

KRS CHAPTER 431
GENERAL PROVISIONS CONCERNING
CRIMES AND PUNISHMENTS
(Selected Sections)

KRS 431.005 Arrest by peace officers – By private persons

- (1) A peace officer may make an arrest:
 - (a) In obedience to a warrant; or
 - (b) Without a warrant when a felony is committed in his or her presence; or
 - (c) Without a warrant when he or she has probable cause to believe that the person being arrested has committed a felony; or
 - (d) Without a warrant when a misdemeanor, as defined in KRS 431.060, has been committed in his or her presence; or
 - (e) Without a warrant when a violation of KRS 189.290, 189.393, 189.520, 189.580, 511.080, or 525.070 has been committed in his or her presence, except that a violation of KRS 189A.010 or KRS 281A.210 need not be committed in his or her presence in order to make an arrest without a warrant if the officer has probable cause to believe that the person being arrested has violated KRS 189A.010 or KRS 281A.210; or
 - (f) Without a warrant when a violation of KRS 508.030 has occurred in the emergency room of a hospital without the officer's presence if the officer has probable cause to believe that the person being arrested has violated KRS 508.030. For the purposes of this paragraph, "emergency room" means that portion of a licensed hospital which as the primary purpose of providing emergency medical care, twenty-four (24) hours per day, seven (7) days per week, and three hundred sixty-five (365) days per year.
- (2)
 - (a) Any peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member, member of an unmarried couple, or another person with whom the person was or is in a dating relationship.
 - (b) As used in this subsection, "dating relationship," "family member," and "member of an unmarried couple" have the same meanings as defined in KRS 403.720 and 456.010.
 - (c) For the purpose of this subsection, the term "member of an unmarried couple" has the same meaning as set out in KRS 403.720(4).

EDITOR'S NOTE: The Kentucky Court of Appeals ruled that "member of an unmarried couple" includes homosexual couples, but not roommates unless engaged in an intimate (i.e., sexual) relationship. Ireland v. Davis, 957 S.W.2d 310 (Ky Ct. App. 1997).

- (3) A peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person is a sexual offender who has failed to comply with the Kentucky Sex Offender Registry requirements based upon information received from the Law Information Network of Kentucky.
- (4) For purposes of subsections (2) and (3) of this section, a "peace officer" is an officer certified pursuant to KRS 15.380.
- (5) If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.
- (6) A private person may make an arrest when a felony has been committed in fact and he has probable cause to believe that the person being arrested has committed it.
- (7) If a law enforcement officer has probable cause to believe that a person has violated a restraining order issued under KRS 508.155, then the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

KRS 431.007 Arrest powers of peace officers assisting in another county – Exception

- (1) A peace officer, certified pursuant to KRS 15.380 to 15.404, who is directly employed as a police officer by a Kentucky city, county, or urban-county government and whose department meets the

requirements of KRS 15.440 and a sheriff or deputy sheriff who has been certified pursuant to KRS 15.380 to 15.404, who is officially requested by a law enforcement agency in another county in Kentucky to assist in any matter within the jurisdiction of the requesting agency shall possess, while responding to and for the duration of the matter for which the request was made, the same powers of arrest in the requesting county as he possesses in the county in which he is a police officer.

- (2) The provisions of this section shall not:
- (a) Authorize assistance in any labor dispute or strike;
 - (b) Authorize assistance by a constable or deputy constable;
 - (c) Authorize assistance by a special local peace officer; or
 - (d) Authorize assistance by a special deputy sheriff.

KRS 431.008 Insurance coverage for assistance rendered under KRS 431.007

When a peace officer specified in KRS 431.007 is lawfully conducting an assistance operation under KRS 431.007, any insurance relative to the performance of his duties, including, but not limited to, workers' compensation, health, liability, and motor vehicle insurance, maintained by the peace officer or the peace officer's employer, shall remain in force.

KRS 431.015 Citation for misdemeanor – Arrest for certain misdemeanors - Failure to appear

- (1) (a) KRS 431.005 to the contrary notwithstanding, and except as provided in paragraphs (b), (c), and (d) of this subsection, a peace officer shall issue a citation instead of making an arrest for a misdemeanor committed in his or her presence, if there are reasonable grounds to believe that the person being cited will appear to answer the charge. The citation shall provide that the defendant shall appear within a designated time.
- (b) A peace officer may make an arrest instead of issuing a citation for a misdemeanor committed in his or her presence if the misdemeanor is:
- 1. A violation of KRS Chapter 508, 510, or 527, or KRS 189A.010, 511.050, 511.085, 514.110 or 523.110;
 - 2. An offense in which the defendant poses a risk of danger to himself, herself, or another person; or
 - 3. An offense in which the defendant refuses to follow the peace officer's reasonable instructions.
- (c) A peace officer shall make an arrest for violations of protective orders issued pursuant to KRS 403.715 to 403.785, or an order of protection as defined in KRS 456.010.
- (d) A peace officer may make an arrest or may issue a citation for a violation of KRS 508.030 which occurs in the emergency room of a hospital pursuant to KRS 431.005(1)(f).
- (2) A peace officer may issue a citation instead of making an arrest for a violation committed in his or her presence but may not make a physical arrest unless there are reasonable grounds to believe that the defendant, if a citation is issued, will not appear at the designated time or unless the offense charged is a violation of KRS 189.223, 189.290, 189.393, 189.520, 189.580, 235.240, 281.600, 511.080, or 525.070 committed in his or her presence or a violation of KRS 189A.010, not committed in his or her presence, for which an arrest without a warrant is permitted under KRS 431.005(1)(e).
- (3) If the defendant fails to appear in response to the citation, or if there are reasonable grounds to believe that he or she will not appear, a complaint may be made before a judge and a warrant shall issue.
- (4) When a physical arrest is made and a citation is issued in relation to the same offense the officer shall mark on the citation, in the place specified for court appearance date, the word "ARRESTED" in lieu of the date of court appearance.

KRS 431.021 Guaranteed arrest bond certificate of surety company to be accepted in lieu of cash bail in traffic cases

- (1) A guaranteed arrest bond certificate presented by the person whose signature appears thereon shall be accepted in lieu of cash bail in an amount not to exceed two hundred dollars (\$200) as a bail bond to guarantee the appearance of such person in any court of this Commonwealth, at the time required by such court, when he is arrested for violation of any law of this Commonwealth or traffic ordinance of any municipality therein relating to the operation of a motor vehicle. A guaranteed arrest bond certificate so presented as a bail bond is subject to the same forfeiture and enforcement provisions as a bail bond or cash bail, but is not subject to Rules 4.30 and 4.34 of the Kentucky Rules of Criminal Procedure. However:
 - (a) The violation must have been committed prior to the expiration date shown on the guaranteed arrest bond certificate, and
 - (b) A guaranteed arrest bond certificate may not be accepted when a person is arrested for violation of KRS 189A.010 or KRS Chapter 281.
- (2) As used in this section, "**guaranteed arrest bond certificate**" means a printed card or other certificate issued by an association to any of its members, which is signed by the member and contains a printed statement that such association and a surety company licensed to do business in this Commonwealth:
 - (a) Guarantee the appearance of the person whose signature appears on the card or certificate, and
 - (b) Will, in the event of the failure of such person to appear in court at the time set for appearance, pay any fine or forfeiture imposed upon such person in an amount not to exceed two hundred dollars (\$200).

KRS 431.025 Notice of intention to arrest – Act of arrest – Force

- (1) The person making an arrest shall inform the person about to be arrested of the intention to arrest him, and of the offense for which he is being arrested.
- (2) An arrest is made by placing the person being arrested in restraint, or by his submission to the custody of the person making the arrest. The submission shall be in the actual presence of the arrester.
- (3) No unnecessary force or violence shall be used in making an arrest.

KRS 431.045 Pursuit in effecting arrest

A peace officer in actual pursuit may continue such pursuit across corporate or county lines for the purpose of making an arrest.

KRS 431.055 Pursuit to recapture escapee

If a person lawfully arrested escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and retake him in any part of the Commonwealth and may be joined in the pursuit and recapture by peace officers in the immediate area or vicinity.

KRS 431.060 Felonies, misdemeanors and violations defined

Offenses are either felonies, misdemeanors, or violations:

- (1) Offenses punishable by death or confinement in the penitentiary, whether or not a fine or other penalty may also be assessed, are felonies.
- (2) Offenses punishable by confinement other than in the penitentiary, whether or not a fine or other penalty may also be assessed, are misdemeanors.
- (3) Offenses punishable by a fine only or by any other penalty not cited herein, whether in combination with a fine or not, are violations.

KRS 431.062 Detention in jail prior to trial prohibited for certain offenses, exceptions

- (1) No person shall be detained in jail prior to trial for any offense defined in KRS 431.060, 500.080, or 532.020 as a violation unless:
 - (a) He has previously failed to make a court appearance required in connection therewith; or

- (b) Is a fugitive from justice.
- (2) This section shall not apply to the offenses listed in KRS 431.015 or 222.202.

KRS 431.063 Victim of human trafficking not to be held in a detention center

A victim of human trafficking shall not be held in a detention center, jail, or other secure facility pending trial for an offense arising from the human trafficking situation except where the incarceration is found to be the least restrictive alternative to securing the appearance of that person before the court or the release of the person under any other reasonable condition would be a clear threat to public safety.

KRS 431.064 Pretrial release of person arrested for assault, sexual offense, or violation of protective order – Conditions – Hearing – Victim entitled to copy of conditions of release – Entry of conditions into Law Information Network – Penalty

- (1) In making a decision concerning pretrial release of a person who is arrested for a violation of KRS Chapter 508 or 510, or charged with a crime involving a violation of an order of protection as defined in KRS 403.720 and 456.010,, the court or agency having authority to make a decision concerning pretrial release shall review the facts of the arrest and detention of the person and determine whether the person:
- (a) Is a threat to the alleged victim or other family or household member; and
 - (b) Is reasonably likely to appear in court.
- (2) Before releasing a person arrested for or charged with a crime specified in subsection (1) of this section, the court shall make findings, on the record if possible, concerning the determination made in accordance with subsection (1), and may impose conditions of release or bail on the person to protect the alleged victim of domestic violence or abuse and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:
- (a) An order enjoining the person from threatening to commit or committing acts of domestic violence or abuse against the alleged victim or other family or household member;
 - (b) An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly;
 - (c) An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;
 - (d) An order prohibiting the person from using or possessing a firearm or other weapon specified by the court;
 - (e) An order prohibiting the person from possession or consumption of alcohol or controlled substances;
 - (f) Any other order required to protect the safety of the alleged victim and to ensure the appearance of the person in court; or
 - (g) Any combination of the orders set out in paragraphs (a) to (f).
- (3) If conditions of release are imposed, the court imposing the conditions on the arrested or charged person shall:
- (a) Issue a written order for conditional release; and
 - (b) Immediately distribute a copy of the order to pretrial services.
- (4) The court shall provide a copy of the conditions to the arrested or charged person upon release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.
- (5) If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the court to review the conditions. Upon request, the court shall hold a prompt hearing to review the conditions.
- * * * * *
- (7) The circuit clerk, or the circuit clerk's designee, in cooperation with the court that issued the order releasing the defendant, shall cause the conditions of release to be entered into the computer system maintained by the clerk and the Administrative Office of the Courts within twenty-four (24) hours following its filing, excluding weekends and holidays. Any modification of the release conditions shall likewise be entered by the circuit clerk, or the circuit clerk's designee.

- (8) The information entered under this section shall be accessible to any agency designated by the Kentucky State Police as a terminal agency for the Law Information Network of Kentucky.
- (9) All orders issued under this section which require entry into the Law Information Network of Kentucky shall be entered on forms prescribed by the Administrative Office of the Courts. If the conditions of pretrial release are contained in an order which is narrative in nature, the prescribed form shall be used in addition to the narrative order.
- (10) Any person who violates any condition of an order issued pursuant to this section is guilty of a Class A misdemeanor.

KRS 431.420 City police to serve warrant, when

Any warrant issued by District Court for an offense committed within a city shall be served by the police department of that city if the warrant is to be served within the city limits.

UNIFORM TRAFFIC CITATION

KRS 431.450 Uniform citation

- (1) The Department of State Police in consultation with the Transportation Cabinet shall design, print, and distribute to all law enforcement agencies in the Commonwealth a uniform citation.
- (2) The citation shall:
 - (a) Be approved by the Supreme Court;
 - (b) Consist of an original document and five (5) copies;
 - (c) Be serially numbered in such a manner that the year of issue and the individual citation number may be readily ascertained; and
 - (d) Contain such other information as may be required by the Supreme Court.
- (3) The Circuit Court clerk shall maintain a system of accountability for all citations issued in accordance with rules and regulations issued by the Supreme Court to assure that citations are not wrongfully destroyed, tampered with, or otherwise compromised in any manner.
- (4) All peace officers in the Commonwealth shall use the uniform citation for all violations of the traffic laws and for all felonies, misdemeanors and violations.

KRS 431.4505 Modification of uniform citation to include alcohol concentration and testing information

The Justice Cabinet shall modify the uniform citation form to include spaces where the peace officer may include:

- (1) The alcohol concentration in cases of violation of KRS 189A.010; and
- (2) Whether the defendant did take, refused to take, or was unable to take for some reason (to be specified on the citation), the alcohol concentration or drug test or tests specified by the peace officer following an arrest for violation of KRS 189A.010.

KRS 431.452 Prepayment of fines subject to certain conditions

- (1) An offense which is designated as subject to prepayment by specific statutory designation may be prepaid by the violator subject to the terms and conditions of the statute involved.
- (2) When an offense that is not designated as subject to prepayment by specific statutory designation is cited on the same citation with another offense that is subject to prepayment, the officer shall cite the violator to court for all cited offenses. However, if the offense for which prepayment is not allowed is dismissed by the judge prior to the court date listed on the citation, the offense subject to prepayment by specific statutory designation may be prepaid by the violator, and the violator shall not be required to appear in court.
- (3) An offense which is designated as subject to prepayment is subject to the following conditions:
 - (a) Designation as subject to prepayment does not preclude a physical arrest by a peace officer for that offense;
 - (b) Designation as subject to prepayment shall preclude a requirement that the defendant make a court appearance on a uniform citation;
 - (c) Except as provided for in KRS 189.990(25), for any offense designated as subject to prepayment the defendant may elect to pay the minimum fine for the offense plus court costs

to the circuit clerk before the date of his trial or be tried in the normal manner, unless the citation is marked for mandatory court appearance pursuant to KRS 431.015 or subsection (2) of this section, except that the fine for violations of KRS 189.221, 189.222, 189.226, 189.270, or 189.271 **[all dealing with weights and measures]** shall be in accordance with KRS 189.990(2)(a) and the defendant shall not be allowed to pay the minimum fine as otherwise allowed by this paragraph;

- (d) Prepayment of the fine and costs shown on the citation or accompanying schedule shall be considered as a plea of guilty for all purposes.
- (4) When a peace officer issues a uniform citation and no physical arrest is made he shall, where the citation is designated as subject to prepayment, mark the citation as "PAYABLE", except as provided in KRS 431.015 or subsection (2) of this section.
- (5) The Administrative Office of the Courts, after consultation with the Kentucky State Police, the Transportation Cabinet, the Division of Forestry, the Division of Fish and Wildlife, and a representative of law enforcement shall develop a prepayable fine and cost schedule and a uniform statewide instruction sheet for the Commonwealth.

KRS 431.455 Prohibitions – Penalty

- (1) No peace officer or other person shall invalidate, or attempt to invalidate, destroy or attempt to destroy a record copy of a uniform citation which has been lawfully issued.
- (2) No peace officer or other person to whom uniform citations are distributed, prior to issuance to a violator, shall fail to properly account for uniform citations issued to him or to his agency as required by KRS 431.450 and the regulations issued thereunder.
- (3) No person required to file reports pursuant to KRS 431.450 and the regulations issued thereunder shall fail to file the reports within the time limits specified.
- (4) Any peace officer or other person who violates the provisions of this section shall be guilty of a Class B misdemeanor.

LIMITATIONS ON WHEN ARREST TO BE MADE

Normally, officers are not restricted by time or location in making arrests and may make an arrest at any time, day or night. Exceptions to this rule include:

LIMITATION IN ARREST WARRANT. The arrest warrant could limit the time for arrest (quite rare).

STATUTE OF LIMITATIONS. The government must start prosecution for misdemeanors or violations within one year. (See KRS 500.050) Arrests (1) without a warrant for misdemeanors or violations occurring more than a year before the arrest, or (2) with a warrant for misdemeanors or violations occurring more than a year before the warrant was issued are improper and illegal.

U.S. SENATORS AND REPRESENTATIVES:

U. S. Constitution Article I, Section 6:

The Senators and Representatives . . . in all Cases, except Treason, Felony and **Breach of the Peace**, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place. . . .

EDITOR'S NOTE: "*Breach of the Peace*" is "*a violation or disturbance of the public tranquility and order. The offense of breaking or disturbing the public peace by any riotous, forcible, or unlawful proceeding. 'Breach of the Peace' is a generic term and includes all violations of public peace or order and acts tending to a disturbance thereof. One who commits a breach of the peace is guilty of disorderly conduct, but not all disorderly conduct is necessarily a breach of the peace.*" Black's Law Dictionary (West Publishing Co)

MEMBERS OF THE GENERAL ASSEMBLY:

Kentucky Constitution Section 43:

The members of the General Assembly shall, in all cases except treason, felony, breach or surety of the peace, be privileged from arrest during their attendance on the sessions of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

VOTERS:

Kentucky Constitution Section 149:

Voters, in all cases except treason, felony, breach of surety of the peace, or violation of the election laws, shall be privileged from arrest during their attendance at elections, and while they are going to and returning therefrom.

KENTUCKY NATIONAL GUARDSMEN:

KRS 38.480(2) Immunity for acts done in pursuance of duty – Immunity from arrest on civil process

* * * * *

(2) No officer, warrant officer, or enlisted man of the Kentucky National Guard or Kentucky active militia shall be arrested, except in case of a felony, while going to, remaining at, or returning from a place where he is ordered to attend for state active duty.

DIPLOMATS; ALIENS

(This material is adapted from materials published by the Federal Law Enforcement Training Center, Brunswick, GA.)

Diplomatic Immunity

Diplomats are representatives of a recognized foreign government who are accredited by that government and are accepted by our government. There are many different types or levels of diplomats including ambassadors, consuls, charge d'affaires, and ministers. Each level of diplomat has its own degree of immunity from civil and/or criminal action. In addition, this immunity may extend beyond that of diplomats themselves and may include the entire family.

Those diplomats who have immunity may not be arrested or prosecuted. If an offense has been committed by a person who claims to have diplomatic immunity, you may detain the person long enough to confirm whether they are in fact protected by diplomatic immunity.

The possession of a diplomatic passport by an individual does not in and of itself indicate that the holder has diplomatic immunity. Verification of diplomatic immunity may be obtained through the United States Department of State's Office of Protocol in Washington, D.C. During normal working hours the State Department may be reached at (202) 647-1664 or (202) 647-1405. After working hours and on weekends, calls should be made to the Diplomatic Security Watch Officer at (202) 647-7277. Send copies of incident reports and citations to (Fax) (202) 895-3613.

Should you find that you have detained diplomats who do have full immunity, you **MUST** release them.

Any writ or process issued against a person holding or possessing diplomatic immunity is null and void, without regard to whether or not the writ or process is civil or criminal in nature. In fact, any person who knowingly obtains or executes such a writ or process may be liable for a fine and/or imprisonment. The one exception to this rule is the issuance of parking citations and similar traffic related offenses.

The right to operate a motor vehicle, obtain state department diplomatic tags, and utilize a driver's permit in the host nation is not an issue of diplomatic immunity. Officers may issue citations to diplomats but not arrest the operator if the diplomat has immunity. It is also recognized that officers may forbid the further operation of a vehicle by an intoxicated driver, regardless of the immunity involved. While the operator, if immune, cannot be arrested, the public safety issue may restrict the movement of the vehicle until a sober and licensed driver can operate the vehicle.

Persons having diplomatic immunity cannot be required to appear in court as a defendant or as a witness for any reason. In order to have them testify, it is necessary for them to volunteer or to get their government to waive their immunity for that purpose.

It is a Federal crime for any person to strike, wound, imprison or offer violence to the person of a diplomatic officer and an offender is subject to fine and/or imprisonment under Federal law as well as being subject to possible prosecution under applicable state statutes which apply to such criminal conduct.

Any and all illegal or criminal acts perpetrated by diplomats should be reported to the Department of State to take whatever action they deem to be appropriate. They may declare a diplomat to be persona non grata and have that diplomat leave the country.

A foreign embassy or other diplomatic mission is considered to be foreign soil. Therefore we have no right to enter onto that property without the permission of an official at that mission. This holds true even in circumstances where a fire has broken out in the mission itself or where people are shooting from the mission, as occurred in London several years ago.

Notification of Embassy Upon Arrest of Aliens.

Aliens are all persons in the United States who are not citizens. Aliens may be here on a temporary basis, such as those with student visas; others may have permanent status, while others are here illegally. While in this country, aliens are subject to all of our criminal laws.

If you arrest an alien, you should ask if the alien wishes you to notify the appropriate consular or diplomatic officers of the appropriate country. If requested, you should notify them as a matter of courtesy. Note however, that some of our treaty obligations with foreign countries require that their diplomatic officials be notified whenever one of their nationals is arrested in our country. To determine such status, call the Department of State at the telephone numbers given above; and remember to fax them a copy of your report.

[This Page Intentionally Left Blank.]