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# The Advocate



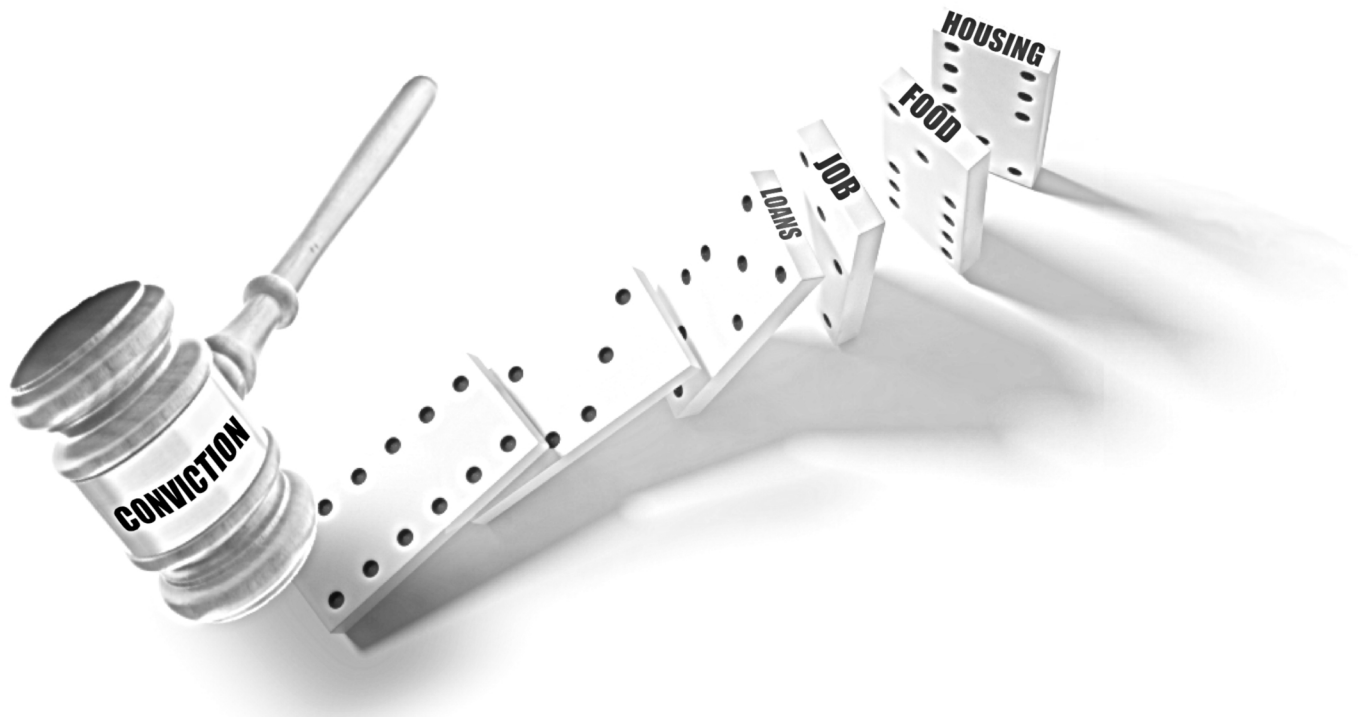
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## COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS IN KENTUCKY



### AND QUICK REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES

Commonwealth of Kentucky  
Department of Public Advocacy

## Disclaimer

This publication is for informational purposes only and does not constitute legal advice.

This publication provides an overview of civil consequences of criminal convictions, but does not attempt to provide comprehensive legal analysis or information. For example, the summaries in this publication do not generally include all conditions or exceptions that could apply in a given situation. Also, laws of the federal government, other jurisdictions, and other political subdivisions of this state may impose additional sanctions and disqualifications that are not listed in this publication.

This publication was finalized in May 2013. Except for the new legislation included, effective July 25, 2013, subsequent changes to the law are not included.

## Acknowledgements

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The Quick Reference Chart of Immigration Consequences was put together by Kate Benward with the special assistance of Dan Kesselbrenner, Executive Director of the National Immigration Project. I thank them both for their hard work for our benefit.

While I have attempted to ensure that the material in this publication is accurate as of the date of publication, any suggestions for improvement of this material will be appreciated.



Glenn S. McClister  
Department of Public Advocacy, May 2013

## Contents

<b>1. Introduction.....</b>	<b>1</b>	Commercial Drivers License.....	12
The True Consequences of a Criminal Conviction.....	1	University Attendance.....	12
Five Critical Questions for Assessing Consequences.....	1	Voting.....	12
Practice Tips.....	1	Election Participation as Candidate or Official.....	12
The Impact of Federal Law.....	2	Property Forfeiture.....	12
Limitations of this Publication.....	2	Genetic and HIV Testing.....	13
<b>2. Why Criminal Records Matter.....</b>	<b>2</b>	Jury Service.....	13
Widespread Availability of Criminal History.....	2	Passport.....	13
Limited Sealing and Expungement of Criminal Records.....	2	<b>10. Greater Penalties Upon Repeat Offenses.....</b>	<b>14</b>
Juvenile Court Records.....	3	Persistent Felony Offender.....	14
<b>3. Employment.....</b>	<b>3</b>	The Federal Armed Career Criminal Act.....	15
Critical Employment Areas.....	4	<b>11. Specific Consequences for Sexual Offenses.....</b>	<b>15</b>
Guilty and No Contest Pleas.....	4	Employment.....	15
The Effect of Out-of-State and Federal Convictions.....	4	Residency and Registration Requirements.....	15
The Effect of Internal Regulations and Policies.....	4	Travel Between States.....	16
The Effect of Federal Law.....	4	<b>12. Specific Consequences for Controlled Substance</b>	
Governmental Discrimination Based on Criminal Record... 4		<b>Offenses.....</b>	<b>16</b>
Private Discrimination Based on Criminal Record.....	5	Employment.....	16
<b>4. Public Benefits Programs.....</b>	<b>5</b>	Public Benefits Programs.....	16
Public Housing.....	5	Family Concerns.....	16
Food Stamps and Public Assistance.....	6	Firearms.....	16
K-Tap, Kentucky Works, Welfare to Work, State		Forfeiture.....	16
Supplementation.....	6	Citizenship and Immigration.....	16
Federal Student Loan Eligibility.....	6	Other Civil Rights and Privileges.....	17
Worker’s Compensation Benefits.....	6	Greater Penalties Upon Repeat Offenses.....	17
Unemployment Benefits.....	7	<b>Appendix I: Occupations and Licensing.....</b>	<b>17</b>
Social Security.....	7	Accountant.....	17
Veterans Benefits.....	7	Acupuncturist.....	17
Loss of Other Federal Benefits Due to a Drug Conviction... 7		Air Transportation, Airports, Pilots.....	17
<b>5. Family Concerns.....</b>	<b>8</b>	Alcoholic Beverage Sales.....	17
Involuntary Termination of Parental Rights.....	8	Alcohol and Drug Counselor.....	17
Name Changes.....	8	Architect.....	18
Adoption and Foster Care.....	8	Art Therapist.....	18
Foreign Exchange Student and Au Pair Host Families.....	8	Assisted Living.....	18
Guardian or Conservator Appointment.....	8	Athletic Agent.....	18
<b>6. Firearms.....</b>	<b>8</b>	Athletic Trainer.....	18
Restrictions under Kentucky Law.....	8	Attorney.....	18
Restrictions under Federal Law, 18 U.S.C. § 922(g).....	9	Auctioneer/Auction House Operator.....	18
<b>7. Body Armor.....</b>	<b>9</b>	Audiologist.....	18
Restrictions under Kentucky Law.....	9	Banking.....	18
Restrictions under Federal Law.....	9	Beautician (cosmetics, facials, skin care, waxing).....	18
<b>8. Citizenship and Immigration.....</b>	<b>9</b>	Boarding Home Registration.....	19
Inadmissibility.....	9	Boxing.....	19
Deportability.....	10	Broadcast Licensing.....	19
Categories of Offenses.....	10	Business Opportunities Salesperson.....	19
Aggravated Felony Convictions.....	10	Car Dealer.....	19
Crimes Involving Moral Turpitude.....	10	Charitable Gaming License (Bingo Games).....	19
Controlled Substance Offenses.....	10	Child Care/Children’s Services.....	19
<b>9. Other Civil Rights and Privileges.....</b>	<b>10</b>	Chiropractor.....	19
Drivers License.....	10	Commodities Broker.....	20
Drivers License Points System.....	11	Concealed Deadly Weapons Instructor.....	20
		Cosmetologist.....	20
		Counselor, Licensed Professional.....	20

Day Care Provider.....	20	Pastoral Counselor.....	27
Dentist and Dental Hygienist.....	20	Pesticide Dealer or User.....	27
Dietitian/Nutritionist.....	20	Pharmacist/Controlled Substance Distributor or Manufacturer.....	27
Driving Instructor.....	20	Physical Therapist.....	28
Drug Manufacturer/Wholesaler.....	20	Physician Assistant.....	28
DUI Program Certification.....	20	Podiatrist.....	28
Electrical Inspector.....	21	Police Officer/Deputy.....	28
EMT/First Responder/Paramedic/EMS Instructor.....	21	Polygraph Examiner.....	28
Engineer.....	21	Prisoner Transportation.....	28
Family Care Home License.....	21	Private Investigator.....	28
Farm Labor Contractor.....	21	Private Security.....	28
Firefighter.....	22	Psychiatric Treatment Director.....	29
Funeral Director/Embalmer.....	22	Psychologist.....	29
Geologist.....	22	Public University Contractor.....	29
Hazardous Materials Handler.....	22	Rape Crisis Center Worker.....	29
Health Care Provider.....	22	Real Estate Appraiser.....	29
Hearing Aid Provider.....	22	Real Estate Broker or Salesperson.....	29
Hemp Researcher.....	22	Rental Property.....	29
Home Inspector.....	22	Respiratory Therapist.....	29
Horse Racing.....	22	School Employees.....	29
Hospice Care.....	23	Senior Citizen Service Provider.....	30
Hunting Instructor.....	23	Sex Offender Risk Assessment Provider.....	30
HVAC (heating, ventilation, air conditioning) Contractor.....	23	Social Worker.....	30
Insurance Agent or Producer.....	23	Solid Waste Transport Operator.....	30
Interpreter for the Deaf.....	23	Speech-Language Pathology and Audiology.....	30
Investment Adviser and Representative.....	23	Sprinkler Contractor.....	30
Juvenile Services Provider.....	24	State Employment.....	30
Kentucky Community Crisis Response Board.....	24	Stockbroker and Securities Sales Representative.....	30
Kentucky Lottery Corporation.....	24	Substance Abuse Treatment Provider.....	30
Kentucky State Police.....	24	Surgical Assistant.....	31
Landscape Architect.....	24	Surveyor.....	31
Life Settlement Provider.....	24	Title Pledge Lender.....	31
Long-term Care.....	24	Veterinarian.....	31
Marriage and Family Therapist.....	24	Waste Site/Landfill.....	31
Massage Therapist.....	24	Wrestling.....	31
Mass Transportation Worker.....	25	Workforce Education Employee.....	31
Medicaid Services Providers.....	25	<b>Bibliography.....</b>	<b>32</b>
Merchant Mariners.....	25	<b>Division of Probation and Parole Application for Restoration of Civil Rights Form.....</b>	<b>33</b>
Midwife.....	25	<b>Quick Reference Chart for Determining Consequences of Selected Kentucky Offenses.....</b>	<b>35</b>
Military.....	25		
Milk Production and Transfer.....	26		
Mining Operations.....	26		
Money Transmission Agent.....	26		
Mortgage Broker.....	26		
Motorcycle Safety Instructor.....	26		
Narcotic Treatment Program Operator/Employee.....	26		
Nudist Society Operator.....	26		
Nurse.....	26		
Nursing Home Administrator.....	27		
Occupational Therapist.....	27		
Office of Career and Technical Education.....	27		
Optician.....	27		
Optometrist.....	27		
Osteopath.....	27		

**Abbreviations Used**

C.F.R.	Code of Federal Regulations
KAR	Kentucky Administrative Regulations
KRS	Kentucky Revised Statutes
U.S.C.	United States Code
U.S.S.G	United States Sentencing Guide

## **1. Introduction**

### ***The True Consequences of a Criminal Conviction***

The impact of a criminal conviction is greater than a number of days in prison or a number of dollars fined. Hundreds of federal, state, and local laws impose additional consequences on people convicted of crimes, many of which remain in effect far beyond any judicially-imposed sentence. Unlike incarceration and fines, however, these additional consequences are frequently unknown at the time of the criminal prosecution to attorneys, judges, and the individuals whose lives are so profoundly affected by them.

The goal of this publication is to provide information about how a criminal conviction may affect the life of an accused person. The publication summarizes consequences that arise under Kentucky law and federal law, yet are not included in the sentence imposed by a judge in a criminal case.<sup>1</sup> The scope of these consequences demonstrates the major impacts on the affected individuals, and indirectly, upon their communities.

The United States Supreme Court has ruled that people contemplating entering a plea of guilty to a criminal charge must be warned about consequences of a criminal conviction when the consequence is both severe and certain and when the consequence would have predictable importance to the individual, whether the consequences arise from a statute, regulation, or contract.<sup>2</sup> This is part of the Sixth Amendment right to effective assistance of counsel. Kentucky follows the United States Supreme Court in interpreting the right to counsel as including the right to be advised of the consequences of a criminal conviction.<sup>3</sup>

### ***Five Critical Questions for Assessing Consequences***

Some of the consequences mentioned in this publication—such as the loss of a public benefit—can have an immediate impact on accused persons and their families. Other consequences, however, may be impossible to identify as issues before a criminal case reaches disposition. For instance, a person charged with a crime may not be aware that he or she will one day aspire to enter a profession for which being convicted of that crime is disqualifying.

Five questions can help individuals and their attorneys identify the consequences most likely to impact their decision-making process as a case moves toward disposition.<sup>4</sup> This publication is loosely organized around these questions, which are designed to be asked of people accused of criminal offenses:

#### **1. How are you employed?**

In many professions, certain charges or convictions can result in losing a license or certificate necessary to work. Asking this question can help identify whether an individual works in a

field likely to track and care about criminal activity. Students can be asked about their fields of study and their plans after finishing school.

#### **2. Do you receive any public benefits?**

Eligibility for many public benefits can be lost upon conviction for certain crimes. Asking this question can identify whether individuals are at risk of losing critical support, either for themselves or for their families.

#### **3. What is your family situation?**

Some types of convictions can impair an individual's ability to be a part of his or her family, especially when children are involved. Asking about family can identify whether family relationships are a concern.

#### **4. Do you own, or will you want to own, any firearms?**

Any felony conviction or a misdemeanor conviction involving domestic violence can leave an individual permanently unable to possess a firearm. Asking this question can both determine whether firearm ownership is a concern and warn against future charges for unlawful possession of a weapon.

#### **5. Are you a United States citizen?/Where were you born?**

Non-citizens charged with crimes are often at risk of either being deported or being deemed inadmissible (thus prohibiting future entry into the United States). Asking these questions can determine whether immigration status is a necessary concern. Asking about place of birth is a good starting point to determine citizenship because some clients may not be sure of citizenship or immigration status.

### ***Practice Tips***

Generally, attorneys should talk with their clients about any possible consequences which might have an especially heavy impact in the life of the client. Attorneys should have the client identify the goals of the representation, including the avoidance of unwanted consequences. Attorneys should also be aware of the special concerns of clients with respect to unwanted consequences before they negotiate with the prosecutor and make sure that the prosecutor is aware of the consequences to be avoided. This may impact the kind of offer the prosecutor will make or may help the prosecutor to see the importance of amending the charge before a plea of guilty is entered by the client. If the client is expected to suffer an unwanted consequence as the result of the resolution of a case, the client should be warned to expect the consequence and, if possible, the attorney should try to identify steps which might lessen the impact of the consequence.<sup>5</sup>

<sup>1</sup> This is the definition of a collateral consequence used by the American Bar Association. See *ABA Standards for Criminal Justice*, 3<sup>rd</sup> Edition, Collateral Sanctions and Discretionary Disqualification of Convicted Persons, Standard 19-1.1, 2004.

<sup>2</sup> *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010).

<sup>3</sup> *Stiger v. Commonwealth*, 381 S.W.3d 230 (Ky. 2012).

<sup>4</sup> These five questions are modified versions of those suggested by Gabriel J. Chin in *Making Padilla Practical: Defense Counsel and Collateral Consequences at Guilty Plea*, 54 *How. L. J.* 675, 690 (2011).

<sup>5</sup> For example, in the context of deportation, clients should be warned that they will not have an attorney during deportation proceedings and that they should not voluntarily accept deportation if they intend to try to remain in the United States. Clients should also be warned of the consequences of illegal re-entry back into the United States after having already been deported one or more times.

## ***The Impact of Federal Law***

Federal law imposes numerous consequences of conviction beyond those created by Kentucky statutes and regulations, but that is generally beyond the scope of this publication, with a few exceptions. Some broadly applicable federal statutes and regulations have been included for purposes of making this publication more useful to the general public and legal community.

For additional information about federal consequences, the American Bar Association has assembled an excellent public website and an excellent manual.<sup>6</sup>

### ***Limitations of this Publication***

This publication describes consequences arising under the 2013 Kentucky Revised Statutes and Kentucky Administrative Regulations. Due to the volume of material covered, it is necessarily incomplete, and it does not address all the statutes and regulations that impose civil consequences.

The internal policies established by individual state and local agencies are also beyond the scope of this publication. Those policies can, however, have a profound impact on the consequences of a conviction. Local public housing authorities, for example, may have widely different positions on how a conviction impacts eligibility.

Sparse information regarding enforcement is another major limitation. Every effort has been made to note instances in which statutory language indicates that a particular penalty or sanction is required. In many cases, however, a criminal conviction “may” prevent someone from obtaining a particular license, certification, or benefit. How individual agencies exercise that discretion is difficult to ascertain. In some cases, what appears to be discretionary language could be enforced in a way that effectively renders a consequence mandatory (and enforcement practices may change, even without a change in the applicable statutory language).

In sum, this publication is intended only as a guide to be used in identifying issues. It is not a substitute for legal advice, and people with specific issues related to their own cases or circumstances should talk to an attorney.<sup>7</sup> The Department of Public Advocacy has attorneys who concentrate part of their practice on identifying possible consequences of conviction in Kentucky and under Federal Law. Contact the local Department of Public Advocacy for more specific information.

<sup>6</sup> Available at [abacollateralconsequences.org](http://abacollateralconsequences.org). See also *Internal Exile: Collateral Consequences of Conviction in Federal Laws and Regulations*, ABA together with the Public Defender Service of the District of Columbia, 2009, available at [americanbar.org/content/dam/aba/migrated/cecs/internalexile.authcheckdam.pdf](http://americanbar.org/content/dam/aba/migrated/cecs/internalexile.authcheckdam.pdf).

<sup>7</sup> “To the extent possible, defense counsel should determine and advise the defendant, sufficiently in advance of the entry of any plea, as to the possible collateral consequences that might ensue from entry of the contemplated plea.” ABA STANDARDS FOR CRIMINAL JUSTICE: GUILTY PLEAS, Standard 14-3.2(f) (3d ed. 1999).

## **2. Why Criminal Records Matter**

### ***Widespread Availability of Criminal History***

Criminal history records are more widely available now than ever before. Kentucky is an open records state, meaning that the custodians of criminal justice records may allow any person to inspect those records except under limited circumstances. KRS 61.870 to KRS 61.884. The general public can search Kentucky criminal court records instantaneously.<sup>8</sup> Any employer may request a criminal records check from the Public Safety Cabinet, the Administrative Office of the Courts, or both. The records will include any felony convictions, any misdemeanor pornography or sex offense convictions, and any misdemeanor violations of KRS 189A (DUI) and KRS 218A (drug offenses) within the last five years of the date of the request. KRS 17.160(1).

Juvenile records are confidential under KRS 610.320(3) and will not be disclosed to the general public. Public access to juvenile court records is limited to a copy of the juvenile petition, juvenile court order of adjudication, and juvenile disposition in cases in which the juvenile was fourteen years of age or older at the time of the commission of what would be, if committed by an adult, a capital offense, Class A, B, or C felony, or any offense involving the use or display of a deadly weapon. KRS 610.320(3). The same information must be distributed to the superintendent or principle of the school or school district the child attends when the child is adjudicated guilty of an offense which classifies the child as a youthful offender or as a violent offender. Notification is also mandatory when a child is charged or found guilty of an offense involving controlled substances, possession of a deadly weapon, or physical injury to others. KRS 610.345(1)-(3).

Widespread record availability has profoundly impacted individuals’ ability to move beyond an arrest or criminal conviction. Any potential employer, landlord, creditor, or government program administrator can check criminal court records at any time; therefore any prior conviction (or criminal charge, even if ultimately dismissed) becomes an easily detectible and a frequently permanent blemish upon an individual. Therefore, many individuals may seek to have their records expunged. Adult and juvenile records may be expunged under certain circumstances as explained below.

### ***Limited Sealing and Expungement of Criminal Records***

KRS 431.076(5) explains the effect of the sealing or expungement of criminal records:<sup>9</sup>

“After the expungement, the proceedings in the matter shall be deemed never to have occurred. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record

<sup>8</sup> At

<http://courts.ky.gov/aoc/criminalrecordreports/Pages/default.aspx>. This is the Administrative Office of the Courts website.

<sup>9</sup> The Kentucky Revised Statutes use the terms “seal” and “expunge” interchangeably. Expunged information is not subject to open records requests. KRS 197.025(5).

or any matter relating thereto on an application for employment, credit, or other type of application.”

In Kentucky, criminal records can only be sealed or expunged under limited circumstances:

- Under KRS 431.076 records in criminal cases may be sealed if the defendant was found not guilty or if the charges were dismissed with prejudice. This includes misdemeanors, violations, and Class D felonies dismissed after a successful completion of diversion.<sup>10</sup>
- Under KRS 218A.14151 a person charged with Possession of a Controlled Substance, First Degree, First or Second Offense, can have his or her charges dismissed and have the records of the case sealed if he or she successfully completes a deferred prosecution program.
- Under KRS 510.300 expungement of the records in sex offense cases is possible upon a verdict of not guilty or the dismissal of the charges with prejudice when the accuser in the case is the spouse.

None of these statutes apply to cases which resulted in a conviction.

The only statutes which provide for the expungement of convictions in criminal cases cover misdemeanor convictions and are:

- Under KRS 218A.275 a person charged with Possession of a Controlled Substance, Second, or Third Degree, if the charge is a first offense, can have his or her conviction set aside and have the records of the case sealed if he or she successfully completes one year of drug treatment.<sup>11</sup>
- Under KRS 218A.276 the same result may occur for a person charged with possession of marijuana, synthetic drugs, or salvia if he or she successfully completes ninety days of treatment.
- Under KRS 431.078 misdemeanor and violation records of conviction may be expunged if:
  - the request is filed five years after the end of the person’s sentence or probation,
  - the offense was not a sex offense or committed against a child,
  - the person had no previous felony conviction,
  - the person had not been convicted of another misdemeanor or violation in the five years before the conviction at issue,
  - the person had not been convicted of a felony, misdemeanor or violation in the five years since the conviction at issue,
  - no new charges are pending, and

- the offense was an offense against the Commonwealth of Kentucky.
- Effective January 1st, 2014, every petition filed for expungement will have to include a certificate of eligibility for expungement in which the Department of Kentucky State Police and the Administrative Office of the Courts certify that they have conducted a criminal background check on the individual and that the individual qualifies for expungement.
- Effective July 25, 2013, this expungement statute has been clarified to require removal or deletion of all computer records of the expunged case so that the record will not be found on an official state criminal background check.

Kentucky currently has no mechanism to expunge felony convictions. Kentucky has no mechanism to allow felony convictions to expire automatically.

A person whose DNA profile has been collected and has been included in the data bank may request removal of his or her profile from the database on the grounds that his or her conviction or adjudication has been dismissed or that he or she has successfully completed a felony diversion program under KRS 533.258. KRS 17.175(5).

### ***Juvenile Court Records***

Under KRS 610.330 juvenile criminal adjudications may be expunged except for any adjudications involving guilt of an offense which would have been a felony if the offense was committed by an adult. Dependency, neglect, and abuse records cannot be expunged. Effective July 25, 2013, certain juvenile records may be made available to the newly created Child Fatality and Near Fatality Review Panel. See KRS Chapter 620.

## **3. Employment**

Employment consequences of a criminal conviction can take many forms. The different types of possible consequences are:

- reporting requirements which oblige one convicted of a crime to provide information of criminal convictions to a potential employer,
- mandatory criminal records checks prior to accepting an application,
- discretionary disqualification from employment when the statute says the applicant “may” be denied employment,
- mandatory disqualification when the statute says you cannot work in a certain occupation with certain types of conviction on one’s record,
- disciplinary provisions for those already employed in certain occupations, which may also be either mandatory or discretionary.

The types of offenses which may trigger consequences also vary from statute to statute and job to job. There could consequences for conviction of:

- any felony at all

<sup>10</sup> Commonwealth v. Shouse, 183 S.W.3d 204 (Ky.App. 2006). For misdemeanor diversion, see RCr 8.04. For Class D felony diversion, see KRS 533.250 *et seq.* Under KRS 533.251, Class C felony drug offenses can also be diverted and could also presumably be expunged.

<sup>11</sup> The federal corollary provision is 18 U.S.C. § 3607, which provides for expungement of possession of marijuana charges upon successful completion of one year of diversion.

- drug offenses
- sex offenses
- violent offenses
- crimes of moral turpitude
- offenses related to a specific occupation
- hate crimes
- any criminal charge or conviction except a violation

Appendix I contains a list of individual professions for which a criminal conviction (or in some cases a criminal charge) can have adverse effects for employment under Kentucky statutes and regulations. The information in this chapter is broadly applicable to Kentucky employers and employees.

### **Critical Employment Areas**

- Government Licenses, Certificates, Registrations, and Contracts
  - As a general rule, if a job requires any type of government-issued license, certificate, registration, permit, or contract, a criminal conviction could have adverse employment consequences.
- Vulnerable People and Positions of Trust
  - As a general rule, the greater the extent to which a job involves working with vulnerable populations (i.e. students, the mentally ill, children, seniors, etc.), the greater the extent to which a criminal conviction may curtail employment possibilities.
  - Also as a general rule, the greater the extent to which a job involves a position of trust or responsibility (i.e. financial responsibility, responsibility for the well being of another, contact with the public, etc.), the greater the extent to which a criminal conviction may curtail employment possibilities.

### **Guilty and No Contest Pleas**

When evaluating a criminal offense, the entities that regulate most of the professions listed in Appendix I treat a guilty plea or a plea of no contest the same way that they treat a conviction following trial by any court of competent jurisdiction.

### **The Effect of Out-of-State and Federal Convictions**

Many of the statutes regulating professions listed in Appendix I specify that out of-state or federal convictions count against an applicant or licensee in the same way as a Kentucky conviction; however, many others do not specifically include these convictions.

States differ in their classifications of crimes and disqualifying convictions. Some Kentucky penalty statutes apply only to persons convicted of a felony in this state. Others apply to people who committed offenses which were felonies in the other state. KRS 527.040 (felon in possession of a firearm). Some also specify that the penalty applies to persons convicted of a crime elsewhere that

would be a felony if committed in this state. KRS 532.080 (Persistent Felony Offender).<sup>12</sup>

### **The Effect of Internal Regulations and Policies**

This publication does not include all of the internal regulations and policies followed by individual governmental authorities or agencies. Therefore, despite the absence of a mandatory disqualification listed in Appendix I, the possibility remains that an individual employed in a regulated profession may be subject to an adverse employment action if convicted of a crime.

### **The Effect of Federal Law**

The impact of federal law is beyond the scope of this publication. Nevertheless, federal restrictions on some broadly applicable professions, such as military service, have been included in the list of occupations in Appendix I.

Nearly all jobs working for the federal government are subject to criminal history checks.<sup>13</sup> The extent to which a criminal record will prevent employment varies from job to job. Most jobs requiring federal licensure also have restrictions on persons with various types of criminal history. Federally regulated occupations with such restrictions include but are not limited to the following:

- Federal law enforcement.
- Child care.
- Transportation industries (air, road, rail, or sea).
- Commodity dealers.
- Broadcast licensing.
- Firearms-related professions (employment that involves use of a firearms, sale or transportation of firearms, etc.).
- Farm labor contractors.
- Financial institutions (banks, brokers, dealers, investment advisers, etc.).

The degree to which a person's criminal history will preclude employment frequently depends on the nature of the individual job and applicant.

### **Governmental Discrimination Based on Criminal Record**

Most states have nondiscrimination laws concerning state hiring practices. Kentucky is one of twelve states which has a nondiscrimination law to "prohibit disqualification from public employment and occupational licensure solely on grounds of conviction."<sup>14</sup> KRS 335B.020(1) states:

<sup>12</sup> See, e.g., *Ware v. Commonwealth*, 47 S.W.3d 333 (Ky.2001), in which the court held that a two-year sentence for a misdemeanor in North Carolina counted as a felony conviction in Kentucky under the PFO statute.

<sup>13</sup> See Federal Executive Order 10450 – Security Requirements for Government Employment, available at: <http://archives.gov/federal-register/codification/executive-order/10450.html>.

<sup>14</sup> Margaret Colgate Love, *The Debt that Can Never Be Paid: A Report Card on the Collateral Consequences of Conviction*, CRIM. JUST., Fall 2006, at 16,23.



“No person shall be disqualified from public employment, nor shall a person be disqualified from pursuing, practicing, or engaging in any occupation for which a license is required solely because of a prior conviction of a crime, unless the crime for which convicted is one described in KRS 335B.010(4) or otherwise directly relates to the position of employment sought or the occupation for which the license is sought.”

Unfortunately, the statute makes exceptions for felonies, misdemeanors for which a jail sentence may be imposed, and crimes of moral turpitude.<sup>15</sup> KRS 335B.010(4).<sup>16</sup>

#### ***Private Discrimination Based on Criminal Record***

Private employers have great discretion in determining whether to hire people with a criminal record, and there are few checks on private employment decisions.

Under Title VII of the Civil Rights Act of 1964, employers are not supposed to impose blanket exclusions on employing anyone with a prior arrest or conviction.<sup>17</sup> Instead, a criminal-history-based employment decision should depend on: (1) the nature and gravity of the offense or offenses; (2) the time that has passed since the conviction and/or completion of the sentence; and (3) the nature of the job held or sought.<sup>18</sup> Regardless, the fact remains that there are few controls on private employers.

No Kentucky law prohibits outright discrimination by private employers based on criminal history, and employment can typically be terminated for essentially any reason. Thus, even if a state agency determines that a previously convicted person is eligible for a license to practice a certain profession, that individual has no guarantee of finding an employer willing to accept his or her criminal history.

<sup>15</sup> “Moral turpitude means, in general, shameful wickedness – so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people.” 50 Am. Jur. 2<sup>nd</sup>, *Libel and Slander* § 165, at 454 (1995).

<sup>16</sup> But see Kentucky Attorney General’s Opinion OAG 80-388, stating that KRS 335B.020 should be understood to mean that conviction of a felony is not an absolute bar to an occupational license; that KRS 335B.020 supersedes all other statutes and regulations as to licensing former felons; and that licensing boards should consider if the applicant has been rehabilitated.

<sup>17</sup> The U.S. Equal Employment Opportunity Commission’s revised April, 2002, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 can be found on the web at [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm).

<sup>18</sup> The ABA recommends that collateral consequences be imposed only when the underlying conduct would itself have been grounds for the consequence even if the person had not been convicted. See *Collateral Sanctions*, Standard 19-3.3.

## **4. Public Benefits Programs**

### ***Public Housing***

The federal government has established several subsidized-housing programs that are administered by local Public Housing Authorities (PHAs). Individual PHAs have great discretion regarding what types of criminal records they will accept in the personal histories of their tenants. Federal law, however, imposes several broadly applicable restrictions on whom PHAs can admit or retain as residents.

Many of the restrictions below apply to “any household member,” thus creating a situation in which the conduct of one person can result in a loss of housing for an entire family. Additionally, many restrictions are based on the PHA’s evaluation of conduct alone and do not require a conviction in order to prohibit or terminate housing.

- PHAs *must* prohibit admission if any of the following circumstances apply:
  - The PHA determines that any household member is currently engaged in illegal use of a drug.
  - The PHA determines that a household member’s illegal drug use or pattern of illegal drug use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.
  - Any household member has ever been convicted of drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally-assisted housing.
  - Any household member is subject to a lifetime registration requirement under a state sex offender registration program.
- PHAs *may* prohibit admission if any household member is currently engaged in or has engaged in any of the following activities, during a reasonable time before the admission:
  - Drug-related criminal activity.<sup>19</sup>
  - Violent criminal activity.
  - Other criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity.
- PHAs *must* terminate assistance if they determine that any member of the household has ever been convicted of producing methamphetamine on the premises of federally-assisted housing.
- PHAs *may* terminate assistance if they make any of the following determinations:
  - Any household member is currently engaged in any illegal use of a drug.
  - A pattern of illegal use of a drug by any household member interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.
  - Any household member has engaged in violent criminal activity.

<sup>19</sup> The term “activity” negates the need for an actual criminal conviction.

42 U.S.C. §§ 1437f, 13661-13663; 24 C.F.R. § 982.553.

### **Food Stamps and Public Assistance**

The food stamp program is now called SNAP (Supplemental Nutrition Assistance Program). See 7 U.S.C. 2012(1) for program details. The more general public assistance program is called, in Kentucky, K-TAP (Kentucky Transitional Assistance Program) and is Kentucky's Temporary Assistance to Needy Families (TANF) federal money payment program to assist children deprived of parental care or support.

- A household in which a family member receives, or is authorized to receive benefits funded under TANF will be considered categorically eligible to receive food stamp benefits, unless a household member is ineligible due to a drug-related felony conviction. 921 KAR 3:030 § 6(4).
- A food stamp or K-TAP applicant previously convicted of a felony under federal or state law that had an element of possession, use, or distribution of a controlled substance is not eligible for benefits. 921 KAR 2:006 § 24, 921 KAR 3:025 § 3(1). The exception to this is if the recipient has been assessed as chemically dependent, and is currently in or has successfully completed a chemical dependency treatment program, or is pregnant and, but for the conviction, otherwise eligible. KRS 205.2005, 921 KAR 3:025 § 3(1).
- A recipient of Special Supplemental Nutrition Program for Women, Infants and Children (WIC) benefits who physically abuses clinic staff or vendor/retailer staff will have her benefits suspended for three months. A felony conviction for such action is not necessary for the suspension to occur. 902 KAR 4:040 § 8(2).

### **K-Tap, Kentucky Works, Welfare to Work, State Supplementation**

- K-TAP assistance will not be provided to an individual who is fleeing to avoid prosecution, custody, or confinement for a crime, or an attempt to commit a crime that is a felony. One who is convicted under federal or state law of a felony offense having an element of possession, use, or distribution of a controlled substance will not be eligible for K-TAP benefits. 921 KAR 2:006 § 22(1) § 23(1).
- A person convicted in federal or state court of having fraudulently misstated or misrepresented his or her identity or place of residence for the purpose of receiving multiple benefits simultaneously under almost any social services program shall be denied K-TAP benefits for a period of 10 years. An individual applying for assistance must state in writing whether the individual or a member of the household has been convicted of such a crime. 921 KAR 2:006 § 22.
- A fugitive felon or person who is violating a condition of probation, extended supervision, or parole imposed by a state or federal court is not eligible for K-TAP assistance. 921 KAR 2:006 § 22(1) § 23(1).

### **Federal Student Loan Eligibility**

- A student convicted under any federal or state law of any offense involving the possession or sale of a controlled substance, for conduct that occurred during a period of enrollment for which the student was receiving federal student assistance, shall not be eligible to receive any grant, loan, or work assistance under either subchapter IV of chapter 28 of title 20, or part C of subchapter I of chapter 34 of title 42, from the date of that conviction for the period of time specified below. 20 U.S.C. § 1091(r).
  - Possession of a Controlled Substance
    - First Offense: One Year.
    - Second Offense: Two Years.
    - Third Offense: Indefinite.
  - Sale of a Controlled Substance
    - First Offense: Two Years.
    - Second Offense: Indefinite.
- A student whose eligibility has been suspended may resume eligibility before the end of the ineligibility period if certain statutorily specified conditions are met. These include completion of a drug rehabilitation program. 20 U.S.C. § 1091(r)(2).
- Pell Grants shall not be awarded to individuals who are in prison for a sex offense or who are subject to involuntary civil commitment as sex offenders. 20 U.S.C. § 1070a(b)(6).
- An individual shall not be eligible to borrow or benefit from an authority insured student loan if the individual is determined by a court to be ineligible to receive any federal benefits as a result of a conviction for any federal or state offense related to distribution or possession of controlled substances. 11 KAR 3:015 § 11(6).
- In order to be eligible to receive funds from the Go Higher Grant Program (KHEA), the individual shall not have a felony conviction. 11 KAR 5:200 § 2(8).
- Commonwealth Merit Scholarship Program - In order to be eligible for a supplemental award to uncertified, nonpublic high school students, which includes GED students, the student must not be a convicted felon. 11 KAR 15:090 § 7(1).

### **Worker's Compensation Benefits**

- No compensation is payable for work-related injuries if the employee falsely represents in writing his or her physical condition or medical history at the time of being hired, the employer's reliance on the employee's misrepresentations were a substantial factor in hiring the employee, and there is a causal connection between the false representation and the injury for which compensation is claimed. KRS 342.165(2).
- Whether incarceration disqualifies an individual from Worker's Compensation benefits in Kentucky is unclear. Some states allow the benefits to continue when the applicant is incarcerated and some states direct the benefits to the applicant's dependents during the period of the incarceration.

### **Unemployment Benefits**

- A person does not qualify for unemployment compensation for any period of unemployment which was the result of a “discharge for misconduct.” Discharge for misconduct includes any time spent in jail for a conviction of a felony or misdemeanor which results in missing at least five days of work. KRS 341.370(6).
- There must be a sufficient nexus between the misconduct which led to dismissal from employment and the nature of the employment as well.<sup>20</sup>

### **Social Security**

- Old-age and survivors insurance benefit payments will not, subject to various exceptions, be paid for any month in which a person is subject to any legal status listed below:
  - Confined in a jail, prison, or other penal institution for conviction of a criminal offense.
  - Confined by court order in an institution at public expense in connection with a verdict of guilty by reason of insanity, a finding of incompetence to stand trial, or a similar verdict or finding.
  - Confined by court order in an institution immediately following completion of confinement for a criminal offense, an element of which is sexual activity, and pursuant to a finding that the individual is a sexually dangerous person (sexual predator) or a similar finding.
  - Fleeing to avoid prosecution or custody for a felony.
  - Violating a condition of probation or parole imposed under federal or state law.
  - For additional information, see 42 U.S.C. § 402(x).
- No person shall be eligible for Supplemental Security Income for the Aged, Blind, and Disabled, subject to certain exceptions, if the person is subject to any legal status listed below:
  - An inmate at a public institution. 42 U.S.C. § 1382(e)(1).
  - Fleeing to avoid prosecution or custody for a felony. 42 U.S.C. § 1382(e)(4)(A)(i).
  - Violating a condition of probation or parole imposed under federal or state law. 42 U.S.C. § 1382(e)(4)(A)(ii).
- Disability benefits are not available for any physical or mental impairment which arise in connection with the commission of a felony if the person is convicted. 20 C.F.R. 404.1506.
- A person who has been convicted of any offense under federal or state law resulting in imprisonment for more than one year cannot serve as a representative payee for a beneficiary

entitled to certain benefits under the Social Security Act. 42 U.S.C. § 1383(a)(2)(B)(ii)(IV).

### **Veterans Benefits**

- If any individual to whom pension is being paid under a law administered by the Department of Veteran Affairs is imprisoned in a federal, state, or local penal institution as a result of a conviction of a felony or a misdemeanor, such pension payments will stop on the sixty-first day of imprisonment following conviction. Benefits can normally be assigned to an eligible family member during this time. 38 C.F.R. § 3.666.
- No veteran shall receive a pension if the veteran is a fugitive felon and no apportionment will be made to the veteran’s dependents. 38 C.F.R. § 3.666.
- No person shall be eligible for residence in an armed forces retirement home if he or she has been convicted of a felony or is not free of drug, alcohol, or psychiatric problems. 24 U.S.C. § 412(b).
- All veteran’s benefits are forfeited if evidence satisfactory to the Secretary shows a veteran to be guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies, or if convicted of various offenses under federal or military law. 38 U.S.C. § 6104, 38 U.S.C. § 6105.
- Similar offenses, including spying, result in forfeiture of National Service Life Insurance, Service-members’ Group Life Insurance, and Veterans’ Group Life Insurance. 38 U.S.C. § 1911, 38 U.S.C. § 1973.
- A veteran who has been convicted of a federal or state capital offense is ineligible to receive benefits under the Veterans’ Service Organization Burial Honor Guard Program. 17 KAR 4:010 § 1(2). A veteran who has been convicted of a federal or state capital offense, and who is sentenced to life in prison without parole, or who is given the death penalty, is ineligible to receive benefits from Kentucky’s Military Burial Honor Guard Trust Fund. 106 KAR 4:010 § 1(2).

### **Loss of Other Federal Benefits Due to a Drug Conviction**

- Any person convicted of distribution of controlled substances may, at the discretion of the sentencing court, lose their right to federal benefits. A federal benefit is the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by funds appropriated by the United States. It does not include retirement, welfare, Social Security, health, disability, veterans benefits, public housing, or other similar benefits.
- For the first conviction the ineligibility period may be up to 5 years, for the second conviction the ineligibility period may be up to 10 years. For a third or subsequent conviction ineligibility is mandatory and permanent. 21 U.S.C. § 862(a).
- Any person convicted of possession of a controlled substance may, at the discretion of the sentencing court, be ineligible for federal benefits for up to one year. For second and subsequent

<sup>20</sup> See, e.g., *Hutchison v. Kentucky Unemployment Insurance Commission*, 329 S.W.3d 353 (Ky.App. 2010), in which the claimant was dismissed as a teacher for repeated violations of a domestic violence order. Even though the conduct did not occur while she was performing her duties or involve students or teachers, the repeated inability to conform to the law compromised her ability to be an example to the school community. The court denied her unemployment benefits.

convictions the ineligibility period may be up to 5 years. 21 U.S.C. § 862(b).

- The period of ineligibility under either of these sections shall be waived if the person declares him or herself an addict and submits to long-term treatment for addiction or is otherwise deemed to be rehabilitated. The period of ineligibility may be suspended for the same reasons or also if the person has tried to get treatment, however it proves to be inaccessible or unavailable.

## **5. Family Concerns**

### ***Involuntary Termination of Parental Rights***

- Involuntary termination of parental rights may occur upon conviction of a criminal charge involving abuse or neglect of any child and a finding by the court that abuse or neglect is likely to happen to the child before the court. KRS 625.090(1).
- During an adoption proceeding, adoption of the child without the parent's consent may be granted if it is proven that the parent has been convicted of a felony that involved serious injury to the child under adoption. KRS 199.502(1)(d).
- The court will not be required to use reasonable efforts to reunify a child with his or her family if a parent has been convicted of causing the death of another child of the parent or if the parent has committed a felony assault on the child or another child of the same parent which resulted in serious bodily injury. KRS 610.127.
- The Adoption and Safe Families Act (ASFA) of 1977 requires that a state file a petition for termination of parental rights when the child has been in foster care under the responsibility of the state for 15 of the most recent 22 months. A custodial parent sentenced to more than 22 months in prison may lose parental rights.
- The ASFA also requires that states file a petition for the termination of parental rights in any case where a parent is convicted of the murder of a child sibling or another child; voluntary manslaughter of a child sibling or another child; aiding or abetting, attempting, conspiring, or solicitation to commit such a murder or such a voluntary manslaughter; or felony assault that has resulted in serious bodily injury to the child who is the subject of the petition, a child sibling, or another child. 42 U.S.C. § 675(5).

### ***Name Changes***

Any person at least eighteen years old may apply to the District Court for a change of name. KRS 401.010. Registrants on the sex offender registry must inform the local probation and parole office of any name changes and provide the previous name(s). KRS 17.500(6). The office must also be informed of changes made to any e-mail, chat, instant messaging or Internet communication identities. KRS 17.510(10)(c). The name of a child under eighteen years of age may be changed by a District, Family or Circuit Court with a case before it involving the family of the child or in the county the child resides. KRS 401.020, effective July 25, 2013.

### ***Adoption and Foster Care***

- An applicant who wishes to become an adoptive or foster parent will not be approved if their criminal record reveals that the applicant, or an adult member of the applicant's household, has been convicted of a felony offense involving a spouse, a child, sexual violence, or death as described by 42 U.S.C. § 671(a)(20)(A), or has been convicted of a drug or alcohol-related felony within the five year period prior to submission of the application. 922 KAR 1:490 § 2(4).
- Closure of an approved adoptive home will occur if an approved adoptive parent is convicted or pleads guilty to charges of a sexual offense designated in KRS 510.040 to 510.140, 510.150, 529.020 to 529.050, 530.020, 530.064, or 531.300 to 531.370, a crime of abuse, neglect, or exploitation of a child pursuant to KRS 508.100, 508.110, 508.120 or KRS 600.020(1) which is substantiated by the Cabinet for Health and Human Services pursuant to 922 KAR 5:070, or if the adoptive parent is convicted of a class A or class B felony offense under KRS Chapter 510. 922 KAR 1:100 § 10(2).
- Under the provisions of the Adoption and Safe Families Act of 1997, a person is barred from being a foster or adoptive parent if that person has a felony conviction of child abuse or neglect, spousal abuse, a crime against a child (including child pornography), and certain violent crimes including rape, sexual assault and homicide. There is a five year bar for a felony conviction of physical assault, battery, or a drug related offense. See 42 U.S.C. § 671and following.

### ***Foreign Exchange Student and Au Pair Host Families***

Federal law requires that any member of a potential host family for a Department of State sponsored foreign exchange student or au pair undergo a background check. There is no guidance provided for consideration of information provided in the background check. 22 C.F.R. 62.25 and 22 C.F.R. 62.31.

### ***Guardian or Conservator Appointment***

A person petitioning to become a guardian, limited guardian or conservator of a minor child must include all criminal convictions on applications. KRS 387.025(4)(c).

## **6. Firearms**

### ***Restrictions under Kentucky Law***

- It is a felony offense to possess or transport a firearm if previously convicted of a felony as defined by the laws of the jurisdiction in which the person was convicted, in any state or federal court when that person has not been pardoned or been granted other relief from the status of a felon.<sup>21</sup> KRS 527.040.

<sup>21</sup> For purposes of KRS 527.040, one becomes a convicted felon at the time of the guilty plea. Even if the felony is successfully diverted and the defendant never gets to sentencing, the person on felony diversion may not possess a firearm. *Thomas v. Commonwealth*, 95 S.W.3d 828 (Ky. 2003).

- No person shall sell or transfer a firearm to any convicted felon. KRS 237.070.
- Once a protective order has been issued against an individual, it is unlawful for that individual to purchase or attempt to purchase a firearm. Law enforcement is to be notified if any person against whom a domestic violence order has been issued attempts to purchase a firearm. KRS 237.095.
- A person may be disqualified from obtaining a concealed handgun permit or may be required to surrender the license if he or she:
  - Has a misdemeanor conviction involving controlled substances within the last three years prior to application for the license
  - Has two or more convictions for driving under the influence within the last three years
  - Owes the equivalent of one year of child support or more
  - Has previous convictions for misdemeanor assault or terroristic threatening within the last three years
  - Has become or is the subject of a domestic violence order or emergency protective order
  - KRS 237.110.
- KRS 513 (arson),
- KRS 237.040 (destructive devices),
- KRS 514.100 (unauthorized use of an automobile),
- KRS 525.020 (riot),
- KRS 527.40, .70 & .100 (unlawful possession of firearms),
- KRS 514.030 (when it is felony theft of an automobile),

AND at the time of the offense the person was wearing body armor and was armed with a deadly weapon, that person shall not be eligible for probation, shock probation, parole, conditional release, or any other form of early release. KRS 533.065.

### ***Restrictions under Federal Law***

It is unlawful for a person to purchase, own, or possess body armor, if previously convicted of a felony that is a crime of violence. For more information, see 18 U.S.C. § 931.

## **8. Citizenship and Immigration**

Non-citizens, depending on their immigration status, will be concerned with avoiding the categories of “deportability”<sup>23</sup> and “inadmissibility.”<sup>24</sup> Consequences related to immigration and citizenship are imposed by federal law, and the details of this complex body of law are beyond the scope of this publication. The information below is provided to highlight general concerns.

### ***Inadmissibility***

The grounds of inadmissibility apply to a non-citizen who came into the United States without appearing before an immigration officer (i.e. crossed the border without inspection) and to someone seeking to immigrate to the U.S., who may seek to apply for admission to the United States in the future. Someone who did not present herself to an immigration official lacks documentation permitting her to stay in the United States and is already deportable. If a non-citizen becomes inadmissible, this can affect her future efforts to gain legal immigration status.

- The grounds of inadmissibility are triggered by both convictions and non-convictions.
- Subject to limited exceptions and waivers, grounds for inadmissibility include the following:
  - Conviction of, or admission to having committed, any crime involving moral turpitude. Note that the definition of “moral turpitude” in this context is governed by federal decisions applied to a variety of state and federal crimes.
  - Conviction of, or admission to having committed, any crime relating to a controlled substance. A limited exception applies for marijuana possession.
  - Conviction of two or more criminal offenses, the resulting aggregate sentences for which were five years or more.
  - Commission of prostitution or commercialized vice.
  - Illegal presence in the United States.

### ***Restrictions under Federal Law, 18 U.S.C. § 922(g)***

It is unlawful for any person to possess a firearm or ammunition if the person:

- Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year (conviction of a felony).
- Is a fugitive from justice.
- Is an unlawful user of, or addicted to, any controlled substance.
- Is under a court order that restrains the person from harassing, stalking, or threatening an intimate partner.
- Has been convicted in any court of a misdemeanor crime of domestic violence.

## **7. Body Armor**

### ***Restrictions under Kentucky Law***

In many states, it is a felony offense to knowingly possess body armor if previously convicted of a violent felony in that state, convicted of a crime elsewhere that would be a violent felony if committed in that state, or found not guilty of a violent felony by reason of mental disease or defect.<sup>22</sup> Kentucky has no such statute (but see the federal statute below).

If an individual commits a felony offense under:

- KRS 218A (controlled substances),
- KRS 507 (homicide),
- KRS 508 (assault),
- KRS 509 (kidnapping, unlawful imprisonment),
- KRS 511 (burglary),

<sup>22</sup> See, e.g., Wis. Stat. § 941.291(2).

<sup>23</sup> The grounds of deportability are listed in 8 USC § 1227(a).

<sup>24</sup> The grounds of inadmissibility are listed in 8 USC § 1182(a).

- This list is not complete. For additional information, see 8 U.S.C. § 1182.

### **Deportability**

A non-citizen who has been admitted to the United States and gained legal status through the Department of Homeland Security is concerned with avoiding deportation. This includes both the category of immigrant (e.g. legal permanent resident (LPR)) and non-immigrants (e.g. visitors and students admitted to the U.S. on short term visas). Lawfully admitted immigrant and non-immigrants can lose this status and be deported if convicted of a deportable offense.

- Deportation: Certain crimes can render a person deportable.
- Other possible consequences include, but are not limited to, the following:
  - Inability to obtain asylum or protected status.
  - Inability to become a citizen.
  - Inability to become a legal permanent resident.
- Subject to limited exceptions and waivers, grounds for deportation include the following:
  - Presence in the United States as an inadmissible person or in violation of law.
  - Conviction of a single crime involving moral turpitude within five years of admission for which a sentence of one year or longer may be imposed.
  - Conviction of multiple crimes involving moral turpitude, regardless of the time after admission or the sentence imposed.
  - Conviction of any aggravated felony.
  - Conviction of a violation of any controlled substance law, other than a single offense involving possession for one's own use of thirty grams or less of marijuana.
  - Conviction of a firearms offense.
  - Conviction of a crime of domestic violence, stalking, child abuse, child neglect, or child abandonment.
  - Violation of a protective order.
- This list is not complete. For additional information, see 8 U.S.C. § 1227.<sup>25</sup>

### **Categories of Offenses**

Non-citizen criminal defendants should be aware that a state criminal conviction can result in immigration consequences if it falls into one of the following categories of offenses as defined by federal immigration law.

#### **Aggravated Felony Convictions**

- If convicted of an aggravated felony, a non-citizen will face mandatory detention, almost certain deportation, and is ineligible for most forms of relief. In addition, if the non-citizen

returns illegally to the United States, he or she will face criminal penalties of up to 20 years in federal prison.

- The most common criminal offenses that are aggravated felonies, regardless of the sentence imposed, include:
  - Murder, rape, sexual abuse of a minor, drug-trafficking crimes (covers wide range of drug offenses, not just drug-trafficking), felon in possession of a firearm, child pornography, and deceit or fraud where the loss to the victim exceeds \$10,000.
- Criminal offenses that are generally aggravated felonies when a sentence of 365 days or more is imposed (regardless of whether the sentence is probated) include:
  - Theft, burglary, crimes of violence (see below), perjury, bribery of a witness, obstruction of justice, alien smuggling, forgery, counterfeiting, and altering a VIN.

#### **Crimes Involving Moral Turpitude**

- A conviction (or sometimes an admission) of a crime involving moral turpitude can trigger both grounds of deportability and inadmissibility. This category has been vaguely defined as a "reprehensible act" with a *mens rea* of at least recklessness.<sup>26</sup> It has been interpreted to include:
  - Crimes involving theft or an intent to defraud; an intent to cause bodily harm; reckless crimes that result in serious bodily harm; some drug trafficking offenses; and most offenses involving sexual conduct.

#### **Controlled Substance Offenses**

- Includes offenses "relating to" a controlled substance as defined by federal law. A conviction for a controlled substance offense will trigger both the grounds of inadmissibility and deportability.
- The following categories of offense will trigger the grounds of deportability, but are not specific grounds of inadmissibility unless also a crime of moral turpitude.
  - Crimes against Children;
  - Crimes of Domestic Violence;
  - Firearms Offenses.

*For more detailed information, see the Immigration Consequences Chart in the latter half of this publication.*

## **9. Other Civil Rights and Privileges**

### **Drivers License**

- Kentucky law provides for mandatory revocation or denial of a drivers license whenever the transportation cabinet receives notice of an individual's conviction for:
  - murder or manslaughter resulting from operation of a motor vehicle
  - driving a vehicle that is not a motor vehicle while under the influence of drugs or alcohol

<sup>25</sup> A number of web resources are also valuable. For instance, there is a list of petty offenses, including DUI, which may make one inadmissible into Canada at the website found at <http://www.duicanadaentry.com/>.

<sup>26</sup> *Matter of Silva-Trevino*, 24 I&N Dec. 687 (AG 2008).

- perjury or making false statements with regard to obtaining a license, registration, etc.
  - any felony in the commission of which a motor vehicle is used
  - conviction (or forfeiture of bail) on three charges of reckless driving within the last twelve months
  - conviction of leaving the scene of an accident
  - conviction of theft of a motor vehicle or its parts (including the conviction of anyone under eighteen years of age)
  - no insurance, second offense or greater, within any five year period
  - use of a fraudulent driver's license in the attempt to purchase alcoholic beverages
  - conviction of operating a motor vehicle, motorcycle or moped without an operator's license
  - in addition, effective June 25, 2013, KRS 186.650 is amended to include license revocation for anyone found incompetent to stand trial under KRS Chapter 504. The revocation will extend until the person is found competent to stand trial or the criminal case is dismissed.
    - See KRS 186.650.
  - KRS 532.356(2) provides license suspension for theft of gasoline. KRS 532.356(3) provides a list of offenses which might involve license suspension when restitution is owed for the offense and remains unpaid.
  - Minors (17 or younger but not less than 14) convicted of controlled substance abuse violations in KRS 218A may have their licenses suspended for one year on first offense and two years on second or subsequent offense or be denied issuance of a license for the same period. KRS 218A.991(1).
  - An individual's driver's license photo or computerized image, Social Security number, or medical or disability information from a motor vehicle record, driver's license or permit, motor vehicle registration, or identification document shall not be disseminated except to be used by a government agency, including a court or law enforcement agency in carrying out its functions, in connection with a civil, criminal, administrative, or arbitral proceeding in a federal, state, or local court or agency, by an insurer in connection with claims investigation activities and antifraud activities, or by an employer to verify information relating to a holder of a CDL. However, driver status, violation, or conviction of a traffic law is not considered personal information. 601 KAR 2:020 § 2 § 3.
- operators go back five years and for commercial vehicle operators go back ten years.
- Penalty points may be assessed against a Kentucky license for offenses committed against the traffic laws of another state when that offense results in conviction, forfeiture of bail or payment of a fine. Speeding violations in other states are not considered for assessment of penalty points.
  - A conviction of one violation involving either racing, speeding in excess of twenty-six miles per hour over the speed limit, or attempting to elude police by the use of a motor vehicle shall result in a ninety day license suspension.
  - Convictions of the following offenses shall be cause for the assessment of the points indicated:
    - speeding fifteen miles an hour or less over the limit – 3
    - speeding sixteen miles an hour over the limit but less than twenty-six – 6
    - failure to stop for a church or school bus – 6
    - improper passing – 5
    - reckless driving – 4
    - driving on the wrong side of the road – 4
    - following too closely – 4
    - failure to yield to an emergency vehicle – 4
    - changing drivers in a moving vehicle – 4
    - vehicle not under control – 4
    - stop violation (electric signal, railroad crossing, stop sign) – 3
    - failure to yield – 3
    - wrong way on one-way street – 3
    - too fast for conditions – 3
    - too slow for conditions – 3
    - improper start – 3
    - improper driving – 3
    - careless driving – 3
    - failure to yield left lane – 3
    - improper lane usage – 3
    - failure to illuminate headlights – 3
    - failure to dim headlights – 3
    - any other moving hazardous violation – 3
    - commission of a moving hazardous violation which involves an accident – 6
    - combination of two or more moving hazardous violations in one occurrence – 6
  - If an individual reaches his or her limit for penalty points within the relevant amount of time, the suspensions which result will be:
    - six months for the first accumulation of penalty points,
    - one year for the second accumulation, and
    - two years for a subsequent accumulation with a two-year period.

### ***Drivers License Points System***

- Drivers license denial, withdrawal, suspension, or revocation may be imposed if an individual is assessed too many penalty points during a certain period. A person eighteen years old or older will face license suspension if he or she accumulates twelve penalty points within two years. A person under eighteen years old will face license suspension if he or she accumulates six or more penalty point within two years. Records of imposed penalty points for noncommercial vehicle

- License suspensions may be probated but, if probated, shall be double the length the suspension period would have been. Additional moving traffic convictions or failure to enroll in and successfully complete a driver improvement clinic may be grounds for revocation of the probation.
- For more details, see 601 KAR 13:025.

### **Commercial Drivers License**

- A person holding or required to hold a CDL license shall receive a suspension, revocation or cancellation for one year if convicted of:
  - driving under the influence of drugs or alcohol
  - driving under the influence of drugs or alcohol with blood, breath, or urine at 0.04 or more
  - leaving the scene of an accident involving a motor vehicle driven by a person who holds or is required to hold a CDL
  - using a motor vehicle in the commission of any felony listed in KRS 186.650 (see above)
  - refusing to submit to a blood, breath or urine test
  - driving a commercial motor vehicle when CDL is revoked, suspended or canceled, first offense
  - causing a fatality through negligent or criminal operation of a commercial motor vehicle
  - See KRS 281A.190.
- Certain crimes related to the operation of a commercial motor vehicle, as well as the operation of a non-commercial motor vehicle, cause a mandatory license suspension. Generally, first-time offenses cause a one year bar and second and multiple charge offenses will lead to a lifetime bar. There is a lifetime bar for a felony conviction of the use of a commercial motor vehicle during the manufacture, dispensing or distributing of controlled substances or possession with the intent to manufacture, dispense, or distribute a controlled substance. 49 U.S.C. § 31310. A one-time reinstatement is available for some offenses after 10 years. Subsequent offenses are not eligible for reinstatement. 49 C.F.R. 383.51.
- 49 CFR Part 383.51(b)(3)(v) governs second convictions of any of the offenses listed in KRS 281A.190(1), which includes any felony offense provided for in KRS 186.560, such as murder or manslaughter committed from the operation of a motor vehicle. 601 KAR 11:050 § 2(1).
- A commercial driver employed by a farm-related service industry may apply for a farm-related service industry limited commercial driver's license, but the applicant must not have been convicted of a felony which involved the operation of any type of motor vehicle during the two years prior to submitting the application. 601 KAR 11:080 § 2(2).

### **University Attendance**

Where a public university finds that an applicant, contractor, employee of a contractor, volunteer or visitor has been convicted of a sex crime as specified in the statute or a violent offense, the institution may deny employment, deny contractor's permit,

prohibit volunteering, or prohibit the person from visiting the institution. KRS 164.281(3).

### **Voting**

Persons convicted of a felony are not eligible to vote unless they have been pardoned by the Governor or otherwise been granted a restoration of civil rights.<sup>27</sup> Kentucky Constitution § 145(1) The names of convicted felons are to be removed from the voter registration books and records. KRS 116.0452(3)(b), KRS 116.113(3).

### **Election Participation as Candidate or Official**

- Any public official taking or giving bribes forfeits his office and is disqualified from the right of suffrage for ten years. KRS 432.350.
- A commonwealth attorney indicted on a felony charge is disqualified from his or her position while the charge is pending. KRS 15.734(1). A commonwealth attorney convicted on a felony charge is barred from seeking reelection. KRS 15.734(4).
- For collateral consequences of election offenses and notice requirements, see KRS 116.025(1), KRS 117.015(2), KRS 117.35(2)(e), KRS 117.045(2), KRS 119.277 and KRS 121.110(1).

### **Property Forfeiture**

- In some states conviction can trigger some forms of automatic forfeiture and seizure.<sup>28</sup> In Kentucky, the forfeiture and seizure of personal property does not have to wait till conviction. The opposite is true of the forfeiture of real property.<sup>29</sup> "Real property subject to forfeiture may be seized only pursuant to final judgment..." (conviction). KRS 218A.415(3).
- Immediate forfeiture without a hearing may be made of:
  - items seized incident to arrest or a search under a search warrant
  - items ordered to be seized at a former forfeiture hearing
  - items for which there is probable cause to believe are directly or indirectly dangerous to health or safety
  - items for which there is probable cause to believe are subject to forfeiture
  - a temporary forfeiture order seizing real property can be had if there is probable cause to believe the property would be subject to forfeiture and preserving the availability of the property outweighs any hardship to the owner

<sup>27</sup> Kentucky has the third-highest disenfranchisement rate in the nation, with an estimated 244,000 adults barred from voting. Bruce Schreiner, "KY, has high felony disenfranchisement rate," Kentucky New Era, accessed on the web at [http://www.sentencingproject.org/detail/news.cfm?news\\_id=1471&id=133](http://www.sentencingproject.org/detail/news.cfm?news_id=1471&id=133).

<sup>28</sup> In this context, the terms "seizure" and "forfeiture" are virtually synonymous.

<sup>29</sup> Defined as "Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land." Black's Law Dictionary, Thompson/West, 1999, p. 1254.



- This includes personal property such as:
  - items it is never legal to own or grow
  - items which may be possessed or sold legally but are not legally possessed or legally sold by the person from whom they are seized
  - legal items used in the manufacture or transfer of illegal items
  - legal items obtained illegally
  - legal items used in the commission of a crime
- Except for temporary orders, the seizure of real property requires a hearing and an opportunity to respond to the prosecution's motion to seize the property. The prosecutor must first show probable cause for the seizure. The respondent must show a preponderance of the evidence against the need for seizure.
- Personal property is forfeitable if it is used in connection with or acquired in the commission or attempted commission of the following crimes:
  - use of a social networking Web site by a registered sex offender when the website allows access to children
  - stalking with the use of any communication or transmission device
  - use of electronic means to induce a child to engage in sexual or prohibited activities
  - unlawful transaction with a minor
  - distribution of obscene matters to minors
  - using minors to distribute obscene material
  - use of a minor in a sexual performance
  - promoting a sexual performance by a minor
  - possession of matter portraying a sexual performance by a minor
  - distribution of matter portraying a sexual performance by a minor
  - promoting sale of material portraying a sexual performance by a minor
  - advertising material portraying a sexual performance by a minor
  - using minors to distribute material portraying a sexual performance by a minor
  - Pursuant to OAG 13-005 (setting the effective date of new legislation), effective June 25, 2013, forfeiture as described in KRS 218A.405 to 218A.406 will also apply to violations of KRS 529.100 (human trafficking) and 529.110 (promoting human trafficking).
- See KRS 218A.405 to 218A.460, and KRS 500.092.
- KRS 242.360 allows for seizure of a vehicle used to transport alcohol into a dry county.

### **Genetic and HIV Testing**

- Upon conviction of any sexual offense listed in KRS 510 which has as an element of the offense intercourse or contact when

the circumstances of the case demonstrate a possibility of the transmission of HIV, the sentencing court shall order the defendant to undergo an HIV test. KRS 510.320.

- When a public servant (like a police officer), a health care professional, an employee of a health care facility, or a victim is bitten, suffers a puncture wound from, or is exposed to the blood or bodily fluids of a criminal defendant, the defendant shall be ordered to submit to testing for HIV, hepatitis B and C, and any other disease if testing for that disease is currently recommended by the Centers for Disease Control and Prevention. Failure to submit to testing may expose the defendant to criminal contempt and an judge's order compelling the defendant to submit to testing. KRS 438.250.
- KRS 529.090 provides mandatory HIV testing for persons convicted of prostitution.
- Under KRS 17.170, the following persons are required to provide a DNA sample for the centralized database:
  - any person convicted of a felony offense on or after March 27, 2009,
  - any juvenile at least fourteen years old at the time of the commission of the offense adjudicated as a public offender for a felony sex offense in KRS 510 or incest, and any juvenile declared a juvenile sexual offender under KRS 635.510,
  - This includes people who have committed felonies in other jurisdictions who transfer probation to Kentucky.
- A defendant who has successfully completed the Class D felony diversion program under KRS 533.258 or who has had the case dismissed, may request expungement of all identifiable information in the data bank and the destruction of all samples taken. KRS 17.175(5).
- Persons required to register on the Sex Offender Registry must give a DNA sample. This includes those convicted of sex offenses in other jurisdictions who come to Kentucky and qualify for registration. KRS 17.510(4).

### **Jury Service**

- Persons convicted of a felony are disqualified from jury service unless he or she has received a pardon or gotten a restoration of his or her civil rights. KRS 29A.080(2)(e).
- Persons convicted of a felony are unable to serve on a federal grand jury or petit jury unless the individual's civil rights have been restored. 28 U.S.C. § 1865(b)(5).

### **Passport**

A person may have his or her passport revoked or denied if convicted of a federal or state felony drug offense or certain misdemeanor drug offenses, if the person used a passport or otherwise crossed an international border in committing the offense. 22 U.S.C. § 2714.

## **10. Greater Penalties Upon Repeat Offenses**

The following is a list of statutory offenses which carry enhanced penalties for a second or subsequent offense. A person convicted of any of these crimes may face greater penalties if subsequently convicted of the same or similar crimes. In some instances, misdemeanors can become felonies for subsequent offenses. In other cases, lower-level felonies can be enhanced to higher-level felonies.

The list is not intended to be exhaustive. It is the attorney's job to ensure that the client is aware that he or she may be pleading guilty to an enhanceable offense, and what the consequences of a second or subsequent offense may be.

- Alcohol Intoxication, 1<sup>st</sup> and 2<sup>nd</sup> offense KRS 222.990
- Assault 4<sup>th</sup> Degree on a family member KRS 508.030 and KRS 508.032
- Assault of a Sport's Official KRS 518.090
- Carrying a Concealed Deadly Weapon KRS 527.020
- Criminal Gang Recruitment KRS 506.140
- Driving Under the Influence of Drugs or Alcohol, Driving on a DUI-Suspended License KRS Chapter 189A
- Driving Under the Influence on a Boat KRS 235.240
- Driving without a License KRS 186.620
- Drug Offenses listed in KRS Chapter 218A
- selling controlled substances to a minor, KRS 218A.1401
- advertising a controlled substance, KRS 218A.1403
- trafficking, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Degree, KRS 218A.1412
- trafficking in marijuana, KRS 218A.1421
- cultivation of marijuana, KRS 218A.1423
- possession of methamphetamine precursor, KRS 218A.1437
- distribution of methamphetamine precursor, KRS 218A.1438
- trafficking in a dietary supplement, KRS 218A.1439
- controlled substance not in original container, KRS 218A.210
- forgery of a prescription, KRS 218A.282
- possession of a forged prescription, KRS 218A.284
- theft, possession, trafficking prescription blanks, KRS 218A.286
- criminal possession of a medical record, KRS 218A.320
- theft of a medical record, KRS 218A.322
- falsification of a medical record, KRS 218A.324
- simulation of controlled substances, KRS 218A.350
- possession of firearm at time of drug offense, KRS 218A.992
- Failure to Report Dependency, Neglect or Abuse of a Child KRS 620.030
- Failure to Send a Child to School KRS 159.990
- Filing an Illegal Lien KRS 434.155(2)
- Forgery or Possession of a Forged Prescription KRS 217.208 & .209
- Indecent Exposure to a person under 18 KRS 510.148
- Loitering for Purposes of Prostitution KRS 529.080

- Manufacture, Sale, Delivery of Armor-Piercing Ammunition KRS 237.080(3)
- No Insurance KRS 304.99-060
- Nonsupport KRS 530.050
- Offenses Regarding Material Portraying a Sexual Performance by a Minor KRS 531.350 through 370
- Possession, Transportation of Alcohol in a Dry County KRS 242.990
- Possession of Anhydrous Ammonia in Other than an Approved Container KRS 250.991(2)
- Possession of a Handgun by a Minor KRS 527.100
- Possession of a Moonshine Still KRS 244.170 & KRS 244.990(2)
- Promoting Sale of Obscenity KRS 531.060
- Theft of Anhydrous Ammonia KRS 514.030
- Theft of a Legend Drug KRS 217.181
- Theft of a Prescription Blank KRS 217.207
- Theft of Telecommunications Services KRS 514.065
- Unauthorized Use of an Automobile KRS 514.100
- Use of Restricted Ammunition KRS 527.080
- Use of Scanning Device or Reencoder to Obtain Payment Card Information KRE 434.675

### ***Persistent Felony Offender***

- The Kentucky Persistent Felony Offender statute, KRS 532.080, is one of the most complex sentencing statutes in the Kentucky Revised Statutes. What follows is only a brief description.
- A person may be found to be a Persistent Felony Offender in the Second Degree when he or she is more than twenty-one years of age and stands convicted of a felony after having been convicted of one previous felony, and when:
  - the previous conviction, in this state or out, involved a sentence to a term of imprisonment of one year or more or death,
  - the offender was over 18 years of age at the time of the offense,
  - and either:
    - completed serving the previous sentence within five years prior to present felony, or
    - was on probation or parole at the time of the present felony, or
    - completed probation or parole within five years of the present offense, or
    - was in custody for the previous offense at the time of the present offense, or
    - had escaped from custody for the previous offense at the time of the present offense.
- A person may be found to be a Persistent Felony Offender in the First Degree when he or she is more than twenty-one years of age and stands convicted of a felony after having been convicted of two or more felonies or one felony sex crime against a minor, and when:

- the previous conviction, in this state or out, involved a sentence to a term of imprisonment of one year or more or death,
- the offender was over 18 years of age at the time of the offense,
- and either:
  - completed serving the previous sentence within five years prior to present felony, or
  - was on probation or parole at the time of the present felony, or
  - completed probation or parole within five years of the present offense, or
  - was in custody for the previous offense at the time of the present offense, or
  - had escaped from custody for the previous offense at the time of the present offense.
- The penalty for federal offenses committed after conviction of a state crime may also be substantially more severe. For example, even a prior misdemeanor conviction may result in an additional two years on a federal sentence.<sup>30</sup> U.S. Sentencing Guidelines Manual Ch. 4 (2010). Some misdemeanor offenses which might be used to give a defendant in federal court a higher criminal history score for the purposes of sentencing include:
  - reckless driving
  - contempt of court
  - disorderly conduct
  - driving on a suspended license
  - giving false information to a police officer
  - leaving the scene of an accident
  - nonsupport
  - resisting arrest
  - trespassing
- imprisonment of more than one year if committed by an adult, and
  - has as an element the use, attempted use, or threatened use of physical force or
  - conduct that presents a serious potential risk of physical injury to another
- “serious drug offense” includes any offense under state law involving manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance for which a maximum term of imprisonment of ten years or more is prescribed by law<sup>31</sup>
- It increases the statutory penalty from a maximum of 10 years imprisonment to a minimum mandatory term of 15 years imprisonment. Since there is no statutory maximum described in the statute, the maximum is life imprisonment.<sup>32</sup>
- The sentence cannot be probated or suspended. The statute also increases the maximum term of supervised release from 3 years to 5 years.
- All three prior qualifying convictions must have been committed on different occasions and be final by the time the defendant possessed the gun in the instant case.<sup>33</sup>
- There is no time limit on the prior convictions.
- There is no way to make a collateral challenge to the constitutional validity of the prior convictions in a federal sentencing proceeding.<sup>34</sup>
- See 18 U.S.C. § 924(e).

## **11. Specific Consequences for Sexual Offenses**

People convicted of sex offenses face a wide array of consequences besides prison time. Because those consequences change frequently and are often imposed by local governments, they cannot be fully documented in this publication. The following considerations are, however, likely to apply.

### ***Employment***

Many of the professions listed in Appendix I are regulated by statutes or rules that specifically make reference to sexual offenses. For additional information, review the applicable profession.

### ***Residency and Registration Requirements***

Sex Offender Registration in Kentucky is covered by KRS 17.500 through KRS 17.580. Some of the most important features include:

- The requirements apply to almost any conviction under KRS 510 (sex offenses) except for misdemeanor sexual misconduct, and any felony offense involving a minor.

<sup>31</sup> Under Kentucky law, conviction of any Class C felony or greater would qualify.

<sup>32</sup> *United States v. Brame*, 997 F.2d 1426, 1428 (11 Cir. 1993).

<sup>33</sup> *United States v. Richardson*, 166 F.3d 1360 (11th Cir. 1999).

<sup>34</sup> Lisa Call, Assistant Federal Defender, The Armed Career Criminal Act, October 26, 2010, on the web at <http://www.fd.org/docs/select-topics--common-offenses/acca.pdf?sfvrsn=4>.

### ***The Federal Armed Career Criminal Act***

- This applies to defendants convicted of the felon in possession of a firearm charge found in 18 U.S.C. § 922(g). However, § 922(g) can apply to anyone who possesses a firearm and is prohibited from doing so (i.e., dishonorably discharged from the Armed Forces, declared mentally incompetent, etc.).
- The individual qualifies for this enhancement if he or she is convicted of being a felon in possession of a firearm under the federal statute and also has three previous convictions involving a “violent felony,” “serious drug offense,” or both.
  - “violent felony” means any crime punishable by imprisonment for more than one year or act of juvenile delinquency involving the use or carrying of a firearm, knife or destructive device that would be punishable by

<sup>30</sup> This can be true even when the misdemeanor conviction took place without the benefit of legal counsel. See *Misdemeanors*, Alexandra Natapoff, Loyola Legal Studies Paper No. 2012-08, available at <http://ssrn.com/abstract=2010826>.

- On or before release by a court, parole board or detention facility the registrant must meet with the probation or parole officer covering the county in which the registrant intends to reside.
- The registrant must register his or her personal information, fingerprints, submit to a photograph, the address of his or her residence, electronic email address, instant messaging, chat, or other Internet communication identities, and basically any other information required by the cabinet.
- Registrants may not use social networking sites, instant messaging or chat room programs which are accessible to minors.
- Lifetime registration is required for anyone convicted of:
  - kidnapping a minor, except by parent
  - unlawful imprisonment, except by parent
  - a sex offense with a prior conviction for an offense against a minor
  - a sex offense with a prior conviction for a sex offense
  - rape 1<sup>st</sup> degree or sodomy 1<sup>st</sup> degree
- Registration is for twenty years for everyone else who qualifies.
- If one moves within the county he or she must provide the new address to the probation or parole officer by the day of the move. If one moves out of the county he or she must provide the new address to the current probation or parole officer by the day of the move and register with the probation or parole officer in the new location within five working days after the change of address.
- A registrant cannot reside with one thousand feet of a:
  - high school
  - middle school
  - elementary school
  - preschool
  - publicly owned playground
  - licensed daycare facility
- The registrant has ninety days to move if a new one of those facilities is opened within one thousand feet of the registrants residence.
- The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, enacted in 1994, establishes federal guidelines for state sex offender registration programs. 42 U.S.C. § 14071.

### **Travel Between States**

A person who has successfully been removed from one state's registry cannot assume he or she will not be required to register in another state. A person whose registration obligations in another state have already been terminated may still be required to register in Kentucky. A person whose obligations in Kentucky have been terminated may still be required to register if he or she moves to another state. KRS 17.520(5).

## **12. Specific Consequences for Controlled Substance Offenses**

Conviction for an offense related to controlled substances may result in consequences not typically associated with other crimes. This chapter is intended to highlight those consequences and provide cross-references to the applicable portions of this publication. In addition to the consequences listed below, consequences applicable to all convictions will typically also apply to an offense related to controlled substances.

For information on consequences specific to offenses related to controlled substances, review the following chapters and sections of this publication:

### **Employment**

Many of the professions listed in Appendix I are regulated by statutes or rules that specifically reference offenses related to controlled substances or drugs. For additional information, review the applicable profession.

### **Public Benefits Programs**

- Eligibility for public housing will almost certainly be lost. See *Public Housing (page 5)*.
- Eligibility for food stamps may be lost. See *Food Stamps (page 6)*.
- Eligibility for student loans will almost certainly be lost. See *Federal Student Loan Eligibility (page 6)*.
- The Kentucky Works Program may be unavailable. See *Kentucky Works Program (page 6)*.
- Eligibility to live at an armed forces retirement home may be lost. See *Veterans Benefits (page 7)*.

### **Family Concerns**

- Adoption rights may not be granted. See *Adoption and Foster Care (page 8)*.

### **Firearms**

- The ability to possess a firearm under state and federal law may be lost. See *Firearms (page 8)*.

### **Forfeiture**

- Real and personal property may be forfeited. See *Property Forfeiture (page 12)*.

### **Citizenship and Immigration**

- Subject to limited exceptions, a drug offense will result in either inadmissibility, deportability, or both. See *Citizenship and Immigration (page 9)*.

### **Other Civil Rights and Privileges**

- Driving privileges may be lost if the offense involved driving. See *Other Civil Rights and Privileges* (page 10). Passport may be lost, if a passport was used. See *Passport* (page 13).

### **Greater Penalties Upon Repeat Offenses**

- Commission of a subsequent controlled substance offense may be punished substantially more severely. See *Greater Penalties Upon Repeat Offenses* (page 14).

## **Appendix I: Occupations and Licensing**

The statutes regulating the following professions indicate that a criminal charge or conviction may result in adverse employment consequences such as the loss of a necessary license or inability to enter a field.

This list is not exhaustive. If the occupations in the field in which you are interested are listed here but the specific occupation in which you are interested is not, there is a good chance your occupation of interest is also covered by some types of restrictions.

Think of the list in this section as a starting point for your own research. In the case of almost every occupation listed below, the relevant statute or administrative regulation contains a list of factors which could effect eligibility for employment or licensure. Be sure to actually go to the statute or regulation itself to investigate.

In addition to the occupations specifically mentioned in state and federal statutes and regulations, federal courts are authorized to impose occupational restrictions as a condition of probation or supervised release by 18 U.S.C. §§ 3563(b)(5), 3583(d) and the United States Sentencing Guidelines. The court may require a defendant to refrain from engaging in the occupation, or to engage in it only to a certain degree or under certain circumstances.

Restrictions are authorized when a “reasonably direct relationship” exists between the defendant’s occupation and his criminal conduct, 18 U.S.C. § 3563(b)(5), U.S.S.G. 5F1.5(a)(1); and the conditions are “reasonably necessary to protect the public because there is reason to believe that, absent such restriction, the defendant will continue to engage in unlawful conduct similar to that for which the defendant was convicted.” U.S.S.G. 5F1.5(a)(2). If such an occupational restriction is imposed, it must be imposed “for the minimum time and to the minimum extent necessary to protect the public.” U.S.S.G. 5F1.5(b).

### **Accountant**

- If convicted of a felony or any crime in which dishonesty or fraud is an element, an accountant’s license may be revoked, suspended, probated, refused or non-renewed, and the licensee be censured or fined up to \$1,000. KRS 325.340(1)(e).
- The Executive Director of Insurance will not recognize a person as a qualified independent certified public accountant if they have been convicted of fraud, bribery, a conviction under 18 USC 1961, 1968 or any dishonest conduct or practices under federal or state law. The executive director should also not

accept an annual audited financial report which was prepared in whole or in part by a person who has been convicted of the above stated crimes. 806 KAR 3:170 §6(3).

### **Acupuncturist**

- If convicted of a felony, an acupuncturist’s certificate may be revoked, suspended, denied, declined for renewal, restricted or limited, probated, or the holder may be fined or reprimanded. KRS 311.684(1).

### **Air Transportation, Airports, Pilots**

- A background check is required of any person who would work as a security screener or otherwise have unescorted access to secure areas of an airport. 49 U.S.C. §§ 44935, 44936. See also 49 U.S.C. § 114. There is a long list of crimes for which a conviction in the previous 10 years would bar employment, and there is no provision for waiver. See 49 U.S.C. § 44936(b)(B) and 49 C.F.R 1542.209(d).
- A FAA airman certificate (including a pilot’s certificate) issued under 49 U.S.C. 44703 may be amended, modified, suspended or revoked for a conviction of airborne hunting (49 U.S.C. § 44709). The certificate shall be revoked if the person is convicted in a state or federal court of a felony related to a controlled substance when an aircraft or service as an airman was related to the commission of the offense or the person knowingly engaged in such an activity. 49 U.S.C. § 44710.

### **Alcoholic Beverage Sales**

- An application for a license to manufacture, store, sell, purchase, transport or traffic in alcoholic beverages must state that the applicant has not been convicted of a felony within the preceding five years from the later of the date of parole or conviction. KRS 243.390(1)(e) If the conviction (or release from custody or incarceration, parole, or termination of probation) was within the preceding five years, the person may not have a license. KRS 243.100(a) If convicted while holding a license, the license may be revoked. KRS 243.490, KRS 243.500.
- A person holding an alcoholic beverage license shall not knowingly employ any person convicted of a felony within the preceding two years. KRS 244.090(1)(a).
- The statute that says a licensee cannot sell, give away or deliver alcohol to minors *also says a seller cannot sell, give away or deliver any alcoholic beverages to anyone known by the seller to be a convicted felon.* KRS 244.080(4).
- If an alcohol distributor is convicted of a felony and fails to sell his or her ownership interest within the later of 120 days after conviction or when the brewer learns of conviction, the brewer may terminate the contract. KRS 244.606(4)(b).

### **Alcohol and Drug Counselor**

- If convicted of a felony, or any other crime in which an element is dishonesty or fraud, within the past three years, a certificate holder may have their certificate as an alcohol and drug

counselor revoked, suspended, placed on probation, restricted, not issued or refused renewal, and the holder may be reprimanded, admonished, or fined. For the complete list of additional penalties, see KRS 309.086(1)(i) and KRS 309.089.

### **Architect**

- If convicted of a felony, an architect's license may be suspended, revoked, probated, refused issuance, reissuance or renewal, or the licensee be reprimanded publicly or privately. KRS 323.120(1)(c).
- An architect who is convicted of a felony commits unprofessional practice. Unprofessional practice is punishable by the board by refusal to grant, renew, or reissue a license, issuing a public or private reprimand, imposing probation, and/or suspending or revoking the license. Unprofessional conduct by an architect includes entry of a guilty plea or an Alford plea, or having been found guilty of, or convicted of a felony involving the violation of state or federal campaign finance laws, where the time for appeal has lapsed, or the judgment or conviction has been affirmed on appeal. 201 KAR 19:095 §1(1) §3(3).

### **Art Therapist**

- If convicted of a felony or misdemeanor involving sexual misconduct or a crime where dishonesty is a necessary element, an art therapist's license may be suspended, revoked, probated, or their application refused or denied, or the licensee may be subject to written reprimand or admonishment. Conviction includes all instances in which a plea of no contest is the basis of the conviction. KRS 309.137(1)(e).

### **Assisted Living**

- A person convicted of a felony related to theft; abuse or sale of illegal drugs; abuse, neglect or exploitation of an adult; or a sex offense may not be employed in long-term care facilities, nursing pools providing staff to a nursing facility, or in assisted-living communities. KRS 216.789(1) See also KRS 216.533(2).
- An applicant seeking initial or renewal certification of assisted-living residences must provide assurances to the Cabinet for Health and Family Services that no officer, director, trustee, limited or general partner, or shareholder has ever been convicted of a felony. 922 KAR 5:080 §2(2).
- A provider of community supported living arrangement services under federal grants to the states for medical assistance programs may not hire individuals who have been convicted of child or client abuse, neglect, or mistreatment, or of a felony involving physical harm to an individual. 42 U.S.C. § 1396u and 42 CFR 441.404.

### **Athletic Agent**

- An athletic agent must disclose any felony conviction, or a conviction for a crime involving moral turpitude, to apply for a certificate of registration. KRS 164.6909(1)(h) The state may

refuse to issue a certificate of registration if the individual has been convicted of a felony or a crime involving moral turpitude. KRS 164.6911(2)(a).

### **Athletic Trainer**

- If convicted of a felony or misdemeanor involving moral turpitude, an athletic trainer's license may be revoked, suspended, denied, probated, limited, refused renewal or the licensee fined. KRS 311.909(1)(c).

### **Attorney**

- An attorney may be temporarily suspended from the practice of law if:
  - probable cause exists to believe the attorney has been misappropriating funds the attorney is holding for others,
  - probable cause exists to believe the attorney's conduct poses a threat of harm to his clients or the public,
  - the attorney has been convicted of a crime, felony or misdemeanor, which puts into grave issue his or her moral fitness to continue practice law, or
  - probable cause exists to believe the attorney is mentally disabled or addicted to intoxicants and probable cause exists the attorney does have the physical or mental fitness to continue practice law. SCR 3.165.
- An attorney shall be automatically suspended from the practice of law upon the day conviction of a felony, whether it be plea of guilty or a finding of guilt by a judge or jury. SCR 3.166.

### **Auctioneer/Auction House Operator**

- If convicted of a felony, an auctioneer or auction house operator's license may be suspended for up to five years, revoked, probated for up to five years, or conditioned, or be otherwise disciplined, including fines up to \$2,000. KRS 330.110(7).

### **Audiologist**

- See Speech-Language Pathologist.

### **Banking**

- Any person who has been convicted (felony or misdemeanor) of any criminal offense involving dishonesty, a breach of trust or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offenses is prohibited from owning, controlling or working in an insured depository institution, or bank, for ten years, absent court approval. 12 U.S.C. § 1829.

### **Beautician (cosmetics, facials, skin care, waxing)**

- If convicted of a felony, an aesthetician's license can be suspended, revoked, probated, conditioned, refused or non-renewed or be otherwise disciplined. KRS 317B.045(1)(a).

### **Boarding Home Registration**

- A person convicted of a crime of abuse under KRS 508.100 to KRS 508.120, they shall not be registered to operate a boarding house. KRS 216B.305(1) See also KRS 216B.305(6)(c).
- Initial registrations for boarding homes may be denied and existing registrations may be revoked if the applicant for registration or the registrant has been convicted of a crime relating to abuse, neglect or exploitation of a child or an adult. 902 KAR 20:350 §4(11).

### **Boxing**

- The authority may refuse issuance or renewal, suspend, reprimand, revoke, or probate a boxing license if the licensee has been convicted of any crime or who consorts or associates with others convicted of crimes. KRS 229.200(2).

### **Broadcast Licensing**

- In the evaluation of an applicant or licensee's "character" for purposes of the Federal Communications Commission (FCC), the FCC will consider any conviction for a felony or serious misdemeanor in appropriate or compelling cases, particularly where there is a pattern of such convictions. 47 C.F.R. 73.4280.

### **Business Opportunities Salesperson**

- Anyone wishing to sell business opportunities for people to start their own business must include in their application to the Division of Consumer Protection a statement as to whether he or she is currently charged with or has been convicted of a felony involving fraud, embezzlement, fraudulent conversion, or misappropriation of property during the previous seven years. KRS 367.805(1)(d).

### **Car Dealer**

- If a new motor vehicle dealer is convicted of a felony, the manufacturer may terminate, cancel or not renew the franchise agreement with 15 days notice. KRS 190.045(4)(c)(4).

### **Charitable Gaming License (Bingo Games)**

- If an applicant or holder of a charitable gaming license has been convicted of a felony, the license shall be denied or revoked. KRS 238.525(4).
- The Department of Charitable Gaming will revoke or deny a license if an applicant, license holder, or individual associated with the applicant or license holder in a capacity listed in KRS 238.525(3) has been convicted of a felony, gambling offense, criminal fraud, forgery, theft, falsifying business records, or violation of KRS 238.995(7). 820 KAR 1:130 §4(1).

### **Child Care/Children's Services**

- No child-care center shall employ any person in a position which involves supervisory or disciplinary power over a minor or direct contact with a minor who is a violent offender or has

been convicted of a sex crime. Each child-care center shall request all conviction information prior to employing any applicant. KRS 17.165(4).

- No child-care provider required to be certified under KRS 199.8982, receives public subsidy, or an adult who resides on the premises of the child-care provider and has direct contact with a minor shall have been convicted of a violent crime or a sex crime. KRS 17.165(5).
- No church-related privately operated child-caring agency or facility shall employ anyone convicted of any sexual offense. KRS 199.640(6) An applicant for employment at *any* child-care center shall be denied employment if the applicant has been convicted of a violent crime or sex crime. KRS 199.896(19).
- A volunteer or employee of a children's advocacy center who has been indicted or charged with a violent crime or sex crime, as defined in KRS 17.165, cannot have contact with children in the center until the employee is cleared of the charge. 920 KAR 2:040 §3(5).
- An employee in a child-care facility who has been indicted or charged with a violent crime or sex crime, as defined in KRS 17.165, will be immediately removed from contact with children within the facility until the employee is cleared of the charge. 922 KAR 1:300 §3(5).
- An employee of a child-placing agency who has been indicted or charged with felonious conduct, or subject to a cabinet investigation in accordance with 922 KAR 1:330, shall not be allowed to have contact or work with a child, unless the employee has been cleared of the charge, a prevention plan has been written and approved by a regional Cabinet for Health and Family Services staff member, or the cabinet investigation reveals an unsubstantiated finding where the charge resulted from an allegation of child abuse, neglect, or exploitation. 922 KAR 1:310 §2(5).
- Each agency of the Federal Government, and every facility operated by the Federal Government (or operated under contract with the Federal Government), that hires (or contracts for hire) individuals involved with the provision of child care services to children under the age of 18 shall assure that all existing and newly-hired employees undergo a criminal history background check. 40 U.S.C. § 590 and 42 U.S.C. 13041.
- Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be ground for denying employment or for dismissal. Convictions for crimes other than sex crimes may be considered if they bear on the individual's fitness to have responsibility for the safety and well-being of children. 42 U.S.C. § 13041.

### **Chiropractor**

- If convicted of a felony, no chiropractic license shall be issued unless the person has been pardoned and approved by the Board of Chiropractic Examiners. KRS 312.085(3).

**Commodities Broker**

- The Commodity Futures Trading Commission may refuse to register, to register conditionally, or revoke the registration of any person who has been convicted of certain felonies within ten years prior to the filing of the application or any time thereafter. Enumerated felonies include those related to contracting sale of a commodity for future delivery, the conduct of business of the registered party, or crimes related to theft and fraud. 7 U.S.C. § 12a(2).

**Concealed Deadly Weapons Instructor**

- If a concealed deadly weapon instructor or instructor trainer is convicted of or pleads guilty to a felony, their certificate shall be revoked. KRS 237.110(22)(j).

**Cosmetologist**

- If convicted of a felony, a cosmetology license may be suspended, revoked, refused issuance or renewal, suspended, or the licensee fined. KRS 317A.140(1)(a).

**Counselor, Licensed Professional**

- If a certified professional counselor commits a dishonest or corrupt act, he or she may have their credentials as a counselor suspended, revoked, conditioned, or the issuance of credentials refused, or the counselor fined or reprimanded. KRS 335.540(1)(a).
- Board-licensed professional counselors will be subject to disciplinary action, in accordance with KRS 335.540, if convicted of a felony. "Conviction" includes a conviction based on a plea of no contest, an Alford plea, or the suspension or deferral of a sentence. 201 KAR 36:040 §4(1).

**Day Care Provider**

- An application for certification or renewal of certification as a family child-care home provider will be denied if the applicant, assistant, employee, substitute, or an adult residing in the household who has direct contact with a minor has a history of behavior that may impact the safety or security of a child in care. Such behavior includes the conviction of a violent crime or sex crime, as defined in KRS 17.165, or a conviction for a drug-related felony. 922 KAR 2:100 §3(1).
- An applicant for registration or a registered child-care provider will be denied from providing services if a history of behavior exists that may impact the safety or security of a child in care. Such behavior includes a conviction related to the abuse or neglect of an adult or a conviction for a drug-related felony. 922 KAR 2:180 §8(3).
- A child-care center licensed by the Cabinet for Health and Family Services must discharge a director or employee of a child-care center who has been convicted of a crime defined by KRS 17.165(1) or KRS 17.165(3). 922 KAR 2:090 §2(3).

- A child-care facility provider shall not employ a person convicted of a crime as defined in KRS 17.165(5). 922 KAR 2:110 §5(2).

**Dentist and Dental Hygienist**

- If convicted of a Class A, B, or C felony, or after completing a diversion program for such felonies, a dentist's license or registration shall be revoked. KRS 313.100(9) See also KRS 313.080(d).
- A certified copy of a court record for any felony conviction is a valid initiating complaint against a licensee, certificate holder, applicant, or a person who is not licensed by the Board but who is engaging in dentistry or who is using the title dentist, hygienist, or specialist. 201 KAR 8:400 §2(3). A licensee who has been convicted of a felony offense under KRS 510, or KRS 530.064, or KRS 531.310, where such offense involves a patient, employee, or co-worker of the licensee commits unprofessional conduct. 201 KAR 8:430 §2(1).

**Dietitian/Nutritionist**

- If convicted of a felony or offense involving moral turpitude, a dietitian/nutritionist's license or certificate may be denied, refused renewal, suspended, revoked, or otherwise disciplined. KRS 310.042(1)(d).

**Driving Instructor**

- A licensed driver training instructor who is convicted of a felony may have their license suspended, revoked, or their license may not be issued or renewed. 502 KAR 10:080 §1(8).
- A third-party CDL skills test examiner who has been convicted of a felony may have their appointment revoked. Such revocation will be determined on a case-by-case basis. 502 KAR 10:110 §2(8).
- An instructor employed to teach a driver's education course administered by a school district, state traffic school, or licensed driver training school shall not have a felony conviction. 601 KAR 13:110 §5(1).
- Department for the Blind - An instructor in an approved certified driver training program shall not have a felony conviction. 782 KAR 1:070 §2(4).

**Drug Manufacturer/Wholesaler**

- No drug manufacturer or wholesaler license issued pursuant to KRS 218A shall be issued to a person who has been convicted of a felony or misdemeanor involving any controlled substance. KRS 218A.160(2).

**DUI Program Certification**

- In order for a DUI program to be certified by the Cabinet for Health Services, the owner, program administrator, clinic staff, and certified staff must not have been released from incarceration, parole, or probation for the conviction of a



violent crime, hate crime, or sex crime within two years of his date of employment with the program. 908 KAR 1:310 §3(1).

### ***Electrical Inspector***

- An applicant or licensee may be deemed to have violated the Electrical Code of Ethics by the Office of Housing, Buildings and Construction if it finds that the applicant or licensee has been convicted of a felony involving moral turpitude, fraud, or deceit. Disciplinary action may be taken in the event of such conviction. 815 KAR 35:080 §1(8).

### ***EMT/First Responder/Paramedic/EMS Instructor***

- Any ambulance service or rescue squad may request a felony offender record check on applicants for employment or membership. KRS 17.167(2).
- License or certificate holders under KRS 311A (Emergency Medical Services) must report any felony or misdemeanor conviction to the board within 30 days of entry of final judgment. Failure to give notice may result in suspension. KRS 311A.090 Employers also must report felony convictions to the board. KRS 311A.050(3)(a) No applicant may be licensed or certified as an emergency medical services provider under KRS 311A if they have been convicted of a felony. KRS 311A.050(2)(n) A person's license must be revoked if convicted of a felony. KRS 311A.060(2)(l).
- Reciprocity certification as a first responder will be given to a person who is certified as a first responder in another state, United States territory, or a member of the military who is registered as an NREMT-FR, if that person has not been convicted of a felony, has not entered a guilty plea or an Alford plea to a felony offense, or has not completed a diversion program for a felony offense. A first responder whose certification has lapsed for over five years will not be reinstated if that person has been convicted of a felony, has entered a guilty plea or an Alford plea to a felony offense, or has completed a diversion program for a felony offense. One who has been convicted of a felony, entered a guilty plea or an Alford plea to a felony offense, or has completed a diversion program for a felony offense is not eligible for a board-issued temporary certificate. 202 KAR 7:201 §4(1)-(2) §6(2)-(3) §8(1).
- Reciprocity certification as an EMT will be given to a person who is certified as an EMT in another state, United States territory, or a member of the military who is registered as an NREMT-B, if that person has not been convicted of a felony, has not entered a guilty plea or an Alford plea to a felony offense, or has not completed a diversion program for a felony offense. An EMT whose certification has lapsed for over five years will not be reinstated if he or she has been convicted of a felony, has entered a guilty plea or an Alford plea to a felony offense, or has completed a diversion program for a felony offense. One who has been convicted of a felony, entered a guilty plea or an Alford plea to a felony offense, or has completed a diversion program for a felony offense is not eligible for a board-issued temporary certificate. 202 KAR 7:301 §4(2) §6(2) §8(1).

- Reciprocity certification as a paramedic will be given to a person who is certified as a paramedic in another state, United States territory, or a member of the military who is registered as an NREMT-P, if that person has not been convicted of a felony, has not entered a guilty plea or an Alford plea to a felony offense, or has not completed a diversion program for a felony offense. A paramedic, whose certification has lapsed for over five years, will not be reinstated if he or she has been convicted of a felony, has entered a guilty plea or an Alford plea to a felony offense, or has completed a diversion program for a felony offense. One who has been convicted of a felony, entered a guilty plea or an Alford plea to a felony offense, or has completed a diversion program for a felony offense is not eligible for a board-issued temporary certificate. 202 KAR 7:401 §4(2) §6(3).
- One who applies for certification as an EMS instructor cannot have a felony conviction, must not have entered a guilty plea or an Alford plea to any felony offense, or must not have been subject to a diversion program for a felony offense. One who applies for endorsement as an EMS evaluator cannot have a felony conviction, must not have entered a guilty plea or an Alford plea to any felony offense, or must not have been subject to a diversion program for a felony offense. 202 KAR 7:601 §14(2) §18(1).

### ***Engineer***

- If convicted of a felony, the board may refuse to issue or renew, suspend, or revoke an engineer's license. KRS 322.180(7). If convicted of a felony within the preceding 10 years involving violence, sexual misconduct, fraud, or deceit, an applicant shall not be eligible for licensure. KRS 322.050(2).

### ***Family Care Home License***

- An initial license or existing license for a family care home will be denied or revoked if the applicant for licensure or the licensee has been convicted of a crime that has a bearing upon the applicant's suitability to operate a family care home, unless the crime occurred more than five years ago and the applicant has been sufficiently rehabilitated. 902 KAR 20:041 §3(16).

### ***Farm Labor Contractor***

- The Migrant and Seasonal Worker Protection Act requires any person (or business) who recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers ("farm labor contracting activities") to obtain a certificate of registration before engaging in farm labor contracting activities. The certificate of registration may be denied if within five years if the person has certain convictions, including those related to gambling or the sale of alcohol in relation to farm labor contracting activities, and certain additional specified serious felony convictions. 29 U.S.C. § 1813.

**Firefighter**

- Any paid or volunteer fire department may request a felony offender record check on applicants for employment or membership. KRS 17.167(2). If convicted of a felony, no person is eligible for appointment as a member of a fire department. KRS 95.710.

**Funeral Director/Embalmer**

- If convicted of a felony, or any misdemeanor related to embalming or funeral directing, a funeral director or embalmer's license may be revoked, suspended, probated, refused issuance or renewal, or the licensee fined or reprimanded. KRS 316.150(1)(b).
- If convicted of any crime involving moral turpitude, a person's license to sell pre-need funeral services, burial or cemetery merchandise contracts may be denied, suspended, or revoked, or the licensee fined up to \$500, or his license may be placed on probation for up to 12 months. KRS 367.973(1)(d).
- If convicted of any crime involving moral turpitude, a person's crematory operator's license may be denied, suspended, or revoked, or the licensee fined up to \$500, or his license may be placed on probation for up to 12 months. KRS 367.97534(1)(c).

**Geologist**

- If convicted of any felony or crime where dishonesty is a necessary element, a geologist's license may be suspended, refused renewal, revoked, probated, or the licensee fined up to \$1,000. KRS 322A.100(3).
- A registered geologist shall not be convicted of a felony. "Conviction" includes a conviction based on a plea of no contest, an Alford plea, or the suspension or deferral of a sentence. 201 KAR 31:060 §6(1).

**Hazardous Materials Handler**

- In order to be eligible for a hazardous materials endorsement to a commercial motor vehicle operator license, a person must first undergo a background check. Drivers requiring hazardous materials endorsements range from municipal trash collectors carrying items like bleach and batteries, to interstate truckers carrying nuclear and biological waste. 49 U.S.C. § 5103a, 49 C.F.R. 1515.7, and 49 C.F.R. 1572.5.

**Health Care Provider**

- A conviction of assisting a suicide under KRS 216.302 may result in revocation of license. KRS 216.308(1).
- One who has been convicted of a felony and submits an application for employment at a local health department may be disqualified from employment by the department. 902 KAR 8:070 §3(2).
- The Kentucky Board of Family Health Care Providers may reject an application for a position as a mid-level health care practitioner (a health care practitioner who provides limited

management of chronic conditions to patients) if the applicant has been convicted of a felony. Additionally, a mid-level health care practitioner may be disallowed from seeking re-certification if convicted of a felony. Also, a mid-level health care practitioner's certification may be revoked if he is convicted of a felony. 902 KAR 22:030 §2(4) §6(4) §7(1).

- A subcontractor or person employed by a subcontractor to provide services to a Title V agency (Department for Public Health) shall not have been convicted of a felony offense, have been convicted of or have entered a guilty plea to a sex offense under KRS 17.165, or have been convicted of or entered a guilty plea to a violent crime under KRS 17.165. 907 KAR 3:030 §6(3).
- An acquired brain injury provider cannot employ or permit a person to serve as a volunteer who has been convicted of an offense under KRS 17.165, convicted of a felony, convicted for abuse or sale of illegal drugs, or convicted of abuse, neglect, or exploitation. 907 KAR 3:090 §2(14).
- Congress has authorized state agencies access to a nationwide background check for the purposes of determining whether a provider has been convicted of a crime (felony or misdemeanor) that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities. 42 U.S.C. § 5119a. See also the note to 28 U.S.C. § 534 which gives nursing care facilities and home health care agencies access to background checks on prospective employees as well.

**Hearing Aid Provider**

- If convicted of a felony or misdemeanor involving moral turpitude, the board may suspend, revoke, refuse issuance or renewal, or probate the license of a hearing instrument specialist, or levy a fine up to \$1,000 and a written reprimand. KRS 334.120(4)(b).

**Hemp Researcher**

- The Kentucky Department of Agriculture will not issue an industrial hemp research license to a person convicted of a felony. If a licensee is convicted under a federal or state drug law, the license will be revoked. 302 KAR 50:010 §2(3) §8(1).

**Home Inspector**

- A licensed home inspector or an entity under which the licensee conducts business shall not be convicted of a crime in the course of the practice of home inspection or commit any act constituting a violation of state law during the course of a home inspection. 815 KAR 6:030 §2(11).

**Horse Racing**

- Anyone wishing to conduct horse racing at a horse race meeting or to engage in simulcasting and intertrack wagering as a receiving track must report any criminal activities for which they have been arrested or indicted and the disposition of the charges, and any current or on-going criminal

investigation related to them, in their application. KRS 230.300(1)(g) A person convicted of a felony or Class A misdemeanor, or any crime of moral turpitude, embezzlement, larceny, or any crime related to illegal gaming or gambling in any jurisdiction within the preceding 10 years cannot be a principal of an applicant. KRS 230.280(2)(f)(2).

- The Racing Commission may refuse to issue a thoroughbred racing license to an applicant, or may suspend or revoke a license issued, or order other disciplinary measures, if the applicant or licensee is convicted of any crime. 810 KAR 1:025 §3(1)-(2).
- The Racing Commission may refuse to approve an application, or may suspend or revoke a license to establish a simulcast thoroughbred racing facility on the grounds of a criminal conviction. 810 KAR 1:030 §2(9).
- An applicant for a provisional license to drive a harness horse at a race meeting licensed by the Racing Commission will not receive such a license if the applicant has been convicted of a crime as described in KRS 335B.010(4), which includes felony convictions. 811 KAR 1:070 §4(1).
- A thoroughbred racing licensee must not commit any crime involving drugs or drug paraphernalia. If the licensee commits such a crime, his license will either be suspended or revoked, depending on the number of offenses the licensee commits. However, if the licensee is convicted of drug trafficking, his license will be revoked, even upon his first offense. 810 KAR 1:060 §2(2) §4(1)-(4).
- A harness racing licensee must not commit any crime involving drugs or drug paraphernalia. If the licensee commits such a crime, his license will either be suspended or revoked, depending on the number of offenses the licensee commits. However, if the licensee is convicted of drug trafficking, his license will be revoked, even upon his first offense. 811 KAR 1:225 §2(2) §4(1)-(4).
- If a *Quarter Horse, Appaloosa and Arabian Racing* licensee is convicted of a crime or violates a narcotic administrative regulation, his license may be revoked, suspended, may not be issued (if an applicant), or he may be subject to other disciplinary action. 811 KAR 2:020 §4(2).

### **Hospice Care**

- All hospices must obtain a criminal background check on all hospice employees who have direct patient contact or access to patient records. Hospice contracts must require that all contracted entities obtain criminal background checks on contracted employees who have direct patient contact or access to patient records. 42 C.F.R. 418.144.

### **Hunting Instructor**

- One who has been convicted of a felony will not be granted certification by the Department of Fish and Wildlife Resources to become a hunter education instructor. 301 KAR 2:185 §5(2).

### **HVAC (heating, ventilation, air conditioning) Contractor**

- The HVAC Board may revoke, suspend, place on probation, restrict, refuse to issue or renew the HVAC license or certificate of any person who has been convicted of a felony or any crime of which an element is dishonesty or fraud. The board also may reprimand, censure or fine the holder. KRS 198B.672(10).

### **Insurance Agent or Producer**

- Conviction of a felony offense involving dishonesty or breach of trust, or insurance fraud under KRS 304.47, disqualifies a person from engaging or participating in the business of insurance and an insurer cannot knowingly permit such a person to participate. KRS 304.47-025(1) and KRS 304.47-025(2).
- An insurance-related license may be denied, suspended or conditioned for indictment for a crime involving dishonesty, breach of trust, insurance fraud under KRS 304.47, or a violation of 18 U.S.C. §1033. For other circumstances, see KRS 304.9-465(3).
- A person who has been convicted of a crime involving dishonesty or breach of trust may not engage in the business of insurance, defined as the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary or incidental to such writing or reinsuring. 18 U.S.C. § 1033.

### **Interpreter for the Deaf**

- If convicted of a felony, high misdemeanor or misdemeanor with a jail sentence, or a crime involving moral turpitude, an interpreter for the deaf and hard of hearing may have their license suspended, revoked, probated, or refused issuance. The interpreter also may be fined or reprimanded. KRS 309.318(1)(a).

### **Investment Adviser and Representative**

- Any application for registration as a broker-dealer, agent, investment advisor or investment advisor representative must include any felony convictions. KRS 292.330(3)(c)(4).
- The registration of any broker-dealer, agent, investment adviser, or investment adviser representative may be denied issuance or renewal, suspended, revoked or probated if convicted of, or for a pending, felony. KRS 292.337(1) and KRS 292.337(2)(c).
- The SEC shall censure, limit, suspend or revoke the registration of any investment adviser if the SEC finds that the investment adviser or any associated person has been convicted within the ten years preceding the filing of the application or any time thereafter of a crime involving the sale of a security arising out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, government securities broker, government securities dealer, fiduciary, transfer agent; involving fraud or theft; or any other felony. 15 U.S.C. § 80b-3.

- No person may serve in any capacity with a registered investment company or as a principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company if that person, within the past 10 years, has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act. 15 U.S.C. § 80a-9.

expulsion, and the appropriate prosecutorial authority will be notified. 503 KAR 3:010 §6(7).

- A law enforcement trainee who is attending a training course and who engages in conduct constituting a felony may face expulsion, and the appropriate prosecutorial authority will be notified. 503 KAR 3:020 §5(7).
- A law enforcement trainee who is attending the telecommunications academy and who engages in conduct constituting a felony may face expulsion or disqualification. KRS 15.540(1)(c), 503 KAR 3:040 §6(7).
- A cadet who is attending the Police Corps basic training course and who engages in conduct constituting a felony may face expulsion, and the appropriate prosecutorial authority will be notified. 503 KAR 3:100 §8(7).

### ***Juvenile Services Provider***

- An individual who has been convicted for the neglect, physical abuse, sexual abuse or sexual exploitation of a child, or for endangering the welfare of a child, shall not be allowed to work with a juvenile client in a non-medical and non-hospital-based alcohol and drug abuse treatment entity owned by an individual or agency operating detoxification, residential, family residential, residential transitional living, outpatient, or intensive outpatient program. 908 KAR 1:370 §6(4).

### ***Landscape Architect***

- If convicted of a felony, a landscape architect's license may be suspended or revoked, and the person may be fined. KRS 323A.110(1)(c).

### ***Life Settlement Provider***

- Life settlement contracts are made by terminally ill individuals who offer to sell their life insurance at a portion of face value in return for a lump sum. KRS 304.15-020(17) A person convicted of a felony involving dishonesty or breach of trust is prohibited from participating in these settlements. KRS 304.15-717(1)(c). For a complete list of additional penalties, see KRS 304.15-717.

### ***Kentucky Community Crisis Response Board***

- An applicant seeking membership on the crisis response team must submit the Kentucky State Police "Request for Felony Conviction Record" form to the Kentucky Community Crisis Board. 106 KAR 5:010 §3.
- A crisis response team member will be subject to discipline by the Kentucky Community Crisis Response Board Membership Committee if he or she is convicted of a felony. The team member will be subject to disciplinary action which may include cancellation of membership on the crisis response team or lesser sanctions such as a verbal reprimand. 106 KAR 5:030 §1(9) §3(2).

### ***Long-term Care***

- See Assisted Living.

### ***Marriage and Family Therapist***

- If a marriage and family therapist commits any dishonest or corrupt act, their license may be revoked, suspended, refused, probated, or the person fined or reprimanded. KRS 335.348(1)(a).
- Board-licensed marriage and family therapists and therapist associates will be subject to disciplinary action if convicted of a felony. "Conviction" includes a conviction based on a plea of no contest, an Alford plea, or the suspension or deferral of a sentence. 201 KAR 32:050 § 3(1).

### ***Kentucky Lottery Corporation***

- No person convicted of a felony, bookmaking, illegal gambling or a crime involving moral turpitude shall be employed by the Kentucky Lottery Corporation. KRS 154A.080(5).
- The Kentucky Lottery Corporation shall not enter into a contract with any vendor who has been found guilty of a felony within the past ten years. KRS 154A.600(4).

### ***Massage Therapist***

- If convicted of a felony which the board determines to have direct bearing on whether the person is trustworthy to serve the public as a licensed massage therapist, a therapist's license may be suspended, revoked, probated, refused issuance or renewal, and the therapist may be fined or reprimanded. KRS 309.362(1)(b).
- A licensee seeking renewal of their massage therapy license must give written confirmation to the board that the licensee has not been convicted of a felony since the license was issued

### ***Kentucky State Police***

- An applicant to become a state police officer will be disqualified from further participation in the selection process or removed from the register if the applicant has been convicted of a felony. 502 KAR 45:025 §1(7).
- A law enforcement recruit who is attending basic training and who engages in conduct constituting a felony may face

or renewed. A licensee who is convicted of a felony in the period between issuance and renewal of the license must give notice to the Board of Licensure of Massage Therapy of the conviction prior to license renewal. 201 KAR 42:040 §1(1) § 2.

### **Mass Transportation Worker**

- Persons who coordinate or provide human service transportation delivery must provide documentation to the Transportation Cabinet that their employees have not been convicted of a drug or alcohol-related offense in the last five years and that their employees not been convicted of a sex offense or violent crime. If an employee has been convicted of any felony within the last five years, that employee cannot drive or attend passengers unless the coordinator, provider, and the Cabinet approved such actions. 603 KAR 7:080 § 8(3).

### **Medicaid Services Providers**

- Any provider of medical assistance services, licensed or regulated by any agency of the Commonwealth of Kentucky, pleads guilty to or is convicted of a violation of any of the crimes listed in KRS 205.8451 to KRS 205.8483 (Medicaid, social security fraud, etc.) shall forfeit their license for a minimum of five years. KRS 205.8475(1).
- A provider of personal care and homemaker services shall not have been convicted of a felony. 907 KAR 1:070 §5(1).
- A provider of personal care assistance services shall not have been convicted of a felony. 907 KAR 1:090 §5(1).
- A provider of support for community living services for individuals with mental retardation or developmental disabilities shall not employ or place an individual as a volunteer with a prior felony conviction or any conviction under KRS 17.165(1-3). 907 KAR 1:145 §3(14).
- A provider of Medicaid services, goods, or assistance to recipients that has been terminated from the Medicaid Program (termination can result from a felony conviction for Medicaid fraud or abuse under KRS 205.8461 or KRS 205.8463 shall not be eligible for re-enrollment until the conviction is final and not under appeal, the period of exclusion has expired, and the provider has complied with the reinstatement requirements in 907 KAR 1:671, §7(1) and (2). 907 KAR 1:671 §7(4).
- A provider who applies for participation in Medicaid may be denied if the provider is under current investigation, has been indicted, or has been convicted for fraud and abuse (which may constitute a felony under KRS 205.8461 or KRS 205.8463) in the Medicaid Program in Kentucky or any other state, the Medicare Program, or in another publicly funded health care program. 907 KAR 1:672 §2(7).
- Quality improvement programs must be established to evaluate regional managed care partnerships which include collecting information from partnership providers every two years regarding the provider's credentials. A partnership provider must disclose any felony conviction when his credentials are assessed. 907 KAR 1:705 §10(3).

- A managed behavioral health organization will recommend dis-enrollment of a Medicaid recipient who is enrolled in a managed behavioral health organization if he is convicted of Medicare fraud. A behavioral health care provider who participates in a managed behavioral health organization must be re-credentialed every two years, which should include information regarding whether the provider has been convicted of a felony. 907 KAR 1:710 §7(2) §14(9).
- A provider of support for community living services for individuals with mental retardation or developmental disabilities shall not employ or place an individual as a volunteer with a prior conviction involving the abuse or sale of illegal drugs. 907 KAR 1:145 §3(14).
- A consumer-directed option provider of home and community-based Medicaid services must not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1-3). 907 KAR 1:160 §6(11).
- Mandatory and permissive exclusions from participation in any federal health care program and designated state health care programs, based upon conviction of certain types of crimes, are set forth in 42 U.S.C. § 1320a-7.

### **Merchant Mariners**

- In accordance with regulations, criminal convictions are considered in applications for Merchant Mariner Documents. Moreover, a merchant mariner's license, certificate or document may be suspended or revoked for certain convictions. 46 U.S.C. § 7703. In particular, a merchant mariner's document may be denied if, within the 10-year period before applying for the license, certificate, or document, the person has been convicted of violating a state or federal dangerous drug law. 46 U.S.C. § 7503.

### **Midwife**

- The Cabinet for Human Resources may deny, revoke, probate, suspend or refuse to renew the permit of any lay-midwife who has been convicted of a felony involving moral turpitude. 902 KAR 4:010 §6(1).
- If a midwife is convicted of a felony involving moral turpitude, the Cabinet for Human Resources may deny, revoke, suspend, or refuse to renew the midwife's permit. 902 KAR 4:015 §6(2).

### **Military**

- No person convicted of a felony shall be allowed to enlist in any branch of the military. The Secretary of Defense may authorize exceptions in meritorious cases. 10 U.S.C. § 504.
- Department of Defense internal policy also bars people with misdemeanor convictions, including misdemeanor domestic violence, from enlisting unless a waiver is granted. This bar, however, is not statutory.<sup>35</sup> A misdemeanor domestic violence conviction may preclude military service because of the

<sup>35</sup> See Military Service and Misdemeanor Convictions, OLR Research Report, Veronica Rose, July 7, 2005. <http://www.cga.ct.gov/2005/rpt/2005-R-0556.htm>.

federal ban on firearms possession following such a conviction. See 18 U.S.C. § 922(g).

- Each branch of the armed forces has different standards regarding what types of criminal histories are acceptable for personnel. Individuals with questions should contact an attorney or a recruiter.

### ***Milk Production and Transfer***

- A license to operate a cream station may be refused, revoked, suspended or probated if the licensee is convicted of or pleads guilty to a felony. KRS 260.830.

### ***Mining Operations***

- The Mine Safety Review Commission shall revoke, suspend, or probate certificates of compliance if the holder of the certificate becomes unworthy due to violation of law and other reasons. For the complete list of reasons, see KRS 352.390.
- A mining blaster's license (explosives, demolitions) shall not be issued if the person has been convicted of a crime carrying a sentence of more than one year, unless specifically exempted. KRS 351.315(5)(b).

### ***Money Transmission Agent***

- If a money transmitter agent is indicted or convicted of a felony for a crime involving theft, fraud, or breach of trust, an emergency order may be issued suspending, limiting, or restricting a license. For the complete list of circumstances affected licensure, see KRS 286.11-045(2) and KRS 286.11-039.

### ***Mortgage Broker***

- A mortgage broker's license may be suspended, revoked, placed on probation, conditioned, refused issuance or renewal, or ordered to cease and desist if the person has been convicted of any felony, or has a pending felony charge, or a conviction for any misdemeanor of which an essential element is fraud, breach of trust, or dishonesty. KRS 286.8-090(1)(k).

### ***Motorcycle Safety Instructor***

To be considered for employment, a motorcycle safety instructor shall not have a felony conviction. KRS 15A.354(3)(e).

### ***Narcotic Treatment Program Operator/Employee***

- If a person has been convicted of a crime involving a controlled substance as defined in KRS 218A, the person shall not be employed by a narcotics treatment program. Criminal record checks are required. KRS 222.231(12)(c).
- The State Narcotic Authority will not grant an application to operate a narcotic treatment program to an applicant who has been convicted of any felony within the last five (5) years. 908 KAR 1:340 §5(2).

### ***Nudist Society Operator***

- A license to operate a nudist society may be revoked if the owner or operator has been convicted of a felony, or a misdemeanor involving disorder or breach of the peace arising out of the operation of the nudist society. KRS 232.031(4).

### ***Nurse***

- If a person has been convicted of a felony related to theft, abuse or sale of illegal drugs, abuse, neglect, or exploitation of an adult, or a sex offense, the person shall not be employed by a long-term care facility, a nursing pool providing staff to a nursing facility, or an assisted-living community. KRS 216.789(1).
- A criminal record check is required upon application to work as described above. KRS 216.793.
- Registered and practical nurses licensed under KRS 314 must notify the board, in writing and within 90 days of order or judgment, of any misdemeanor or felony conviction, except traffic-related offenses other than DUI. KRS 314.109.
- If convicted of a felony, or misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, breach of trust, physical harm or endangerment to others, or dishonesty, a nurse's license or application may be denied, limited, revoked, probated, or suspended, or the licensee be reprimanded. KRS 314.091(1)(b-c).
- To be eligible for licensure by examination, an applicant who is a graduate of any state nursing program must include a certified copy of any court record involving the applicant's felony conviction pursuant to 211 KAR 20:370. Additionally, the applicant must submit a letter that addresses each felony conviction. 201 KAR 20:070 §1(1).
- To be eligible for licensure by endorsement, an applicant must submit a certified copy of any court record involving the applicant's felony conviction pursuant to 201 KAR 20:370. Additionally, the applicant must submit a letter that addresses each felony conviction. 201 KAR 20:110 §1(2).
- To be eligible for license renewal, the licensee must submit a certified copy of any court record involving the applicant's felony convictions and submit a letter explaining each felony conviction. 201 KAR 20:230 §1(5).
- To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced registered nurse practitioner registration, renewal or reinstatement, an applicant must submit a certified copy of any court record involving the applicant's felony conviction in Kentucky or any other jurisdiction. The applicant must also include a letter addressing each felony conviction. 201 KAR 20:370 §1(3).
- An individual who applies to be credentialed as a dialysis technician must provide the Board of Nursing with a certified copy of a court record regarding any felony conviction from any jurisdiction and include a letter explaining each conviction. The board will review the conviction to determine whether the application process should proceed without further action,

or whether the application process should proceed after the applicant and the board enter into an agreed order or a hearing is held pursuant to KRS 314.091 and 201 KAR 20:162, and a final decision is entered by the board. The board may discipline a dialysis technician for conviction of a felony. The imposed discipline may include denial of an application for the credential, or suspension, probation, reprimand, or permanent revocation of the credential. 201 KAR 20:470 §2(1) §2(6) §6(2) §6(3).

- An applicant to the Kentucky Alternative Recovery Effort for Nurses Program will be denied admission if the applicant has been convicted of a crime relating to the sale or distribution of scheduled substances or legend prescription drugs. 201 KAR 20:450 §2(2).

### ***Nursing Home Administrator***

- A nursing home administrator will be subject to disciplinary action if convicted of a felony offense. “Conviction” includes a conviction based on a plea of no contest, an Alford plea, or the suspension or deferral of a sentence. 201 KAR 6:080 §4(1).

### ***Occupational Therapist***

- If convicted of a felony for which the board finds to have direct bearing on whether the person should be entrusted to serve the public as a licensed occupational therapist or therapy assistant, a person’s occupational therapy license may be denied or refused renewal, suspended, revoked, or probated. KRS 319A.190(1)(c).
- An applicant for licensure must submit a statement to the Board of Occupational Therapy as to whether they have been convicted of a felony in any jurisdiction. 201 KAR 28:02 §1(20).

### ***Office of Career and Technical Education***

- The office may refuse to consider or disqualify an applicant, or remove an employee, if the person has been convicted of a felony within the preceding five years and has not had their civil rights restored. KRS 151B.050.

### ***Optician***

- If an ophthalmic dispenser commits a dishonest or corrupt act, upon conviction, the board may refuse to issue, suspend, revoke, or probate a license or an apprentice license, or fine or reprimand the holder. KRS 326.090(1)(a). For a list of other factors affecting licensure, see KRS 326.090(1).

### ***Optometrist***

- If convicted of any felony or misdemeanor involving sexual misconduct, the board may refuse to issue or renew, limit or restrict, revoke, or suspend an optometrist’s license, or may place on probation, or reprimand a licensee, or order restitution or a fine. KRS 320.310(1)(b).

### ***Osteopath***

- The board may deny licensure to an applicant or re-registrant if convicted of any felony or violation of KRS 311.595 or KRS 311.597. KRS 311.571(9). See also KRS 311.595(4-5) and KRS 311.597.

### ***Pastoral Counselor***

- Certified fee-based pastoral counselors will be subject to disciplinary action, in accordance with KRS 335.635, if convicted of a felony. “Conviction” includes a conviction based on a plea of no contest, an Alford plea, or the suspension or deferral of a sentence. 201 KAR 38:060 §7(1).

### ***Pesticide Dealer or User***

- Applicants to become a pest control or fumigation applicator or manager shall include a statement from a statewide law enforcement agency that the applicant has never been convicted of a felony. The board must approve an applicant who has been convicted of a felony. 302 KAR 29:050 §2(1) §2(6).

### ***Pharmacist/Controlled Substance Distributor or Manufacturer***

- The board may refuse to issue or renew a pharmacist’s license, permit, or certificate, or suspend, revoke, fine, probate, reprimand, or restrict the actions of a licensee or holder if convicted of a felony, act involving moral turpitude, or violating other laws related to pharmacy, drug and medical equipment. KRS 315.121(1)(c).
- The holder of a pharmacist or pharmacy license, permit or certificate must notify the board within 30 days of conviction of a felony. Failure to notify shall be grounds for suspension or revocation of the license, certificate, or permit. KRS 315.121(4).
- It is considered unprofessional conduct if a pharmacist or an employer of a pharmacist does not report to the board regarding a pharmacist’s felony conviction which involved acts that bear directly on the qualifications or ability of the licensee to practice pharmacy. 201 KAR 2:100 §5(1).
- In reviewing the qualifications of an applicant who wishes to obtain a special permit for medicinal gasses, the Kentucky Board of Pharmacy shall consider whether the applicant has been convicted of any felony under federal, state, or local laws. The Kentucky Board of Pharmacy will deny an application for a special permit for medical gasses if the applicant has been convicted of a violation of federal, state, or local laws relating to drugs, federal state or medical assistance programs, or the practice of pharmacy. 201 KAR 2:225 §3(1)-(2).
- When reviewing the qualifications of one who engages in the wholesale distribution of prescription drugs, the Kentucky Board of Pharmacy must consider whether the applicant has been convicted of any felony under federal, state, or local laws. 201 KAR 2:105 §3(1).

- In reviewing the qualifications of an applicant to engage in the manufacture or wholesale distribution of controlled substances, the Cabinet for Health Services will consider whether the applicant or its managing officers has been convicted under federal, state, or local law of an offense relating to controlled substances and whether the applicant or its managing officers has been convicted of any felony. 902 KAR 55:010 §4(1).

### **Physical Therapist**

- If convicted of a felony or misdemeanor which affects their ability to continue to practice competently and safely, a physical therapist's license may be refused issuance or renewal, suspended, revoked, probated, restricted, or be otherwise disciplined. KRS 327.070(2)(f).
- An applicant to the Practitioners Alternative Care Effort Program will be denied if the applicant has been convicted of a crime relating to the sale or distribution of scheduled substances or legend prescription drugs. 201 KAR 22:150 §2(2).

### **Physician Assistant**

- If convicted of a felony or misdemeanor involving moral turpitude, a physician assistant's license may be suspended, revoked, denied, declined review, limited or restricted, and the licensee fined, reprimanded, or placed on probation for up to five years, KRS 311.850(1)(c).
- If a board-certified physician assistant is convicted of a felony in any United States jurisdiction, and the offense is classified as a felony under Kentucky law or federal law, the board may revoke, suspend, deny, decline to renew, limit or restrict their certificate or may reprimand them or place them on probation for up to five years. 201 KAR 9:175 §10.
- See also Surgical Assistant.

### **Podiatrist**

- If convicted of a felony or misdemeanor involving moral turpitude or conduct to deceive or defraud the public, a podiatrist's license may be refused issuance or renewal, suspended, revoked, probated, or the holder may be fined. KRS 311.480(1-2).

### **Police Officer/Deputy**

- A police officer must not have a felony conviction at time of certification. KRS 15.382(6) A felony conviction will result in revocation of certification. KRS 15.386(5)(d).
- If any officer or deputy holding any office or post in KRS 61.010 is convicted of bribery, forgery, perjury, or any felony, by a court of record in or out of the state, his office or post shall be vacated by such conviction (i.e., he has to leave his job). KRS 61.040.
- A person cannot serve as a deputy sheriff, deputy constable, patrol or other non-elective peace officer or deputy peace

officer If convicted of a crime of involving moral turpitude. KRS 61.300(4).

- Federal law enforcement officers convicted of felonies must be removed from service without exception. 5 U.S.C. § 7371 and 5 U.S.C. § 8331(20).

### **Polygraph Examiner**

- A person cannot qualify to be a detection of deception examiner if they have been convicted of a felony or misdemeanor involving moral turpitude. KRS 329.030(2)(e) If convicted of a felony or misdemeanor involving moral turpitude, an examiner's license may be denied, suspended or revoked. KRS 329.070(3).

### **Prisoner Transportation**

- Any person who has a felony conviction or misdemeanor domestic violence conviction is prohibited from working for a private prisoner transport company. 42 U.S.C. § 13726 and 28 C.F.R. 97.11.

### **Private Investigator**

- Each applicant for a private investigator license shall not receive a license until 10 years after release from a sentence for any felony. The applicant cannot have been convicted of any misdemeanor involving moral turpitude or for which dishonesty is an element for the previous five years. KRS 329A.035(3)(d)(1) and KRS 329A.035(3)(e). The board may refuse to issue, suspend, revoke or probate a private investigator's license, or fine or reprimand the holder, if convicted of a felony. KRS 329A.065(1)(c).
- An individual private investigator license may be renewed when the licensee submits written confirmation that they have not been convicted of a felony since the license has been issued or renewed. A licensee who is convicted of a felony in the period between issuance and renewal of the license must give notice to the Board of Private Investigators of the conviction and include a written explanation prior to license renewal. 201 KAR 41:060 §1(2) §2.
- If a board-licensed private investigator is convicted of a felony in any jurisdiction, the Board of Private Investigators may find the licensee guilty of misconduct. 201 KAR 41:090 §2(10).

### **Private Security**

- The note to 28 U.S.C. § 534 allows authorized private security employers to have access to FBI criminal background information. The information provided is guided by state standards. If no standards are available then the report will include any conviction of a felony, a "lesser offense" involving dishonesty or false statement if occurring within the previous ten years, a conviction of a "lesser offense" involving the use or attempted use of physical force against the person of another if occurring within the previous ten years, or a felony charge during the previous 365 days for which there has been no resolution. 28 C.F.R. 105.23.



**Psychiatric Treatment Director**

- A program director of a psychiatric residential treatment facility shall not have a Class A felony conviction or any conviction under KRS 17.165. 902 KAR 20:320 §5(2).

**Psychologist**

- The board may suspend, revoke, or refuse to issue or renew a license, restrict or probate, reprimand or otherwise discipline a psychologist upon conviction for any felony or misdemeanor relating to the practice of psychology, or under KRS 510, KRS 530.064(1)(a), or KRS 531.310, or upon proof that they have committed any act involving moral turpitude, dishonesty, or corruption, relating to the practice of psychology. For complete details, see KRS 319.082(1)(a),(m)&(o).
- An initiating complaint to the board regarding a psychologist may consist of a certified copy of a court record for a felony conviction relating to the practice of psychology. 201 KAR 26:130 §2(1).

**Public University Contractor**

- If a public university finds that an applicant, contractor, employee of a contractor, volunteer or visitor has been convicted of a sex crime in KRS 17.500 or a violent offense in KRS 439.3401, the university may deny employment, a contractor's permit, prohibit volunteering or prohibit visiting the institution. KRS 164.281(3) If an employee with a public university is convicted of a violent or sex offense, the employee may be terminated. KRS 164.281(6).

**Rape Crisis Center Worker**

- A person convicted of a sex crime in KRS 17.165 cannot perform client services in a rape crisis center. 920 KAR 2:010 §4(3).

**Real Estate Appraiser**

- The board may refuse issuance or renewal, suspend or revoke, or otherwise discipline, a real estate appraiser's license if the person is convicted of any felony, or misdemeanor requiring incarceration. KRS 324A.050(1)(c).

**Real Estate Broker or Salesperson**

- A person failing to notify the commission of a conviction for a felony or misdemeanor involving sexual misconduct may have their license as a real estate broker or salesman suspended, revoked, or be fined, reprimanded, placed on probation or otherwise disciplined. KRS 324.160(4)(k).
- A member of the commission overseeing real estate brokers and salesmen shall be automatically removed from the commission if convicted of a felony in which fraud is an essential element or any crime involving moral turpitude. KRS 324.281(3).

- Applicants seeking licensure shall request a criminal background check and reveal any felony conviction to the Real Estate Commission. The commission will investigate the conviction. The commission may also order the applicant to appear before the commission for a hearing pursuant to KRS 324.045 and KRS 13B. If the commission chooses to order a hearing, the hearing will focus on the nature of the crime, whether the crime indicates the applicant's untrustworthiness, or incompetence in a manner that would threaten the public interest. However, any evidence of rehabilitation will be considered. After the hearing, the commission will either approve or deny the application and notify the applicant of its decision. 201 KAR 11:430 §2(3)-(6).

**Rental Property**

- If a firm is owned by or employs a person convicted of a felony in KRS 56.990(3-6) within the previous five years, the firm cannot rent real property to the Commonwealth of Kentucky. KRS 56.990(7)(a-b).

**Respiratory Therapist**

- If convicted of any crime, act of dishonesty, or corruption, a respiratory care practitioner's license may be refused issuance or renewal, suspended, revoked, probated, or be otherwise disciplined. KRS 314A.225(1)(a).
- A respiratory care practitioner who is convicted of a felony relating to the practice of respiratory care is deemed to have committed unprofessional conduct. Conviction also includes a plea of no contest and deferred or suspended sentences. A member of the Board of Respiratory Care may be removed by majority vote if the board member has been convicted of a felony. 201 KAR 29:020 §2(10) §3(1).

**School Employees**

- The Education Professional Standards Board may revoke, suspend, or refuse to issue or renew any certificate or license issued to a school superintendent, principal, teacher, substitute teacher, or other school employee convicted of a felony or any misdemeanor in KRS 161.120(2-3). KRS 161.120(1)(a)(1) Any person convicted of a violent crime or sex crime as defined in KRS 17.165 is ineligible for employment. KRS 160.380(4).
- A nonpublic school may choose not to employ any person who is a violent offender under KRS 17.165(2), or has been convicted of a felony sex crime under KRS 17.165(1), or has committed a violent crime under KRS 17.165(3). KRS 160.151(3)(a).
- No public school superintendent shall employ in any position any person who is a violent offender or has been convicted of a felony sex offense under KRS 17.165. KRS 160.380(4) Probationary employment within a public school shall be contingent on receipt by the school district of a criminal history background check which does not include a sex offense or violent offense. KRS 160.380(8).

- A non-faculty coach or assistant coach shall not be a violent offender or convicted of a felony sex crime under KRS 17.165. KRS 161.185(2).
- The Safe and Drug-Free Schools and Communities Act, Title IV, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (Public Law 107-110) authorizes funding for a nationwide background check for all current and potential local educational agency employees. The purpose of the background check is to determine whether the employee or prospective employee has been convicted of a crime that bears upon the employee's fitness to be responsible for the safety or well-being of children; to serve in the particular capacity in which the employee or prospective employee is or will be employed; or to otherwise be employed by the local educational agency. 20 U.S.C. § 7115. See also 42 U.S.C. § 16962, which authorizes states to conduct fingerprint checks of the national crime information databases.

### **Senior Citizen Service Provider**

- If convicted of a felony related to theft, abuse or sale of illegal drugs, abuse, neglect, or exploitation of an adult, or the commission of a sex crime, a person may not be employed by an agency providing services to senior citizens which receive state funding in a position which involves direct services to a senior citizen. KRS 216.787(1). For additional senior services restrictions, see KRS 216.789.

### **Sex Offender Risk Assessment Provider**

- The Sex Offender Risk Assessment Advisory Board will deny, suspend or revoke approval if an applicant to become a provider to conduct court-ordered comprehensive sex offender presentence evaluations and treatment of sex offenders or an approved provider, that currently conducts such services, has been convicted of or pled guilty to a felony criminal offense. 501 KAR 6:190 §5(1).

### **Social Worker**

- If a social worker commits a dishonest or corrupt act, the social worker may have their license revoked, suspended, refused issuance or renewal, probated, or be fined or reprimanded. KRS 335.150(1)(a).
- The board may revoke the license of a social worker if the person has been convicted of a felony under KRS 510, KRS 530.064(1)(a) or KRS 531.310, or a misdemeanor offense under KRS 510 involving a client, or has been found to have had sexual contact with a client. KRS 335.150(7).

### **Solid Waste Transport Operator**

- An applicant for a license to operate a municipal solid waste transportation vehicle shall apply to the Transportation Cabinet, Department of Vehicle Regulation and must provide information regarding any felony conviction of the applicant,

corporate officer, or principal stockholder. 601 KAR 40:020 §1(2).

### **Speech-Language Pathology and Audiology**

- If convicted of a felony, a speech-language pathologist or audiologist license shall be suspended revoked, or declined issuance. KRS 334A.180(4).
- A board-licensed Speech-Language Pathologist or Audiologist will be subject to disciplinary action upon felony conviction, in accordance with KRS 334A.180. "Conviction" under this section includes an Alford plea, plea of no contest, a suspended sentence, or a deferred sentence. 201 KAR 17:041 §3(1).

### **Sprinkler Contractor**

- The commissioner may refuse to renew or may suspend or revoke the license of a licensed fire protection sprinkler contractor or a certificate to engage in the business of fire protection sprinkler systems if the contractor has been convicted of a felony. KRS 198B.620(1)(b).

### **State Employment**

- An applicant to become a state employee may be refused disqualified if the applicant has been convicted of a felony within the preceding five years and has not had their civil rights restored or been pardoned by the Governor. KRS 18A.032(1)(i) A job-related misdemeanor conviction also may constitute grounds for disqualification. KRS 18A.032(1)(j).
- Any state employee who is convicted of a felony may be subject to any disciplinary action deemed appropriate, including dismissal from state service. KRS 18A.146(2).
- The State Department of Education shall not employ, in a position which involves supervisory or disciplinary power over a minor, any person who is a violent offender or has been convicted of a sex crime constituting a felony. KRS 156.483(1).

### **Stockbroker and Securities Sales Representative**

- Brokers and dealers required to register with the Securities Exchange Commission shall have their license limited or suspended for a period not to exceed twelve months if, within the last ten years, they have been convicted of a specified felony or misdemeanor offense. See 15 U.S.C. § 780(b)(4).

### **Substance Abuse Treatment Provider**

- An agency providing an alcohol or drug abuse prevention program will violate a licensure standard, resulting in revocation of the license, when an agency preventionist or volunteer is convicted of a crime relating to abuse, neglect, or exploitation of a child or adult. 908 KAR 1:380 §10(2).

**Surgical Assistant**

- If convicted of a felony, or a misdemeanor involving moral turpitude or conduct likely to deceive or defraud the public, a surgical assistant's license may be revoked, suspended, declined renewal, limited, restricted, or the licensee fined, reprimanded, or placed on probation for no more than five years. KRS 311.890(1)(a-b).

**Surveyor**

- If convicted of a felony, the board may refuse to issue or renew, suspend, or revoke a surveyor's license. KRS 322.180(7). If convicted of a felony within the preceding 10 years involving violence, sexual misconduct, fraud, or deceit, an applicant shall not be eligible for licensure. KRS 322.050(2).

**Title Pledge Lender**

- A person wanting a license to loan money to others in exchange for a security interest in the other person's titled property must include in their application an affidavit stating that the applicant has not been convicted of a felony within the preceding 10 years. KRS 286.10-220(4).

**Veterinarian**

- A veterinarian who commits a dishonest or corrupt act may have their license refused issuance, suspended, revoked, probated or conditioned, or the licensee fined or reprimanded. KRS 321.351(1)(a).

- A veterinarian must notify the Board of Veterinary Examiners if s/he is convicted of a felony in any jurisdiction. 201 KAR 16:010 §13(1)-(3).
- Anyone who seeks certification as a board-certified euthanasia specialist shall not have been convicted of any felony, or have entered an Alford plea or a plea of no contest regarding a felony charge. Even if the applicant's sentence or entry of plea has been suspended, or if the applicant has been granted probation, they are still ineligible for certification. 201 KAR 16:090 §1(3).

**Waste Site/Landfill**

- A permit for a waste site or facility may be revoked, modified, suspended, or denied if the applicant, or any of its key personnel, has been convicted of any felony within the preceding five years. KRS 224.40-330(1)(c)

**Wrestling**

- See Boxing.

**Workforce Education Employee**

- A Workforce Education certified employee who is convicted of a felony or job-related misdemeanor may be subject to any disciplinary action deemed appropriate, including dismissal. KRS 151B.052

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**Division of Probation and Parole Application for Restoration of Civil Rights Form**

Attachment CPP 27-26-01  
Rev. July 2012

**DIVISION OF PROBATION AND PAROLE**  
**APPLICATION FOR RESTORATION OF CIVIL RIGHTS**

**\*\*\*Please allow up to 12 weeks to process your application\*\*\***

Answer every question that applies to you:

1. Name Used at Time of Conviction: \_\_\_\_\_ Aliases Used: \_\_\_\_\_  
Institution or Federal Number: \_\_\_\_\_  
Case Number (Probation): \_\_\_\_\_

2. Address: \_\_\_\_\_  
City/State: \_\_\_\_\_ Zip: \_\_\_\_\_  
County: \_\_\_\_\_

3. Phone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_

4. Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_ Social Security Number: \_\_\_\_ - \_\_\_\_ - \_\_\_\_

5. What is your **most recent** felony conviction? **List Charges:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Length of Sentence: \_\_\_\_\_ Probated for \_\_\_\_\_ Years

7. Court of Conviction: \_\_\_\_\_ City, County & State: \_\_\_\_\_

8. Date of Conviction: \_\_\_\_\_

9. Institution or Jail **released** from: \_\_\_\_\_  
Date Entered Institution or Jail: \_\_\_\_\_  
Date Paroled: \_\_\_\_\_ Date of Final Discharge or Serve Out: \_\_\_\_\_

10. Date Probated: \_\_\_\_\_ Date Probation Expired: \_\_\_\_\_

Name of **Last** Supervising Officer and County: \_\_\_\_\_

11. **Federal Sentences:** Date Probation Supervised or Parole Release Terminated? \_\_\_\_\_

12. Are you under Indictment? Yes  No  Explain: \_\_\_\_\_

13. Do you have any Outstanding Fines? Yes  No  Explain: \_\_\_\_\_

14. Do you have any Unpaid Restitution? Yes  No  Explain: \_\_\_\_\_

15. Do you have any previous felony convictions other than the one(s) above? Yes  No

List any previous Felony Convictions: (A) Number, Institution, State (B) Crime (C) Sentence (D) Date of Conviction (E) Date & Method of Release (F) Date of Final Discharge: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Restoration of Civil Rights DOES NOT give a convicted felon the right to purchase, own or have in possession a firearm or other weapon.**

To the best of my knowledge the above information is correct.

\_\_\_\_\_  
Applicant Signature/Date

\_\_\_\_\_  
Notary Public or Probation & Parole Officer

Attachment CPP 27-26-01  
Rev. March 2011

- All persons who have been convicted of a felony in any court in this or any other state loses the right to vote and to hold public office. It is the prerogative of the Governor afforded him or her under the Kentucky Constitution to restore these rights.
- To be eligible for restoration of civil rights, applicants must have received a Final Discharge from parole or their sentence must have expired, whichever is applicable. Applicants must not be under felony indictment, must not have pending charges or owe any outstanding fines or restitution.
- Registering to vote **prior** to receiving restoration of civil rights is a violation of the law. This violation may impose a maximum penalty of five (5) years in prison.
- If you had a **Federal Conviction**, answer all questions that apply to your probation or parole conviction.
- If you had an **Out-of-State Conviction**, answer questions that apply to your probation or parole conviction.
- **For those convicted in a federal or out-of-state court, you must provide a copy of the conviction/judgment of final sentence, a letter from the former parole officer attesting to the final discharge, and proof that fines or restitution ordered has been paid.**
- If you do not answer all of the questions that apply to you, submit any documents that may be required or fail to sign; your application will be returned to you for completion. Please assist us in processing your application as quickly as possible by completing the questions applicable to your case.
- Return the completed application to:

Department of Corrections  
Division of Probation & Parole  
P.O. Box 2400  
Frankfort, KY 40602-2400  
Attn: Restoration of Civil Rights

# QUICK REFERENCE CHART FOR DETERMINING CONSEQUENCES OF SELECTED KENTUCKY OFFENSES

Prepared by Kate Benward, Public Defender Corps Fellow, Department of Public Advocacy  
and Dan Kesselbrenner, National Immigration Project.

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 189A.010	Operating motor vehicle [...]while under the influence of alcohol, a controlled substance , or other substance which impairs driving ability.	Not AF.	Not CIMT (unless ROC reflects that DUI conviction occurred while driver had actual knowledge that his driver's license was suspended or otherwise restricted). <i>Marmolejo-Campos v. Holder</i> , 558 F.3d 903 (9 <sup>th</sup> Cir. 2009)).	1(c), (d), & (e)- CSO if ROC establishes a controlled substance as defined in 21 U.S.C.§802.	To avoid CSO, make sure that ROC states that defendant was under the influence of <i>alcohol</i> , <u>not</u> a controlled substance.
KRS 189A.090	Operating motor vehicle while license is revoked or suspended for driving under the influence.	Not AF.	2(c)-CIMT if driving under the influence while license is DUI revoked or		

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 189A.345	Penalties for violation of hardship license and ignition interlock device.	Not AF.	suspended. <i>Marmolejo-Campos v. Holder</i> , 558 F.3d 903 (9 <sup>th</sup> Cir. 2009). Not CIMT.		
<b>Chapter 218A: Controlled Substances</b>					
KRS 218A.140	Prohibited acts relating to controlled substances; penalties— Class D felony.	1(a)-Possibly AF (Drug trafficking) (Federal felony under 21 U.S.C.§843(a)(3) “to knowingly or intentionally acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge.”) 1(b)-Could be AF (see 1(a)); 1(c)- Could be AF (see 1(a)); 1(d)- Could be AF (see 1(a)); 1(e)- Could be AF (see 1(a)); 1(f)- Could be AF (see 1(a)); 1(g)- )- Could be AF (see 1(a)); (2)-Probably AF (Drug trafficking)(21 U.S.C.§841(a)(2), it is a federal felony to “create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance”); (3)-Probably not AF.	1(a)-CIMT 1(b)-CIMT. 1(c)-CIMT. 1(d)-CIMT. 1(e)-CIMT. 1(f)-Probably CIMT. 1(g)-Probably not CIMT.	1(a)-(g)CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802; (2)-CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802; (3)- CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802; (4)-Possibly	To avoid CSO or AF, negotiate pre-plea diversion. (1)(a)-(c) Allocate to ‘attempt’ to obtain.  Divisible statute—do not specify section or plead to safer sections, (1)(a)-(c) with allocation to <i>attempt to obtain</i> ; or (3), or (4).  (2)-To possibly avoid AF (Drug Trafficking), affirmatively allocate to ‘possess,’ ‘prescribe,’ or ‘administer’ (terms not contained in 21 U.S.C. §841(a)(1).  If alternative plea to non-controlled substance offense is not possible, omit name of substance from ROC.



STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 218A.1401	Selling controlled substances (other than synthetic cannabinoid or piperazines or salvia) to minor; penalties are class C felony for first offense; Class B felony for any subsequent offense unless more severe trafficking charge applies.	(4)-Possibly AF (see 1(a)). AF (Drug trafficking) if record of conviction establishes a controlled substance as defined in 21U.S.C.§802.	CIMT.	CSO. CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802. Possibly CAC.	To avoid CSO or AF, negotiate pre-plea diversion. To potentially avoid AF for drug trafficking, allocate to “transfer of small amount of marihuana for no remuneration.” If alternative plea to non-controlled substance offense is not possible, omit name of substance from ROC.
KRS 218A.1402	Criminal conspiracy to commit offense in KRS Chapter 218A subject to same penalties as provided for underlying offense.	If underlying offense is AF, charge of conspiracy will be AF. See <i>Matter of Aruna</i> , 24 I&N Dec. 452 (BIA 2008).	CIMT if underlying offense is CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	To avoid CSO or AF, negotiate pre-plea diversion. To potentially avoid AF for drug trafficking, allocate to “transfer of a small amount of marihuana for no remuneration.” If alternative plea to non-controlled substance offense is not possible, omit name of substance from ROC.
KRS 218A.1403	Advertising controlled substance; penalties— First Offense Class B misdemeanor; Class A misdemeanor for each subsequent offense.	Not AF.	Not CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	To avoid AF, do not let ROC reflect elements of 21 U.S.C.§843(c): “Knowingly place in any newspaper, magazine, handbill, or other publications, any written advertisement that has the purpose of seeking or offering illegally to receive, buy, or distribute a schedule I controlled substance.”
KRS 218A.1404	Prohibited activities relating to controlled substances; penalties— violation of provisions (1) or (3) shall be guilty of Class D felony for first	(1)-AF (Drug trafficking) if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802;	(1)-CIMT. (2)-Probably not CIMT. <i>Matter of Abreu-Semino</i> , 12 I & N Dec. 775 (BIA 1968)(Not	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	Divisible statute-do not specify section or plead to safer sections (2) & (3) to avoid AF and CIMT. (1)-To potentially avoid AF, allocate to “possess” or “transfer of small amount of

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	<p>offense; Class C felony for subsequent offenses; violation of (2) shall be guilty of Class A misdemeanor for first offense and Class D felony for subsequent offenses.</p>	<p>(2)-Not AF unless defendant has prior drug conviction (which has become final) and is prosecuted as recidivist under the statute that corresponds to federal recidivist possession felonies under 21 U.S.C.§844(a)); (3)-Probably AF (Drug trafficking) if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.</p>	<p>CIMT if no evil intent); (3)-CIMT.</p>	<p>U.S.C.§802.</p>	<p>marijuana for no remuneration.” (3)-Allocute to ‘prescribes’ or ‘administers’ (terms not contained in 21 U.S.C.§841(a)(1)).</p>
<p>KRS 218A.1405</p>	<p>Use and investment of drug-related income; penalties—Class D felony and other penalties.</p>	<p>Probably AF (Drug trafficking) if ROC establishes a controlled substance as defined in 21 U.S.C.§802 (Corresponds with Controlled Substances Act 21 U.S.C.§854).</p>	<p>Probably CIMT.</p>	<p>CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.</p>	<p>To potentially avoid AF and CSO, plead to non-controlled substance related offense such as KRS 517.020, Deceptive Business Practices.</p>
<p>KRS 218A.1411</p>	<p>Trafficking in controlled substance in or near school; penalty—Class D felony, unless more severe penalty in chapter is set forth.</p>	<p>AF (Drug trafficking) if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.</p>	<p>CIMT.</p>	<p>CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.</p>	<p>To avoid CSO or AF, negotiate pre-plea diversion. To avoid AF, plead to simple possession.</p>
<p>KRS 218A.1412</p>	<p>Trafficking in controlled substance first degree; penalties— First offense Class C felony; Class B felony for second or subsequent offense.</p>	<p>AF (Drug trafficking) if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.</p>	<p>CIMT.</p>	<p>CSO if record of conviction establishes a controlled substance as</p>	<p>To avoid AF, plead to simple possession.</p>

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 218A.1413	Trafficking in controlled substance second Degree; penalties—First offense Class D felony; Class C felony for second or subsequent offense.	AF (Drug trafficking) if record of conviction establishes a controlled substance as defined in 21U.S.C.§802.	CIMT.	defined in 21 U.S.C.§802. CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	To avoid AF, plead to simple possession.
KRS 218A.1414	Trafficking in controlled substance third degree; penalties—First offense Class A misdemeanor; Class D felony for second or subsequent offense.	AF (Drug trafficking) if record of conviction establishes a controlled substance as defined in 21U.S.C.§802.	CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	Allocute to “transfer of small amount of marijuana for no remuneration” to potentially avoid AF drug trafficking.
KRS 218A.1415	Possession of controlled substance first degree; penalties—First offense Class D felony; Class C felony for second or subsequent offense.	Not AF except 1(g)-AF(Drug trafficking).	Probably not CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	To avoid CSO, enter pre-plea diversion pursuant to KRS 218A.14151. Avoid conviction under section 1(g) because it will be AF.
KRS 218A.1416	Possession of controlled substance second degree; penalties—First offense Class A misdemeanor; Class D felony for second or subsequent offense.	Not AF.	Probably not CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	To avoid CSO, enter pre-plea diversion pursuant to KRS 218A.14151.
KRS	Possession of Controlled	Not AF.	Probably not	CSO	To avoid CSO, enter pre-plea diversion

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
218A.1417	Substance Third Degree; penalties—First offense Class A misdemeanor; Class D felony for second or subsequent offense.		CIMT.	if record of conviction establishes a controlled substance as defined in 21 U.S.C. §802.	pursuant to KRS 218A.14151.
KRS 218A.1418	Theft of a controlled substance; penalties—First offense Class D felony if substance value < \$300; Class C felony for second and subsequent offense if value > \$300.	AF (Theft) if sentence of more than 364 days imposed.	CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. §802.	Plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less to avoid AF.  To avoid CSO consider alternative plea to Theft, (with sentence of 364 days or less), Theft by deception (amount under \$10,000), Trespass, or Disorderly Conduct.
KRS 218A.1421	Trafficking in marijuana; penalties—8 oz. or less, class A misd.; 8 oz.-5 lbs. is Class D felony for first offense, Class C felony for second offense; Trafficking in 5 lbs. or more is Class C felony for first offense, Class B felony for second offense.	AF (Drug trafficking).	CIMT.	CSO.	Allocate to ‘transfer’ small amount of marijuana for no remuneration’ to potentially avoid AF (Drug trafficking).  To avoid AF (Drug trafficking) consider plea to possession of marijuana (less than 30 grams)(KRS 218A.1422).
KRS 218A.1422	Possession of marijuana; penalty—Class A misdemeanor.	Not AF.	Probably not CIMT.	Is CSO for inadmissibility purposes. For deportability purposes, is CSO only if record of conviction establishes	Obtain pre-plea diversion to avoid CSO.  Affirmatively allocate to amount less than 30 grams.

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 218A.1423	<p>Marijuana cultivation; penalties—cultivation of five (5) or more plants of marijuana is:</p> <p>(a) For a first offense a Class D felony;</p> <p>(b) For a second or subsequent offense a Class C felony;</p> <p>(3) Marijuana cultivation of fewer than five (5) plants is:</p> <p>(a) For a first offense a Class A misdemeanor;</p> <p>(b) For a second or subsequent offense a Class D felony.</p>	AF(Drug trafficking).	Probably CIMT.	<p>possession of more than 30 grams of marijuana.</p> <p>CSO.</p>	To avoid AF consider plea to possession of marijuana (under 30 grams) (KRS 218A.1422).
KRS 218A.1432	<p>Manufacturing Methamphetamine; penalties—First offense Class B felony; Class A felony for second and subsequent offense.</p>	AF(Drug trafficking).	CIMT.	CSO.	
KRS 218A.1437	<p>Unlawful possession of a methamphetamine precursor; Prima Facie Evidence of Intent; penalties—First Offense Class D Felony; Class C felony for each subsequent offense.</p>	Probably AF(Drug trafficking).	CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 218A.1438	Unlawful distribution of a methamphetamine precursor; penalties—Class D felony for first offense, Class C felony for each subsequent offense.	AF (Drug trafficking).	CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	
KRS 218A.1439	Trafficking in or transferring a Dietary Supplement; exceptions; penalties—First offense Class A misdemeanor; Class D felony for second or subsequent offense.	Possibly AF (Drug trafficking).	Probably CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	
KRS 218A.1441	Controlled substance endangerment to a Child—First Degree; penalty—Class A felony.	AF(COV) & possibly AF (Drug trafficking) if ROC establishes person manufactured a controlled substance.	CIMT.	CAC. CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	
KRS 218A.1442	Controlled substance endangerment to a child—Second Degree; penalty—Class B felony.	AF (COV) & possibly AF (Drug trafficking) if ROC establishes person manufactured a controlled substance.	CIMT.	CAC. CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	
KRS 218A.1443	Controlled substance endangerment to a child—Third Degree; penalty—Class C felony.	AF (COV) & possibly AF (Drug trafficking) if ROC establishes person manufactured a controlled substance.	CIMT.	CAC. CSO if record of conviction establishes a controlled	

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 218A.1444	Controlled substance endangerment to a child—Fourth Degree; penalty—Class D felony.	AF (COV) & possibly AF (Drug trafficking) if ROC establishes person manufactured a controlled substance.	CIMT.	substance as defined in 21 U.S.C.§802. CAC. CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	To potentially avoid AF, plead to <i>attempt</i> to reduce to Class A Misdemeanor and obtain sentence of 364 days or less so long as ROC does not reflect defendant convicted of manufacturing.
KRS 218A.1450	Trafficking in salvia—Class A misdemeanor.	Not AF (not currently a controlled substance as defined in 21 U.S.C.§802).	Probably not CIMT.	Not CSO (not currently a controlled substance as defined in 21 U.S.C.§802).	
KRS 218A.1451	Possession of salvia—Class B misdemeanor.	Not AF (not currently a controlled substance as defined in 21 U.S.C.§802).	Probably not CIMT.	Not CSO (not currently a controlled substance as defined in 21 U.S.C.§802).	
KRS 218A.1452	Salvia cultivation—Class A misdemeanor.	Not AF (not currently a controlled substance as defined in 21U.S.C.§802).	Probably not CIMT.	Not CSO (not currently a controlled substance as defined in 21 U.S.C.§802).	
KRS 218A.1453	Trafficking in substituted cathinones—Class A misdemeanor.	AF if included as a controlled substance in 21 U.S.C.§802. <b>Note:</b> three synthetic stimulants that are used to make bath salts, including:	Possibly CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21	

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
		Mephedrone, 3,4 methylenedioxypropylvalerone (MDPV) and Methylyone are temporarily included as Schedule I controlled substances.		U.S.C.§802.	
KRS 218A.1454	Possession of substituted cathinones—Class A misdemeanor.	Not AF.	Probably not CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	
KRS 218A.1455	Manufacturing substituted cathinones	AF (Drug trafficking).	Probably CIMT.	CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	
KRS 218A.180	Distribution by practitioner or pharmacist; prescription requirements; penalties—First offense Class A misdemeanor; Class D felony for second or subsequent offense.	Probably not AF.	Probably not CIMT.	Could be CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	
KRS 218A.200	Record-keeping and inventory requirements; penalties—First offense Class A misdemeanor; Class D felony for subsequent offenses.	Not AF (Misdemeanor offense under 21 U.S.C. 842(c)).	Probably not CIMT.	Could be CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	



STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 218A.210	Controlled substances may be possessed only in original container; penalties—First offense Class B misdemeanor; Class A misdemeanor for subsequent offenses.	Not AF.	Probably not CIMT.	U.S.C. §802. Could be CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. §802.	
KRS 218A.282	Forgery of a prescription—First Offense Class D felony; Class C felony for second and subsequent offense.	Probably AF (Forgery) if sentence of 364 or more days imposed; possibly AF (Drug trafficking).	CIMT.	Could be CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. §802.	To potentially avoid AF if charged with first offense, plead to <i>attempt</i> to reduce to Class A misdemeanor and obtain sentence of 364 days or less.  To avoid potential AF (Drug trafficking), ensure that ROC does not establish substance was <i>acquired</i> or <i>obtained</i> (21 U.S.C. 843(a)(3) makes it a felony “to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge”).
KRS 218A.284	Criminal possession of a forged prescription—First offense Class D felony; Class C felony for second or subsequent offense.	Probably AF (Forgery) if sentence of more than 364 days imposed.  Possibly AF (Drug trafficking).	Probably CIMT.	Could be CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. §802.	To avoid potential AF (Drug trafficking), ensure that ROC does not reflect that controlled substance was <i>acquired</i> or <i>obtained</i> . (21 U.S.C. 843(a)(3) makes it a felony “to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge”).
KRS 218A.286	Theft, criminal possession, trafficking, or unlawful possession of a prescription or blank—First offense Class D felony; Class C felony for	(1) Probably not AF; (2) Probably not AF; (3) Probably not AF.	(1)-Probably not CIMT.	Could be CSO if record of conviction establishes a controlled substance as	Divisible statute—do not specify section of statute client is convicted under.  (1)- To potentially avoid AF (Drug trafficking) by ensuring that ROC does not reflect that controlled substance was <i>acquired</i> or

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	second or subsequent offense.			defined in 21 U.S.C. §802.	<p><i>obtained</i> (21 U.S.C. 843(a)(3) makes it a felony “to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge”). To avoid potential AF(Theft), ensure that ROC does not reflect the “taking of property or an exercise of control over property without consent with the criminal intent to deprive the owner of rights and benefits of ownership...”</p> <p>(2)- To potentially avoid AF (Drug trafficking), ensure that ROC does not reflect that controlled substance was <i>acquired</i> or <i>obtained</i> (21 U.S.C. 843(a)(3));</p> <p>(3)- To potentially avoid AF (Drug trafficking), ensure that ROC does not establish controlled substance was <i>acquired</i> or <i>obtained</i> (21 U.S.C. 843(a)(3).</p> <p>To ensure that conviction under (1)-(3) is not AF (Forgery), plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less to avoid AF.</p> <p>To avoid CIMT, ensure that ROC does not reflect “a specific intent to effect a permanent taking of another’s property without consent.” See <i>Matter of Grazley</i>, 14 I&amp;N Dec. 330, 333 (BIA 1973).</p>
KRS 218A.320	Criminal possession of a medical record; penalties—First offense	Possibly AF (Drug trafficking).	Probably CIMT.	CSO if record of conviction establishes a	To avoid potential AF (Drug trafficking), ensure that ROC does not reflect that controlled substance was <i>acquired</i> or

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	Class D felony; Class C felony for second or subsequent offense.			controlled substance as defined in 21 U.S.C.§802.	<i>obtained.</i> (21 U.S.C. 843(a)(3) makes it a felony “to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge”).
KRS 218A.322	Theft of a medical record; penalties—First offense Class D felony; Class C felony for second or subsequent offense.	Probably not AF.	Probably not CIMT.	Not CSO.	To avoid potential AF (Theft), ensure that ROC does not reflect the “taking of property or an exercise of control over property without consent with the criminal intent to deprive the owner of rights and benefits of ownership...” See <i>Matter of Garcia-Madruga</i> , 24 I&N Dec. 436, 440-441 (BIA 2008).  To avoid potential CIMT, ensure that ROC does not reflect “a specific intent to effect a permanent taking of another’s property without consent.” See <i>Matter of Grazley</i> , 14 I&N Dec. 330, 333 (BIA 1973).
KRS 218A.324	Criminal falsification of a medical record; penalties—First offense Class D felony; Class C felony for second or subsequent offense.	Probably AF (Forgery); Could be AF (Drug trafficking).	Probably not CIMT.	Probably CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802.	To avoid AF (Forgery), plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less to avoid AF.  To avoid potential AF (Drug trafficking), ensure that ROC does not reflect that controlled substance was <i>acquired</i> or <i>obtained</i> . (21 U.S.C. 843(a)(3) makes it a felony “to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge”).
KRS 218A.350	Prohibited practices concerning substances that simulate controlled substances; penalties—	(1)-Probably not AF; (2)-Probably not AF; (3)-Probably not AF; (4)-Probably not AF.	Probably not CIMT. See Umang Desai, A44 828 446	Probably not CSO if record of conviction does not establish it	Probably not AF because a counterfeit substance is defined in 21 U.S.C.§802(7) is not identical to the prohibited activity in KRS 218A.350.

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	First offense Class A misdemeanor; Class D felony for subsequent offenses.		2007 (BIA March 20, 2007); (Westlaw cite: 2007 WL 1180517)(unpublished) (Not crime of moral turpitude where defendant falsely purported chocolate to be laced with the hallucinogen psilocybin).	is a controlled substance as defined in 21 U.S.C.§802.	
KRS 218A.500	Possession of drug paraphernalia; penalties—First offense Class A misdemeanor; Class D felony for subsequent offenses.	Not AF.	Probably not CIMT.	Probably CSO.	To potentially avoid CSO, where client is charged with possession of 30 grams or less marijuana, let ROC reflect that “the paraphernalia in question was merely an adjunct to the offender’s simple possession or ingestion of 30 grams or less of marijuana.”
<b>Chapter 506: INCHOATE OFFENSES</b>					
KRS 506.010	Criminal Attempt—Class C felony when the crime attempted is a violation of KRS 521.020 or 521.050; Class B felony when the crime attempted is a Class A felony or capital offense; Class C felony when the crime attempted is a Class B felony; Class A misdemeanor when the crime attempted is a	An attempt to commit an AF would be deemed an AF.	An attempt to commit a CIMT would probably also be considered a CIMT.	Conviction would be CSO or FO if underlying conviction would be.	If client is charged with a Class C or D felony, under KRS 506.010(4)(d), if a sentence of 364 days or less, an attempt will not be categorized as AF(COV), so is a much safer plea.

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 506.030	Class C or D felony; Class B misdemeanor when the crime attempted is a misdemeanor. Criminal Solicitation — Penalties (2)(a) Class C felony where the crime solicited is a violation of KRS 521.020 or 521.050; (b) Class B felony when the crime solicited is a Class A felony or capital offense; (c) Class C felony where the crime solicited is a Class B felony; (d) Class A misdemeanor when the crime solicited is a Class C or D felony; (e) Class B misdemeanor when the crime solicited is a misdemeanor.	AF if the crime solicited is AF.	Likely CIMT if the underlying offense is CIMT.	CSO if underlying offense is CSO. <i>Matter of Zorrilla</i> , 24 I&N Dec. 768 (BIA 2009) (holds that solicitation is a CSO outside Ninth Circuit. <i>But see U.S. v. Dolt</i> , 27 F.3d 235 (6 <sup>th</sup> Cir. 1994)(Holding that solicitation to traffic in cocaine is not a controlled substance offense under §4B1.1).	If underlying offense is a Class C or D felony, try to avoid AF(COV) under KRS 506.030(2)(d) by obtaining sentence of 364 days or less.

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 506.040	Criminal Conspiracy— Penalties Class C felony where the conspiratorial agreement is a violation of KRS 521.020 or 521.050; (b)Class B felony when the conspiratorial agreement is a Class A felony or capital offense; (c)Class C felony where the crime solicited is a Class B felony; (d) Class A misdemeanor when conspiratorial agreement is a Class C or D felony; (e)Class B misdemeanor when the conspiratorial agreement is a misdemeanor.	AF if the underlying offense is an AF.	CIMT if underlying offense is a CIMT.	CSO, FO, or CAC, etc. if underlying offense is the same.	If underlying charge is a Class C or D felony, try to avoid AF (COV) under KRS 506.040(2)(d) by obtaining sentence of 364 days or less.
KRS 506.080	Criminal Facilitation- Please contact <a href="mailto:kate.benward@ky.gov">kate.benward@ky.gov</a> for advice on this charge.				
KRS 506.120	Engaging in organized crime— Penalties Class B felony, unless the offense involves only the theft or acquisition of retail merchandise for the purpose of reselling the stolen merchandise, in which case it is a Class	1(a-f): AF(RICO offense) if more than 364 day sentence imposed; 1(g): AF(Commercial bribery) or AF(RICO offense) if more than 364 day sentence imposed; 1(h-i): AF (Theft) if more than 364 day sentence imposed; 3(a): Likely AF(Commercial	CIMT.	3(e)-CSO	Divisible statute: do not specify section. 1(i) &(h): To avoid AF (theft) plead to 'attempt' with a maximum 364 day sentence. 3(a): Do not allocate to violating KRS 521.020; instead allocate to violating KRS 514.080(1) (b) (c)(d)(e)(f) and amount < \$10,000 to avoid AF (Theft).

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	C felony.	bribery) if more than 364 day sentence imposed; 3(b):AF(Prostitution offense); 3(c) & (i): AF(Theft) if more than 364 day sentence imposed; 3(d): AF(Gambling) if more than 364 day sentence imposed; 3(e): AF (drug trafficking); 3(f): Possibly AF(RICO offense) if more than 364 day sentence imposed.			3(d): If pleading to gambling offense cannot be avoided, keep record clear of facts satisfying elements of 18 U.S.C.§1955.  3(e) should reflect trafficking in liquors or spirits so as to avoid CSO.  3(a) or (f) could be safer pleas to avoid AF.
KRS 506.140	Criminal Gang Recruitment Penalties—Class A misdemeanor and Class D felony for a second or subsequent offense.	Possibly AF if more than 364 day sentence imposed.	Might be CIMT. See Guillermo Gonzalez-Sanchez a.k.a. Guillermo Gonzalez, A042 447 416 (BIA May 26, 2011)(Westlaw cite: 2011 WL 2470980) (unpublished opinion)		
<b>Chapter 507: CRIMINAL HOMICIDE</b>					
KRS 507.020	Murder—Capital offense.	AF(COV) under 1(a); Probably AF(COV) under 1(b).	1(a)-CIMT. 1(b)- likely to be CIMT.	CODV if committed against spouse or similarly situated family member; CAC if record of conviction	Divisible statute: 1(b) may be marginally safer plea.

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 507.030	Manslaughter—First degree—Class B felony.	AF(COV).	CIMT (crime in which bodily harm is caused or threatened by an intentional act).	identifies victim as child. FO if ROC establishes use of a firearm. CODV if committed against spouse or similarly situated family member; CAC if record of conviction identifies victim as child. FO if firearm used.	To preserve an argument against CIMT, plead to <i>attempted</i> manslaughter.
KRS 507.040	Manslaughter—Second degree—Class C felony.	Possibly be AF(COV) under (a); Probably AF under (b).	Probably CIMT.	CODV if committed against spouse or similarly situated family member; CAC under (1)(b).	Divisible statute: section (a) is a safer plea to avoid CAC. Attempt to plead down to Reckless Homicide to prevent AF.
KRS 507.050	Reckless Homicide—Class D felony	Not AF <i>U.S. v. Portela</i> , 469 F.3d 496 (6 <sup>th</sup> Cir. 2006) ('crime requiring only recklessness does not qualify as a 'crime of violence' under 18 U.S.C. §16 and is therefore not an AF)	Likely CIMT but not yet decided: <i>Sagr v. Holder</i> , 548 F.3d 414 (6 <sup>th</sup> Cir. 2009).	CODV if committed against spouse or similarly situated family member; CAC if record of conviction identifies victim as child. FO if firearm used.	



STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
<b>Chapter 507A: FETAL HOMICIDE</b>					
KRS 507A.020	Fetal Homicide—First degree—Capital offense.	AF(COV) under 1(a); Very likely AF under 1(b).	CIMT.	CODV if committed against spouse or similarly situated family member; CAC if record of conviction identifies victim as child.	Divisible statute-conviction under 1(b) could be marginally safer plea.
KRS 507A.030	Fetal Homicide—Second degree—Class B felony.	AF(COV).	CIMT (crime in which bodily harm is caused or threatened by an intentional act).	Probably CAC.	
KRS 507A.040	Fetal Homicide—Third degree—Class C felony.	Likely AF.	Likely CIMT.	Probably CAC.	
KRS 507A.050	Fetal Homicide—Fourth degree—Class D felony.	Not AF. See <i>U.S. v. Portela</i> , 469 F.3d 496 (6 <sup>th</sup> Cir. 2006)(holding that crime requiring only recklessness does not qualify as a ‘crime of violence’ under 18 U.S.C. 16 and is therefore not an AF).	Likely CIMT, but not yet decided. See <i>Sagr v. Holder</i> , 548 F.3d 414 (6 <sup>th</sup> Cir. 2009).	Probably CAC.	
<b>Chapter 508: ASSAULT AND RELATED OFFENSES</b>					
KRS 508.010	Assault—First degree—Class B felony.	1(a)-AF (COV). 1(b)- Likely AF (COV).	1(a)-CIMT. 1(b)-Very likely CIMT. See <i>In re Fuataou</i> , 21 I. & N. Dec. 475, 478 (BIA 1996) (an assault involving a reckless state of	Could be FO if record of conviction shows firearm used under 1(a). Could be CODV if victim was spouse or	Divisible statute—ensure that ROC reflects dangerous instrument (not a firearm) under 1(a) to avoid FO; 1b could be safer plea- allocate to ‘wantonly.’

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 508.020	Assault—Second degree—Class C felony.	1(a) and 1(b)-AF (COV); 1(c)-likely AF (COV).	mind is a crime of moral turpitude if it results in 'the infliction of serious bodily injury.')	similarly situated individual; CAC if assault against a child.  Could be FO if record of conviction shows firearm used under (1(b) or (c). Could be CODV if victim was spouse or similarly situated individual; CAC if ROC establishes assault against a child.	1(b) with allocation to 'dangerous instrument' could be safer plea to avoid CIMT because not <i>serious</i> physical injury. See <i>In re. Fuataau</i> , 21 I. & N. Dec. 475, 478 (BIA 1996) (stating that an assault involving a reckless state of mind is a crime of moral turpitude if it results in 'the infliction of <i>serious</i> bodily injury.'). See <i>Matter of Medina</i> , 15 I. & N. Dec. 611 (BIA 1976)(the use of a deadly weapon turns an assault into CIMT).  1(c) could be safer plea for CIMT—allocate to a dangerous instrument (not deadly weapon) (see above <i>Matter of Medina</i> ).  Plead to <i>attempt</i> for section 1(c) See <i>Gill v. INS</i> , 420 F.3d 82 (2d Cir. 2006)(a person cannot intend to commit a reckless act; therefore an <i>attempted</i> reckless assault could not constitute CIMT even though the completed crime itself is CIMT).  Divisible statute; 1(a): Allocate to 'recklessly' with a 'dangerous instrument' (not firearm or deadly weapon); 'intentionally' causing physical injury is an AF (COV).  1(a)-To decrease CIMT risk, consider
KRS 508.025	Assault—Third degree—Class D felony.	1(a)-Possibly AF(COV); 1(b)-Likely not AF.	Probably CIMT, especially if record of conviction shows injury or special knowledge of victim or assault	Could be FO if record of conviction shows firearm used under (1)(a).	1(a): Allocate to 'recklessly' with a 'dangerous instrument' (not firearm or deadly weapon); 'intentionally' causing physical injury is an AF (COV).  1(a)-To decrease CIMT risk, consider

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 508.030	Assault—Fourth degree—Class A misdemeanor.	1(a)-Not AF(COV) if sentence of 364 or fewer days imposed. 1(b)-Not AF if sentence of 364 or fewer days imposed. Even if 365 day sentence imposed, likely not AF because no intentional use of physical force required.	with deadly weapon. See <i>Matter of Danesh</i> , 19 I & N Dec. 669, 670 (BIA 1988)(holding that the fact that the assault was on a peace officer was a key element in establishing a CIMT.)	Could be FO if ROC shows use of firearm under (1)(b). Could be CODV if victim was spouse or similarly situated individual; CAC if assault against a child.	alternative offense of an <i>attempt</i> to ‘recklessly with a dangerous instrument’. See <i>Gill v. INS</i> , 420 F.3d 82 (2d Cir. 2006);  Under 1(b) ensure ROC does not reflect the mental state of intent and the use of physical force.  To avoid AF, plead to EED which becomes Class B misd with 364 or less day sentence imposed.
			1(a)-Likely not CIMT if ‘wantonly.’ See <i>Matter of Solon</i> , 24 I. & N. Dec. 239, 241 (BIA 2007) (“Offenses characterized as ‘simple assaults’ are generally not considered to be crimes involving moral turpitude.”) 1(b)-May be CIMT if ROC reflects recklessness with a deadly weapon. See <i>Matter of Medina</i> , 15 I&N	Divisible statute. Under (1)(a) allocate to “wantonly.” Under (1)(b) allocate to ‘dangerous instrument’ (not deadly weapon).  Keep ROC clear of reference to domestic violence and deadly weapon or firearm.  To avoid AF—obtain sentence of 364 days or less.  To decrease CIMT risk, consider alternative offense of an <i>attempt</i> . See <i>Gill v. INS</i> , 420 F.3d 82 (2d Cir. 2006).	

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 508.032	Assault—Enhancement— May be prosecuted as Class D felony if it is the third or subsequent offense of assault in the 4 <sup>th</sup> degree under KRS 508.030 within 5 years and the relationship between the perpetrator and victim meets definition of family member.	Probably (COV) if sentence of 365 or more days imposed.	Dec. 611 (BIA 1976). Probably CIMT. See <i>In Re. Tran</i> , 21 I&N Dec. 291(BIA 1996)(infliction of bodily harm upon a person with whom one has such a familial relationship is an act of depravity which is contrary to accepted moral standards).	If the victim was a current or former spouse or similarly situated individual, most likely CODV. If the victim was a child, conviction might be CAC.	
KRS 508.040	Assault under extreme emotional disturbance (EED)— Class D felony when it would be assault in the first or second degree if not committed under influence of EED; Class B misdemeanor when it would be assault in the 4 <sup>th</sup> degree not committed under the influence of an extreme emotional disturbance.	Probably not AF.	Likely not CIMT if committed under EED.	If the victim was a current or former spouse or similarly situated individual, might also be CODV. If the victim was a child, conviction might be CAC. FO if ROC establishes use of a firearm.	Obtain sentence of 364 days or less to preclude any possibility of AF (COV).
KRS 508.050	Menacing— Class B misdemeanor.	Not AF if sentence of 364 days or less imposed.	Likely not CIMT, but not yet decided See <i>Singh v. Holder</i> ,	If the victim was a current or former spouse or similarly	Obtain sentence of 364 days or less to avoid AF (COV). Do not let ROC reflect use of firearm or

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 508.060	Wanton Endangerment— Class D felony.	Possibly AF (COV).	321 Fed. Appx. 473 (6 <sup>th</sup> Cir.2009) (unpublished) (Supports finding that Menacing is not CIMT: 'the apprehension variety of assault is less morally turpitudinous than the attempted-battery variety, as it requires no intention to physically harm another person.')	situated individual, might also be CODV. If the victim was a child, conviction might be CAC. FO if ROC establishes use of a firearm.	familial relation to the victim.
			Likely not CIMT. <i>Matter of Solon</i> , 24 I&N Dec. 239, 242 (BIA 2007)( As the level of conscious behavior decreases, i.e., from intentional to reckless conduct, more serious resulting harm is required in order to find that the crime involves moral turpitude). See <i>also Matter of</i>	CAC if victim is child. FO if offense involves firearm. CODV if spouse or other similarly situated family member.	Ensure that ROC does not establish firearm or relation of victim to the defendant.  To further avoid CIMT, plead to <i>attempt</i> . See <i>Gill v. INS</i> , 420 F.3d 82 (2d Cir. 2006).

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 508.070	Wanton Endangerment in the 2 <sup>nd</sup> degree —Class A misdemeanor.	Not AF if 364 or less day sentence imposed.	<p><i>Falaaau</i>, 21 I. &amp; N. Dec. 475 (BIA 1996)(The BIA held that to find moral turpitude, the element of a reckless state of mind must be coupled with an offense involving the infliction of serious bodily injury).</p> <p>Possibly CIMT. <i>Matter of Solon</i>, 24 I&amp;N Dec. 239, 242 (BIA 2007)( As the level of conscious behavior decreases, i.e., from intentional to reckless conduct, more serious resulting harm is required in order to find that the crime involves moral turpitude). See also <i>Matter of Falaaau</i>, 21 I. &amp; N. Dec. 475 (BIA 1996)( The BIA held that to find</p>		<p>Ensure that ROC does not establish firearm or relation of victim to the defendant.</p> <p>To further avoid CIMT, plead to <i>attempt</i>. See <i>Gill v. INS</i>, 420 F.3d 82 (2d Cir. 2006).</p> <p>Obtain sentence of 364 days or less to avoid possible AF.</p>

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 508.075	Terroristic Threatening— First degree—Class C felony.	May be AF(COV).	moral turpitude, the element of a reckless state of mind must be coupled with an offense involving the infliction of serious bodily injury). <i>But see Matter of M, 3 I&amp;N Dec. 272 (BIA 1948)</i> (found property damage offense was CIMT because was not one “where the act was merely accompanied by negligence or carelessness, but one which was perpetrated maliciously and wantonly”) Probably CIMT.	May be CAC under 1(a)(1-3). Could be FO if ROC reflects firearm.	Let ROC establish that no force was used.
KRS 508.078	Terroristic Threatening— Second degree—Class D felony.	May be AF(COV).	Probably CIMT.	May be CAC under 1(a)(1-3). Could be FO if ROC reflects firearm.	Divisible statute; 1(b) may be safer plea to avoid AF.  To avoid CODV or CAC, keep age/relationship of victim out of ROC.

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 508.080	Terroristic Threatening—Third degree—Class A misdemeanor.	Not AF if sentence of 364 or less days imposed.	Probably CIMT.	CAC if victim is child. CODV if spouse or other similarly situated family member. FO if offense involves firearm.	Let ROC establish that no force was used to possibly avoid AF. Obtain sentence of 364 days or less.
KRS 508.100	Criminal Abuse—First degree—Class C felony.	1(a)-Probably not AF(COV); 1(b)Probably not AF; 1(c)-Probably not AF(COV) (statute does not require active use of force).	CIMT.	CAC if ROC reflects victim is a child; possibly CODV if ROC reflects victim is spouse or similarly situated family member.	Divisible statute-Allocate to 'permits' and not 'abuses;' 1(b) likely safer plea to avoid AF.
KRS 508.110	Criminal Abuse—Second degree—Class D felony.	1(a)-Probably not AF(COV); 1(b)-Probably AF (COV); 1(c)-Probably AF(COV).	CIMT.	CAC if ROC reflects victim is a child; possibly CODV if ROC reflects victim is spouse or similarly situated family member.	Divisible statute: allocate to 'permits' and not 'abuses;' To possibly avoid CIMT, plead to <i>attempt</i> . See <i>Gill v. INS</i> , 420 F.3d 82 (2d Cir. 2006). 1(b) is likely a safer plea to avoid AF.
KRS 508.120	Criminal Abuse—Third degree—Class A misdemeanor.	Probably not AF.	Probably CIMT.	CAC if ROC reflects victim is a child and possibly CODV if ROC reflects victim is spouse	To avoid CIMT, plead to <i>attempt</i> . See <i>Gill v. INS</i> , 420 F.3d 82 (2d Cir. 2006). To foreclose possibility of AF, obtain sentence of 364 days or less.



STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 508.140	Stalking—First Degree—Class D felony.	Possibly AF(COV).	Probably CIMT.	or similarly situated family member. “Stalking” is deportable offense; could be CAC if victim is child or CODV if victim is spouse or similarly situated family member. Also deportable offense as “violation of order of protection” under (1)(b)1(A); Could be FO offense under (1)(b)(4).	Do not let ROC establish the use of a firearm.
KRS 508.150	Stalking—Second Degree—Class A misdemeanor.	Not AF if sentence of 364 or less days imposed.	Probably CIMT.	“Stalking” is a deportable offense. Could be CAC if victim is child or CODV if victim is spouse or similarly situated family member.	To avoid AF, obtain sentence of 364 days or less.
KRS 508.160	Disarming a police officer—Class D felony	Possibly AF(COV).	Probably CIMT. <i>See Matter of</i>	Could be FO offense.	Plead to <i>attempt</i> and obtain sentence of 364 days or less to potentially avoid AF.

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
<b>Chapter 509: KIDNAPPING AND RELATED OFFENSES</b>					
KRS 509.020	Unlawful Imprisonment—First Degree—Class D felony.	Probably AF(COV).	Probably CIMT. See <i>In Re. Luis A. Nunez Ramos</i> A.K.A Luis Nunez, (Westlaw cite: 2010 WL 3780667) (unpublished opinion)(Finding that there is no evidence that the Fifth Circuit Court of Appeals would not view an identical New York statute (NY Penal Law § 135.10) to be a crime of moral turpitude).	Probably CODV if ROC identifies victim as a protected household member; CAC if ROC establishes offense committed against a child.	Plead to <i>attempt</i> with sentence of 364 days or less to potentially avoid AF (COV).
KRS 509.030	Unlawful Imprisonment—Second Degree—Class A	Probably AF(COV) unless sentence of 364 days or less days imposed.	Probably CIMT. See <i>Carlos Armando</i>	Possibly CAC or CODV if ROC identifies victim	Obtain sentence of 364 days or less to avoid AF(COV).

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	misdemeanor.		Bojorquez-Montante, A41 830 630 (BIA May 12, 2005) (Westlaw cite: 2005 WL 1848329) (unpublished opinion) (unlawful imprisonment statute that does not have element of injury or bodily harm is still crime of moral turpitude).	as a protected household member or child.	
KRS 509.040	Kidnapping—Class B felony when victim is released alive and in safe place prior to trial; Class A felony when victim is alive but suffered serious physical injury during the kidnapping, or as a result of not being released in a safe place, or as a result of being released in any circumstances which are intended, known, or should have been known to cause or lead to serious physical injury. Capital offense when victim is not released	1(a)-Probably AF(COV); 1(b)-Probably AF(COV); 1(c)-Probably AF(COV); 1(d)-Probably AF (COV); 1(e)-Probably AF (COV); 1(f)-Could be AF(COV);See Wei Ly Bokel, A076 325 301(BIA January 13, 2009)(Westlaw cite: 2009 WL 263140) (unpublished opinion) (“International parental kidnapping does not categorically present a [‘material, important, or significant’] possibility that physical force would be used in the course of its commission.”)	Probably CIMT.	Possibly CAC or CODV if ROC identifies victim as a protected household member or child.	Divisible statute: 1(f) might be safer plea to avoid AF.

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	alive but subsequently dies...	(2)(a)-AF(COV); 2(b)-AF(COV); 2(c)-AF(COV).			
KRS 509.070	Custodial Interference— Class D felony unless the person taken from lawful custody is returned voluntarily by the defendant.	(1)-Possibly AF(COV) if sentence of 365 or more days imposed.	Likely CIMT.	Possible CAC or CODV if ROC identifies victim as a protected household member or child.	Divisible statute: allocute to “entices” to avoid possible AF (COV).  Plead to ‘attempt’ with sentence of 364 days or less to ensure not an AF (COV).
KRS 509.080	Criminal Coercion—Class A misdemeanor.	Probably not AF.	Probably CIMT.	Possible CAC or CODV if ROC identifies victim as a protected household member or child.	Obtain sentence of 364 days or less to avoid AF.
<b>Chapter 510: SEXUAL OFFENSES</b>					
KRS 510.040	Rape—First degree— Class B felony unless victim is under twelve (12) years old or receives a serious physical injury, in which case it is a Class A felony.	1(a)-AF(COV) and AF(Rape). 1(b)(1) AF(Rape); 1(b)(2) AF(Sexual abuse of a minor) & AF(Rape).	CIMT.	CAC if convicted under 1(b)(2).	
KRS 510.050	Rape—Second degree— Class C felony.	(1)(a)-AF(Sexual abuse of a child) & AF(Rape); 1(b)-AF(Rape).	CIMT.	CAC if convicted under (1)(a).	
KRS 510.060	Rape—Third degree— Class D felony.	1(a)-AF(Rape); 1(b)-AF(Rape) & and AF(Sexual abuse of a minor); 1(c)-AF(Rape) & AF (Sexual abuse of a minor); 1(d)-AF(Rape) and AF(Sexual abuse of a minor);	CIMT.	CAC if convicted under 1(b),(c),(d).	

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 510.070	Sodomy—First degree—Class B felony unless the victim is less than twelve (12) years old or receives a serious physical injury, in which case it is a Class A felony.	1(e)-AF(Rape). 1(a)-AF(COV) and AF(Rape); 1(b)(1)-AF(Rape); 1(b)(2)-AF(Rape) and (AF) Sexual abuse of a minor.	CIMT.	CAC if convicted under 1(b).	
KRS 510.080	Sodomy—Second degree—Class C felony.	1(a) AF (Rape and Sexual abuse of a minor). 1(b)-(Rape)	CIMT.	CAC if convicted under 1(a).	
KRS 510.090	Sodomy—Third degree—Class D felony.	1(a)-AF(Rape) 1(b)-AF(Rape); & AF(Sexual abuse of a minor); 1(c)-AF(Rape) and AF(Sexual abuse of a minor); 1(d) -AF-(Rape) & AF(Sexual abuse of a minor); 1(e)-AF (Rape) (Lack of consent defined in KRS 510.020(3)(e), includes any person “under the care or custody of a state or local agency pursuant to court order...)	CIMT.	CAC if convicted under 1(b), (c), (d).	
KRS 510.100	Sodomy—Fourth degree—Class A misdemeanor.	(1)-Not AF.	Not CIMT.		(unconstitutional statute)
KRS 510.110	Sexual Abuse—First degree—Class D felony, unless the victim is less than twelve (12) years old, in which case it is a Class C felony.	1(a)-AF(COV) & AF(Rape); 1(b)(1)-AF(Rape); 1(b)(2)-(Rape and Sexual abuse of a minor); 1(b)(3)-AF(Rape); 1(c)(1)- AF(Sexual abuse of a	CIMT.	CAC under 1(a), (b),(c)(1); Probably CAC under 1(c)(2), (3) and (d).	Divisible statute. Likely safer plea under 1(c)(2),(3) & 1(d) because there is no intent for sexual arousal and no physical contact required and does not require the use of “persuasion, inducement, enticement, or coercion of a

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 510.120	Sexual Abuse—Second degree—Class A misdemeanor.	<p>minor);</p> <p>1(c)(2)-Probably AF(Sexual abuse of a minor);</p> <p>1(c)(3)-Probably AF(Sexual abuse of a minor).</p> <p>1(d)-AF(Sexual abuse of a minor).</p> <p><i>In Re. Pedro Rodriguez-Rodriguez</i>, 22 I &amp; N Dec. 991 (1999)(finding that indecency with a child by exposure in the presence of a child by one intent on sexual arousal constitutes sexual abuse of a minor, AF).</p>	Probably CIMT. See <i>Mehboob v. Att’y Gen. of U.S.</i> , 549 F.3d 272 (3d Cir. 2008)(holding that moral turpitude inheres in sex offenses involving minors under the age of 16 notwithstanding the lack of any <i>mens rea</i> requirement with respect to the age of the victim).	1(b): CAC	<p>child to engage in, or assist another to engage in sexually explicit conduct or rape, etc. as defined in 18 U.S.C.§3509 (a)(8) and some of the guiding definitions followed by <i>In Re. Pedro Rodriguez-Rodriguez</i>, 22 I &amp; N Dec. 991 (1999).</p> <p>Under 1(d) do not allocute to sexual contact.</p> <p>1(a)&amp;(c)-Obtain sentence of 364 days or less to preclude possibility of COV.</p> <p>Section 1(b)-Keep ROC clear of facts establishing sexual abuse of a minor.</p>
KRS	Sexual Abuse—Third	(1)-Possibly AF if victim is a	CIMT if crime	CAC if victim is a	

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
510.130	degree—Class B misdemeanor.	minor. Note: In Ninth Circuit, will be AF Sexual abuse of a minor if the record reflects (1) the mens rea of 'knowingly'; (2) a sexual act; (3) with a minor between ages of 12-16; and (4) an age difference of at least four years between the defendant and minor as defined by 18 U.S.C.§2243. <i>Estrada—Espinoza v. Mukasey</i> , 546 F.3d 1147, 1159 (9th Cir.2008) ( <i>en banc</i> ), abrogated on other grounds by <i>United States v. Aguila—Montes de Oca</i> , 655 F.3d 915 (9th Cir.2011) ( <i>en banc</i> ).	involves a minor.  Otherwise, probably not CIMT (no <i>mens rea</i> ).	minor.	
KRS 510.140	Sexual Misconduct—Class A misdemeanor.	Not AF.	Probably CIMT.	CODV if the victim was a current or former spouse or similarly situated individual.	Obtain sentence of 364 days or less to preclude possibility of COV.
KRS 510.148	Indecent Exposure—First Degree—Class B misdemeanor for first offense; Class A misdemeanor for second offense, if committed within three (3) years of the first conviction; Class D felony for the third	Not AF.	CIMT.	1(a)-Likely CAC. See <i>Matter of Velazquez-Herrera</i> , 24 I&N Dec. 503 (BIA 2008) (“[We] interpret the term ‘crime of child abuse’	

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	<p>offense, if committed within three (3) years of the second conviction; and Class D felony if it was committed within three (3) years of the prior conviction.</p>			<p>broadly to mean any offense involving an intentional, knowing, reckless, or criminally negligent act or omission that constitutes maltreatment of a child or that impairs a child's physical or mental well-being, including sexual abuse or exploitation [...]also including acts that induce (or omissions that permit) a child to engage in prostitution, pornography, or other sexually explicit conduct)</p>	
KRS 510.150	<p>Indecent Exposure—Second Degree—Class B misdemeanor.</p>	<p>Not AF.</p>	<p>Probably CIMT.</p>		
KRS 510.155	<p>Unlawful use of electronic means—Class D felony.</p>	<p>Probably AF.</p>	<p>CIMT.</p>	<p>Likely CAC. See <i>Matter of Velazquez-Herrera</i>, 24 I&amp;N</p>	<p>Could be safer to plead to section (1) with an allocation to section KRS 531, which contains offenses that do not necessarily require the sexual exploitation of a child (e.g. KRS</p>



STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
				Dec. 503 (BIA 2008).	531.060, "Promoting sale of obscenity")
<b>CHAPTER 511: BURGLARY AND RELATED OFFENSES</b>					
KRS 511.020	Burglary—First Degree—Class B felony.	AF.	CIMT.	1(a)-FO	
KRS 511.030	Burglary—Second Degree—Class C felony.	AF.	CIMT.		
KRS 511.040	Burglary—Third Degree—Class D felony.	AF.	Possibly CIMT. <i>Matter of M</i> , 2 I&N Dec. 721 (BIA 1946)("The determinative factor is whether the crime intended to be committed at the time of entry or prior to breaking in involves moral turpitude").		To minimize CIMT risk, consider alternative offense of Criminal Trespass. If that is not possible, specify in the record that the underlying offense is NOT a CIMT. If that is not possible, leave record of conviction vague as to what was the underlying crime intended.
KRS 511.050	Possession of Burglar's Tools—Class A misdemeanor.	Not AF, unless term of imprisonment imposed is 365 days or more, in which case might be attempted burglary or AF(Theft).	Probably CIMT if record of conviction establishes that the offense intended to be committed was CIMT.		Divisible statute: Section 1(b) may be safer plea because it lacks intent.  To avoid attempted "burglary" or AF(Theft), obtain sentence of 364 days or less.  To minimize CIMT risk, consider alternative offense of Criminal Trespass. If that is not possible, specify in the record that the underlying offense is NOT a CIMT. If that is

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
					not possible, leave ROC vague as to what was the underlying crime intended.
KRS 511.060	Criminal Trespass—First degree—Class A misdemeanor.	Not AF.	Not CIMT.		
KRS 511.070	Criminal Trespass—Second degree—Class B misdemeanor.	Not AF.	Not CIMT.		
KRS 511.080	Criminal Trespass Third degree—a violation.	Not AF.	Not CIMT.		
<b>Chapter 512: CRIMINAL DAMAGE TO PROPERTY</b>					
KRS 512.020	Criminal Mischief—First degree—Class D felony.	Probably AF.	Probably CIMT. See <i>Matter of M</i> , 3 I&N Dec. 272 (BIA 1948) (property damage offense was CIMT because it was “perpetrated maliciously and wantonly”); <i>contra Matter of N-</i> , 8 I&N Dec. 272, 273 (BIA 1948) (Alien’s vandalism offense was not CIMT).		Divisible statute as to AF: allocute to “wantonly” and/or “deface” which might be safer pleas.
KRS 512.030	Criminal Mischief—Second degree—Class A misdemeanor.	Probably not AF.	Possibly CIMT (see above).		Divisible statute as to AF: allocute to “wantonly” and/or “deface” which might be safer pleas.

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 512.040	Criminal Mischief—Third Degree—Class B misdemeanor.	Not AF.	May be CIMT (see above).		Obtain sentence of 364 days or less to avoid AF. Divisible statute: 1(b) likely safer to avoid CIMT as no damage or destruction of property is required.
KRS 512.050	Criminal Use of Noxious substance—Class B misdemeanor.	Not AF.	Not CIMT.		
KRS 512.060	Criminal Possession of noxious substance—Class B misdemeanor.	Not AF.	Not CIMT.		
KRS 512.070	Criminal Littering—Class A misdemeanor.	Not AF.	Not CIMT.		
KRS 512.080	Unlawfully Posting Advertisements—a violation.	Not AF.	Not CIMT.		
<b>Chapter 513: ARSON AND RELATED OFFENSES</b>					
KRS 513.020	Arson—First degree—Class A felony.	AF.	CIMT.		
KRS 513.030	Arson—Second degree—Class B felony.	AF.	CIMT.		
KRS 513.040	Arson—Third degree—Class D felony.	AF. See <i>U.S. v. Corona</i> , 108 F.3d 565, 568(5 <sup>th</sup> Cir. 1997)(Agreeing with the Fourth Circuit that “maliciously” as used in 18 U.S.C. § 844(i) includes “wanton and willful burnings without justification or excuse”)	CIMT.		
KRS 513.060	Burning Personal Property to Defraud	AF.	CIMT.		

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	Insurer—Class D Felony				
<b>Chapter 514: THEFT AND RELATED OFFENSES</b>					
KRS 514.030	Theft by unlawful taking or disposition; penalties— (2) Class A misdemeanor unless value is over \$500, in which case it is Class D felony; (2)(a) Theft of Firearm— Class D felony; (2)(b) The property is anhydrous ammonia— Class D felony; theft with intent to manufacture meth is Class B felony for first offense, and Class A felony for each subsequent offense. (2)(c) Theft of property valued over \$10,000 is Class C felony.	(2)-AF only if sentence of more than 364 days imposed; 2(a)- AF; 2(b)-AF; 2(c)-AF.	CIMT unless offense qualifies as <i>petty offense exception</i> (misd. punishable by less than one year, with six month or less sentence imposed).	2(a)-FO offense. 2(b)-CSO (Intent to manufacture meth)	(2)- (for Class A misdemeanor)- Obtain sentence of 364 days or less to avoid AF.  If charged with Class C or D offense, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.  To avoid CIMT, consider alternative offenses such as Disorderly Conduct, Trespass.  If charged with Class A misd, plead to <i>attempt</i> (KRS 506.010) to reduce to Class B misdemeanor or otherwise obtain sentence of less than six months ( <i>petty offense exception</i> ).
KRS 514.040	Theft by deception— Class A misdemeanor unless value of property or services or amount of check is more than \$500 but less than \$10,000, in which case it is a Class D felony. If value is \$10,000 or more, it is a Class C felony.	1(a)-AF if ROC reflects amount of \$10,000 or more. <i>See Matter of Garcia-Madruga</i> , 24 I&N Dec. 436 (BIA 2008)(Defining “fraud offense” as “the taking or acquisition of property with consent that has been fraudulently obtained;” “Theft” defined as “the taking of, or exercise of control over, property without consent and with the criminal intent to deprive the owner of the	CIMT unless offense qualifies as <i>petty offense exception</i> (misd. punishable by less than six months).		To avoid AF (fraud) allocute to amount less than \$10,000. (Note that to avoid AF fraud dollar amount must still be under \$10,000 even if charge reduced to ‘attempt.’ <i>See Matter of Onyido</i> , 22 I & N Dec. 552 (BIA 1999).  To avoid CIMT, consider alternative offenses such as Disorderly Conduct, Trespass.  If charged with Class A, plead to <i>attempt</i> (KRS 506.010) to reduce to Class B misdemeanor with sentence of less than six

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
		rights and benefits of ownership.” 1(b)-see above; 1(c)-see above; 1(d)-see above; (6)-AF if amount is \$10,000 or greater. (7)- AF if amount is \$10,000 or greater.			months ( <i>petty offense exception</i> ).
KRS 514.050	Theft of property lost, mislaid, or delivered by mistake—Class A misdemeanor unless the value of the property is more than \$500 but less than \$10,000, in which case it is a class D felony. Over \$10,000 is a Class C felony.	1(a)-Could be AF (Theft) if sentence of more than 364 days imposed or AF(Fraud) if amount is \$10,000 or greater. 1(b)-See 1(a).	CIMT unless offense qualifies as <i>petty offense exception</i> (misd. punishable by less than one year with less than six month sentence imposed).		To avoid AF(Theft), obtain sentence of 364 days or less.  To avoid AF(Fraud), allocute to amount less than \$10,000.  If charged with Class C or D offense, plead to <i>attempt</i> (KRS 506.010), which will reduce offense to Class A misdemeanor, and obtain sentence of 364 days or less. Note that to avoid AF(Fraud), dollar amount must still be under \$10,000 even if charge reduced to ‘attempt.’ See <i>Matter of Onyido</i> , 22 I & N Dec. 552 (BIA 1999).  To avoid CIMT, consider alternative offenses such as Disorderly Conduct or Trespass.  If charged with Class A, obtain sentence of less than six months to qualify as <i>petty offense exception</i> .  To avoid AF(Theft), obtain sentence of 364 days or less.  To avoid AF(Fraud), allocute to amount less than \$10,000.
KRS 514.050	Theft of Property Lost, Mislaid, or Delivered by Mistake—Class A misdemeanor unless the value of the property is	1(a)-Could be AF(Theft) if sentence of more than 364 days imposed or AF(Fraud) if amount is \$10,000 or greater. 1(b)-See 1(a).	CIMT unless offense qualifies as <i>petty offense exception</i> (misd. punishable by		

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	<p>more than \$500 but less than \$10,000, in which case it is a class D felony. Over \$10,000 is a Class C felony.</p>		<p>less than one year with less than six month sentence imposed).</p>		<p>If charged with Class C or D offense, plead to <i>attempt</i>, which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less (KRS 506.010). Note that to avoid AF fraud dollar amount must still be under \$10,000 even if charge reduced to 'attempt.' See <i>Matter of Onyido</i>, 22 I &amp; N Dec. 552 (BIA 1999).</p> <p>To avoid CIMT, consider alternative offenses such as Disorderly Conduct, Trespass.</p> <p>If charged with Class A misdemeanor, obtain sentence of less than six months to qualify as <i>petty offense exception</i>.</p>
KRS 514.060	<p>Theft of Services— Class A misdemeanor unless the value of services is (a) \$500 or more but less than \$10,000, in which case it is a Class D felony; (c) \$10,000 or more is a class C felony.</p>	<p>1(a)-Possibly AF if sentence of more than 364 days imposed and loss to victim exceeds \$10,000. 1(b)(1)-Probably not AF. 1(b)(2)-Probably not AF. 1(b)(3)-Probably not AF. 1(b)(4)-Possibly AF if sentence of more than 364 days imposed and loss to victim exceeds \$10,000. 1(c)-Possibly AF if loss to victim exceeds \$10,000.</p>	<p>1(a)-CIMT. 1(b)(1)-(3)-Probably not CIMT. 1(b)(4)-CIMT. 1(c)-Probably CIMT.</p>		<p>Divisible statute. 1(b) (1),(2), &amp;(3) may be safer pleas to avoid AF and CIMT (no fraud, deprivation or intent to deprive).</p> <p>Obtain sentence at 364 days or less to avoid AF (theft); specify dollar amount under \$10,000 to avoid AF(Fraud).</p> <p>If charged with Class C or D offense, plead to <i>attempt</i> (KRS 506.010(4)(d) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less. (Note that to avoid AF fraud dollar amount must still be under \$10,000 even if charge reduced to 'attempt.' See <i>Matter of Onyido</i>, 22 I &amp; N Dec. 552 (BIA 1999)).</p> <p>To avoid CIMT, consider alternative offenses such as Disorderly Conduct or Trespass.</p>

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 514.065	Possession, use, or transfer of device for theft of tele-communications services—Class A misdemeanor; Class D felony if the defendant has previously been convicted of violating the section.	2(a)-Not AF; 2(b)-Probably not AF.	2(a)-Probably Not CIMT; 2(b)-Probably not CIMT.		To foreclose possibility of AF, obtain sentence of 364 days or less.
KRS 514.070	Theft by failure to make required disposition of property— Class A misdemeanor unless value is over \$500 and less than \$10,000, which is Class D felony; Over \$10,000 is Class C felony.	AF(Fraud) if loss to victim exceeds \$10,000.	CIMT unless offense qualifies as <i>petty offense exception</i> (misd. punishable by less than one year with less than six month sentence imposed).		If charged with Class A obtain sentence of less than six months to qualify as <i>petty offense exception</i> .  To avoid CIMT, consider alternative offenses such as Disorderly Conduct or Trespass.
KRS 514.080	Theft by extortion— Class A misdemeanor unless value of property obtained is: \$500 or more but less than \$10,000, in which case it is Class D misdemeanor; over \$10,000 is a Class C felony.	1(a)-AF; 1(b)-If sentence of more than 364 days imposed AF(Theft); also probably AF (COV) See <i>James v. United States</i> , 550 U.S. 192, 196 (2007) (one could imagine an extortion scheme where the [...] risk of physical injury to another approaches zero. But that does not mean that the offense [...] is categorically nonviolent); 1(c)- see above. 1(d)- see above.	CIMT.		Obtain sentence of 364 days or less to avoid AF (Theft) or (COV) conviction.

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 514.090	Theft by labor already rendered— Class A misdemeanor unless the value is over \$500 or more but less than \$10,000, in which case it is a Class D felony; If amount is \$10,000 or more, it is a Class C felony.	1(e)- see above. 1(f)- see above. Probably not AF. See <i>United States v. Espinoza-Cano</i> , 456 F.3d 1126, 1131 (9th Cir. 2006)(Theft of labor generally not a 'Theft' offense).	CIMT.		To avoid AF, obtain sentence of 364 days or less.  If charged with Class A, obtain total sentence of less than six months to qualify as <i>petty offense exception</i> .  To avoid CIMT, consider alternative offenses such as Disorderly Conduct or Trespass.
KRS 514.100	Unauthorized use of automobile or other propelled vehicle— Class A misdemeanor unless Defendant has previously been convicted of the offense or of KRS 514.030 for having stolen an automobile, in which case it is Class D felony.	Probably AF(Theft) if sentence of more than 364 days imposed.	Probably not CIMT if there is no showing that a "permanent taking" was involved.		
KRS 514.110	Receiving Stolen Property— Class A misdemeanor unless The value is \$500 or more but less than \$10,000, which is Class D felony; the value is \$10,000 or more, which is Class C felony; the property is a firearm, which is Class D felony; the property is	3(a)-Possibly not AF See Edgar Uribe-Rocha, A.K.A., Edgar Uribe, A018 620 522 (October 28, 2010)((Westlaw cite: 2010 WL 4500864)(unpublished opinion)(“the <i>mens rea</i> of ‘knowledge or belief’ is an essential element of a ‘receipt of stolen property’ aggravated felony and does not include a ‘reason to believe’ or equivalent.”);	Probably not CIMT. See <i>Matter of K-</i> , 2 I&N Dec. 90 (BIA 1944)(finding that receipt of stolen goods without knowledge they are stolen or without intent to deprive owner of	3(c)-FO	To avoid FO, avoid conviction under 3(c).  A conviction under 3(d) will likely be a ‘drug trafficking’ aggravated felony.  To potentially avoid AF, allocute to “having a reason to believe” that property was stolen rather than “knowing that it has been stolen.”



STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	<p>anhydrous ammonia, regardless of value, which is Class D felony unless proven to be for manufacture of meth, which makes it a Class B for first offense, Class A for each subsequent offense.</p>	<p><u>Knowledge or belief defined: Matter of Bahata, 22 I&amp;N Dec. 1381, 1385 (BIA 2000)</u>(The general rule is that there is an aggravated felony where there is knowledge or "evidence demonstrating that a reasonable person would have realized that the goods had been stolen.").</p> <p>3(b)-Possibly not AF (see above);</p> <p>3(c)-Possibly not be AF (see above);</p> <p>3(d)-Probably AF (Drug trafficking).</p>	<p>his possession is not a crime involving moral turpitude).</p>		
<p>KRS 514.120</p>	<p>Obscuring identity of machine or other property—Class A misdemeanor unless value of property is more than \$500 but less than \$10,000, in which case it is Class D felony; or more than \$10,000 which is Class C felony.</p>	<p>(a)-Not AF. (b)-Not AF.</p>	<p>Not CIMT.</p>		
<p>KRS 514.140</p>	<p>Theft of mail matter—Class D felony.</p>	<p>1(a)-AF (Theft) if sentence of more than 364 days imposed; 1(b)-AF (Theft) if sentence of more than 364 days imposed; AF (Fraud) if amount exceeds \$10,000. 1(c)-AF(Theft) if sentence of more than 364 days imposed; or AF (Fraud) if amount</p>	<p>CIMT.</p>		<p>To avoid AF, plead to <i>attempt</i> (KRS 506.010(4)(d)) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.</p>

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 514.150	Possession of stolen mail matter—Class D Felony.	<p>exceeds \$10,000.</p> <p>(d)AF(Theft) if sentence of more than 364 days imposed;</p> <p>(e) AF(Theft) if sentence of more than 364 days imposed;</p> <p>(f) AF(Theft) if sentence of more than 364 days imposed.</p> <p>Possibly not AF. See Edgar Uribe-Rocha, A.K.A., Edgar Uribe, A018 620 522 (October 28, 2010)((Westlaw cite: 2010 WL 4500864)(unpublished opinion)(“the <i>mens rea</i> of ‘knowledge or belief’ is an essential element of a ‘receipt of stolen property’ aggravated felony and does not include a ‘reason to believe’ or equivalent.”)</p> <p><u>Knowledge or belief defined:</u> <i>Matter of Bahita</i>, 22 I&amp;N Dec. 1381, 1385 (BIA 2000)(The general rule is that there is an aggravated felony where there is knowledge or “evidence demonstrating that a reasonable person would have realized that the goods had been stolen.”)</p>	Probably not CIMT. See <i>Matter of K-</i> , 2 I&N Dec. 90 (BIA 1944)(finding that receipt of stolen goods without knowledge they are stolen or without intent to deprive owner of his possession is not a crime involving moral turpitude).		To potentially avoid AF, allocute to “having a reason to believe” that property was stolen rather than “knowing that it has been stolen.”
KRS 514.160	Theft of identity—Class D felony.	1(a)- Possibly not AF. <i>Matter of Garcia-Madruga</i> , 24 I&N Dec. 436, 438-40 (BIA 2008)(Holding that “to be considered an aggravated	CIMT.		To further avoid AF, do not let ROC reflect that defendant knew the identification belonged to another person. See <i>Flores-Figueroa v. United States</i> , 556 U.S. 646, 647 (2009)(Holding that Government

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
		felony, a theft offense requires that the stolen property be obtained from the owner "without consent."") 1(b)AF (Fraud) if amount is \$10,000 or more. 1(c)AF(Fraud) if amount is over \$10,000. 1(d)Possibly not AF (see section 1(a) above). 1(e)Possibly not AF (see section 1(a) above).			must show that the defendant knew that the means of identification at issue belonged to another person where adverb 'knowingly' applies to the entire action in the sentence).
KRS 514.170	Trafficking in stolen identities—Class C felony.	Could be AF(Forgery)or (Counterfeiting) if ROC reflects forgery or counterfeiting; otherwise possibly not AF because offense does not require property be obtained from owner without consent. <i>Matter of Garcia-Madruga</i> , 24 I&N Dec. 436, 438-40 (BIA 2008).	CIMT.		To avoid AF, allocute to sell, transfer, purchase, or possess, <u>not</u> manufacture.
<b>Chapter 515: ROBBERY</b>					
KRS 515.020	Robbery— First degree— Class B felony.	AF(COV).	CIMT.	1(b)-Probably FO if ROC reflects use of firearm.	Do not let ROC reflect use of firearm.
KRS 515.030	Robbery—Second degree—Class C felony.	AF(COV).	CIMT.	Probably FO if ROC reflects use of firearm.	Do not let ROC reflect use of firearm. Plead to <i>attempt</i> to bring down to A misd and obtain sentence of 364 days or less to avoid AF (COV).
<b>Chapter 516: FORGERY AND RELATED OFFENSES</b>					
KRS 516.020	Forgery—First degree— Class C felony.	AF.	CIMT.		If charged with Class C or D offense, plead to <i>attempt</i> (KRS 506.010) which will reduce it to

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
					Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 516.030	Forgery—Second degree—Class D felony.	AF.	CIMT.		If charged with Class C or D offense, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 516.040	Forgery—Third degree—Class A misdemeanor.	Not AF if sentence of 364 days or less imposed.	CIMT.		To avoid CIMT, plead to <i>attempt</i> (KRS 506.010) to reduce to Class B misdemeanor or otherwise obtain sentence of less than six months ( <i>petty offense exception</i> ).
KRS 516.050	Criminal Possession of forged instrument—First degree—Class C felony.	AF.	CIMT.		If charged with Class C or D offense, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 516.060	Criminal possession of forged instrument—Second degree—Class D felony.	AF.	CIMT.		If charged with Class C or D offense, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 516.070	Criminal Possession of forged instrument—Third degree—Class A misdemeanor.	Not AF if sentence of 364 days or less imposed.	CIMT.		To avoid CIMT, Plead to <i>attempt</i> (KRS 506.010) to reduce to Class B misdemeanor or otherwise obtain sentence of less than six months ( <i>petty offense exception</i> ).
KRS 516.090	Possession of forgery device—Class D felony.	AF.	1(a)-Probably not CIMT. 1(b)-CIMT.		Divisible statute—to possibly avoid CIMT, section (a) may be safer because intent not an element of the offense.  To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS	Criminal simulation—	Not AF unless loss to victim	CIMT.		

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
516.108	First degree—Class D felony.	exceeds \$10,000.			
KRS 516.110	Criminal simulation—Second degree—Class A misdemeanor.	1(a)-Not AF unless loss to victim exceeds \$10,000; 1(b)-Not AF unless loss to victim exceeds \$10,000; 1(c)-Not AF unless loss to victim exceeds \$10,000.	CIMT.		Avoid possible AF by obtaining sentence of 364 days or less.  Ensure that ROC does not reflect loss to victim that exceeds \$10,000.
KRS 516.120	Using Slugs—First degree—Class D Felony	Not AF.	CIMT.		
KRS 516.130	Using Slugs—Second Degree—Class B Misdemeanor	Not AF.	1(a)- CIMT; 1(b)- Probably CIMT.		Divisible statute-section 1(b) may be safer to avoid CIMT.
<b>Chapter 517: BUSINESS AND COMMERCIAL FRAUDS</b>					
KRS 517.020	Deceptive business practices—Class A misdemeanor.	Not AF unless loss to victim exceeds \$10,000.	1(a)-Probably CIMT. 1(b)-Probably CIMT. 1(c)-Probably CIMT. 1(d)-Probably CIMT. 1(e)-Probably CIMT.		
KRS 517.030	False Advertising—Class A Misdemeanor	Not AF.	Probably CIMT.		
KRS 517.040	Bait Advertising—Class A Misdemeanor	Not AF.	Probably not CIMT.		
KRS 517.050	Falsifying Business Records—Class A Misdemeanor	AF if loss to victim exceeds \$10,000.	CIMT.		
KRS 517.060	Defrauding Secured Creditors	AF if loss to victim exceeds \$10,000 (Class C felony).	Probably CIMT.		
KRS 517.070	Defrauding Judgment Creditors—Class A	AF if loss exceeds \$10,000.	CIMT.		

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 517.080	Misdemeanor Fraud in Insolvency— Class A Misdemeanor	AF if loss exceeds \$10,000.	(a)- Probably CIMT. (b)-Probably CIMT (c)-Probably CIMT.		
KRS 517.090	Issuing False Financial Statement—Class A Misdemeanor	AF if loss exceeds \$10,000.	CIMT.		
KRS 517.100	Receiving Deposits in Failing Financial Institution—Class D Felony	Not AF.	Possibly CIMT.		
KRS 517.110	Misapplication of Entrusted Property— Class A Misdemeanor	Probably AF if sentence of 365 days or more imposed.	CIMT.		To avoid possibility of AF (Theft), obtain sentence of 364 days or less.
KRS 517.120	Operating a Sham or Front Company—Class D Felony	Not AF.	Not CIMT.		
<b>Chapter 518: MISCELLANEOUS CRIMES AFFECTING BUSINESSES; OCCUPATIONS, AND PROFESSIONS</b>					
KRS 518.020	Commercial Bribery— Class A Misdemeanor	Not AF unless sentence of 365 days or more imposed.	CIMT.		To avoid AF, obtain sentence of 364 days or less.
KRS 518.030	Receiving Commercial Bribe—Class A Misdemeanor	Not AF unless sentence of 365 days or more imposed.	CIMT.		To avoid AF, obtain sentence of 364 days or less.
KRS 518.040	Sports Bribery—Class D Felony	AF (commercial bribery).	CIMT.		To avoid AF, plead to <i>attempt</i> and obtain sentence of 364 days or less.
KRS 518.050	Receiving Sports Bribery—Class D Felony	Possibly AF (commercial bribery).	CIMT.		To foreclose possibility of AF, plead to <i>attempt</i> and obtain sentence of 364 days or less.
KRS 518.060	Tampering with or Rigging Sports Contest— Class A Misdemeanor	(a) Probably not AF; (b) Possibly AF if loss to victim exceeds \$10,000.	Not CIMT.		
KRS	Ticket Scalping—a	Not AF.	Not CIMT.		

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
518.070	Violation				
KRS 518.090	Assault of Sports Official—Class A misdemeanor, Class D felony for second or subsequent offense or if defendant assembles five (5) or more persons to assault the official.	Class A misdemeanor- Not AF if sentence of 364 days or less imposed; Class D felony-AF (COV)	Possibly CIMT. See <i>Matter of Danesh</i> , 19 I & N Dec. 669, 670 (BIA 1988)(Holding that the fact that the assault was on a peace officer was a key element in establishing a CIMT.)		
<b>Chapter 519: OBSTRUCTION OF PUBLIC ADMINISTRATION</b>					
KRS 519.020	Obstructing Governmental Operations—Class A Misdemeanor	AF if sentence of 365 days or more is imposed.	Probably not CIMT.		To avoid AF, obtain sentence of 364 days or less
KRS 519.030	Compounding a Crime—Class A Misdemeanor	AF if loss exceeds \$10,000 or if sentence of 365 days or more is imposed. Not AF.	Not CIMT.	KRS 519.030	Compounding a Crime—Class A Misdemeanor
KRS 519.040	Falsely Reporting an Incident—Class A Misdemeanor		(a)-Possibly CIMT. (b)-Probably CIMT. (c)-Probably CIMT. (d)-Probably CIMT. (e)-Probably CIMT. See <i>Matter of Kochiani</i> , 24 I&N Dec. 128, 130-		

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
			<p>131 (BIA 2007)(Moral turpitude[...] inheres in crimes that involve inherently deceptive conduct and that result in the impairment of governmental functions or other significant societal harm, whether or not the specific intent to defraud is an element of the crime).</p>		
KRS 519.050	Impersonating a Public Servant—Class A Misdemeanor	AF(Fraud) if loss to victim exceeds \$10,000.	Probably not CIMT. See <i>Matter of H</i> , 1 I&N Dec. 509 (BIA 1943)(The act of impersonating a Federal officer in and of itself does not involve moral turpitude).		
KRS 519.055	Impersonating a Peace Officer—Class D Felony	AF(Fraud) if loss to victim exceeds \$10,000.	Probably not CIMT. See <i>Matter of H</i> , 1 I&N Dec. 509 (BIA 1943)(The act of		



STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 519.060	Tampering with Public Records—Class D Felony	AF(Fraud) if loss to victim exceeds \$10,000.	impersonating a Federal officer in and of itself does not involve moral turpitude). Probably CIMT.		
KRS 519.070	Tampering with a Prisoner Monitoring Device—Class D Felony	Possibly AF (Obstruction of justice) <i>See In Re. Cesar Duran-Morales</i> , 2008 WL 1924674 (BIA 2008) (“Escaping or attempting to escape from custody imposed as a result of being arrested for or charged with a felony may be construed as obstruction of justice...”).	Probably CIMT <i>See Matter of Kochilani</i> , 24 I&N Dec. 128, 130-131 (BIA 2007)(Moral turpitude[...] inheres in crimes that involve inherently deceptive conduct and that result in the impairment of governmental functions or other significant societal harm, whether or not the specific intent to defraud is an element of the crime).		To avoid AF, plead to <i>attempt</i> and obtain sentence of 364 days or less.
<b>Chapter 520: ESCAPE AND OTHER OFFENSES RELATING TO CUSTODY</b>					
KRS 520.015	Attempting to escape from penitentiary—Class	Probably AF (COV) if sentence of more than 364 days	Possibly CIMT based on		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor,

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 520.020	D felony.  Escape—First degree— Class C felony.	imposed. <i>United States v. Aragon</i> , 983 F.2d 1306, 1313 (4 <sup>th</sup> Cir. 1993) (“the crime of assisting or instigating the escape or attempted rescue of a prisoner is a crime of violence as defined in § 16(b)”).	whether aggravating factors exist. See <i>Matter of B-</i> , 5 I&N Dec. 538 (BIA 1953)(absent aggravating circumstances, “an attempt to escape from prison [...] is not a crime involving moral turpitude.”)		and obtain sentence of 364 days or less.  To avoid CIMT, keep ROC void of details that could be construed as aggravating, such as an assault.
KRS 520.030	Escape—Second degree—Class D felony.	Probably AF(Obstruction of justice) See <i>Cesar Duran-Morales</i> , A4177177 (April 10, 2008 BIA)(Westlaw cite: 2008 WL 1924674)(unpublished opinion) (“Escaping or attempting to escape from custody imposed as a result of being arrested for or charged with a felony may be construed as obstruction of justice...”); <u>OR</u> AF (COV) if sentence of 364 or more days imposed.	Possibly CIMT based on whether aggravating factors exist See <i>Matter of B-</i> , 5 I&N Dec. 538 (BIA 1953)(absent aggravating circumstances, “an attempt to escape from prison [...] is not a crime involving moral turpitude.”)		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.  To avoid CIMT, keep ROC void of details that could be construed as aggravating, such as an assault.
KRS 520.030	Escape—Second degree—Class D felony.	Probably AF(Obstruction of justice) See <i>Cesar Duran-</i>	Could be CIMT based on		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor,

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
		<p>Morales, A41777177 (April 10, 2008 BIA)(Westlaw cite: 2008 WL 1924674)(unpublished opinion)("Escaping or attempting to escape from custody imposed as a result of being arrested for or charged with a felony may be construed as obstruction of justice...");  or  AF(COV) if sentence of 364 or more days imposed.</p>	<p>whether aggravating factors exist. <i>Matter of B-</i>, 5 I&amp;N Dec. 538 (BIA 1953)(absent aggravating circumstances, "an attempt to escape from prison [...]is not a crime involving moral turpitude.")</p>		<p>and obtain sentence of 364 days or less.</p> <p>To avoid CIMT, keep ROC void of details that could be construed as aggravating, such as an assault.</p>
KRS 520.040	Escape—Third degree—Class B misdemeanor.	Not AF.	Probably not CIMT.		
KRS 520.050	Promoting contraband—First degree—Class D felony.	Probably not AF.	Probably not CIMT.	Possibly CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.	Foreclose possibility of CSO by affirmatively allocating to non-controlled substance.
KRS 520.060	Promoting contraband—Second degree—Class A misdemeanor.	Not AF.	Probably not CIMT.	Possibly CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.	
KRS	Bail Jumping—First	AF(Bail jumping) if ROC	Not CIMT.		

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
520.070	degree—Class D felony.	<p>establishes underlying charge involves a sentence of two years or more imprisonment that could be imposed;</p> <p>OR</p> <p>an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more. 8 U.S.C. 1101(a)(43)(Q) &amp; (T).</p>			
KRS 520.080	Bail Jumping—Second degree—Class A misdemeanor.	Not AF.	Not CIMT.		
KRS 520.090	Resisting Arrest—Class A Misdemeanor	<p>1(a)-AF(COV) if sentence of 364 days or more imposed;</p> <p>1(b)-Not AF.</p>	<p>Probably CIMT. See <i>Matter of Danesh</i>, 19 I&amp;N Dec. 669 (BIA 1988)(Agg Assault conviction was a crime involving moral turpitude because “bodily injury” was an essential element of the pertinent statute, which indicated that sufficient force must have been used to cause harm to the police officer”)</p>		<p>Divisible statute-avoid AF by pleading to section 1(b).</p> <p>Consider alternative plea to Assault 4 (KRS 508.030) or Disorderly conduct (KRS 525.055).</p>

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 520.095	Fleeing or evading police—First degree—Class D felony.	1(a)(1)-Possibly AF (COV); 1(a)(2)-Probably AF(COV); 1(a)(3)-Possibly AF(COV). 1(a)(4)- AF(COV).  1(b)(1)-Probably not AF. 1(b)(2)-AF (COV).	1(a)(1)-Possibly not CIMT; 1(a)(2)-Probably CIMT; 1(a)(3)-Probably not CIMT; 1(a)(4)-CIMT.  1(b)(1)-Probably CIMT; 1(b)(2)-CIMT.	1(a)(1)-CODV. 1(b)(1)-CODV.	Divisible statute-do not state which section defendant is pleading to potentially avoid CIMT or AF.  Safer to plead 1(a)(3) to possibly avoid CIMT.  To possibly avoid AF, safer to plead to 1(a)(1), 1(a)(2), 1(a)(3)(safest), and 1(b)(1).
KRS 520.100	Fleeing or evading police—Second degree—Class A misdemeanor.	Not AF.	Probably not CIMT.		
KRS 520.120	Hindering prosecution or apprehension—First degree—Class D felony.	Probably AF(Obstruction of justice).	Probably CIMT.		
KRS 520.130	Hindering Prosecution or Apprehension —Second Degree—Class A Misdemeanor	Probably AF(Obstruction of justice).	Probably CIMT.		
<b>Chapter 521: BRIBERY AND CORRUPT INFLUENCES</b>					
KRS 521.020	Bribery of public servant—Class C felony.	1(a)-Probably not AF. 1(b)-Probably not AF.	Probably CIMT.		
KRS 521.030	Soliciting unlawful compensation—Class B misdemeanor.	Not AF.	Probably CIMT.		
KRS 521.040	Unlawful compensation for assistance in public matters—Class A misdemeanor.	1(a)-Not AF. 1(b)-Not AF.	1(a)-Probably not CIMT. 1(b)-Probably CIMT.		
KRS 521.050	Providing a pecuniary benefit for bribery of a public servant—Class C felony.	Not AF.	Probably not CIMT.		

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
<b>Chapter 522: ABUSE OF PUBLIC OFFICE</b>					
KRS 522.020	Official misconduct—First degree—Class A misdemeanor.	1(a)-Not AF; 1(b)-Not AF; 1(c)-Not AF.	1(a)-Not CIMT; 1(b)-Probably not CIMT; 1(c)-Not CIMT.		To foreclose any possibility of AF, obtain sentence of 364 or fewer days.
KRS 522.030	Official misconduct—Second degree—Class B misdemeanor.	1(a)-Not AF; 1(b)-Not AF; 1(c)-Not AF.	1(a)-Not CIMT; 1(b)-Not CIMT; 1(c)-Not CIMT.		
KRS 522.040	Misuse of Confidential Information—Class D Felony	1(a)-Not AF. 1(b)-Not AF. 1(c)-Not AF.	1(a)-Not CIMT. 1(b)-Not CIMT. 1(c)-Not CIMT.		
KRS 522.050	Abuse of public trust—Penalties—Class D felony if value of public property is less than \$10,000; Class C felony if value of public money is \$10,000 or more but less than \$100,000; Class B felony if value of public money is \$100,000 or more.	AF(Fraud) if loss to victim exceeds \$10,000.	CIMT.		To avoid AF, plead to Class D offense, where loss to victim is less than \$10,000 or if unable to obtain conviction for Class D felony, do not let ROC for Class C felony, allocate to \$10,000 so that amount will not exceed \$10,000.
<b>Chapter 523: PERJURY AND RELATED OFFENSES</b>					
KRS 523.020	Perjury—First degree—Class D felony.	AF(Perjury).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 523.030	Perjury—Second degree—Class A misdemeanor.	AF(Perjury) if sentence of more than 364 days imposed.	CIMT.		Obtain sentence of 364 or fewer days to avoid AF.
KRS 523.040	False swearing—Class B misdemeanor.	Not AF.	Possibly CIMT.		
KRS 523.100	Unsworn falsification to authorities—Class B misdemeanor.	1(a)-Not AF; 1(b)-Not AF; 1(c)-Not AF.	1(a)- CIMT; 1(b)-CIMT; 1(c)-CIMT.		

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 523.110	Giving peace officer a false name or address—Class B misdemeanor.	Not AF.	CIMT.		
<b>Chapter 524: INTERFERENCE WITH JUDICIAL ADMINISTRATION</b>					
KRS 524.020	Bribing a witness—Class D felony.	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 524.030	Bribe receiving by witness—Class D felony.	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 524.040	Intimidating a participant in the legal process—Class D felony.	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 524.050	Tampering with a witness—Class D felony.	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 524.055	Retaliating against a participant in the legal process—Class D felony.	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 524.060	Bribing a juror—Class D felony.	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 524.070	Bribe Receiving by a Juror—Class D Felony	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 524.090	Jury tampering—Class D felony.	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 524.100	Tampering with Physical Evidence—Class D Felony	AF(Obstruction of justice).	CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 524.110	Simulating legal process—Class B Misdemeanor	Not AF unless loss to victim exceeded \$10,000.	Probably CIMT.		

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 524.130	Unauthorized practice of law—Class B misdemeanor.	Not AF.	Not CIMT.		
<b>Chapter 525: RIOT, DISORDERLY CONDUCT, AND RELATED OFFENSES</b>					
KRS 525.020	Riot—First degree—Class D felony.	AF(COV).	Probably not CIMT. See <i>In the Matter of O</i> , 4 I & N Dec. 301 (BIA 1951)(Not CIMT if the act is not “premeditated.”)		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 525.030	Riot—Second degree—Class A Misdemeanor	Not AF.	Probably not CIMT. See <i>In the Matter of O</i> , 4 I & N Dec. 301 (BIA 1951)(Not CIMT if the act is not “premeditated.”)		Obtain sentence of 364 days or less to ensure that conviction is not an AF.
KRS 525.040	Inciting to Riot—Class A Misdemeanor	Not AF.	Probably not CIMT. See <i>In the Matter of O</i> , 4 I & N Dec. 301 (BIA 1951)(Not CIMT if the act is not “premeditated.”)		Obtain sentence of 364 days or less to ensure that conviction is not an AF.
KRS 525.050	Unlawful assembly—Class B misdemeanor.	Not AF.	Not CIMT.		
KRS 525.055	Disorderly conduct—First degree—Class A misdemeanor.	Not AF.	Not CIMT.		
KRS 525.060	Disorderly conduct—Second degree—Class B misdemeanor.	Not AF.	Not CIMT.		
KRS 525.070	Harassment—Class B misdemeanor.	Not AF (so long as sentence does not exceed 364 days).	1(a)-Probably CIMT;	If the victim was a current or	Divisible statute as to CIMT—do not allocate to 1(f)(2), especially not ‘theft.’



STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
			1(b)-Probably CIMT; 1(c)-Not CIMT; 1(d)-Not CIMT; 1(e)-Not CIMT; 1(f)(1)-Probably CIMT; 1(f)(2)-Not CIMT; 1(f)(3)-Not CIMT.	former spouse or similarly situated individual, might be CODV.	Also safer to avoid 1(a) &(b).
KRS 525.080	Harassing communications—Class B misdemeanor.	Not AF.	Probably not CIMT.		
KRS 525.090	Loitering—a violation.	Not AF.	Not CIMT.	1(b)-Could be CSO if ROC establishes a controlled substance as defined in 21 U.S.C. § 802.	Do not let ROC name a controlled substance to avoid CSO.
KRS 525.100	Public intoxication—Class B misdemeanor.	Not AF.	Not CIMT.	Could be CSO if ROC establishes a controlled substance as defined in 21 U.S.C. §802.	Do not let ROC name a controlled substance to avoid CSO.
KRS 525.105	Desecration of venerated objects—First degree—Class C felony.	Not AF.	Possibly CIMT.		
KRS 525.110	Desecration of venerated objects—Second degree—Class A misdemeanor.	Not AF.	Probably not CIMT.		
KRS 525.113	Institutional vandalism—Class D felony.	Probably AF (COV).	Probably CIMT. See Rafal Baczewski, A95		Divisible statute as to AF: allocate to “desecrate” or “deface” to potentially avoid AF (COV).

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 525.115	Violating graves—Class D felony.	1(a)- Probably AF (COV); 1(b)-Probably AF (COV); 1(c)- Probably AF (COV).	946453 (January 12, 2007 BIA) (Westlaw cite: 2007 WL 275860) (Unpublished opinion) (“Any hate crime is, by its very nature, contrary to the accepted rules of morality and the duties owed between persons or to society in general.”)		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.
KRS 525.120	Abuse of a corpse--Class A misdemeanor, unless the act attempted or committed involved sexual intercourse or deviate sexual intercourse with the corpse or the deliberate failure to prepare, bury, or cremate a corpse after the acceptance of remuneration in accordance with any contract negotiated, in which case it is a Class D felony.	AF(Fraud) if prosecuted as failure to perform contract with acceptance of remuneration and loss to victim exceeds \$10,000.	Probably CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor, and obtain sentence of 364 days or less.  To avoid AF (Fraud) affirmatively allocate to loss to victim that is less than \$10,000.
KRS	Cruelty to animals—First	Probably not AF.	Not CIMT.		To foreclose possibility of AF(COV) obtain

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
525.125 KRS	degree—Class D felony. Cruelty to animals—				sentence of 364 days or less.
525.130	Second degree—Class A misdemeanor.	1(a)-Could be AF(COV) if sentence of more than 364 days imposed; 1(b)-Not AF; 1(c)-Not AF(COV).	Probably CIMT.		1(a)-To foreclose possibility of AF, obtain sentence of 364 days or less; let ROC reflect that animal was not “the property of another.”
KRS 525.135	Torture of dog or cat— Class A misdemeanor for the first offense and a Class D felony for each subsequent offense if the dog or cat suffers physical injury as a result of the torture, and a Class D felony if the dog or cat suffers serious physical injury or death as a result of the torture.	Class A misd-Not AF (COV) unless sentence of 364 days or greater imposed.  Class D felony-Probably AF(COV).	Probably CIMT.		Class A misd-obtain sentence of 364 days or less.  To possibly avoid AF (COV), let ROC reflect that animal was not “the property of another.”
KRS 525.140	Obstructing a highway or other public passage— Class B misdemeanor.	Not AF.	Not CIMT.		
KRS 525.145	Disrupting meetings and processions—First degree—Class A misdemeanor.	Not AF.	Probably not CIMT.		
KRS 525.150	Disrupting meetings and processions—Class B misdemeanor.	Not AF.	Not CIMT.		
KRS 525.155	Interference with a funeral—Class B misdemeanor.	Not AF.	Not CIMT.		
KRS 525.160	Failure to disperse—Class B misdemeanor.	Not AF.	Not CIMT.		
KRS 525.200	Assault on a service animal—First degree—	Probably AF (COV).	Probably CIMT.		To avoid AF, plead to <i>attempt</i> (KRS 506.010) which will reduce it to Class A misdemeanor,

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	Class D felony.				and obtain sentence of 364 days or less.  To possibly avoid AF (COV), let ROC reflect that animal was not "the property of another."
KRS 525.205	Assault on a service animal—Second degree—Class B misdemeanor.	Not AF.	Probably CIMT.		
<b>Chapter 526: EAVESDROPPING AND RELATED OFFENSES</b>					
KRS 526.020	Eavesdropping—Class D felony.	Not AF.	Not CIMT.		
KRS 526.030	Installing eavesdropping device—Class D felony.	Not AF.	Not CIMT.		
KRS 526.040	Possession of eavesdropping device—Class A misdemeanor.	Not AF.	Not CIMT.		
KRS 526.050	Tampering with private communications—Class A misdemeanor.	Not AF.	Not CIMT.		
KRS 526.060	Divulging illegally obtained information—Class A misdemeanor.	Not AF.	Not CIMT.		
<b>Chapter 527: OFFENSES RELATING TO FIREARMS AND WEAPONS</b>					
KRS 527.020	Carrying Concealed Deadly Weapon—Class A misdemeanor, unless the defendant has been previously convicted of a felony in which a deadly weapon was possessed, used, or displayed, in which case it is a Class D felony.	Class A misd-Not AF;  Class D felony-AF(Firearm offense) See <i>Matter of Vasquez-Muniz</i> , 23 1&N Dec. 207 (BIA 2002)(Possession of a firearm by a convicted felon is an aggravated felony as described in 18 U.S.C. § 922(g)(1)).	Probably not CIMT. See Eduardo Zuniga-Gallardo, A098 939 09 (January 2, 2009 BIA)(Westlaw cite: 2009 WL 263114) (Unpublished opinion)	FO offense if ROC establishes firearm or destructive device as defined in 18 U.S.C. § 921(a)(3).	If charged with Class A misdemeanor, obtain sentence of 364 days or less.

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 527.030	Defacing a firearm—Class A misdemeanor.	Not AF.	Probably not CIMT.	Probably FO if record of conviction establishes firearm or destructive device (as defined in 18 USC § 921(a)).	
KRS 527.040	Possession of firearm by convicted felon—Class D felony unless the firearm possessed is a handgun in which case it is a Class C felony.	AF(Firearm offense) See <i>Matter of Vasquez-Muniz</i> , 23 I&N Dec. 207 (BIA 2002)(Possession of a firearm by a convicted felon is an aggravated felony as described in 18 U.S.C. § 922(g)(1)).	Probably not CIMT. See Eduardo Zuniga-Gallardo, A098 939 09 (January 2, 2009 BIA)(Westlaw cite: 2009 WL 263114)	FO if record of conviction establishes firearm or destructive device (as defined in 18 U.S.C. 921(a)).	

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 527.050	Possession of defaced firearm—Class A misdemeanor.	Not AF.	<p>(Unpublished opinion) (“Typically convictions for unlawfully possessing a concealed firearm have not been held to constitute crimes involving moral turpitude absent evidence that the alien unlawfully possessed the firearm with the intent of harming someone.”)</p> <p>Not CIMT.</p>	FO if record of conviction establishes firearm or destructive device (as defined in 18 U.S.C. §921(a)).	
KRS 527.070	Unlawful Possession of a Weapon on School Property; Posting of Sign; exemptions—Class D Felony	Not AF.	Probably not CIMT. See Eduardo Zuniga-Gallardo, A098 939 09 (January 2, 2009 BIA)(Westlaw cite: 2009 WL	FO if record of conviction establishes firearm or destructive device (as defined in 18 USC	Divisible statute—allocute to ‘booby trap device’ or ‘deadly weapon’ (not a firearm or dangerous weapon as defined in 26 U.S.C. § 5845) to potentially avoid FO offense.

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 527.080	Using restricted ammunition during the commission of a crime— Penalties—(a) Class D felony if no shot is fired; (b) Class C felony if a shot is fired and no person is killed or wounded thereby; (c) Class B felony if a shot is fired and a person other than the defendant or an accomplice of the defendant is wounded by the shot; and (d) A Class A felony if a	AF(COV) if the underlying felony is one that, “by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense” under 18 U.S.C.§16(b).	263114) (Unpublished opinion) (“Typically convictions for unlawfully possessing a concealed firearm have not been held to constitute crimes involving moral turpitude absent evidence that the alien unlawfully possessed the firearm with the intent of harming someone.”) Probably CIMT.	921(a)).  FO if record of conviction establishes firearm or destructive device (as defined in 18 USC 921(a)).	To potentially avoid AF(COV), allocate to commission of a crime in which there is not a substantial risk that physical force against person or property of another.

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	shot is fired and a person other than the defendant or an accomplice of the defendant is killed by the shot.				
KRS 527.100	Possession of handgun by minor—First offense class A misdemeanor; each subsequent Offense Class D felony.	Class A misd- Probably not AF;  Class D felony—If ROC establishes an offense akin to one described in 18 U.S.C. 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r), 18 U.S.C. 924 (b) or (h), or 26 U.S.C. 5861, probably AF(Firearm offense).	Not CIMT.	FO if record of conviction establishes firearm or destructive device (as defined in 18 USC 921(a)).	
KRS 527.110	Unlawfully providing handgun to juvenile or possess handgun —Class D felony.	1(a)- Not AF. 1(b)- If ROC establishes an offense akin to one described in 18 U.S.C. 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r), 18 U.S.C. 924 (b) or (h), or 26 U.S.C. 5861, might be AF (firearm offense).	Probably not CIMT.	FO if record of conviction establishes firearm or destructive device (as defined in 18 USC 921(a)).	To potentially avoid AF, not let ROC reflect that offense was in violation of KRS 527.040 (Possession of firearm by convicted felon).
KRS 527.200	Use of a weapon of mass destruction—First	Probably AF(COV).	Probably CIMT.	FO if record of conviction	Allocute to form of 'destructive device' that does not meet the definition of 26 U.S.C. §



STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	degree—Class A felony.			establishes firearm or destructive device (as defined in 18 USC 921(a)).	5845 to potentially avoid firearm offense (FO).
KRS 527.205	Use of a weapon of mass destruction—Second degree—Class B felony.	Probably AF (COV).	CIMT.	FO if record of conviction establishes firearm or destructive device (as defined in 18 USC 921(a)).	Allocute to form of 'destructive device' that does not meet the definition of 26 U.S.C. § 5845 to potentially avoid firearm offense (FO).
KRS 527.210	Use of weapon of mass destruction—Third degree—Class C felony.	Probably AF (COV).	CIMT.	FO if record of conviction establishes firearm or destructive device (as defined in 18 USC 921(a)).	Allocute to form of 'destructive device' that does not meet the definition of 26 U.S.C. § 5845 to potentially avoid firearm offense (FO).
<b>Chapter 528: GAMBLING</b>					
KRS 528.020	Promoting gambling—First degree—Class D felony.	Probably AF (Gambling) See Carlos Calderon-Figueroa, a.k.a. Carlos Calderon, A28 981170 (April 21, 2006) (Westlaw cite: 2006 WL 1558706)(Unpublished opinion) (One 'conducts' an illegal gambling business within the	Not CIMT. See <i>Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).	Possibly commercialized vice inadmissibility.	Plead to <i>attempt</i> and obtain sentence of 364 days or less to avoid aggravated felony.

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
		meaning of 18 U.S.C. § 1955(a) by performing any necessary function in the gambling operation, other than that of a mere bettor.)			
KRS 528.030	Promoting gambling—Second degree—Class A misdemeanor.	Not AF if sentence of 364 days or less imposed.	Not CIMT. See <i>Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).	Possibly commercialized vice inadmissibility.	Avoid AF by obtaining sentence of 364 days or less.
KRS 528.040	Conspiracy to promote gambling—Class D felony.	Possibly AF(Gambling) if record of conviction shows that offense is one “described in” 18 U.S.C. § 1955.	Not CIMT. See <i>Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).	Possibly commercialized vice inadmissibility.	To foreclose any possibility of an AF(Gambling), plead to <i>attempt</i> and obtain sentence of 364 days or less. Also, ensure that ROC does not reflect that defendant ‘conduct[ed] an illegal gambling business’ as defined in 18 U.S.C. § 1955(a).
KRS 528.050	Possession of gambling records—First degree—Class D felony.	Possibly AF(Gambling) if record of conviction shows that offense is one “described in” 18 U.S.C. § 1955.	Not CIMT. See <i>Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).	Possibly commercialized vice inadmissibility.	To foreclose any possibility of an AF(Gambling), plead to <i>attempt</i> and obtain sentence of 364 days or less. Also, ensure that ROC does not reflect that defendant ‘conduct[ed] an illegal gambling business’ as defined in 18 U.S.C. § 1955(a).
KRS 528.060	Possession of gambling records—Second degree—Class A misdemeanor.	Not AF if sentence of 364 days or less imposed.	Not CIMT. See <i>Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).		Ensure that sentence of 364 days or less is imposed to avoid AF(Gambling).
KRS 528.070	Permitting gambling—Class B misdemeanor.	Not AF.	Not CIMT. See <i>Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).		

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 528.080	Possession of gambling device—Class A misdemeanor.	Not AF if sentence of 364 days or less imposed.	Not CIMT. See <i>Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).		Ensure that sentence of 364 days or less is imposed to avoid AF (Gambling).
KRS 528.110	Horse races, messenger betting prohibited—Class A misdemeanor.	Not AF if sentence of 364 days or less imposed.	Not CIMT. See <i>Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).		Ensure that sentence of 364 days or less is imposed to avoid AF (gambling). Ensure that ROC does not reflect that defendant 'conduct[ed] an illegal gambling business' as defined in 18 U.S.C. §1955(a) (i.e. allocate to wagering of money as a bettor.)
KRS 528.120	Off-track acceptance of money for pari-mutuel wagering—Class A misdemeanor.	Not AF if sentence of 364 days or less imposed.	Not CIMT. See <i>Matter of Gaglioti</i> , 10 I&N Dec. 719 (BIA 1964).		Ensure that sentence of 364 days or less is imposed to avoid AF (gambling). Ensure that ROC does not reflect that defendant 'conduct[ed] an illegal gambling business' as defined in 18 U.S.C. § 1955(a) (i.e. allocate to wagering of money as a bettor.)
<b>Chapter 529: PROSTITUTION OFFENSES</b>					
KRS 529.020	Prostitution—Class B misdemeanor.	Not AF.	CIMT.	Probably is prostitution inadmissibility	
KRS 529.040	Promoting prostitution—Class A misdemeanor unless the person managed, supervised, controlled, or owned, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving	Class A misd- Not AF. Class D felony- AF (Prostitution).	CIMT.	Probably is prostitution Inadmissibility	

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	prostitution activity by two (2) or more prostitutes, in which case it is a Class D felony.				
KRS 529.070	Permitting prostitution— Class B misdemeanor.	Probably not AF.	Probably not CIMT.	Possibly prostitution inadmissibility.	
KRS 529.080	Loitering for prostitution purposes— First offense is a Violation; Class B misdemeanor for second and subsequent offenses.	Not AF.	Probably CIMT (Unless client has no other CIMT and sentence is less than six months, will qualify for petty offense exception).	Possibly prostitution inadmissibility.	
KRS 529.100	Human trafficking— Class C felony unless it involves serious physical injury to a trafficked person, in which case it is Class B felony.	12(a)-AF(COV) & AF(Trafficking in persons); 12(b)-AF(COV) & AF(Trafficking in persons).	CIMT.	Could be CAC if ROC reflects age of victim is less than 18.	Allocate affirmatively that age of victim was over 18.
KRS 529.110	Promoting human trafficking— Class D felony unless victim is under eighteen (18), in which case it is Class C felony.	12(a)-AF(COV) & AF(Trafficking in persons); 12(b)-AF(COV) & AF(Trafficking in persons).	CIMT.	Could be CAC if ROC reflects age of victim is less than 18.	Allocate affirmatively that age of victim was over 18.
<b>Chapter 530: FAMILY OFFENSES</b>					
KRS 530.010	Bigamy— Class D felony.	Not AF.	1(a)- CIMT. 1(b)-Possibly not CIMT. See <i>In the Matter of E----</i> 2 I. & N. Dec. 328, 337 (BIA 1945)		To possibly avoid CIMT, 1(b) may be safer plea if ROC does not name other state (other state's bigamy law might not contain requirement of a "guilty mind").

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 530.020	Incest—2(a)-Class C felony if committed by two consenting adults; 2(b)- Class B felony if committed on a victim who is: (1)Less than eighteen (18) years of age; or (2)Incapable of consent because he or she is physically helpless or mentally incapacitated; 2(c)-Class A felony if (1) committed on a victim less than twelve (12) years of age; or (2) The victim receives serious physical injury.	2(a)-Not AF; 2(b)(1)-AF; 2(b)(2)-AF; 2(c)(1)-AF; 2(c)(2)-AF.	(A conviction for bigamy is a crime of moral turpitude is required to have a "guilty mind").  2(a)-Probably CIMIT; 2(b)(1)-CIMIT; 2(b)(2)-CIMIT; 2(c)(1)-CIMIT; 2(c)(2)-CIMIT.	2(b)(1)-Probably CAC; 2(c)(1)-CAC.	To possibly avoid AF-Statute is divisible-if client cannot obtain conviction under 2(a), do not allow ROC to reflect under which section client was convicted.
KRS 530.030	Concealing birth of infant—Class A misdemeanor.	Not AF.	Probably not CIMIT.		
KRS 530.040	Abandonment of minor—Class D felony.	Not AF.	Possibly not CIMIT. See <i>Rodriguez-Castro v. Gonzales</i> , 427 F. 3d. 316 (5 <sup>th</sup> Cir. 2005) (Is not a crime of moral	CAC.	

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 530.050	Nonsupport and flagrant nonsupport—nonsupport Class A misdemeanor; flagrant non-support Class is D felony.	Not AF.	turpitude where “intentionally” refers only to the offender’s act of leaving the child unattended by another...) Not CIMT.		
KRS 530.060	Endangering welfare of minor—Class A misdemeanor.	Not AF.	Possibly CIMT.	CAC.	To avoid CIMT, affirmatively allocate to “fails” rather than “refuses.”
KRS 530.064	Unlawful transaction with a minor—First degree— Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity; (b) Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and (c) Class A felony if the minor so used incurs physical injury thereby.	1(a)-AF(Sexual abuse of a minor) 1(b)-Probably not AF.	1(a)-CIMT. 1(b)-Probably CIMT.	1(a)-Probably CAC. 1(b)-CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C.§802; Possibly CAC.	To possibly avoid CSO, keep the name of the controlled substance out of the ROC.
KRS 530.065	Unlawful transaction with a minor—Second degree—Class D felony.	Possibly AF if ROC establishes offense that qualifies as an AF.	Possibly CIMT if ROC establishes offense that qualifies as a	CSO if record of conviction establishes a controlled	Keep ROC free of reference to nature of the offense minor is induced, assisted, or caused to perform.

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
KRS 530.070	Unlawful transaction with a minor—Third degree—Class A misdemeanor.	(a)-Not AF; (b)-Possibly AF if ROC establishes “criminal activity” is an AF; (c)- Not AF; (d)- Not AF.	(a)-Not CIMT. (b)-Not CIMT unless ROC establishes “criminal activity” is a CIMT. (c)-Not CIMT. <i>See In the Matter of C. 2 I&amp;N Dec. 220 (BIA 1944).</i> (d)-Not CIMT	substance as defined in 21 U.S.C.§802. Possibly CAC. (b)-could be CSO if ROC establishes that “other criminal activity” involves a controlled substance as defined in 21 U.S.C.§802.	Allocute to “any other criminal activity” to keep ROC free of direct reference to AF or CIMT.  (b)-Avoid AF and/or CIMT by keeping ROC clear of any mention of criminal activity that qualifies as AF or CIMT, preferably allocating to “other criminal activity.”
KRS 530.080	Endangering the welfare of an incompetent person—Class A misdemeanor.	Not AF.	Probably CIMT.		
<b>Chapter 531: PORNOGRAPHY</b>					
KRS 531.020	Distribution of obscene matter—Class B misdemeanor unless defendant possesses more than one unit of material defined in the chapter, in which case it shall be Class A misdemeanor.	Not AF.	Probably not CIMT.		
KRS 531.030	Distribution of obscene matter to minors—Class A misdemeanor unless the defendant has	AF.	CIMT.	Possibly CAC.	

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	previously been convicted of this section or KRS 531.020, in which case it is a Class D felony.				
KRS 531.040	Using Minors to Distribute Obscene Material—Class A misdemeanor unless the defendant has previously been convicted of this section or KRS 531.030, which case it is Class D felony.	AF.	CIMT.	Possibly CAC.	
KRS 531.050	Advertising obscene material—Class B misdemeanor.	Not AF.	Probably not CIMT.		
KRS 531.060	Promoting sale of obscenity—Class B misdemeanor for the first offense; Class A misdemeanor for the second offense; Class D felony for each subsequent offense.	Not AF.	Probably not CIMT.		
KRS 531.090	Voyeurism—Class A misdemeanor.	Not AF.	Probably CIMT.	Might be CAC if the victim is a minor; keep age out of ROC.	To be certain to avoid AF for section 1(a)(3), obtain sentence of 364 days or less. Keep age out of ROC if the victim is a minor. Keep age out of ROC if the victim is a minor.
KRS 531.100	Video voyeurism- Class D felony.	Not AF.	Probably CIMT.	CAC if the victim is a minor; keep age out of ROC.	
KRS 531.310	Use of a minor in a sexual performance—Class C felony if the minor so use	AF(Child pornography) & AF(Sexual abuse of a minor).	CIMT.	CAC.	



STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	is less than eighteen (18) years old; Class B felony if the minor is less than sixteen (16) years old; Class A felony if the minor involved in the sexual performance incurs physical injury thereby.				
KRS 531.320	Promoting a sexual performance by a minor—Class C felony if minor is less than eighteen (18) years old; Class B felony if minor involved is less than sixteen (16) years old; Class A felony if the minor involved in the sexual performance incurs physical injury thereby.	AF(Child pornography) & AF(Sexual abuse of a minor).	CIMT.	CAC.	
KRS 531.335	Possession of matter portraying a sexual performance by a minor—Class D Felony.	AF(Child pornography).	CIMT.	CAC.	
KRS 531.340	Distribution of matter portraying a sexual performance by a minor—Class D felony for the first offense; Class C felony for each subsequent offense.	AF(Child pornography).	CIMT.	CAC.	
KRS 531.350	Promoting sale of material portraying a	AF(Child pornography).	CIMT.	Could be CAC.	

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
	sexual performance by a minor— Class A misdemeanor for the first offense; Class D felony for second offense; Class C felony for each subsequent offense.				
KRS 531.360	Advertising material portraying a sexual performance by a minor— Class D felony for second offense; Class C felony for each subsequent offense.	AF(Child pornography).	CIMT.	Could be CAC.	
KRS 531.370	Using minors to distribute material portraying a sexual performance by a minor—Class D felony unless defendant has been previously convicted of a violation of this section or KRS 531.030, in which case it shall be a Class C felony.	AF(Child pornography).	CIMT.	Could be CAC.	





# Department of Public Advocacy

100 Fair Oaks Lane, Suite 302 • Frankfort, Kentucky 40601 • 502-564-8006, Fax: 502-564-7890

## ***The Advocate:***

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#### **Department of Public Advocacy**

Education & Development  
100 Fair Oaks Lane, Suite 302  
Frankfort, Kentucky 40601  
Tel: (502) 564-8006  
Fax: (502) 564-7890  
E-mail: michael.camenisch@ky.gov