

1 AN ACT relating to terrorism.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) *As used in this section:*

6 (a) *"Act of terror" means an activity that:*

7 1. *Involves violent acts or acts dangerous to human life that violate*
8 *federal or state law;*

9 2. *Appears to be intended to:*

10 a. *Intimidate or coerce a civilian population;*

11 b. *Influence the policy of a government by intimidation or*
12 *coercion; or*

13 c. *Affect the conduct of a government by mass destruction,*
14 *assassination, or kidnapping; and*

15 3. *Occurs primarily within the Commonwealth; and*

16 (b) *"Terrorist" means a person who commits an act of terror, including a*
17 *person who acts as an accessory before or after the fact, aids or abets,*
18 *solicits, or conspires to commit an act of terror or who lends material*
19 *support to an act of terror.*

20 (2) *Any person whose property or person is injured by a terrorist may file a claim for*
21 *and recover damages from the terrorist.*

22 (3) *Any person who files an action under this section is entitled to recover three (3)*
23 *times the actual damages sustained or fifty thousand dollars (\$50,000), whichever*
24 *is greater, as well as court costs and attorneys' fees in the trial and appellate*
25 *courts if the person prevails in the claim.*

26 (4) *The rights and remedies provided by this section are in addition to any other*
27 *rights and remedies provided by law.*

1 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 525 IS CREATED TO
2 READ AS FOLLOWS:

3 (1) A person is guilty of the separate offense of terrorism if conviction of the
4 underlying offense committed would classify the person as a violent offender
5 under KRS 439.3401(1)(a), (b), (c), or (d), or the underlying offense was an
6 offense under KRS 527.200, 527.205, or 527.210 and the person had the intent to:

7 (a) Intimidate the civilian population at large, or an identifiable group of the
8 civilian population; or

9 (b) Influence, through intimidation, the conduct or activities of the government
10 of the United States, the Commonwealth, any other state, or any unit of
11 local government.

12 (2) Terrorism is a capital offense. An offense under this section is a separate offense
13 from the underlying offense and shall not merge with other offenses.

14 (3) A person convicted under this section shall not be released on probation, shock
15 probation, parole, conditional discharge, or any other form of conditional
16 release.

17 (4) (a) All real and personal property used or intended for use in the course of,
18 derived from, or realized through an offense punishable pursuant to this
19 section shall be subject to lawful seizure and forfeiture to the
20 Commonwealth as set forth in KRS 218A.420.

21 (b) Notwithstanding paragraph (a) of this subsection, any real or personal
22 property:

23 1. Taken by a lender in good faith as collateral for the extension of credit
24 and recorded as provided by law;

25 2. Of an owner who made a bona fide purchase of the property; or

26 3. Of a person with rightful possession of the property;

27 shall not be subject to forfeiture unless the lender, owner, or person had

1 *knowledge of an offense under this section.*

2 *(5) Damages awarded pursuant to a successful claim under Section 1 of this Act may*
3 *be paid by property lawfully seized and forfeited under this section.*

4 ➔Section 3. KRS 532.025 is amended to read as follows:

5 (1) (a) Upon conviction of a defendant in cases where the death penalty may be
6 imposed, a hearing shall be conducted. In such hearing, the judge shall hear
7 additional evidence in extenuation, mitigation, and aggravation of
8 punishment, including the record of any prior criminal convictions and pleas
9 of guilty or pleas of nolo contendere of the defendant, or the absence of any
10 prior conviction and pleas; provided, however, that only such evidence in
11 aggravation as the state has made known to the defendant prior to his trial
12 shall be admissible. Subject to the Kentucky Rules of Evidence, juvenile court
13 records of adjudications of guilt of a child for an offense that would be a
14 felony if committed by an adult shall be admissible in court at any time the
15 child is tried as an adult, or after the child becomes an adult, at any subsequent
16 criminal trial relating to that same person. Juvenile court records made
17 available pursuant to this section may be used for impeachment purposes
18 during a criminal trial and may be used during the sentencing phase of a
19 criminal trial; however, the fact that a juvenile has been adjudicated
20 delinquent of an offense that would be a felony if the child had been an adult
21 shall not be used in finding the child to be a persistent felony offender based
22 upon that adjudication. Release of the child's treatment, medical, mental, or
23 psychological records is prohibited unless presented as evidence in Circuit
24 Court. Release of any records resulting from the child's prior abuse and
25 neglect under Title IV-E or IV-B of the Federal Social Security Act is also
26 prohibited. The judge shall also hear argument by the defendant or his counsel
27 and the prosecuting attorney, as provided by law, regarding the punishment to

1 be imposed. The prosecuting attorney shall open and the defendant shall
2 conclude the argument. In cases in which the death penalty may be imposed,
3 the judge when sitting without a jury shall follow the additional procedure
4 provided in subsection (2) of this section. Upon the conclusion of the evidence
5 and arguments, the judge shall impose the sentence or shall recess the trial for
6 the purpose of taking the sentence within the limits prescribed by law. If the
7 trial court is reversed on appeal because of error only in the presentence
8 hearing, the new trial which may be ordered shall apply only to the issue of
9 punishment;

10 (b) In all cases in which the death penalty may be imposed and which are tried by
11 a jury, upon a return of a verdict of guilty by the jury, the court shall resume
12 the trial and conduct a presentence hearing before the jury. Such hearing shall
13 be conducted in the same manner as presentence hearings conducted before
14 the judge as provided in paragraph (a) of this subsection, including the record
15 of any prior criminal convictions and pleas of guilty or pleas of nolo
16 contendere of the defendant. Upon the conclusion of the evidence and
17 arguments, the judge shall give the jury appropriate instructions, and the jury
18 shall retire to determine whether any mitigating or aggravating circumstances,
19 as defined in subsection (2) of this section, exist and to recommend a sentence
20 for the defendant. Upon the findings of the jury, the judge shall fix a sentence
21 within the limits prescribed by law.

22 (2) In all cases of offenses for which the death penalty may be authorized, the judge
23 shall consider, or he shall include in his instructions to the jury for it to consider,
24 any mitigating circumstances or aggravating circumstances otherwise authorized by
25 law and any of the following statutory aggravating or mitigating circumstances
26 which may be supported by the evidence:

27 (a) Aggravating circumstances:

- 1 1. The offense of murder or kidnapping was committed by a person with a
2 prior record of conviction for a capital offense, or the offense of murder
3 was committed by a person who has a substantial history of serious
4 assaultive criminal convictions;
- 5 2. The offense of murder or kidnapping was committed while the offender
6 was engaged in the commission of arson in the first degree, robbery in
7 the first degree, burglary in the first degree, rape in the first degree, or
8 sodomy in the first degree;
- 9 3. The offender by his act of murder, armed robbery, or kidnapping
10 knowingly created a great risk of death to more than one (1) person in a
11 public place by means of a weapon of mass destruction, weapon, or
12 other device which would normally be hazardous to the lives of more
13 than one (1) person;
- 14 4. The offender committed the offense of murder for himself or another,
15 for the purpose of receiving money or any other thing of monetary value,
16 or for other profit;
- 17 5. The offense of murder was committed by a person who was a prisoner
18 and the victim was a prison employee engaged at the time of the act in
19 the performance of his duties;
- 20 6. The offender's act or acts of killing were intentional and resulted in
21 multiple deaths;
- 22 7. The offender's act of killing was intentional and the victim was a state or
23 local public official or police officer, sheriff, or deputy sheriff engaged
24 at the time of the act in the lawful performance of his duties;~~and~~
- 25 8. *The offender was convicted of terrorism under Section 2 of this Act;*
26 *and*
- 27 9. The offender murdered the victim when an emergency protective order

1 or a domestic violence order was in effect, or when any other order
2 designed to protect the victim from the offender, such as an order issued
3 as a condition of a bond, conditional release, probation, parole, or
4 pretrial diversion, was in effect.

5 (b) Mitigating circumstances:

- 6 1. The defendant has no significant history of prior criminal activity;
- 7 2. The capital offense was committed while the defendant was under the
8 influence of extreme mental or emotional disturbance even though the
9 influence of extreme mental or emotional disturbance is not sufficient to
10 constitute a defense to the crime;
- 11 3. The victim was a participant in the defendant's criminal conduct or
12 consented to the criminal act;
- 13 4. The capital offense was committed under circumstances which the
14 defendant believed to provide a moral justification or extenuation for his
15 conduct even though the circumstances which the defendant believed to
16 provide a moral justification or extenuation for his conduct are not
17 sufficient to constitute a defense to the crime;
- 18 5. The defendant was an accomplice in a capital offense committed by
19 another person and his participation in the capital offense was relatively
20 minor;
- 21 6. The defendant acted under duress or under the domination of another
22 person even though the duress or the domination of another person is not
23 sufficient to constitute a defense to the crime;
- 24 7. At the time of the capital offense, the capacity of the defendant to
25 appreciate the criminality of his conduct to the requirements of law was
26 impaired as a result of mental illness or an intellectual disability or
27 intoxication even though the impairment of the capacity of the defendant

1 to appreciate the criminality of his conduct or to conform the conduct to
 2 the requirements of law is insufficient to constitute a defense to the
 3 crime; and

4 8. The youth of the defendant at the time of the crime.

5 (3) The instructions as determined by the trial judge to be warranted by the evidence or
 6 as required by KRS 532.030(4) shall be given in charge and in writing to the jury
 7 for its deliberation. The jury, if its verdict be a recommendation of death, or
 8 imprisonment for life without benefit of probation or parole, or imprisonment for
 9 life without benefit of probation or parole until the defendant has served a minimum
 10 of twenty-five (25) years of his sentence, shall designate in writing, signed by the
 11 foreman of the jury, the aggravating circumstance or circumstances which it found
 12 beyond a reasonable doubt. In nonjury cases, the judge shall make such designation.
 13 In all cases unless at least one (1) of the statutory aggravating circumstances
 14 enumerated in subsection (2) of this section is so found, the death penalty, or
 15 imprisonment for life without benefit of probation or parole, or the sentence to
 16 imprisonment for life without benefit of probation or parole until the defendant has
 17 served a minimum of twenty-five (25) years of his sentence, shall not be imposed.

18 ➔Section 4. This Act shall be known and may be cited as Andy's Law.