

**640.010 Preliminary hearing -- Proof required to try child as youthful offender in Circuit Court.**

- (1) For children who are alleged to be youthful offenders by falling in the purview of KRS 635.020(2), (3), (5), (6), (7), or (8), the court shall at arraignment assure that the child's rights as specified in KRS 610.060 have been explained and followed.
- (2) In the case of a child alleged to be a youthful offender by falling within the purview of KRS 635.020(2), (3), (5), (6), (7), or (8), the District Court shall, upon motion by the county attorney to proceed under this chapter, and after the county attorney has consulted with the Commonwealth's attorney, conduct a preliminary hearing to determine if the child should be transferred to Circuit Court as a youthful offender. The preliminary hearing shall be conducted in accordance with the Rules of Criminal Procedure.
  - (a) At the preliminary hearing, the court shall determine if there is probable cause to believe that an offense was committed, that the child committed the offense, and that the child is of sufficient age and has the requisite number of prior adjudications, if any, necessary to fall within the purview of KRS 635.020.
  - (b) If the District Court determines probable cause exists, the court shall consider the following factors before determining whether the child's case shall be transferred to the Circuit Court:
    1. The seriousness of the alleged offense;
    2. Whether the offense was against persons or property, with greater weight being given to offenses against persons;
    3. The maturity of the child as determined by his environment;
    4. The child's prior record;
    5. The best interest of the child and community;
    6. The prospects of adequate protection of the public;
    7. The likelihood of reasonable rehabilitation of the child by the use of procedures, services, and facilities currently available to the juvenile justice system; and
    8. Evidence of a child's participation in a gang.
  - (c) If, following the completion of the preliminary hearing, the District Court finds, after considering the factors enumerated in paragraph (b) of this subsection, that two (2) or more of the factors specified in paragraph (b) of this subsection are determined to favor transfer, the child may be transferred to Circuit Court, and if the child is transferred the District Court shall issue an order transferring the child as a youthful offender and shall state on the record the reasons for the transfer. The child shall then be proceeded against in the Circuit Court as an adult, except as otherwise provided in this chapter.
  - (d) If, following completion of the preliminary hearing, the District Court is of the opinion, after considering the factors enumerated in paragraph (b) of this subsection, that the child shall not be transferred to the Circuit Court, the case

shall be dealt with as provided in KRS Chapter 635.

- (3) If the child is transferred to Circuit Court under this section and the grand jury does not find that there is probable cause to indict the child as a youthful offender, as defined in KRS 635.020(2), (3), (5), (6), (7), and (8), but does find that there is probable cause to indict the child for another criminal offense, the child shall not be tried as a youthful offender in Circuit Court but shall be returned to District Court to be dealt with as provided in KRS Chapter 635.

**Effective:** July 14, 2000

**History:** Amended 2000 Ky. Acts ch. 534, sec. 16, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 606, sec. 116, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 358, sec. 55, effective July 15, 1997. -- Amended 1994 Ky. Acts ch. 396, sec. 13, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 412, sec. 1, effective July 14, 1992. -- Amended 1988 Ky. Acts ch. 350, sec. 104, effective April 10, 1988. -- Created 1986 Ky. Acts ch. 423, sec. 134, effective July 1, 1987.

**Legislative Research Commission Note.** Acts 1986, ch. 423, and 199 read: "KRS 446.250 to 446.320 to the contrary notwithstanding, Acts 1986, ch. 423 shall prevail in the event of a conflict between Acts 1986, ch. 423 and other Acts passed by the 1986 regular session of the General Assembly."