Supreme Court of Kentucky

2020-77

AMENDED ORDER

IN RE: KENTUCKY COURT OF JUSTICE RESPONSE TO COVID-19 EMERGENCY: AMENDED EMERGENCY RELEASE SCHEDULE AND PRETRIAL DRUG TESTING STANDARDS

Under Section 116 of the Constitution and Supreme Court Rule 1.010, the Supreme Court hereby amends Administrative Order 2020-67, *In re: Kentucky Court of Justice Response to COVID-19 Emergency: Amended Emergency Release Schedule for Pretrial Defendants and Pretrial Drug Testing Standards* as follows, effective December 17, 2020:

1. Except for the offenses included in the attached Appendix A, the following emergency administrative release schedule shall be implemented to expedite the release of certain defendants:

    a. Any defendant charged with a non-sexual/non-violent misdemeanor who has not been assessed as a high risk for new criminal activity will be eligible under this emergency schedule and shall be released on recognizance by Pretrial Services unless a defendant has been charged with the misdemeanor offense of KRS 222.202 (Offenses of Alcohol Intoxication or Drinking Alcoholic Beverages in a Public Place), KRS 525.100 (Public Intoxication), or KRS 189A.010 (Operating Motor Vehicle While Under the Influence 1st Offense, "DUI 1st") in which case he or she shall be released as follows:

        i. To an adult who is willing to accept responsibility for the defendant either through a signature verification on a form prescribed by the Administrative Office of the Courts or by verbal affirmation and showing a government issued identification to the jailer; or

        ii. At such time as the defendant is able to safely care for himself or herself but in no event shall the defendant be detained for more than eight (8) hours following his or her arrest.

    b. Any defendant charged with a non-sexual/non-violent Class D felony who has not been assessed as a high risk for new criminal

activity will be eligible under this schedule and shall be released on recognizance by Pretrial Services and supervised by Pretrial Services through monitored conditional release, including any defendant arrested on an indictment warrant. Any defendant released under this paragraph shall report by phone to the local Pretrial Services Office and must keep Pretrial Services updated with a current address and phone number for future court notifications.

c. Any defendant who is served with a warrant for nonpayment of court costs, fees, or fines, or with a warrant for a failure to appear on a violation shall not be arrested and taken to jail. Peace officers shall issue a citation in lieu of arrest and give the defendant a court date after February 1, 2021. In the event a defendant is arrested and taken to jail on a warrant for nonpayment of court costs, fees, or fines, or for a warrant for arrest for failure to appear on a violation, the defendant shall be immediately released and a show cause hearing shall be set after February 1, 2021.

d. If a defendant is charged with a crime in which there is an alleged victim(s), the defendant shall not have any contact with the alleged victim(s).

e. Any defendant arrested for contempt of court for violation of a protective order is not eligible under this schedule.

f. Any defendant arrested for a violation of conditions of release is not eligible under this schedule.

g. Any defendant arrested on a probation violation or drug court violation is not eligible under this schedule.

h. Any defendant who is on pretrial release and has a new arrest for a new misdemeanor or felony charge is not eligible under this schedule.

i. Any defendant who was charged with a crime in the Commonwealth of Kentucky and who was extradited from another state is not eligible under this schedule.

j. Any defendant who declines the pretrial services interview is not eligible under this schedule.

k. No defendant shall be held in custody for failure to pay the $25.00 bond filing fee required under KRS 64.005.

l. Any defendant not eligible for release under this schedule or under Supreme Court Order 2017-19, Non-Financial Uniform Schedule of Bail Administrative Release Program (Administrative Release Program) shall only be released upon judicial review and conditions of release ordered by the court. Pretrial Services must provide the circuit judge, district judge, or trial commissioner with the pretrial risk assessment and recommendations for release within 12 hours of the defendant's booking.

2. Any defendant who otherwise qualifies for release under the Administrative Release Program shall continue to be released under the provisions of that Order.

3. Pretrial drug testing providers may resume urine drug testing if they adhere to the "Healthy at Work" requirements for similar businesses, including but not limited to the following:

    a. The number of pretrial defendants present at any given time shall be limited to 33% of the occupational capacity of the facility.

    b. The use of waiting areas shall be eliminated.

    c. Services shall be provided by appointment only. Pretrial defendants should be notified by phone or text when it is time to enter the facility.

    d. Pretrial defendants must not be permitted to congregate in the facility before or after their appointment.

    e. To the greatest extent practicable, traffic flow shall be modified to minimize contacts between employees and pretrial defendants.

    f. Additional persons shall not be permitted to accompany a pretrial defendant undergoing drug testing.

    g. Employees should use digital rather than paper files to the greatest extent practicable.

    h. Controls should be established when six feet of physical distancing is not feasible, including, for example, installation of portable or permanent non-porous physical barriers (i.e., plexiglass shields), if necessary.

    i. Pretrial drug testing providers should communicate with pretrial defendants and receive payments through contactless payment options (e.g., phone or Internet), to the greatest extent practicable.

Pretrial drug testing providers that cannot utilize contactless payments should install floor or wall decals for customer queuing areas to demark safe waiting distances spaced at least six feet apart.

j. Employees of pretrial drug testing providers must wear a facial covering such as a mask, scarf, bandana, or other cloth which covers the nose and mouth for any interaction with a pretrial defendant. Pretrial defendants must wear facial coverings while in the facility. Pretrial drug testing providers should make facial coverings available for pretrial defendants; however, pretrial defendants may bring and utilize their own facial covering if they wish.

k. Pretrial drug testing providers are responsible for monitoring and adhering to any other requirements established by the Cabinet.

This Order only applies to new arrests and shall be effective until further Order of this Court.

Entered this 17th day of December 2020.

CHIEF JUSTICE

All sitting. Minton, C.J.; Hughes, Keller, Lambert, Nickell, and VanMeter, JJ., concur. Wright, J., dissents.

		CLASS D FELONY AND MISDEMEANOR CHARGES NOT ELIGIBLE FOR THE COVID-19 EMERGENCY RELEASE ORDER **Revised 9/15/20**		
Code	**KRS Chap.**	**Description**	**Level**	**Class**
02602	525.12	ABUSE OF CORPSE	M	A
02603	525.12	ABUSE OF CORPSE (SEXUAL INTERCOURSE)	F	D
01723	531.36	ADVERTISING MATTER PORTRAY SEX PERF BY MINOR, 1ST OFF	F	D
01716	531.05	ADVERTISING OBSCENE MATERIAL	M	B
20005	513.04	ARSON, 3RD DEGREE	F	D
13117	518.09	ASSAULT 3RD DEGREE - SPORTS OFFICIAL (5 OR MORE), 1ST OFF	F	D
13118	518.09	ASSAULT 3RD DEGREE - SPORTS OFFICIAL, 2ND OR > OFFENSE	F	D

13115	508.025	ASSAULT 3RD-DEPT. SOCIAL SERVICES WORKER	F	D
13214	525.205	ASSAULT ON SERVICE ANIMAL, 1ST DEGREE	F	D
13213	525.205	ASSAULT ON SERVICE ANIMAL, 2ND DEGREE	M	B
13250	508.04	ASSAULT UNDER EXTREME EMOTIONAL DISTURBANCE	F	D
13259	508.04	ASSAULT UNDER EXTREME EMOTIONAL DISTURBANCE	M	B
13119	518.09	ASSAULT, 3RD DEGREE - SPORTS OFFICIAL, 1ST OFF	M	A
13120	508.025	ASSAULT, 3RD DEGREE (EMS, FIRE, RESCUE SQUAD)	F	D
13124	508.025	ASSAULT, 3RD DEGREE (OFFICER TRANSPORTING INMATES)	F	D
13123	508.025	ASSAULT, 3RD DEGREE (SCHOOL EMPLOYEE OR SCHOOL VOLUNTEER)	F	D
00786	508.03	ASSAULT, 4TH DEGREE DATING VIOLENCE (NO VISIBLE INJURY)	M	A
00788	508.03	ASSAULT, 4TH DEGREE DATING VIOLENCE (MINOR INJURY)	M	A
INT00799	508.03	ASSAULT, 4TH DEGREE (CHILD ABUSE)	M	A
00798	508.03	ASSAULT, 4TH DEGREE (DOMESTIC VIOLENCE) MINOR INJURY	M	A
00797	508.03	ASSAULT, 4TH DEGREE (DOMESTIC VIOLENCE) NO VISIBLE INJURY	M	A
00790	508.032	ASSAULT, 4TH DEGREE (DOMESTIC) 3RD OR > WITHIN 5 YRS	F	D
00796	508.03	ASSAULT, 4TH DEGREE (MINOR INJURY)	M	A
00795	508.03	ASSAULT, 4TH DEGREE (NO VISIBLE INJURY)	M	A
13114	508.025	ASSAULT-3RD DEGREE-INMATE ASSAULT ON CORRECTIONS EMPLOYEE	F	D
13113	508.025	ASSAULT-3RD DEGREE-POLICE/PROBATION OFFICER-IDENT WEAPON	F	D
13126	508.025	ASSAULT 3RD PEACE OFFICER NON-COMMUNICABLE BODILY FLUID	M	B
13128	508.025	ASSAULT 3RD PEACE OFFICER - COMMUNICABLE BODILY FLUID	M	A
49201	520.070	BAIL JUMPING 1ST	F	D
38040	530.01	BIGAMY	F	D
00805	508.08	BOMB THREATS	M	A
01501	527.02	CARRYING A CONCEALED DEADLY WEAPON	M	A
01506	527.02	CARRY CONCEAL WEAPON BY PRIOR DEADLY WEAPON FELONY OFFENDER	F	D
52196	527.040	CONVICTED FELON IN POSSESSION OF A FIREARM	F	D
13240	508.11	CRIMINAL ABUSE-2ND DEGREE	F	D
13241	508.11	CRIMINAL ABUSE-2ND DEGREE-CHILD 12 OR UNDER	F	D
00810	508.12	CRIMINAL ABUSE-3RD DEGREE	M	A
00811	508.12	CRIMINAL ABUSE-THIRD DEGREE-CHILD 12/UNDER	M	A
02618	509.08	CRIMINAL COERCION	M	A
02759	511.085	CRIMINAL TRESSPASS/DOMESTIC VIOLENCE SHELTER	M	A
51006	525.125	DOG FIGHTING VIOLATIONS	F	D
51005	525.125	CRUELTY TO ANIMALS-1ST DEGREE	F	D
02625	525.13	CRUELTY TO ANIMALS-2ND DEGREE	M	A
02633	525.135	DISARMING A PEACE OFFICER	F	D
37280	531.34	DIST OF MATTER PORTRAYING SEXUAL PERF BY MINOR, 1ST OFF	F	D
01765	531.12	DIST. OF SEXUALLY EXPLICIT IMAGES NO CONSENT - 1ST OFF	M	A
01767	531.12	DIST. OF SEXUALLY EXPLICIT IMAGES NO CONSENT - 2ND OF >	F	D

01770	531.12	DIST SEXUALLY EXPLICIT IMAGES NO CONSENT FOR PROFIT 1ST OFF	F	D
37200	531.03	DISTRIB OBSCENE MATTER TO MINORS W/PRIOR CONVICT	F	D
37201	531.03	DISTRIBUTION OBSCENE MATTER TO MINORS 1ST OFF	M	A
01714	531.02	DISTRIBUTION OF OBSCENE MATTER >1 UNIT OF MATTER	M	A
01713	531.02	DISTRIBUTION OF OBSCENE MATTER-1 UNIT OF MATTER	M	B
49012	520.030	ESCAPE 2ND DEGREE	F	D
02002	530.06	ENDANGERING THE WELFARE OF A MINOR	M	A
01680	17.510	FAILURE TO COMPLY W/SEX OFFENDER REGISTRATION (1ST OFF)	F	D
01686	17.549	FALSE STMT LAW ENFORCEMENT RE NON-COMPLIANT SEX OFF REG, 1ST OFF	M	A
01687	17.549	FALSE STMT TO LAW ENFC RE NON-COMPLIANT SEX OFF REG, 2ND OR >	F	D
09303	507A.050	FETAL HOMICIDE, 4TH DEGREE	F	D
00188	520.095	FLEEING OR EVADING POLICE-1ST OFFENSE	F	D
00196	520.095	FLEEING OR EVADING POLICE, 1ST DEGREE (MOTOR VEHCILE)	F	D
00197	520.095	FLEEING OR EVADING POLICE, 1SR DEGREE (ON FOOT)	F	D
52137	527.090	FRAUDULENT FIREARM TRANSACTION-CLASS D FELONY	F	D
01688	17.549	HARBORING NON-COMPLIANT SEX OFFENDER REGISTRANT, 1ST OFF	M	A
01689	17.549	HARBORING NON-COMPLIANT SEX OFFENDER REGISTRANT, 2ND OR > OFF	F	D
02647	525.040	INCITING A RIOT	M	A
01750	510.148	INDECENT EXPOSURE, 1ST DEGREE, 1ST OFFENSE	M	B
01751	510.148	INDECENT EXPOSURE, 1ST DEGREE, 2ND OFFENSE (W/I 3 YRS)	M	A
01752	510.148	INDECENT EXPOSURE, 1ST DEGREE, 3RD OFFENSE	F	D
01753	510.148	INDECENT EXPOSURE, 1ST DEGREE, 4TH OR > OFFENSE	F	D
01754	510.15	INDECENT EXPOSURE, 2ND DEGREE	M	B
51201	524.04	INTIMIDATING A PARTICIPANT IN LEGAL PROCESS	F	D
59807	119.255	INTIMIDATION OF ELECTION OFFICER	F	D
00572	189.580(1)!a)	LEAVING THE SCENE OF AN ACCIDENT/FAIL TO RNDR AID/ASSIST W/SERIOUS PHYSICAL INJURY OR DEATH	F	D

00803	508.05	MENACING	M	B
02084	189A.010	OPER MTR VEHICLE U/INFLUENCE ALC/DRUGS/ETC. .08 - 2ND OFF	M	A
02086	189A.010	OPER MTR VEH U/INFLU ALC/DRUGS/ETC. .08 (AGG CIRCUM), 2ND	M	A
02088	189A.010	OPER MTR VEH U/INFLUENCE ALC/DRUGS/ETC. .08 - 3RD OFF	M	A
02090	189A.010	OPER MTR VEH U/INFLU ALC/DRUGS/ETC. .08 (AGG CIRCUM) 3RD OFF	M	A
02114	189A.010	OPER MTR VEH U/INFLUENCE ALC/DRUGS/ETC. .08 4TH OR >	F	D
02115	189A.010	OPER MTR VEH U/INFLU ALC/DRUGS/ETC. .08 (AGG CIRCUM) 4TH OR >	F	D
60182	311A.787	PERFORM PROHIBITED ABORTION PROCEDURES - 11 WKS OR GREATER	F	D
73101	532.080(3)	PERSISTENT FELONY OFFENDER 1ST DEGREE	X	O
73102	532.080(2)	PERSITENT FELONY OFFENDER 2ND DEGREE	X	O
52210	237.040	POSSESSION OF DESCRUCTIVE DEVICE OR BOOBY TRAP DEV	F	D
52196	527.040	POSSESSION OF FIREARM BY CONVICTED FELON	F	D
52205	527.100	POSSESSION OF HANDGUN BY MINOR, 2ND OR >	F	D

37272	531.335	POSSESS/VIEW MATTER PORTRAY SEXUAL PERFORMANCE BY MINOR	F	D
10970	510.155	PROH USE OF ELEC COMM SYS TO PROC MINOR/PEACE OFF R/SEX OFF	F	D
37250	531.35	PROM SALE OF MATTER PORT SEX PERF BY MINOR 2ND OFF	F	D
49031	520.050	PROMOTING CONTRABAND-1ST DEGREE	F	D
40104	529.11	PROMOTING HUMAN TRAFFICKING	F	D
40190	529.04	PROMOTING PROSTITUTION	M	A
40191	529.04	PROMOTING PROSTITUTION (2 OR MORE PROSTITUTES)	F	D
01722	531.06	PROMOTING SALE OBSCENEITY 2ND OFFENSE	M	A
01717	531.06	PROMOTING SALE OF OBSCENITY 1ST OFFENSE	M	B
37020	531.06	PROMOTING SALE OF OBSCENITY 3RD OR > OFFENSE	F	D
01720	531.35	PROM-SALE/MATTER PORTRAY SEX PERFORM-MINOR/1ST OFF	M	A
01608	529.090	PROSTITUTION WHILE INFECTED (H.I.V.)	F	D
01607	529.090	PROSTITUTION WHILE INFECTED (S.T.D.)	M	A
01609	529.090	PROSTITUTION, PROCURING WHILE INFECTED (H.I.V.)	F	D
01682	17.510	PROVIDE FALSE/MISLEAD/INCOMP INFO FOR SEX OFF REGISTRATION, 1ST OFF	F	D

11165	510.06	RAPE, 3RD DEGREE	F	D
49031	514.110	RECEIVING STOLEN POPERTY (FIREARM)	F	D
02033	209.990	RECKLESS ABUSE/NEGLECT OF ADULT BY PERSON	M	A
09210	507.05	RECKLESS HOMICIDE	F	D
01667	17.545	REGISTER SEX OFFENDER SCHOOL RESTRICTIONS	M	A
01684	17.545	REGISTERED SEX OFFENDER REGISTRATION RESTRICTIONS (1ST OFFENSE)	M	A
01685	17.545	REGISTERED SEX OFFENDER RESIDENCE RESTRICTIONS (2ND OR > OFF)	F	D
50215	524.055	RETALIATING AGAINST A WITNESS	F	D
51202	524.055	RETALIATING AGAINST A PARTICIPANT IN A LEGAL PROCESS	F	D
53031	525.02	RIOT-1ST DEGREE	F	D
01660	17.546	SEX OFFENDER IM/CHAT/SOCIAL NETWORK USE	M	A
01692	17.546	SEX OFFENDER FILM/PHOTO/VIDEO MINOR W/O CONSENT	M	A
11229	510.015	3RD OR SUBSEQUENT MISDEMEANOR SEXUAL OFFENSE	F	D
01709	510.13	SEXUAL ABUSE - 3RD DEGREE	M	B
11220	510.11	SEXUAL ABUSE, 1ST DEGREE	F	D
11222	510.12	SEXUAL ABUSE, 2ND DEGREE	M	A
02566	525.137	SEX CRIMES AGAINST ANIMALS	F	D
01710	510.14	SEXUAL MISCONDUCT	M	A
01712	510.14	SEXUAL MISCONDUCT-SPOUSE	M	A
11205	510.09	SODOMY, 3RD DEGREE	F	D
13242	508.14	STALKING-1ST DEGREE	F	D
13243	508.15	STALKING-2ND DEGREE	M	A
13227	508.175	STRANGULATION-2ND DEGREE	F	D
02636	519.070	TAMPERING W/PRISONER MONITORING DEVICE	F	D

00821	508.078	TERRORISTIC THREATENING, 2ND DEGREE	F	D
00822	508.08	TERRORISTIC THREATENING, 3RD DEGREE	M	A
23240	514.08	THEFT BY EXTORTION	F	D
01119	514.08	THEFT BY EXTORTION	M	A
23100	514.030	TBUT OR DISP-FIREARM	F	D
02571	525.135	TORTURE OF A DOG OR CAT 2ND OR > OFFENSE	F	D
02570	525.135	TORTURE OF A DOG OR CAT-1ST OFFENSE	M	A
02572	525.135	TORTURE DOG/CAT W/SERIOUS PHYS INJ OR DEATH	F	D
10201	509.02	UNLAWFUL IMPRISONMENT-1ST DEGREE	F	D
02606	509.03	UNLAWFUL IMPRISONMENT-2ND DEGREEE	M	A
52204	527.070	UNLAWFUL POSSESSION OF WEAPON ON SCHOOL PROPERTY	F	D
52203	527.110	UNLAWFULLY PROV/PERMIT MINOR TO POSSESS HANDGUN	F	D
52211	237.040	USE BOOBY TRAP TO AVOID THEFT OF CONTOLLED SUB		
37260	531.37	USE MINOR TO DIST MAT PORT SEX PER MINOR 1ST OFF	F	D
37210	531.04	USE MINOR TO DISTRIB OBSCENE MATTER W/PAST CONVICT	F	D
37202	531.04	USING MINOR TO DISTRIBUTE OBSCENE MATTER 1ST OFF	M	A
01740	531.1	VIDEO VOYEURISM	F	D
02762	403.763	VIOLATION OF FOREIGN EPO / DVO	M	A
27630	403.763	VIOLATION OF KENTUCKY EPO / DVO	M	A
02770	456.180	VIOLATION OF IPO	M	A
02774	456.120	VIOLATION OF FOREIGN IPO	M	A
02764	508.155	VIOLATION OF STALKING RESTRAINING ORDER	M	A
01730	531.09	VOYEURISM	M	A
02032	209.990	WANTON ABUSE/NEGLECT OF ADULT BY PERSON	F	D
13201	508.06	WANTON ENDANGERMENT-1ST DEGREE	F	D
13221	508.06	WANTON ENDANGERMENT-1ST DEGREE-POLICE OFFICER	F	D
00441	508.07	WANTON ENDANGERMENT-2ND DEGREE	M	A
00444	508.07	WANTON ENDANGERMENT-2ND DEGREE-POLICE OFFICER	M	A
02035	209.990	WANTON/ RECKLESS EXPLOIT ADULT BY PERSON O/$300	F	D