretion and requires a sentence of death or life without parole.

In addition, the Act increases the level of the offense of Attempted Murder when the victim is a first responder. Under current law, Attempted Murder is a Class A felony (punishable by life or a 20-50 year term of imprisonment).⁵ The Act raises the level of Attempted Murder when the victim is a first responder to a capital offense (punishable by life without parole for 20 years, life without parole for 25 years, or a 20-50 year term of imprisonment).⁶

⁵ Defendants sentenced to life imprisonment for a Class A felony are eligible for release after twenty years.

⁶ The Act removes death and life without parole as eligible sentences for this capital offense.

The Act provides that if the victim was “a parent or guardian of a minor child or dependent” the sentencing court “may order the defendant to pay restitution in the form of financial support for the child or dependent.”

B. Fleeing or Evading Police

The Act amends the crime of Fleeing or Evading Police in the First Degree. A person is guilty of this crime if he or she disobeys a police officer’s directive to stop his or her vehicle after committing an act of domestic violence, or driving under the influence, or driving on a suspended license. If on foot, a person is guilty if he or she disobeys an officer’s directive to stop after committing an act of domestic violence or, if while fleeing, he or she creates a substantial risk of serious physical injury to others.

The Act increases the level of this offense from a Class D felony (punishable by a 1-5 year term of imprisonment) to a Class C felony (5-10 years imprisonment). It also prohibits release before 50% of an imposed sentence is served. This marks a substantial change in the law. Under the current law, a person guilty of this offense faces 1-5 years of imprisonment, with an opportunity for early release. Under the Act, the same person faces 5-10 years imprisonment, with no opportunity for release before serving 50% of an imposed term of imprisonment.

The Act similarly amends the crime of Fleeing or Evading Police in the Second Degree. A person is guilty of Fleeing or Evading Police in the Second Degree if he or she refuses to comply with an order to stop by an officer with reasonable suspicion and causes or creates a substantial risk of physical injury to others.

The Act enhances the level of this offense from a Class A misdemeanor to a Class D felony. It also prohibits release before 50% of an imposed sentence is served. Under the current law, a person guilty of this offense faces 90-365 days of imprisonment, with an opportunity for early release. Under the Act, the same person faces 1-5 years imprisonment, with no opportunity for release before serving 50% of an imposed term of imprisonment.

V. CARJACKING

The Act creates the crime of Carjacking, a Class B felony (punishable by a 10-20 year term of imprisonment). The Act provides:

A person is guilty of carjacking when he or she takes a motor vehicle in the possession of another, 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.

It is worth noting that the crime does not require the use of a weapon, but only “force or intimidation.” Nor does it require a “permanent deprivation.” A “temporary deprivation” (such as a joyride) will suffice. Moreover, the victim need not be inside the car at any point. The Act classifies a person convicted of Carjacking as a “violent offender” (meaning he or she must serve 85% of an imposed term of imprisonment).

VI. WORKPLACE VIOLENCE

The Act includes several provisions protecting the workplace.

A. Terroristic Threatening

The Act amends the crime of Terroristic Threatening. Under current law, Terroristic Threatening in the First Degree prohibits threats to use a “weapon of mass destruction” in places enumerated in the KRS as protected, including schools, government buildings, and domestic violence shelters. This is a Class C felony (punishable by a 5-10 year term of imprisonment). The Act expands the list of protected places to include “any workplace; or any real property or any building, public or private, that is the site of any gathering of three or more persons.”

Under current law, Terroristic Threatening in the Second Degree prohibits threats to commit an act likely to result in death or serious physical injury. The KRS provides that a threat need not identify a specific victim, so long as it was made in a place enumerated in the KRS as protected. This is a Class C felony (punishable by a 5-10 year term of imprisonment). The Act expands the list of protected places to include a “workplace, or gathering of three or more persons.”

B. Justifiable Use of Force

The Act expands the scope of justifiable force against suspected shoplifters to include “a reasonable amount of force” by security officers, merchants, or merchant’s employees “necessary to protect himself or herself and to prevent the escape of the person detained or the loss of goods for sales.”

Under current law, such persons are authorized to “detain” suspected shoplifters. The Act goes further, clarifying and expanding the circumstances where force is justifiable. Moreover, the Act provides that persons are immune from criminal and civil liability for any harm or damage caused by the use of justifiable force.

VII. DOMESTIC VIOLENCE

The Act includes several provisions protecting victims of domestic violence.

A. Redefining “Serious Physical Injury”

Many crimes in the KRS – notably Assault – require a “serious physical injury.” The KRS defines “serious physical injury” as “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.” Importantly, the KRS gives a broader definition to “serious physical injury” if the victim is a child 12 years of age or less. This broader definition of “serious physical injury” includes “bruising near the eye,” as well as a host of other injuries enumerated in the KRS.

The Act expands the application of the broader definition of “serious physical injury,” from a child 12 years of age or less to “any person if the relationship between the perpetrator and the victim meets the definition of a family member or member of an unmarried couple . . . or dating relationship.”

Under current law, “bruising near the eye” on a victim over 12 years of age is not, by itself, a “serious physical injury,” but rather a “physical injury.” Acts causing “physical injury” constitute Assault in the Third Degree, a Class D felony (punishable by a 1-5 year term of imprisonment).

Under the Act, the same injury on a victim (of any age) in a domestic context is classified as a “serious physical injury” and thereby meets the standard for Assault in the Second Degree, a Class C felony (punishable by a 5-10 year term of imprisonment), and if a dangerous weapon or instrument was used, Assault in the First Degree, a Class B felony (punishable by a 10-20 year term of imprisonment).

B. Protective Orders

The Act increases the offense level for a second violation of a protective order. The KRS provides that violations are Class A misdemeanors (punishable by a 90-365 day term of imprisonment). Under the Act, a second violation within five years constitutes a Class D felony (1-5 years imprisonment).

VIII. HOMELESSNESS

The Act includes several provisions relating to homelessness.

A. Crime of Unlawful Camping

The Act creates the crime of Unlawful Camping. It provides that “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, 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.” For first-time offenders, it is a mere violation (with no possibility of imprisonment). For repeat offenders, it is a Class B misdemeanor (punishable by a 0-90 day term of imprisonment).

B. Justifiable Use of Force

The Act expands the scope of justifiable force by private persons against unlawful campers. The Act states that “the use of physical force by a defendant upon another person is justifiable when the defendant believes that such force is immediately necessary to prevent . . . [t]he commission of unlawful camping . . . when the offense is occurring on property owned or leased by the defendant, the individual has been told to cease, and the individual has used force or threatened to use force against the defendant.”

Under current law, force by private persons is justifiable if immediately necessary to, among other things, prevent a “criminal trespass.” “Criminal trespass” is limited by the KRS to unlawful intrusions into dwellings, or upon real property within an enclosure (such as fencing). The Act expands the scope of justifiable force, authorizing the use of force against unlawful campers on un-enclosed real property (i.e., where there has been no “criminal trespass”).

C. Miscellaneous

The Act provides that local governments “may” provide indoor or outdoor areas for temporary camping for homeless individuals, but if they do so, they “must” provide portable water and adequate sanitary facilities.

The Act provides that local governments “shall not adopt or enforce any policy under which it directly or indirectly prohibits or discourages the enforcement of laws about unlawful camping.” To facilitate the enforcement of this provision, the Act authorizes the Attorney General to bring a civil action.

The Act limits the use of public funds to support “any initiatives” providing “permanent housing to homeless individuals,” requiring that recipients of such funds must impose behavioral and rehabilitative requirements on tenants, including, at a minimum, prohibitions on criminal activity and the excessive use of alcohol.

IX. INVOLUNTARY COMMITMENT

The Act eases the standards for involuntary commitment of persons found incompetent to stand trial. Under current law, a person deemed incompetent to stand trial shall not be involuntarily committed unless he or she has, among other things, “a demonstrated history of criminal behavior that has endangered or caused injury to others or has a substantial history of involuntary hospitalizations . . . prior to the commission of the charged crime.”

The Act removes this requirement, authorizing involuntary commitment based only upon a determination that the person “presents a danger to self or others as a result of his or her mental condition,” the person “needs care, training, or treatment in order to mitigate or prevent substantial physical harm to self or others,” and “a less restrictive alternative mode of treatment would endanger the safety of the respondent or others.”

X. JUVENILES

The Act includes three provisions relating to juveniles.

A. Conspiracy with a Minor

The Act expands criminal liability for persons engaging in a criminal conspiracy with a minor. It provides: “Any person who engages in a criminal conspiracy with a minor shall be charged one level higher than the level provided for the offense which is the object of the conspiratorial agreement.”

B. Custodian Attendance at Juvenile Proceedings

The Act requires courts to order custodian attendance at juvenile proceedings. Under current law, a court “may” require a custodian’s attendance. The Act amends this provision, stating that courts “shall” order attendance of “one person exercising custodial control.” In cases of non-compliance, courts shall impose a \$500 fine and require 40 hours of community service.

C. Reporting Requirements for School Employees

The Act requires school employees to immediately contact law enforcement if they have “reasonable cause to believe” certain crimes enumerated in the KRS have been committed on school property or at a school-sponsored event.

XI. CRIMINAL MISCHIEF

The Act amends the crime of Criminal Mischief (which includes “defacing, damaging, or destroying property”). The KRS distinguishes First Degree Criminal Mischief (a Class D felony, punishable by a 1-5 year term of imprisonment) from Second Degree Criminal Mischief (a Class A misdemeanor, punishable by a 90-365 day term of imprisonment) based on the amount of damage caused.

The Act lowers the threshold amount of damage for First Degree Criminal Mischief (from \$1000 to \$500). It also requires that the offense level of First or Second Degree Criminal Mischief be reduced to a Class B misdemeanor (0-90 days imprisonment) if the defendant “repairs damaged property” or provides “complete restitution” at any time prior to trial.

XII. CHARITABLE BAIL ORGANIZATIONS

The Act places limits on bail and bonds provided by “charitable bail organizations.” Such organizations may not furnish bail or bonds in an amount over \$5000, or in any amount for a person alleged to have committed an offense of domestic violence or an offense that would classify the person as a “violent offender.”

The Act mandates that unlawful funds be transferred to the victims of the related crimes. Moreover, the Act requires “charitable bail organizations” to publish detailed annual reports.

The term “charitable bail organizations” is confined to 501(c)(3) organizations. As a result, the Act’s provisions do not restrict organizations willing to forego 501(c)(3) status.

XIII. INTIMIDATING PARTICIPANTS IN THE LEGAL PROCESS

Under current law, the offense of Intimidating a Participant in the Legal Process (such as a witness) requires the use of “physical force” or “a threat directed to a person.” The Act broadens the offense to include “harassing communications.”

XIV. OFFENDER RE-ENTRY

The Act includes several provisions impacting offender re-entry.

A. Data on Recidivism

The KRS requires the Kentucky Justice & Public Safety Cabinet to report data to the Governor, Legislative Research Commission, and Corrections Commission. The Act requires the Cabinet to

include in its report “the percentage of offenders participating in each reentry program operated by, or operated under contract with, the department who commit a new criminal offense within two years of their release from custody.”

B. Conditions of Release

The Act supplements the list of conditions a court may impose on a prisoner who is released early. Under the Act, a court may require a prisoner upon release to participate in a program designed to reduce violence.

C. Personal ID Card

The KRS directs the Transportation Cabinet to issue a personal identification card to felony offenders released from the Kentucky Department of Corrections or a federal prison in Kentucky. The Act expands this directive to include felony offenders released from “a county jail or other local or regional correctional facility.”

D. Parole Board

The Act provides that grants of parole require a unanimous panel vote, or, if not, a two-thirds vote of the full board.

CONCLUSION

The Act expands the reach of the Kentucky criminal code in a variety of ways. It creates new offenses, broadens elements, raises offense levels, increases sentences, reduces sentencing discretion, and restricts opportunities for early release.