

CHAPTER 113**(HB 1)**

AN ACT relating to crimes and punishments.

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

SECTION 1. A NEW SECTION OF KRS CHAPTER 508 IS CREATED TO READ AS FOLLOWS:

- (1) A person is guilty of terroristic threatening in the first degree when he or she:**
 - (a) Intentionally makes false statements that he or she or another person has placed a weapon of mass destruction on:**
 - 1. The real property or any building of any public or private elementary or secondary school, vocational school, or institution of postsecondary education;**
 - 2. A school bus or other vehicle owned, operated, or leased by a school;**
 - 3. The real property or any building public or private that is the site of an official school-sanctioned function; or**
 - 4. The real property of any building owned or leased by a government agency; or**
 - (b) Intentionally and without lawful authority, places a counterfeit weapon of mass destruction at any location or on any object specified in paragraph (a) of this subsection.**
- (2) A counterfeit weapon of mass destruction is placed with lawful authority if it is placed, with the written permission of the chief officer of the school or other institution, as a part of an official training exercise and is placed by a public servant, as defined in KRS 522.010.**
- (3) A person is not guilty of commission of an offense under this section if he or she, innocently and believing the information to be true, communicates a threat made by another person to school personnel, a peace officer, a law enforcement agency, a public agency involved in emergency response, or a public safety answering point and identifies the person from whom the threat was communicated, if known.**
- (4) Terroristic threatening in the first degree is a Class C felony.**

SECTION 2. A NEW SECTION OF KRS CHAPTER 508 IS CREATED TO READ AS FOLLOWS:

- (1) A person is guilty of terroristic threatening in the second degree when, other than as provided in Section 1 of this Act, he or she intentionally:**
 - (a) With respect to a school function, threatens to commit any act likely to result in death or serious physical injury to any student group, teacher, volunteer worker, or employee of a public or private elementary or secondary school, vocational school, or institution of postsecondary education, or to any other person reasonably expected to lawfully be on school property or at a school-sanctioned activity, if the threat is related to their employment by a school, or work or attendance at school, or a school function. A threat directed at a person or persons or at a school does not need to identify a specific person or persons or school in order for a violation of this section to occur;**

- (b) *Makes false statements that he or she has placed a weapon of mass destruction at any location other than one specified in Section 1 of this Act; or*
- (c) *Without lawful authority places a counterfeit weapon of mass destruction at any location other than one specified in Section 1 of this Act.*
- (2) *A counterfeit weapon of mass destruction is placed with lawful authority if it is placed as part of an official training exercise by a public servant, as defined in KRS 522.010.*
- (3) *A person is not guilty of commission of an offense under this section if he or she, innocently and believing the information to be true, communicates a threat made by another person to school personnel, a peace officer, a law enforcement agency, a public agency involved in emergency response, or a public safety answering point and identifies the person from whom the threat was communicated, if known.*
- (4) *Terroristic threatening in the second degree is a Class D felony.*

Section 3. KRS 508.080 is amended to read as follows:

- (1) *Except as provided in Section 1 or 2 of this Act, a person is guilty of terroristic threatening in the third degree when:*
 - (a) He threatens to commit any crime likely to result in death or serious physical injury to another person or likely to result in substantial property damage to another person; or
 - (b) He intentionally makes false statements for the purpose of causing evacuation of a building, place of assembly, or facility of public transportation.
- (2) Terroristic threatening *in the third degree* is a Class A misdemeanor.

SECTION 4. A NEW SECTION OF KRS CHAPTER 527 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of use of a weapon of mass destruction in the first degree when he or she intentionally, without lawful authority, places a weapon of mass destruction at any location in the Commonwealth and, as a result, any person other than the defendant is killed or receives serious physical injury.*
- (2) *A weapon of mass destruction is used with lawful authority if it is used with the written permission of an agency of the Commonwealth or of a city, county, charter county, or urban-county government having jurisdiction over the use of destructive devices as defined in KRS 237.030 or the use of explosives.*
- (3) *Use of a weapon of mass destruction in the first degree is a Class A felony unless a person other than the defendant is killed as a result, in which case it is a capital offense.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 527 IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of use of a weapon of mass destruction in the second degree when intentionally, without lawful authority, he or she:*
 - (a) *Places a weapon of mass destruction at any location in the Commonwealth and, as a result, any person other than the defendant receives physical injury; or*
 - (b) *Places a weapon of mass destruction on:*
 - 1. *The real property or any building of any public or private elementary or secondary school, vocational school, or institution of postsecondary education;*

2. *A school bus or other vehicle owned, operated, or leased by a school;*
 3. *The real property or any building, public or private, that is the site of an official school-sanctioned function; or*
 4. *The real property of any building owned or leased by a government agency, and no person dies or receives any physical injury.*
- (2) *A weapon of mass destruction is used with lawful authority if it is used with the written permission of an agency of the Commonwealth or of a city, county, charter county, or urban-county government having jurisdiction over the use of destructive devices as defined in KRS 237.030 or the use of explosives.*

- (3) *Use of a weapon of mass destruction in the second degree is a Class B felony.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 527 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in Section 5 of this Act, a person is guilty of use of a weapon of mass destruction in the third degree when intentionally, without lawful authority, he or she places a weapon of mass destruction at any location in the Commonwealth.*
- (2) *A weapon of mass destruction is used with lawful authority if it is used with the written permission of an agency of the Commonwealth or of a city, county, charter county, or urban-county government having jurisdiction over the use of destructive devices as defined in KRS 237.030 or the use of explosives.*
- (3) *Use of a weapon of mass destruction in the third degree is a Class C felony.*

Section 7. KRS 500.080 is amended to read as follows:

As used in the Kentucky Penal Code, unless the context otherwise requires:

- (1) "Actor" means any natural person and, where relevant, a corporation or an unincorporated association;
- (2) "Crime" means a misdemeanor or a felony;
- (3) "Dangerous instrument" means any instrument, including parts of the human body when a serious physical injury is a direct result of the use of that part of the human body, article, or substance which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury;
- (4) "Deadly weapon" means any *of the following*~~[weapon]~~:
 - (a) *A weapon of mass destruction;*
 - (b) Any weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged;
 - (c)~~(b)~~ Any knife other than an ordinary pocket knife or hunting knife;
 - (d)~~(c)~~ Billy, nightstick, or club;
 - (e)~~(d)~~ Blackjack or slapjack;
 - (f)~~(e)~~ Nunchaku karate sticks;
 - (g)~~(f)~~ Shuriken or death star; or

- (h)~~(g)~~ Artificial knuckles made from metal, plastic, or other similar hard material;
- (5) "Felony" means an offense for which a sentence to a term of imprisonment of at least one (1) year in the custody of the Department of Corrections may be imposed;
- (6) "Government" means the United States, any state, county, municipality, or other political unit, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government;
- (7) "He" means any natural person and, where relevant, a corporation or an unincorporated association;
- (8) "Law" includes statutes, ordinances, and properly adopted regulatory provisions. Unless the context otherwise clearly requires, "law" also includes the common law;
- (9) "Minor" means any person who has not reached the age of majority as defined in KRS 2.015;
- (10) "Misdemeanor" means an offense, other than a traffic infraction, for which a sentence to a term of imprisonment of not more than twelve (12) months can be imposed;
- (11) "Offense" means conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law, local law, or ordinance of a political subdivision of this state or by any law, order, rule, or regulation of any governmental instrumentality authorized by law to adopt the same;
- (12) "Person" means a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government, or a governmental authority;
- (13) "Physical injury" means substantial physical pain or any impairment of physical condition;
- (14) "Possession" means to have actual physical possession or otherwise to exercise actual dominion or control over a tangible object;
- (15) "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ;
- (16) "Unlawful" means contrary to law or, where the context so requires, not permitted by law. It does not mean wrongful or immoral;~~and~~
- (17) "Violation" means an offense, other than a traffic infraction, for which a sentence to a fine only can be imposed; *and*
- (18) "***Weapon of mass destruction***" means:
- (a) *Any destructive device as defined in KRS 237.030, but not fireworks as defined in KRS 227.700;*
- (b) *Any weapon that is designed or intended to cause death or serious physical injury through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;*
- (c) *Any weapon involving a disease organism; or*
- (d) *Any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.*

Section 8. KRS 532.025 is amended to read as follows:

- (1) (a) Upon conviction of a defendant in cases where the death penalty may be imposed, a hearing shall be conducted. In such hearing, the judge shall hear additional evidence in extenuation, mitigation, and aggravation of punishment, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant, or the absence of any prior conviction and pleas; provided, however, that only such evidence in aggravation as the state has made known to the defendant prior to his trial shall be admissible. Subject to the Kentucky Rules of Evidence, juvenile court records of adjudications of guilt of a child for an offense that would be a felony if committed by an adult shall be admissible in court at any time the child is tried as an adult, or after the child becomes an adult, at any subsequent criminal trial relating to that same person. Juvenile court records made available pursuant to this section may be used for impeachment purposes during a criminal trial and may be used during the sentencing phase of a criminal trial; however, the fact that a juvenile has been adjudicated delinquent of an offense that would be a felony if the child had been an adult shall not be used in finding the child to be a persistent felony offender based upon that adjudication. Release of the child's treatment, medical, mental, or psychological records is prohibited unless presented as evidence in Circuit Court. Release of any records resulting from the child's prior abuse and neglect under Title IV-E or IV-B of the Federal Social Security Act is also prohibited. The judge shall also hear argument by the defendant or his counsel and the prosecuting attorney, as provided by law, regarding the punishment to be imposed. The prosecuting attorney shall open and the defendant shall conclude the argument. In cases in which the death penalty may be imposed, the judge when sitting without a jury shall follow the additional procedure provided in subsection (2) of this section. Upon the conclusion of the evidence and arguments, the judge shall impose the sentence or shall recess the trial for the purpose of taking the sentence within the limits prescribed by law. If the trial court is reversed on appeal because of error only in the presentence hearing, the new trial which may be ordered shall apply only to the issue of punishment;
 - (b) In all cases in which the death penalty may be imposed and which are tried by a jury, upon a return of a verdict of guilty by the jury, the court shall resume the trial and conduct a presentence hearing before the jury. Such hearing shall be conducted in the same manner as presentence hearings conducted before the judge as provided in paragraph (a) of this subsection, including the record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant. Upon the conclusion of the evidence and arguments, the judge shall give the jury appropriate instructions, and the jury shall retire to determine whether any mitigating or aggravating circumstances, as defined in subsection (2) of this section, exist and to recommend a sentence for the defendant. Upon the findings of the jury, the judge shall fix a sentence within the limits prescribed by law.
- (2) In all cases of offenses for which the death penalty may be authorized, the judge shall consider, or he shall include in his instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by law and any of the following statutory aggravating or mitigating circumstances which may be supported by the evidence:
 - (a) Aggravating circumstances:

1. The offense of murder or kidnapping was committed by a person with a prior record of conviction for a capital offense, or the offense of murder was committed by a person who has a substantial history of serious assaultive criminal convictions;
 2. The offense of murder or kidnapping was committed while the offender was engaged in the commission of arson in the first degree, robbery in the first degree, burglary in the first degree, rape in the first degree, or sodomy in the first degree;
 3. The offender by his act of murder, armed robbery, or kidnapping knowingly created a great risk of death to more than one (1) person in a public place by means of a ***weapon of mass destruction***~~[destructive device]~~, weapon, or other device which would normally be hazardous to the lives of more than one (1) person;
 4. The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value, or for other profit;
 5. The offense of murder was committed by a person who was a prisoner and the victim was a prison employee engaged at the time of the act in the performance of his duties;
 6. The offender's act or acts of killing were intentional and resulted in multiple deaths;
 7. The offender's act of killing was intentional and the victim was a state or local public official or police officer, sheriff, or deputy sheriff engaged at the time of the act in the lawful performance of his duties; and
 8. The offender murdered the victim when an emergency protective order or a domestic violence order was in effect, or when any other order designed to protect the victim from the offender, such as an order issued as a condition of a bond, conditional release, probation, parole, or pretrial diversion, was in effect.
- (b) Mitigating circumstances:
1. The defendant has no significant history of prior criminal activity;
 2. The capital offense was committed while the defendant was under the influence of extreme mental or emotional disturbance even though the influence of extreme mental or emotional disturbance is not sufficient to constitute a defense to the crime;
 3. The victim was a participant in the defendant's criminal conduct or consented to the criminal act;
 4. The capital offense was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct even though the circumstances which the defendant believed to provide a moral justification or extenuation for his conduct are not sufficient to constitute a defense to the crime;

5. The defendant was an accomplice in a capital offense committed by another person and his participation in the capital offense was relatively minor;
 6. The defendant acted under duress or under the domination of another person even though the duress or the domination of another person is not sufficient to constitute a defense to the crime;
 7. At the time of the capital offense, the capacity of the defendant to appreciate the criminality of his conduct to the requirements of law was impaired as a result of mental illness or retardation or intoxication even though the impairment of the capacity of the defendant to appreciate the criminality of his conduct or to conform the conduct to the requirements of law is insufficient to constitute a defense to the crime; and
 8. The youth of the defendant at the time of the crime.
- (3) The instructions as determined by the trial judge to be warranted by the evidence or as required by KRS 532.030(4) shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict be a recommendation of death, or imprisonment for life without benefit of probation or parole, or imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall designate in writing, signed by the foreman of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In nonjury cases, the judge shall make such designation. In all cases unless at least one (1) of the statutory aggravating circumstances enumerated in subsection (2) of this section is so found, the death penalty, or imprisonment for life without benefit of probation or parole, or the sentence to imprisonment for life without benefit of probation or parole until the defendant has served a minimum of twenty-five (25) years of his sentence, shall not be imposed.

Approved March 15, 2001