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CHAPTER 403

DIVORCE

403.010	Equity court may grant divorce; remarriage	403.060	and legal effect Disposition of property; restoration of maiden name
403.020	Grounds for divorce; procedure in case of divorce on ground of insanity	403.070	Court to provide for care of children
403.030	Proof required for divorce	403.080	When wife may obtain order securing alimony and maintenance
403.040	Condonation; annulment of divorce decree	403.090	"Friend of the court" in county containing city of first or second class
403.050	Divorce from bed and board; grounds		

403.010 [2117; 2118] Equity court may grant divorce; remarriage. A jury shall not be impeached in any action for divorce, alimony or maintenance, but courts having general equity jurisdiction may grant a divorce for any of the causes enumerated in KRS 403.020. A judgment of divorce authorizes either party to marry again.

Alimony and divorce; pleadings and proof, C.C. 420 to 423
General Assembly not to grant divorce by special Act, Const. 59(10)
Judgment granting divorce may not be reversed by Court of Appeals, KRS 21.060

403.020 [2117] Grounds for divorce; procedure in case of divorce on ground of insanity. (1) A divorce may be granted to either party for the following causes:

- (a) Such impotency or malformation as prevents sexual intercourse; or
- (b) Living apart without any cohabitation for five consecutive years next before application.

(2) A divorce may be granted to the party not in fault for the following causes:

- (a) Abandonment for one year;
- (b) Living in adultery;
- (c) Condemnation for felony in or out of this state;
- (d) Concealment from the other party of any loathsome disease existing at the time of marriage, or contracting such a disease afterward;
- (e) Force, duress or fraud in obtaining the marriage; or
- (f) Uniting with any religious society whose creed and rules require a renunciation of the marriage covenant, or forbid husband and wife from cohabiting.

(3) A divorce may be granted to the wife, if she is not in like fault, for the following causes:

(a) Confirmed habit of drunkenness of not less than one year's duration, accompanied by a wasting of the husband's estate and without any suitable provision for the maintenance of the wife or children;

(b) Habitually behaving toward her, for not less than six months, in such cruel and inhuman manner as to indicate a settled aversion to her or to destroy permanently her peace or happiness; or

(c) Such cruel beating or injury, or attempt at injury, of the wife as indicates an outrageous temper in the husband, or probable danger to her life, or of great bodily injury, from her remaining with him.

(4) A divorce may be granted to the husband for the following causes:

(a) Where the wife is pregnant by another man without the husband's knowledge at the time of marriage.

(b) When not in like fault, habitual drunkenness on the part of the wife of not less than one year's duration:

(c) Adultery by the wife, or such lewd, lascivious behavior on her part as proves her to be unchaste, without actual proof of an act of adultery;

(d) Habitually behaving toward him, for not less than six months, in such cruel and inhuman manner as to indicate a settled aversion to him or to destroy permanently his peace or happiness; or

(e) Such cruel beating or injury, or attempt at injury, of the husband as indicates an outrageous temper in the wife, or probable danger to his life, or great

bodily injury, from his remaining with her.

(5) (a) A divorce may be granted to the sane spouse when either the husband or wife has become permanently and incurably insane; provided, that no divorce shall be granted under this subsection unless such permanently incurably insane person shall have been confined in an insane asylum, hospital or other similar institution for a period of not less than five successive years prior to the filing of the petition for divorce, whether such period of time shall have been prior to or subsequent to June 19, 1946, or partly both, nor unless the court shall find from the testimony of two or more physicians competent in psychiatry that such insanity, in their opinion, is permanently incurable.

(b) The petition shall be filed under oath, in the court having jurisdiction over divorce matters in either the county where the plaintiff resides or in the county where the institution is located in which the insane person is confined.

(c) Service of process under this subsection shall be made as provided in Section 53, Kentucky Civil Code of Practice, relating to service of process upon persons of unsound mind.

(d) In cases arising under this subsection the court shall possess all powers which courts of equity now have, or which may hereafter be conferred upon them, relative to alimony, and custody and control and support of infant children of the parties. Where the plaintiff is the husband the court may, when necessary and circumstances warrant, require the plaintiff to pay alimony, support or maintenance, for the benefit of said defendant and make provision for the reasonable expense for the burial of said defendant, or it may require the plaintiff to give bond to the State of Kentucky, conditioned upon the payment by the plaintiff for the care and maintenance of said defendant during the remainder of her life and necessary funeral expenses. The court may, upon notice, modify or revoke any orders or decrees relating to the custody of infant children and their support and the support and maintenance of the defendant. (1946, c. 74)

Seduction, KRS 486.010

403.030 [2119] Proof required for divorce. A petition for divorce shall not be

taken for confessed or be sustained by the admission of the defendant alone, but must be supported by other proof. Two witnesses, or one witness and strong corroborative circumstances, shall be necessary to sustain the charge of adultery or of lewd and lascivious behavior. The credibility or good character of the witnesses must be personally known to the judge or personally known to and certified to by the officer taking the deposition, or else it must be proved. (1946, c. 179)

Alimony and divorce, proof required, C.C. 420 to 423

403.040 [2120] Condonation; annulment of divorce decree. (1) Cohabitation as man and wife, after knowledge of the adultery or lewd and lascivious behavior complained of, shall take away the right of divorce therefor.

(2) The court rendering a judgment for divorce may, at any time, annul it on the joint application of the parties, and restore the parties to the condition of husband and wife; but no divorce shall thereafter be granted between them for the same or a like cause.

Action for divorce or alimony, jurisdiction, C.C. 76

Allegations necessary in action for divorce, C.C. 423

Annulment of divorce decree, C.C. 426, 427

When husband and wife may testify against each other, C.C. 606

403.050 [2121] Divorce from bed and board; grounds and legal effect. Divorce from bed and board may be rendered for any cause that allows divorce, or for any other cause that the court in its discretion considers sufficient. A divorce from bed and board shall operate as to property thereafter acquired, and upon the personal rights and legal capacities of the parties, as a divorce from the bond of matrimony, except that neither shall marry again during the life of the other, and except that it shall not bar curtesy, dower or distributive right. The judgment may be revised or set aside at any time by the court rendering it.

Annulment of divorce from bed and board, C.C. 427

403.060 [2121; 2122; 2123] Disposition of property; restoration of maiden name.

(1) If the wife does not have sufficient estate of her own she may, on a divorce obtained by her, have such allowance out of

that of her husband as the court considers equitable; but no such allowance shall divest the husband of the fee simple title to real estate.

(2) Upon final judgment of divorce from the bonds of matrimony, each party shall be restored all the property, not disposed of at the beginning of the action, that he or she obtained from or through the other before or during the marriage and in consideration of the marriage.

(3) Pending an action for divorce or for divorce from bed and board, the court may allow the wife maintenance.

(4) If the wife obtaining a divorce so desires, the court shall restore to her the name she bore before marriage.

Income taxes, how alimony payments treated for purposes of, KRS 141.095, 141.096
 Maintenance during action, C.C. 424
 Proceedings to restore property, C.C. 425
 Property claims barred by divorce, KRS 392.090
 When husband to pay costs, KRS 453.120

403.070 [2123] Court to provide for care of children. Pending an application for divorce, or on final judgment, the court may make orders for the care, custody and maintenance of the minor children of the parties and any of their children of unsound mind. At any time afterward, upon the petition of either parent, the court may revise any of its orders as to the children, having principally in view in all such cases the interest and welfare of the children. No such order for maintenance of children shall divest either party of the fee simple title to real estate.

Parents entitled to services of minor child, KRS 405.010
 Penalty for divorced parent failing to comply with orders as to custody or support of child, or taking child away from other parent to whom custody has been awarded, KRS 435.240

403.080 [2124] When wife may obtain order securing alimony and maintenance. When the husband is about to remove himself, or his property or a material part of it out of the state, or where there is reason to suspect that he will fraudulently sell, convey or conceal his property, the wife may obtain the necessary orders for securing alimony for herself and maintenance for their children without giving surety.

403.090 "Friend of the court" in county containing city of first or second class.

(1) In any county containing a city of the

first or second class, the fiscal court may, by resolution, authorize the appointment of a "friend of the court." If the circuit court of the county has but one judge, the appointment shall be made by the judge. If the court has two or more judges, the appointment shall be made by joint action of the judges, at the general term. The appointment shall be for a term of two years, subject to removal at the pleasure of the appointing authority. Vacancies shall be filled by appointment of the appointing authority for the unexpired term. The person appointed shall be a licensed practicing attorney. He shall take the Constitutional oath of office and shall give bond in such sum as may be fixed by the appointing judge or judges.

(2) It shall be the duty of the friend of the court to supervise and enforce the payment of sums ordered or adjudged by the circuit court in divorce actions to be paid for the care and maintenance of minor children. All persons who have been ordered or adjudged by the court, in connection with divorce actions, to make payments for the care and maintenance of children, shall, if so ordered by the court, make such payments to the friend of the court, and he shall see that the payments are properly applied in accordance with the order or judgment. However, if the court so directs, the payments may be made through the juvenile court of the county; in such case the friend of the court shall render such assistance as may be required in keeping records concerning such payments and in the enforcement of delinquent payments, and the circuit court may direct that a designated amount or portion of the funds appropriated by the fiscal court for expenses of the friend of the court be paid to the juvenile court as reimbursement for the expenses incurred by the juvenile court in connection with the handling of such payments. The friend of the court shall promptly investigate all cases where payments have become delinquent, and when necessary shall cause the delinquent person to be brought before the court for the purpose of compelling payment. He shall ascertain the facts concerning the care, custody, and maintenance of children for whom payments are being made, and shall report to the court all cases in which the children are not receiving proper care or maintenance, or in which the person hav-

ing custody is failing to furnish proper custody. He shall make such other reports to the court as the court may require.

(3) In any action for divorce where the parties have minor children, the friend of the court, if requested by the trial judge, shall make such investigation as will enable him to ascertain all facts and circumstances that will affect the rights and interests of the children and will enable the court to enter just and proper orders and judgment concerning the care, custody and maintenance of the children. He shall make a report to the trial judge, at a time fixed by the judge, setting forth his recommendations as to the care, custody and maintenance of the children. He may request the court to postpone the final submission of any case to give him a reasonable time in which to complete his investigation.

(4) The friend of the court shall have authority to secure the issuance by the court of any order, rule or citation necessary for the proper enforcement of orders and judgments in divorce actions concerning the custody, care and maintenance of children. In performing his duties under subsection (3) of this section, he shall attend the taking of depositions within the county, and shall have authority to cross-examine the witnesses; in the case of depositions taken on interrogatories, he may file cross-interrogatories. He shall be duly notified of the time and place of the taking of depositions in all divorce actions where the parties have

minor children, and shall attend the taking of all such depositions when he deems it necessary for the protection of the minor children, or when he may be directed by the court to attend.

(5) The friend of the court shall not directly or indirectly represent any party to a divorce action except as he is herein authorized to represent the minor children of parties to a divorce action, but if an allowance is made for the support of a mother and her infant child or children, he may proceed to enforce the payment of the allowance made to the mother also.

(6) The fiscal court of any county which has authorized the appointment of a friend of the court under this section shall, by resolution, fix a reasonable compensation for the friend of the court, and make a reasonable allowance for his necessary supplies, equipment and expenses, payable out of the general fund of the county, upon approval of the judge or judges appointing him. The compensation of the friend of the court in counties containing a city of the second class shall not exceed \$2400 per annum, and the allowance for expenses shall not exceed \$900 per annum; and in counties containing a city of the first class the compensation shall not exceed \$3600 per annum and the allowance for expenses shall not exceed \$1200 per annum. (1946, c. 166; subsections (1) and (6) amended, 1948, c. 168, effective June 17, 1948)

Criminal penalty for divorced parent failing to make support payments for child, KRS 435.240

CHAPTER 435

OFFENSES AGAINST PERSONS

435.010	Murder	435.180	Shooting, wounding or cutting in sudden affray or heat and passion, without previous malice
435.020	Voluntary manslaughter	435.190	Reckless shooting or throwing of missile into train, station or motor vehicle
435.030	Homicide occurring in course of criminal syndicalism or sedition	435.200	Drawing, flourishing or recklessly using deadly weapon
435.040	Homicide occurring in course of abortion	435.210	Drawing or flourishing deadly weapon in passenger coach
435.050	Homicide occurring in course of striking, stabbing or shooting	435.220	Shooting firearms in city
435.060	Homicide or injury resulting from obstruction of road	435.230	Carrying concealed deadly weapon; selling deadly weapon to a minor
435.070	Lynching or mob violence	435.235	Confiscation of deadly weapons
435.080	Rape of child under twelve; attempted rape	435.240	Abandonment of child under sixteen or pregnant wife in destitute circumstances; postponement of prosecution; power of circuit court over verdict or indictment; desertion, abandonment or nonsupport by divorced parent; taking of child from divorced parent to whom custody has been awarded
435.090	Rape of female over twelve	435.250	Sending threatening letter; incriminating testimony
435.100	Carnal knowledge of female child under eighteen with her consent, or of male child under eighteen	435.260	Demand of thing of value by menace or threat of violence
435.105	Indecent or immoral practices with child under fifteen	435.270	Blackmail
435.110	Taking or detaining woman against her will	435.280	Oral threat similar to blackmail
435.120	Taking girl under fourteen away from parents	435.290	Nature of threat in KRS 435.270 or 435.280
435.130	Taking or enticing away or detaining child under ten	435.300	Spreading slanderous report
435.140	Kidnapping; venue	435.310	Fraudulently having one adjudged of unsound mind or confined in an institution
435.150	Unlawful arrest, imprisonment or transportation out of state		
435.160	Maiming		
435.170	Malicious and willful shooting, cutting or poisoning; shooting or throwing missile into train, station, steamboat, motor vehicle or building		

CROSS REFERENCES

Accessories after the fact, KRS 431.170	General Provisions concerning Crimes and Punishments, Ch. 431
Accessories before the fact, KRS 431.160	Sabotage of property occupied by human being, KRS 39.130
Confederating to injure persons, KRS 437.110	Second and third convictions for felony, KRS 431.190
Felony, conviction for excludes one from suffrage, Const. 145	"Sweating" prohibited, KRS 422.110

435.010 [1149] Murder. Any person who commits willful murder shall be punished by confinement in the penitentiary for life, or by death.

Killing of bastard child to conceal birth,
KRS 436.030

435.020 [1150] Voluntary manslaughter. Any person who commits voluntary manslaughter shall be confined in the penitentiary for not less than two nor more than twenty-one years.

435.030 [1148a-8] Homicide occurring in course of criminal syndicalism or sedition. Any person who violates any of

the provisions of KRS 432.020 to 432.050 shall be punished by confinement in the penitentiary for life, or by death, if the death of any person occurs in the course of or by reason of the violation, or the violation contributes to the death.

435.040 [1219a-3] Homicide occurring in course of abortion. Any person who violates any of the provisions of KRS 436.020 shall be punished as provided by KRS 435.010 or 435.020 for murder or voluntary manslaughter, as the facts may justify, if the woman to whom a drug or other substance has been administered or

upon whom an instrument has been used dies.

435.050 [1151] Homicide occurring in course of striking, stabbing or shooting. Any person who willfully strikes, stabs, thrusts or shoots another, not intending to produce or cause his death, and not in self-defense nor in an attempt to keep and preserve the peace nor in the lawful arrest or attempt to arrest a person charged with a crime, nor in doing any other legal act, so that the person struck, stabbed, thrust or shot dies from the injury within six months, shall be confined in the penitentiary for not less than one nor more than six years.

435.060 [1241] Homicide or injury resulting from obstruction of road. (1) Any person who willfully obstructs any public road or private passway by stretching or placing any obstruction dangerous to the traveling public on or across it, and thereby causes a person to suffer a fatal injury, shall be punished by confinement in the penitentiary for life, or by death.

(2) Any person who willfully obstructs any public road or private passway by stretching or placing any obstruction dangerous to the traveling public on or across it, whereby any person is injured, shall be confined in the penitentiary for not less than one nor more than five years.

Injury to personal property by willfully obstructing road, KRS 433.440
Tearing up or obstructing railroad prohibited, KRS 433.390

435.070 [1151a-1; 1151a-2] Lynching or mob violence. (1) As used in subsections (2), (3) and (4) of this section, "mob" means any number of persons more than three, assembled to do violence or injury to or lynch any person in the custody of a peace officer or jailer in this state.

(2) Any person who takes part in and with any mob shall be punished by confinement in the penitentiary for life, or by death, if the person in custody meets death at the hands of the mob.

(3) Any person who takes part in and with a mob shall be confined in the penitentiary for not less than two nor more than twenty-one years, if the person in custody does not meet death at the hands of the mob.

(4) Any person not standing in the relationship of husband or wife, parent, grandparent, child, grandchild, brother or sister, by consanguinity or affinity, who, after subsections (2) and (3) of this section have been violated, harbors, conceals or aids any member of the mob who participated in the offense, with the intent that that member of the mob shall escape arrest or punishment, shall be confined in the penitentiary for not less than two nor more than twenty-one years.

Accessories after the fact, KRS 431.170
Confederating to injure persons, KRS 437.110
Resistance to execution of process, Cr.C. 371 to 374
Riots, suppression of, Cr.C. 375 to 379
Vacation of office when lynching due to officer's negligence, KRS 63.140

435.080 [1152; 1153] Rape of child under twelve; attempted rape. (1) Any person who commits rape upon a child under twelve years of age shall be punished by confinement in the penitentiary for life, or by death.

(2) Any person who attempts to commit rape upon a child under twelve years of age shall be confined in the penitentiary for not less than five nor more than twenty years.

435.090 [1154] Rape of female over twelve. Any person who unlawfully carnally knows a female of and above twelve years of age against her will or consent, or by force or while she is insensible, shall be punished by death, or by confinement in the penitentiary for life without privilege of parole, or by confinement in the penitentiary for not less than ten years nor more than twenty years. (1944, c. 143)

435.100 [1155] Carnal knowledge of female child under eighteen with her consent, or of male child under eighteen. (1) Except as provided in subsection (2) of this section, any male person who carnally knows, with her consent, any female child, not his wife, and any female person who carnally knows any male child, not her husband, shall:

(a) If the child is under twelve years of age, be punished by confinement in the penitentiary for not less than twenty nor more than fifty years, or by death.

(b) If the child is of the age of twelve years and under sixteen, be confined in

the penitentiary for not less than five nor more than twenty years.

(c) If the child is of the age of sixteen years and under eighteen, be confined in the penitentiary for not less than two nor more than ten years, unless it is shown by the evidence, beyond a reasonable doubt, that the prosecutrix is sexually immoral or has a reputation for sexual immorality, in which case the defendant shall be fined not more than five hundred dollars. In all prosecutions for carnally knowing a female between the ages of sixteen and eighteen years, previous acts of sexual immorality committed by the female and her general reputation for sexual immorality may be proven.

(2) Any male person of the age of seventeen years and under twenty-one and any female person of the age of eighteen years and under twenty-one who violates any of the provisions of this section shall be fined not more than five hundred dollars.

(3) When the complaining witness is over the age of sixteen years and the defendant is under twenty-one, testimony may be heard in aggravation or mitigation of the charge.

Procedure and commitment, where male child of seventeen years or less, or female of eighteen or less, is charged with any crime,
KRS 199.080 to 199.110

435.105 Indecent or immoral practices with child under fifteen. Any person of the age of seventeen years or over who carnally abuses the body, or indulges in any indecent or immoral practices with the body or organs of any child under the age of fifteen years, or who induces, procures or permits a child under the age of fifteen years to indulge in immoral, sexual or indecent practices with himself or any person shall be guilty of a felony, punishable on conviction thereof by imprisonment in the penitentiary for not less than one year nor more than ten years. (1948, c. 36; effective June 17, 1948)

435.110 [1158] Taking or detaining woman against her will. Any person who unlawfully takes or detains any woman against her will, with intent to marry her or have her married to another, or with intent to have carnal knowledge of her himself or that another shall have carnal knowledge of her, shall be confined in the

penitentiary for not less than two nor more than seven years.

435.120 [1156; 1157] Taking girl under fourteen away from parents. (1) Any person over the age of fourteen years who unlawfully takes, without her consent, any unmarried girl under the age of fourteen years out of the custody of her father, mother or other person having the lawful custody and charge of her, against the will and consent of the person, shall be fined not less than one hundred dollars nor more than five hundred dollars, or confined in the penitentiary for not less than one nor more than two years, or both.

(2) Subsection (1) of this section shall not apply to a person claiming in good faith to be the parent of the child or to have the right to its custody.

435.130 [1157] Taking or enticing away or detaining child under ten. (1) Any person over the age of fourteen years who unlawfully takes or entices away or detains any child under the age of ten years, with intent to deprive the parent or other person having the lawful custody and charge of the child of such custody, or with intent to steal any article of value upon or about the person of the child, or shall, with any such intention to deprive the parent or other person having the lawful custody and charge of the child, receive, conceal or harbor the child, knowing it to have been so taken or enticed away, shall be confined in the penitentiary for not less than one nor more than three years.

(2) Subsection (1) of this section shall not apply to a person claiming in good faith to be the parent of the child or to have the right to its custody.

435.140 [1157a] Kidnapping; venue. (1) Any person who, forcibly or otherwise, holds another against his will to unlawfully obtain a ransom for his release, or who aids or abets any person thus offending, shall be punished by confinement in the penitentiary for life, or by death.

(2) Any person charged with violating subsection (1) of this section may be tried in any county into or through which the person held or taken has been carried or brought.

435.150 [1221] Unlawful arrest, imprisonment or transportation out of state. Any person who arrests or imprisons another or transports him, against his will, beyond the bounds of this state, otherwise than according to law, but under circumstances not constituting a violation of any of the provisions of KRS 435.140, or causes or in any manner counsels, aids or abets in such an arrest, imprisonment or transportation shall be confined in the penitentiary for not less than one nor more than twenty years.

Banding together to rescue accused person from custody of officer prohibited, KRS 437.110

435.160 [1165] Maiming. Any person who, by fighting or otherwise, unlawfully puts out an eye, or cuts, bites off or slits the tongue, nose, ear or lip, or cuts or bites off any other member of another, shall be confined in the penitentiary for not less than one nor more than five years.

Slung shots and brass knuckles, injury by is actionable by person injured, KRS 411.020
Slung shots and brass knuckles, widow or minor child of person killed by has action, KRS 411.150

435.170 [1166; 1227a] Malicious and willful shooting, cutting or poisoning; shooting or throwing missile into train, station, steamboat, motor vehicle or building. Any person shall be confined in the penitentiary for not less than two nor more than twenty-one years who:

(1) Willfully and maliciously, with a gun or other instrument loaded with a leaden bullet or other hard substance, shoots at another without wounding him, or shoots at and wounds another with intent to kill him so that he does not die from the wound, or wounds a person other than the person shot at so that he does not die from the wound; or

(2) Willfully and maliciously cuts, strikes or stabs another with a knife or other deadly weapon with intent to kill, if the person stabbed, cut or bruised does not die from the wound; or

(3) Willfully and maliciously administers poison to another, if the person poisoned does not die from the poisoning; or

(4) Willfully and maliciously shoots at or into, or throws a stone or dangerous or deadly missile at or into, any railroad engine or cars attached to the engine, passenger coach, station, station platform, steamboat or motor vehicle occupied by

any person, or any dwelling house, storehouse or any building where people live or frequent for pleasure or business; or

(5) Presents a gun, with intent to willfully and maliciously shoot in or on any railroad engine or cars attached to the engine, passenger coach, station, station platform, steamboat or motor vehicle occupied by any person; or

(6) Aids, counsels, advises or encourages another person in committing any offense described in this section.

Accessory before the fact, KRS 431.160
Firearms, widow or minor child of person killed by reckless use of has action, KRS 411.150
Slung shot, injury by is actionable by person injured, KRS 411.020
Slung shot, widow or minor child of person killed by has action, KRS 411.150

435.180 [1242] Shooting, wounding or cutting in sudden affray or heat and passion, without previous malice. Any person who, not under circumstances described in KRS 435.190, in a sudden affray or in sudden heat and passion, without previous malice, and not in self-defense, shoots at without wounding, or shoots and wounds another person, or wounds a person other than the person shot at, with a gun or other instrument loaded with a bullet or other hard substance, without killing that person, or, in like manner, cuts, thrusts or stabs any other person with a knife or other deadly weapon, without killing that person, shall be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned for not less than six nor more than twelve months, or both.

435.190 [794] Reckless shooting or throwing of missile into train, station or motor vehicle. (1) Any person who recklessly throws a stone or other missile at or into, or shoots at or into, any railroad engine or cars attached to the engine, passenger coach, any station or station platform occupied by any person, or at or into any motor vehicle, stationary or traveling upon any public highway in this state, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned for not less than six nor more than twelve months.

(2) If the missile thrown or the shot fired was calculated to produce death or great bodily harm, and any person on or in the engine, cars, coach, station, station

platform or motor vehicle is injured or wounded the person so throwing or shooting shall be confined in the penitentiary for not less than one nor more than five years, and should death ensue from such throwing or shooting within one year thereafter the person guilty of the throwing or shooting shall be punished by confinement in the penitentiary for life, or by death.

Firearms, widow or minor child of person killed by reckless use of has action, KRS 411.150

435.200 [1308] Drawing, flourishing or recklessly using deadly weapon. Any person who, in any place other than a passenger coach or the platform of any passenger coach occupied by passengers or employes, draws a deadly weapon upon or at another, or holds or flourishes a deadly weapon, whether the weapon is loaded or unloaded, or uses a deadly weapon in a threatening or boisterous manner, or discharges a deadly weapon, except in self-defense or in defense of property, on a public highway or at any school assembly, place of public worship or business or in going to or from any place of public worship, shall be fined not less than fifty dollars nor more than one hundred dollars, or imprisoned for not less than ten nor more than fifty days, or both.

Assault with offensive weapon, with intent to rob, KRS 433.150

435.210 [1308a-1] Drawing or flourishing deadly weapon in passenger coach. Any person who, not under circumstances described in KRS 435.170, draws or flourishes a deadly weapon inside a passenger coach or on the platform of a passenger coach occupied by passengers or employes shall be fined not less than twenty-five dollars nor more than three hundred dollars, or imprisoned for not less than ten days nor more than twelve months, or both.

Railroad, boisterous behavior on prohibited, KRS 277.260

435.220 [1347] Shooting firearms in city. Any person who shoots or discharges firearms in a city, unless necessary or proper for the protection of person or property, shall be fined not more than twenty dollars. However, the

city may permit shooting outside of designated limits or on particular occasions, or in designated places.

435.230 [1309; 1313] Carrying concealed deadly weapon; selling deadly weapon to minor. (1) Any person, not expressly authorized by law, who carries concealed a deadly weapon, other than an ordinary pocket knife, on or about his person, or any person who sells a deadly weapon, other than an ordinary pocket knife, to a minor, shall be confined in the penitentiary for not less than two nor more than five years.

(2) Sheriffs, constables, marshals, policemen and other ministerial officers, when necessary for their protection in the discharge of their official duties; United States mail carriers, when actually engaged in their duties; and agents and messengers of express companies, when necessary for their protection in the discharge of their official duties, may carry concealed deadly weapons on or about their persons. (1946, c. 40)

Active Militia and National Guard may carry arms, KRS 37.250, 38.420
Conservation officers may bear arms, KRS 150.095

435.235 Confiscation of deadly weapons. (1) Upon the conviction of any person for the violation of any law of this Commonwealth in the unlawful use of any deadly weapon, any such weapon used by such person in the commission of said offense or found in his possession or control shall be confiscated, donated to any officer of the Federal, state or county government, or sold by the sheriff of the county by order of the court wherein such conviction is had.

(2) The judge of any court now having in its possession or under its control any deadly weapon taken from any person heretofore convicted or charged with any offense for the violation of the use of such weapons is hereby authorized to confiscate, donate to any officer of the Federal, state or county government, or to have same sold by the sheriff of the county. If said weapons are sold by the sheriff, any fund received from the sale thereof shall be turned over to the school fund of said county. (1942, c. 42)

435.240 [331i-1; 331i-2] Abandonment of child under sixteen or pregnant wife

in destitute circumstances; postponement of prosecution; power of circuit court over verdict or indictment; desertion, abandonment or nonsupport by divorced parent; taking of child from divorced parent to whom custody has been awarded.

(1) The parent of any child residing in this state who leaves, deserts or abandons a child under the age of sixteen years, leaving the child in destitute or indigent circumstances and without making proper provision for the board, clothing, education and proper care of the child in a manner suitable to the condition and station in life of the parent and the child, or any married man who leaves, deserts or abandons his wife while she is pregnant by him, leaving her in destitute or indigent circumstances and without making proper provision for the board, clothing and proper care of the wife in a manner suitable to the condition and station in life of the man and his wife, shall be confined in the penitentiary for not less than one nor more than five years.

(2) The circuit court may postpone, at the request of the defendant, any trial under any indictment returned under subsection (1) of this section during the good behavior of the defendant, and may suspend judgment upon any verdict of conviction during the good behavior of the person convicted. It shall have power over the verdict or indictment for five years after the return of such an indictment or the rendition of such a verdict, and may dismiss such an indictment or set aside such a verdict when in the exercise of a sound judicial discretion it deems the conduct of the parent will warrant such action.

(3) If a divorce has been granted by a court of competent jurisdiction, and the parent of any child under the age of sixteen years shall desert or abandon such child, without complying with the orders of the court as set forth in the judgment granting said divorce relative to the custody or support of said child, or if such parent having custody of such child under the orders of said court shall abandon and desert said child, or if a parent, not having custody of said child, shall take and carry away said child from the custody of the parent to whom the custody of such child was awarded by said judgment of divorce, without the consent of the parent having such custody, the

parent so doing shall be deemed guilty of a felony and shall be confined in the penitentiary for not less than one nor more than five years. (Subsection (3) added, 1946, c. 90, § 1)

Note: 1946, c. 90, which purported to amend KRS 435.240 by adding thereto an additional subsection to be known as subsection (3), without setting the entire section forth at length as amended as required by § 51 of the Constitution, is probably unconstitutional.

Cruel desertion of child under six prohibited, KRS 405.040

Parents, supervisor of, in counties having population of 200,000 or more, KRS 405.090
Spouses may testify against each other in prosecution for child desertion, C.C. 606

435.250 [1241a-6; 1241a-7] Sending threatening letter; incriminating testimony. (1) Any person who sends, circulates, exhibits or puts up any threatening notice or letter, signed with his or another's name or anonymously, shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned for not less than three nor more than twelve months.

(2) In any prosecution under subsection (1) of this section, no witness shall be excused from testifying on the ground that his testimony may incriminate himself. But, no such testimony shall be used against him in any prosecution except for perjury, and he shall be discharged from all liability for any violation of subsection (1) of this section necessarily disclosed in his testimony.

Reward for apprehension of violator of this section, KRS 437.130

435.260 [1376qq-1] Demand of thing of value by menace or threat of violence. Any person who unlawfully and maliciously, by menace or in any forcible or violent manner or with threat of violence, demands any money, goods or chattels, bond, bill, deed, or will or other evidence of right or title, or anything else of value from any other person, under circumstances not constituting robbery, shall be confined in the penitentiary for not less than one nor more than fifteen years.

Robbery, offenses of, KRS 433.120 to 433.150, 433.170

435.270 [1376q-2] Blackmail. Any person who, knowing the contents of the letter, and with intent by means of it to extort or gain any money or other property, or to do, abet or procure any illegal

or wrongful act, sends, delivers or in any manner causes to be forwarded or received or makes or parts with for the purpose that there may be sent or delivered, any letter or other writing threatening to accuse any person of a crime, to do an injury to any person or to any property, to publish or connive at publishing any libel or to expose or impute to any person any deformity or disgrace, shall be confined in the penitentiary for not less than one nor more than ten years.

435.280 [1376q-3] Oral threat similar to blackmail. Any person who, under circumstances not constituting robbery or attempted robbery, with intent to extort any gain or property, orally makes such a threat as would be a violation of KRS 435.270 if made in writing, shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned for not less than thirty nor more than one hundred and twenty days.

435.290 [1376q-4] Nature of threat in KRS 435.270 or 435.280. It shall be immaterial whether a threat made as specified in KRS 435.270 or 435.280 is of things to be done or committed by the offender, or by any other person.

435.300 [1376n] Spreading slanderous report. (1) Any person who willfully, knowingly or maliciously repeats or communicates to any person a false rumor or

report of a slanderous or harmful nature or one detrimental to the character or standing of another person, whether such other person is a private citizen, officer or candidate for office, shall be fined not less than ten dollars nor more than one hundred dollars, or imprisoned for not less than ten nor more than fifty days, or both.

(2) The person repeating or scattering such a report shall be deemed guilty, unless he is able to show to the satisfaction of the court hearing the case that he has carefully investigated the source and foundation of the report and that there were reasonable grounds for repeating it. In order that such a defense shall be available, the person repeating or scattering the report shall be able to give the name of the person furnishing the information upon which the report was based.

Libel, retraction of, in civil action, KRS 411.050; C.C. 124a

435.310 [216aa-102] Fraudulently having one adjudged of unsound mind or confined in an institution. Any person who knowingly conspires or contrives to have another person unlawfully or fraudulently adjudged an idiot, feeble-minded or insane, or confined in any institution in this state for the feeble-minded, epileptic or insane, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned for not less than three nor more than twelve months, or both.

CHAPTER 436

OFFENSES AGAINST MORALITY

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| <p>436.010 Seduction of female under twenty-one
 436.020 Abortion or miscarriage
 436.030 Concealing birth of bastard
 436.040 Pandering
 436.050 Sodomy; buggery
 436.060 Incest
 436.070 Fornication; adultery
 436.075 Prostitution, lewdness and assignation
 436.080 Bigamy
 436.090 Manufacture, distribution or advertising of articles for immoral use
 436.100 Distribution of obscene literature
 436.110 Publications featuring crime
 436.120 Exceptions to KRS 436.090, 436.100 and 436.110
 436.130 Publications featuring pictures of people influenced by stimulants
 436.140 Appearing on highway in bathing garb
 436.150 Profane cursing or swearing
 436.160 Working, holding boxing or wrestling match, playing billiards or pool or hunting, on Sunday
 436.170 Exhibiting or using studhorse, jack or bull near place of worship, residence or school
 436.180 Cruelty to animals
 436.190 Dog fights and chicken fights
 436.200 Gambling in general
 436.210 Common gambler
 436.220 Gambler may be required to give surety for good behavior
 436.230 Operating gambling machine, game or contrivance; pools at race tracks exempted
 436.240 Permitting operation of gambling device on premises
 436.250 Permitting gambling on premises
 436.260 Persuading another to visit gambling place; liability to him and his creditors
 436.270 Playing at gambling device
 436.280 Gambling implements to be seized and destroyed
 436.290 Search for gambling tables</p> | <p>436.300 Betting on billiards or pool
 436.310 Permitting betting on billiards or pool
 436.320 Minor must have parental permit to play billiards or pool; filing and inspection of permits
 436.330 Betting on election
 436.340 Limitation of actions under KRS 436.200 to 436.330
 436.350 Peace officer to arrest person operating gambling machine, game or contrivance
 436.360 Lotteries and gift enterprises prohibited
 436.370 Permitting premises to be used for lottery or gift enterprise
 436.380 Procuring lottery ticket
 436.390 Prohibition of fictitious lotteries
 436.400 Buyer of lottery ticket may testify against seller
 436.410 Indictment in lottery cases
 436.420 Advertising lotteries in newspapers and magazines
 436.430 Selling paper containing lottery advertisement
 436.440 Keeping or leasing premises where bets are placed on races or other contests
 436.450 Acting as agent or employe of another in keeping premises where bets are placed on races or other contests
 436.460 Assembling on premises where bets are placed on races or other contests
 436.470 Peace officer to suppress places where bets are placed on races or other contests
 436.480 Authorized race meetings exempt from KRS 436.440 to 436.470
 436.490 Betting on or transmitting bets on horse races other than authorized Kentucky races
 436.500 Betting on boxing or wrestling match
 436.510 Protection of witnesses in investigation or prosecution for gambling
 436.520 Vagrancy
 436.530 Peace officers to disperse vagrants</p> |
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CROSS REFERENCES

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| <p>Accessories after the fact, KRS 431.170
 Accessories before the fact, KRS 431.160
 Felony, conviction for excludes one from suffrage, Const. 145</p> | <p>General Provisions concerning Crimes and Punishments, Ch. 431
 Second and third convictions for felony, KRS 431.190</p> |
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436.010 [1214] Seduction of female under twenty-one. (1) Any person who, under promise of marriage, seduces and has carnal knowledge of any female under twenty-one years of age, shall be confined in the penitentiary for not less than one nor more than five years.

(2) No prosecution under subsection (1) of this section shall be instituted where the person charged has married the girl seduced or offers and is willing to marry

her unless he willfully and without a cause constituting a ground of divorce provided in KRS 403.020 for the husband, abandons or deserts her within three years after the marriage.

(3) Any prosecution instituted under subsection (1) of this section shall, upon the request of the defendant, be suspended if the accused marries the girl before final judgment. The prosecution shall be renewed and proceed as though

no marriage had taken place if the accused, willfully and without a cause constituting a ground of divorce provided in KRS 403.020 for the husband, abandons or deserts his wife within three years after the marriage.

(4) All prosecutions under subsection (1) of this section shall be instituted within four years after the commission of the offense.

Civil action for seduction, KRS 411.030

436.020 [1219a-1; 1219a-2; 1219a-4] **Abortion or miscarriage.** (1) Any person who prescribes or administers to any pregnant woman or to any woman whom he has reason to believe pregnant, at any time during the period of gestation, any drug, medicine or other substance, or uses any instrument or other means, with the intent to procure the miscarriage of that woman, unless the miscarriage is necessary to preserve her life, shall be fined not less than five hundred dollars nor more than one thousand dollars, and confined in the penitentiary for not less than one nor more than ten years.

(2) If, by reason of any of the acts described in subsection (1) of this section, the miscarriage of the woman is procured and she does miscarry, causing the death of the unborn child, whether before or after quickening time, the person violating the provisions of subsection (1) of this section shall be confined in the penitentiary for not less than two nor more than twenty-one years.

(3) In any prosecution under subsection (1) or (2) of this section, or under KRS 435.040, the consent of the woman to the performance of the operation or the administering of the drug, medicine or other substance shall be no defense, and she shall be a competent witness in the prosecution. For the purpose of testifying she shall not be considered an accomplice.

Accomplice, no conviction on testimony of alone, Cr.C. 241
Homicide, penalty for, if woman dies from abortion, KRS 435.040

436.030 [1220] **Concealing birth of bastard.** Any woman who is delivered of any issue of her body, which, if born alive, would be a bastard, and who endeavors privately by drowning or secretly burying the child or in any other way, directly or indirectly, to conceal the birth

of the child, so that it may not be known whether the child was born alive or not, shall be confined in the penitentiary for not less than one nor more than five years.

Stillborn child, birth of to be recorded, KRS 213.070

436.040 [1215a; 1215b-1] **Pandering.** Any person shall be confined in the penitentiary for not less than one nor more than five years who:

(1) Procures a female inmate for a house of prostitution; or

(2) Causes, induces, persuades or encourages a female, by promise, threat, violence or any scheme or device, to become or to remain an inmate of a house of prostitution; or

(3) Admits to his house or takes or directs to any house, for the purpose of prostitution or lewdness, any female under the age of sixteen; or

(4) Induces, persuades or encourages a female person to come into this state or to leave this state to become an inmate of a house of prostitution; or

(5) Knowingly transports or causes to be transported or aids or assists in obtaining transportation for any female person from one point within this state to another point within this state, with the intent of inducing, persuading or forcing her to become an inmate of a house of prostitution; or

(6) Knowingly accepts or appropriates any money or other thing of value, without lawful consideration, from a prostitute and from the earnings from her prostitutions; or

(7) Receives or gives, or agrees to receive or give, any money or other thing of value for procuring, or attempting to procure, an inmate for a house of prostitution; or

(8) Procures a person for another for the purpose of illicit sexual intercourse and, directly or indirectly, receives a consideration for procuring the person.

Carnal knowledge of child under eighteen, KRS 435.100

Contributing to delinquency of minor, KRS 199.320

Indecent or immoral practices with child under fifteen, KRS 435.105

436.050 [1218] **Sodomy; buggery.** Any person who commits sodomy or buggery, with man or beast, shall be confined in the penitentiary for not less than two nor more than five years.

436.060 [1219] Incest. Any person who carnally knows his or her father, mother, child, sister or brother, knowing such a relationship to exist, shall be confined in the penitentiary for not less than two nor more than twenty-one years.

Incestuous marriage, criminal liability of parties to, KRS 402.990
Prohibited degrees of relationship for marriage, KRS 402.010

436.070 [1320] Fornication; adultery. Any person who commits fornication or adultery shall be fined not less than twenty dollars nor more than fifty dollars.

Adultery, a ground of divorce, KRS 403.020

436.075 Prostitution, lewdness and assignation. (1) The term "prostitution" as used in this section shall be construed to include the giving or receiving of the body for sexual intercourse for hire, and shall also be construed to include the giving or receiving of the body for indiscriminate sexual intercourse without hire. The term "lewdness" shall be construed to include any indecent or obscene act. The term "assignation" shall be construed to include the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

(2) It shall be unlawful to engage in prostitution or to aid or abet prostitution or to procure or solicit any person for the purposes of prostitution, or to keep or set up a house of ill-fame, brothel, or bawdy house, or to receive any person for the purpose of lewdness, assignation, or prostitution into any vehicle, conveyance, place, structure or building, or to permit any person to remain for the purpose of lewdness, assignation, or prostitution in any vehicle, conveyance, place, structure, or building, or to direct, take or transport, or to offer or agree to take or transport, any person to any vehicle, conveyance, place, structure, or building, or to any other person, with knowledge or reasonable cause to know that the purpose of such directing, taking or transporting is prostitution, lewdness, or assignation, or to lease or rent or contract to lease or rent any vehicle, conveyance, place or structure, or building, or part thereof, knowing or with good reason to know that it is intended to be used for any of the purposes herein prohibited.

(3) Any person violating any provision

of this section shall be fined not exceeding two hundred dollars or confined in the county jail for not more than one year, or both so fined and imprisoned.

(4) This section shall in no wise repeal any laws of the Commonwealth of Kentucky on the subject of prostitution and shall be construed by the courts as supplementary thereto. (1942, c. 135, §§ 1, 2, 3, 4)

Indecent or immoral practices with child under fifteen, KRS 435.105

436.080 [1216] Bigamy. (1) Except as provided in subsection (2) of this section, any person who has a living husband or wife and who marries another shall be confined in the penitentiary for not less than three nor more than nine years.

(2) Subsection (1) of this section shall not apply to any person whose spouse has absented himself and continually remained outside of the state, not having been heard of for five years preceding the second marriage, the one spouse not knowing the other to be alive, nor to a person whose former marriage has been or may hereafter be declared void, or whose former marriage was made within the age of consent.

Death, presumption of after seven years' absence, KRS 422.130

First wife to have dower in husband's realty; wife marrying bigamously to lose dower in first husband's realty, KRS 392.100

Marriages prohibited and declared void, KRS 402.020

436.090 [1352; 1354] Manufacture, distribution or advertising of articles for immoral use. Any person who manufactures, sells, lends, gives away or shows, or offers to sell, lend, give away or show, or has in his possession with intent to sell, lend, give away or show, or advertises in any manner or otherwise offers for distribution any article or instrument of indecent or immoral use or purporting to be for an indecent or immoral use or purpose, or who employs, uses or permits any minor to do so, shall be fined not less than fifty dollars nor more than one thousand dollars, or imprisoned for not less than ten days nor more than one year, or both.

436.100 [1352; 1354] Distribution of obscene literature. Any person who sells, lends, gives away or shows, offers to sell, lend, give away or show, has in his possession with intent to sell, lend, give away or show, or advertises in any manner or

otherwise offers for sale, loan, gift or distribution any obscene or disgusting book, magazine, pamphlet, newspaper, writing, picture, drawing, photograph, figure or image, or any written or printed matter of an indecent character, or who designs, copies, draws, photographs, prints, utters, publishes or in any manner manufactures or prepares any such matter or article, or who writes, prints, publishes or utters or causes to be written, printed, published or uttered any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state, where, how, of whom or by what means any such matter or article named in this section can be purchased, obtained or had, or who employs, uses or permits any minor to do so, shall be fined not less than fifty dollars nor more than one thousand dollars, or imprisoned for not less than ten days nor more than one year, or both.

436.110 [1353; 1354] Publications featuring crime. Any person who prints, utters, publishes, sells, lends, gives away or shows, or has in his possession with intent to sell, lend, give away or show, or otherwise offers for sale, loan, gift or distribution, any book, pamphlet, magazine, newspaper or other printed paper whose principal characteristic is criminal news, police reports or accounts of criminal deeds, or pictures or stories of deeds of bloodshed, lust or crime, or employs or uses any minor to do so, shall be fined not less than fifty dollars nor more than one thousand dollars, or imprisoned for not less than ten days nor more than one year, or both.

436.120 [1355] Exceptions to KRS 436.090, 436.100 and 436.110. KRS 436.090, 436.100 and 436.110 do not apply to works of a scientific character or prevent book publishers or dealers from issuing and selling books of scientific character.

436.130 [1351] Publications featuring pictures of people influenced by stimulants. Any person who sells or offers for sale, prints, publishes, or brings into this state to sell, give away or otherwise dispose of, or who circulates or aids in circulating in any way any paper, book or periodical whose principal characteristic

is to depict by illustrations men and women influenced by alcoholic beverages, drugs or stimulants shall be fined not less than twenty-five dollars nor more than two hundred dollars.

436.140 [1376m-1; 1376m-2] Appearing on highway in bathing garb. Any person who appears on any highway, or upon the street of any city that has no police protection, when clothed only in ordinary bathing garb, shall be fined not less than five dollars nor more than twenty-five dollars.

436.150 [1319] Profane cursing or swearing. (1) Any person who profanely curses or swears shall be fined one dollar, and every oath shall be deemed a separate offense.

(2) If the offense prohibited by subsection (1) of this section is committed in a court, the court may instantly, without further proof, inflict the penalty prescribed in subsection (1) of this section.

Profane or obscene language, use of on railroad train prohibited, KRS 277.260

Profane or obscene language, use of on street railway prohibited, KRS 437.090

Profane swearing, limitation of prosecution for, KRS 431.090

436.160 [1290a-7; 1290a-11; 1321; 1323; 1369; 1979] Working, holding boxing or wrestling match, playing billiards or pool or hunting, on Sunday. (1) Any person who works on Sunday at his own or at any other occupation or employs any other person, in labor or other business, whether for profit or amusement, unless his work or the employment of others is in the course of ordinary household duties, work of necessity or charity or work required in the maintenance or operation of a public service or public utility plant or system, shall be fined not less than two dollars nor more than fifty dollars. The employment of every person employed in violation of this subsection shall be deemed a separate offense.

(2) Persons who are members of a religious society which observes as a Sabbath any other day in the week than Sunday shall not be liable to the penalty prescribed in subsection (1) of this section, if they observe as a Sabbath one day in each seven.

(3) Subsection (1) of this section shall not apply to amateur sports, athletic games, operation of moving picture shows,

chautauquas, filling stations or opera.

(4) Any person who holds any boxing or wrestling match or exhibition on Sunday shall be fined not less than ten dollars nor more than one hundred dollars.

(5) Any person licensed to keep, or any person controlling, a billiard, pigeon-hole or pool table who permits any game to be played on it on Sunday shall be fined not less than twenty-five dollars nor more than sixty dollars, and forfeit his billiard, pigeon-hole or pool table license if he holds such a license.

(6) Any person who hunts game, with a gun or dogs, on Sunday shall be fined not less than five dollars nor more than fifty dollars.

Sabbath-breaking, limitation of prosecution for, KRS 431.090

436.170 [1329] Exhibiting or using studhorse, jack or bull near place of worship, residence or school. (1) Any person who exhibits or shows, by riding or leading, a studhorse, jack or bull, or uses him in covering, within view or hearing of any place of public religious worship during the time that an assemblage of persons is engaged in worship, assembled for the purpose of worship or is dispersing from a service, shall be fined not less than ten dollars nor more than fifty dollars.

(2) Any person who uses a studhorse, jack or bull in covering within view of any private residence or school shall be fined not less than ten dollars nor more than fifty dollars.

436.180 [1246-1] Cruelty to animals. Any person who unnecessarily or cruelly beats, tortures, uses or otherwise mistreats any animal, whether his own or not, shall be fined not more than one hundred dollars.

Cattle, injuring, maiming, poisoning or killing of prohibited, KRS 433.810

436.190 [1344] Dog fights and chicken fights. Any person who, for profit, causes dogs or chicken cocks to fight, keeps any house or place to be used for dog fighting or chicken fighting, bets upon any dog fight or chicken fight, or furnishes any dog or chicken cock to be used in a dog fight or chicken fight shall be fined not less than ten dollars nor more than one hundred dollars.

436.200 [1977] Gambling in general.

Any person who engages in any hazard or game on which money or property is bet, won or lost, in any case in which no other penalty is prescribed, shall be fined not less than twenty dollars nor more than one hundred dollars.

436.210 [1971] Common gambler. Any person who is without any lawful occupation, but supports himself for the most part by gambling, shall be indicted as a common gambler and fined not less than fifty dollars nor more than two hundred dollars, or imprisoned for not more than six months, or both. He shall also give surety for his good behavior in the sum of five hundred dollars for one year, or be imprisoned for not more than one year or until he gives such surety. If, after giving surety, he bets any money or thing of value during the year at any game, he shall be deemed to have broken his recognizance.

Peace bond, grounds and breach of and proceedings on, Cr.C. 382 to 391

436.220 [1970] Gambler may be required to give surety for good behavior. Two justices of the peace, a county judge or a police judge may cause any person charged with having no visible estate or lawful occupation but supporting himself for the most part by gambling, to be brought before them, and if the charge appears to be well-founded, may require him to give surety for his good behavior in the sum of one hundred dollars for one year or commit him to prison until he gives it. If, after the person gives the surety, he plays for or bets any money or thing of value during the year at any game, he shall be deemed to have broken his recognizance.

436.230 [1960; 1961] Operating gambling machine, game or contrivance; pools at race tracks exempted. (1) Any person who, with or without compensation, sets up, keeps, manages, operates or conducts or assists in setting up, keeping, managing, operating or conducting a keno bank, faro bank or other machine or contrivance used in betting whereby money or anything of value may be won or lost, or any person who, for compensation, percentage or commission, sets up, keeps, manages, operates or conducts a game of cards, oontz or craps, whereby money

or anything of value may be won or lost or, with or without compensation, percentage or commission, assists in setting up, carrying on, managing, operating or conducting any game so set up, carried on, managed, operated or conducted for compensation, percentage or commission, shall be fined five hundred dollars, and confined in the penitentiary for not less than one nor more than three years. In addition, he shall be deemed infamous after conviction, and be forever disqualified from exercising the right of suffrage and from holding any state, county or city office of honor, trust or profit. The judgment of conviction shall recite such infamy and disqualification, and shall not be valid without the recital.

(2) Subsection (1) of this section shall not apply to persons who play at such games, machines or contrivances, unless they aid or take other part in setting up, conducting, keeping, managing or operating them.

(3) The change of the name of any of the games, banks, tables, machines or contrivances prohibited by subsection (1) of this section shall not prevent the conviction of any person violating the provisions of that subsection.

(4) Subsection (1) of this section shall not apply to persons who sell combination or French pools on any regular race track during the races on that track. An indictment for a violation of the provisions of subsection (1) of this section may charge the accused in one count with any or all of the offenses mentioned or included in that subsection.

Betting permitted at authorized race meetings.
KRS 436.480

Operation of gambling device or game of chance on State Fair Grounds forbidden, KRS 247.155

436.240 [1967] Permitting operation of gambling device on premises. (1) Any person who permits any game, table, bank, machine or contrivance prohibited by KRS 436.230, to be set up, conducted, kept or exhibited in any house, boat or float, or on any premises in his occupation or under his control, or leases such a place or any part of it for that purpose, shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars.

(2) After proof of the setting up, conducting, keeping or exhibiting of such game, machine or contrivance in such a house, boat, float or place, it shall be pre-

sumed to have been with the permission of the person occupying or controlling the place, unless the contrary is clearly proved.

Liability to owner or tenant of premises for gambling there without his consent, KRS 411.090

436.250 [1978] Permitting gambling on premises. Any person who permits any game at which money or anything of value is won or lost to be played in a house, boat or float or on premises in his occupation or under his control, under circumstances not constituting a violation of the provisions of KRS 436.230, 436.240 or 436.310, shall be fined not less than two hundred dollars nor more than five hundred dollars.

436.260 [1969] Persuading another to visit gambling place; liability to him and his creditors. Any person who invites, persuades or otherwise induces another to visit any place where any gambling prohibited by KRS 436.230 is carried on shall be fined not less than fifty dollars nor more than five hundred dollars, and shall be responsible to the other and his creditors for whatever he may lose gambling at that place.

Loser or creditor or heir of loser may have discovery in chancery, KRS 372.030

Loser or creditor or heir of loser may recover from winner, KRS 372.020

436.270 [1968] Playing at gambling device. Any person who engages in or plays at any game, table, bank, machine or contrivance set up, managed, operated, kept or conducted in violation of any of the provisions of KRS 436.230 shall be fined not less than fifty dollars nor more than one hundred dollars.

436.280 [1962] Gambling implements to be seized and destroyed. Any bank, table, contrivance, machine or article used for carrying on a game prohibited by KRS 436.230, together with all money or other things staked or exhibited to allure persons to wager, may be seized by any justice of the peace, sheriff, constable or police officer of a city, with or without a warrant, and upon conviction of the person setting up or keeping the machine or contrivance, the money or other articles shall be forfeited for the use of the state, and the machine or contrivance and other articles shall be burned or destroyed. Though no person is convicted as the

setterup or keeper of the machine or contrivance, yet, if a jury, in summary proceedings, finds that the money, machine or contrivance or other articles were used or intended to be used for the purpose of gambling, they shall be condemned and forfeited.

Third-class city to provide for seizure and destruction of gaming implements, KRS 85.200

436.290 [1974] Search for gambling tables. A judge or justice of the peace, may, by warrant, cause any building to be searched, by night or by day, for the detection of gambling tables. If admission to the building is not given on demand, the person in charge of the warrant shall force an entrance and seize the table, all implements used with the table, and all money and other things staked or exhibited on the table, and arrest the keeper of the table.

Officer may break door to effect arrest, Cr.C. 40
Search warrant to describe place to be searched, and to issue only on probable cause, Const. 10

436.300 [1368; 1979] Betting on billiards or pool. Any person who wagers on a billiard or pool game shall be fined not less than twenty dollars nor more than one hundred dollars.

Officers to suppress pool rooms where gambling is permitted, KRS 436.470

436.310 [1368; 1972; 1979] Permitting betting on billiards or pool. Any person licensed to keep, or any person controlling, a billiard or pool table who knowingly permits any wagering on games played at the table shall be fined not less than twenty-five dollars nor more than two hundred dollars, and shall forfeit his license if he holds such a license.

436.320 [1972] Minor must have parental permit to play billiards or pool; filing and inspection of permits. (1) Any person owning or controlling a billiard or pool table who permits, for compensation or reward, any minor, without the written permission of the parent, guardian or other person having the care, custody or control of the minor, to play any game on the table whether accompanied by betting or not, shall be fined one hundred dollars and shall forfeit the right and privilege of again keeping a table.

(2) The permit required by subsection (1) of this section shall be made under oath. All permits shall be filed alphabeti-

cally by the person owning or operating the billiard or pool table and shall be subject to inspection by any peace officer. (1946, c. 71)

436.330 [1975]-Betting on election. (1) Any person who wagers money or anything of value upon any election shall be fined one hundred dollars. The fine may be recovered in any county where the person violating this subsection may be found, or where the wager was made.

(2) In addition to the fine, if the person winning receives the money or other thing so wagered, its value, or anything for it, the sum of money or the value of anything else so received shall be forfeited to the state, and may be recovered by any appropriate action in the name of the state before the circuit court or the presiding judge of the county court, wherever the person violating subsection (1) of this section may be found.

Fines and forfeitures inure to state, KRS 431.100

436.340 [1980] Limitation of actions under KRS 436.200 to 436.330. Any prosecution or other action arising under KRS 436.200 to 436.330 shall be commenced within five years after the commission of the offense or the cause of action arose.

Felony prosecutions, no limitation on, KRS 431.090

436.350 [1963; 1964] Peace officer to arrest person operating gambling machine, game or contrivance. Any peace officer, having knowledge or information of the commission of the offense of setting up or carrying on a keno bank, faro bank, game of cards or other gambling machine or contrivance whereby money or anything of value may be won or lost as prohibited by KRS 436.230, or who has knowledge of any person aiding or abetting in the offense, who fails to arrest or cause to be arrested immediately the person offending, and take him before the proper court, shall be fined not less than one thousand dollars and imprisoned for not less than six nor more than twelve months, and shall forfeit his office.

Arrest, justice may issue warrant of, when offense involves violence or defendant will otherwise escape punishment, Cr.C. 327

Misfeasance or malfeasance of county officer prohibited, KRS 61.170, 74.990

Officer to take oath to suppress gambling, KRS 62.040

Peace officer, when may arrest, Cr.C. 36

Warrant or summons may be issued by justice, upon sworn information given him, Cr.C. 326
Warrant, proceedings when arrest made without, Cr.C. 46

436.360 [2573] Lotteries and gift enterprises prohibited. (1) Any person who sets up, conducts, manages, operates, draws or otherwise promotes or assists in setting up, conducting, managing, operating, drawing or in otherwise promoting any lottery or gift enterprise, whereby money or anything of value is or is pretended to be disposed of, or any person who writes, prints, sells, exchanges, disposes of, supplies or procures or causes to be supplied or procured, to or for any person, or has in his possession or under his control, with intent, for himself or another, to sell, exchange, dispose of or supply any ticket, share or part of a ticket, or any writing, print, paper, certificate, token or device purporting, designed or intended to give or entitle the holder or any other person to any prize, share or interest in any prize, or to any right, share or interest whatever in any lottery or gift enterprise in or out of this state or in or to any drawing of or in or to the result of any lottery or gift enterprise in or out of this state shall be fined not less than five hundred dollars nor more than five thousand dollars, and shall be confined in the penitentiary for not less than two nor more than five years.

(2) Repealed, 1944, c. 173, § 23.

Lotteries and gift enterprises prohibited, Const. 226

436.370 [2574] Permitting premises to be used for lottery or gift enterprise. Any person who permits the commission of any of the offenses prohibited by KRS 436.360, in any building owned, occupied or controlled by him, or rents or gives control of any building or any part of it, with knowledge or for the purpose that any of the offenses prohibited by KRS 436.360 are to be committed there, shall be fined not less than five hundred dollars nor more than five thousand dollars, and shall be confined in the penitentiary for not less than two nor more than five years.

436.380 [2575] Procuring lottery ticket. Any person who procures for himself any lottery or gift enterprise ticket, or other token, device or thing prohibited by KRS 436.360, shall be fined not less than twenty-five dollars nor more than one hundred dollars.

436.390 [2576] Prohibition of fictitious lotteries. The provisions of KRS 436.360, 436.370 and 436.380 shall apply to pretended or fictitious lotteries or gift enterprises, as well as to real lotteries or gift enterprises.

436.400 [2579] Buyer of lottery ticket may testify against seller. The buyer of any lottery ticket or any device in the nature of a lottery ticket shall be a competent witness in any prosecution against the seller of the ticket.

436.410 [2577; 2580] Indictment in lottery cases. (1) Any indictment found under KRS 436.360 to 436.400 shall be held good if it charges the offense in the language of the particular section. It need not set forth the number, date or other description of the ticket or device or the name of the lottery or gift enterprise.

(2) An indictment may charge in one count the commission of any number of the offenses mentioned in KRS 436.360 and 436.370.

Offenses that may be joined in one indictment, Cr.C. 127

436.420 [1314; 1316] Advertising lotteries in newspapers and magazines. (1) The publisher or owner of any newspaper, magazine, sheet or periodical published and circulated in this state which prints or publishes any advertisement of any lottery, drawing or scheme of chance or any announcement indicating where any ticket or chance thereon can be procured, or which prints, advertises, circulates or publishes any matter, announcement or statement in anywise concerning any lottery, drawing or scheme of chance, whether it is an advertisement of a lottery, drawing or scheme of chance that will occur in the future, that has occurred in the past or that it is usual or customary to hold at any given time, and whether the lottery, drawing or scheme of chance is held in this state or elsewhere, or which prints, advertises, circulates or publishes any announcement or statement of the result, in whole or in part, of any lottery, drawing or scheme of chance, shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned for not less than thirty nor more than sixty days.

(2) If a newspaper, magazine, sheet or periodical which prints or publishes mat-

ter prohibited by subsection (1) of this section is owned by a corporation, the corporation shall be fined as provided in subsection (1) of this section, and either the president or the managing officers of the corporation, or both, shall be imprisoned as provided by subsection (1) of this section in the case of an individual.

436.430 [1315; 1317] Selling paper containing lottery advertisement. Any person who sells or offers for sale or circulates or distributes any written or printed matter in this state containing any advertisement, announcement or statement prohibited by KRS 436.420, shall be fined not less than three hundred dollars nor more than one thousand dollars, and imprisoned for not less than ten nor more than thirty days. Each sale or offering for sale shall be regarded as a separate offense.

436.440 [3914b-1; 3914b-3] Keeping or leasing premises where bets are placed on races or other contests. (1) Any person who provides, manages, maintains or keeps any room, building, float, vessel or premises, or aids and abets others in so doing, in which persons assemble to wager money or anything of value on the result of any horse race or other contest of man or beast to be decided in or out of the state, or advertised or reported as having been or to be run, or in which any money is wagered or received and deposited to be transmitted elsewhere to another to wager, or in which any money or other thing of value is received or paid for any ticket, lot, pool or chance on the result of such a race or contest held or to be held in or out of the state, or advertised or reported as having been held or to be held, shall be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned for not less than six nor more than twelve months.

(2) Any person who, either as owner or agent, leases or rents to any other person, any room, building, float, vessel or premises, to be used for any of the purposes described in subsection (1) of this section, or permits it to be used for such purposes, shall be fined not less than one thousand dollars nor more than five thousand dollars.

(3) Each day that the room, building, float, vessel or premises is provided, man-

aged, maintained, kept or used shall constitute a separate offense.

Races for purse without authority of State Racing Commission prohibited, KRS 230.050

436.450 [3914b-2] Acting as agent or employe of another in keeping premises where bets are placed on races or other contests. Any person who acts as the agent or employe of any other person in establishing, setting up, maintaining, keeping, operating or conducting any room, building, float, vessel or premises of the kind referred to in KRS 436.440 shall be confined in the county jail for not less than six months nor more than one year. Each day any person assists in maintaining, keeping, operating or conducting such a room, building, float, vessel or premises or acts as agent or employe of any other person in maintaining, keeping, operating or conducting it, shall constitute a separate offense.

436.460 [3914b-4] Assembling on premises where bets are placed on races or other contests. Any persons who assemble for any purpose referred to in KRS 436.440 in any room, building, float, vessel or premises shall be imprisoned for not less than ten nor more than thirty days.

436.470 [3914b-5] Peace officer to suppress places where bets are placed on races or other contests. Any peace officer who willfully fails to suppress any room, building, float, vessel or premises in which the provisions of KRS 436.440 are being violated or to arrest violators of the provisions of KRS 436.440 shall be imprisoned for not less than six nor more than twelve months. In addition, a peace officer convicted under this section shall forfeit his office and shall be ineligible to hold any other office in the gift of this state.

436.480 [3914b-6] Authorized race meetings exempt from KRS 436.440 to 436.470. KRS 436.440 to 436.470 shall not apply to enclosures during regular race meetings or enclosures in which horse racing is being conducted under license from the State Racing Commission, or to enclosures during regular race meetings in which trotting and pacing races are being conducted by associations regularly organized for that purpose.

436.490 [1328a] Betting on or transmitting bets on horse races other than authorized Kentucky races. (1) Any person who, either for himself or as agent or employe of another, wagers money or anything of value on a horse race run or about to be run or advertised, posted or reported as being run at any race track in or out of this state, or who engages in the occupation of receiving, making, transmitting or negotiating, either in person or by messenger, telephone or telegraph, wagers on horse races run or about to be run or advertised, posted or reported as being run or about to be run at any race track in or out of the state, shall, except in the case of wagers made within the enclosure of a race track licensed by the State Racing Commission during an authorized race meeting at that track, or an enclosure during regular meetings in which running, trotting or pacing races are being conducted by associations regularly organized for that purpose, be imprisoned for not less than one nor more than twelve months.

(2) In any prosecution under subsection (1) of this section, the state need not prove that the horse race upon which the wager was placed was actually run. Proof that the wager was made upon what purported to be or what was advertised, reported or understood to be a horse race shall be sufficient to establish a prima facie case for the state.

Tax on pari-mutuel betting, KRS 138.510

436.500 [1286] Betting on boxing or wrestling match. Any person who places a wager on any prize fight or boxing or wrestling match or exhibition shall be fined one hundred dollars.

436.510 [1328a; 1973; 2579] Protection of witnesses in investigation or prosecution for gambling. (1) In any prosecution or any investigation by an examining court or grand jury under KRS 436.490, or any prosecution for gambling, it shall be no exemption for a witness that his testimony may incriminate himself.

(2) It shall be no exemption for the buyer of a lottery ticket, in any prosecution against the seller of a lottery ticket, that his testimony may incriminate himself.

(3) No testimony given in the proceedings stated in subsections (1) and (2) of this section shall be used against the testi-

fying witness in any prosecution except for false swearing.

(4) Except as provided in subsection (3) of this section, a witness testifying in any prosecution or any investigation by an examining court or grand jury under KRS 436.490, or any prosecution against the seller of a lottery ticket, shall be discharged from all liability for any offense necessarily disclosed in his testimony.

(5) A witness testifying in any prosecution for gambling shall be discharged from all liability for gambling disclosed in his testimony.

(6) No person against whom a witness testifies in any prosecution or any investigation by an examining court or grand jury under KRS 436.490 shall testify as to similar violations on the part of the witness.

(7) No person against whom a witness testifies in any prosecution for gambling shall testify as to any gambling by the witness.

436.520 [4758-1; 4758-2] Vagrancy.

(1) Any person guilty of being a vagrant shall, for the first offense, be fined ten dollars or imprisoned for thirty days, or both. For the second and each subsequent offense, he shall be imprisoned for sixty days.

(2) "Vagrant," as used in subsection (1) of this section and KRS 436.530 means:

(a) Any able-bodied male person who habitually loiters or rambles about without means to support himself, and who has no occupation at which to earn an honest livelihood; or

(b) Any able-bodied male person without visible means of support who habitually fails to engage in honest labor for his own support or for the support of his family, if he has one; or

(c) Any idle and dissolute able-bodied male person who purposely deserts his wife or children, leaving any of them without suitable subsistence or suitable means of subsistence; or

(d) Any able-bodied person without visible means of support who habitually refuses to work, and who habitually loiters on the streets or public places of any city.

Hard labor, sentence to, KRS 431.140, 441.120 to 441.200

436.530 [4758-4] Peace officers to disperse vagrants. All peace officers shall keep a watch for vagrants at places where they are accustomed to congregate. If any of these officers has reason to believe that a vagrant habitually infests a public place or street, he shall warn the vagrant

to leave that place and go to work. If two or more vagrants habitually loiter about any street or public place, the officer shall disperse them, using no more force than is reasonably necessary for that purpose.