

## CHAPTER 141

( HB 359 )

AN ACT relating to alcohol monitoring.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 431 IS CREATED TO READ AS FOLLOWS:

*When considering the pretrial release of a person whose pretrial risk assessment indicates he or she is a moderate-risk or high-risk defendant, the court considering the release may order as a condition of pretrial release that the person use an alcohol monitoring device during all or part of the person's period of pretrial release. All costs associated with the alcohol monitoring device, including administrative and operating costs, shall be paid by the defendant. As used in this section, "alcohol monitoring device" means an electronic device that:*

- (1) *Tests for alcohol concentration level through scheduled, random, continuous, or on-demand testing;*
- (2) *Detects and records tampering attempts; and*
- (3) *Transmits the data by means of either a telephone line or cellular uplink, or records the data for retrieval through methods approved by the court.*

➔Section 2. KRS 431.520 is amended to read as follows:

Any person charged with an offense shall be ordered released by a court of competent jurisdiction pending trial on his personal recognizance or upon the execution of an unsecured bail bond in an amount set by the court or as fixed by the Supreme Court as provided by KRS 431.540, unless the court determines in the exercise of its discretion that such a release will not reasonably assure the appearance of the person as required, or the court determines the person is a flight risk or a danger to others. When such a determination is made, the court shall, either in lieu of or in addition to the above methods of release, impose any of the following conditions of release:

- (1) Place the person in the custody of a designated person or organization agreeing to supervise him;
- (2) Place restrictions on the travel, association, or place of abode of the person during the period of release;
- (3) Require the execution of a bail bond:
  - (a) With sufficient personal surety or sureties acceptable to the court; in determining the sufficiency of such surety or sureties, the court shall consider his character, his place of residence, his relationship with the defendant, and his financial and employment circumstances; or
  - (b) With the ten percent (10%) deposit as provided in KRS 431.530; provided that if the defendant is permitted to earn credit toward bail pursuant to KRS 431.066, that credit shall be applied to the ten percent (10%) deposit; or
  - (c) With the deposit of cash equal to the amount of the bond or in lieu thereof acceptable security as provided in KRS 431.535;
- (4) If the person's record indicates a history of controlled substance or alcohol abuse:~~;~~
  - (a) Order the person to submit to periodic testing for use of controlled substances or alcohol and pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court with the fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. If the person is declared indigent, the testing fee may be waived by the court. The Administrative Office of the Courts shall establish pilot projects to implement the provisions of this subsection; *or*
  - (b) *Order the person to use an alcohol monitoring device, as defined in Section 1 of this Act. All costs associated with the device, including administrative and operating costs, shall be paid by the defendant. If the court determines that the defendant is indigent, and a person, county, or other organization has not agreed to pay the costs for the defendant in an attempt to reduce incarceration expenses and increase public safety, the court shall consider other conditions of release provided for in this section;*

- (5) (a) During all or part of a person's period of release pursuant to this section, order the person to participate in a global positioning monitoring system program operated by a county pursuant to KRS 67.372 and 67.374 under the same terms and conditions provided under KRS 431.517.
- (b) If the person is charged with a sex crime as defined in KRS 17.500, consider requiring that he or she be monitored electronically, and shall consider requiring the person be subject to home incarceration;
- (6) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours;
- (7) A court authorizing the release of a person pursuant to this section shall cause the issuance of an appropriate order containing a statement of the conditions imposed, if any, shall cause such person to be informed of the penalties applicable to violations of the conditions of his release, and shall cause him to be informed that a warrant for his arrest will be issued immediately upon any such violation;
- (8) A person for whom conditions of release are imposed and who after twenty-four (24) hours from the time of the imposition of said conditions continues to be detained as a result of his inability to meet the conditions of release shall, upon written application or upon the court's own motion, be entitled to have the conditions reviewed by the court which imposed them. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon written application or upon the court's own motion, be entitled to a review by the court which imposed the condition; or
- (9) If at any time following release of a defendant and before he is required to appear for trial, the court is advised of a material change in the defendant's circumstances or that he has not complied with all conditions imposed upon his release, the court having jurisdiction may:
  - (a) Order the arrest of the defendant;
  - (b) Enter an order requiring the defendant, his surety or sureties to appear and show cause why the bail bond should not be forfeited or the conditions of his release be changed; or
  - (c) Both.

A copy of said order shall be served upon the defendant, his surety or sureties. If the defendant fails to appear before the court as ordered or if, after hearing, the court finds the conditions of release have not been complied with, the court may change the conditions imposed or forfeit the bail bond or any portion thereof and enter a judgment for the Commonwealth against the defendant and his surety or sureties for the amount of the bail bond or any portion thereof and cost of the proceedings.

➔Section 3. KRS 533.030 is amended to read as follows:

- (1) The conditions of probation and conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation or conditional discharge that the defendant not commit another offense during the period for which the sentence remains subject to revocation.
- (2) When imposing a sentence of probation or conditional discharge, the court may, in addition to any other reasonable condition, require that the defendant:
  - (a) Avoid injurious or vicious habits;
  - (b) Avoid persons or places of disreputable or harmful character;
  - (c) Work faithfully at suitable employment as far as possible;
  - (d) Undergo available medical or psychiatric treatment and remain in a specific institution as required for that purpose;
  - (e) Post a bond, without surety, conditioned on performance of any of the prescribed conditions;
  - (f) Support his dependents and meet other family responsibilities;
  - (g) Pay the cost of the proceeding as set by the court;
  - (h) Remain within a specified area;
  - (i) Report to the probation officer as directed;
  - (j) Permit the probation officer to visit him at his home or elsewhere;

- (k) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment;
  - (l) Submit to periodic testing for the use of controlled substances or alcohol, if the defendant's record indicates a controlled substance or alcohol problem, and to pay a reasonable fee, as determined by the court, which fee shall not exceed the actual cost of the test and analysis and shall be paid directly to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis, as specified by written order of the court, performed under this subsection. For good cause shown, the testing fee may be waived by the court;~~and~~
  - (m) ***Use an alcohol monitoring device, as defined in Section 1 of this Act. All costs associated with the device, including administrative and operating costs, shall be paid by the defendant. If the court determines that the defendant is indigent, and a person, county, or other organization has not agreed to pay the costs for the defendant in an attempt to reduce incarceration expenses and increase public safety, the court shall consider other conditions of probation or conditional discharge provided for in this section; or***
  - (n) During all or part of the period of probation or conditional discharge, participate in a global positioning monitoring system program operated by a county pursuant to KRS 67.372 and 67.374 under the same terms and conditions as provided in KRS 431.517.
- (3) When imposing a sentence of probation or conditional discharge in a case where a victim of a crime has suffered monetary damage as a result of the crime due to his property having been converted, stolen, or unlawfully obtained, or its value substantially decreased as a result of the crime, or where the victim suffered actual medical expenses, direct out-of-pocket losses, or loss of earning as a direct result of the crime, or where the victim incurred expenses in relocating for the purpose of the victim's safety or the safety of a member of the victim's household, or if as a direct result of the crime the victim incurred medical expenses that were paid by the Cabinet for Health and Family Services, the Crime Victims Compensation Board, or any other governmental entity, the court shall order the defendant to make restitution in addition to any other penalty provided for the commission of the offense. Payment of restitution to the victim shall have priority over payment of restitution to any government agency. Restitution shall be ordered in the full amount of the damages, unless the damages exceed one hundred thousand dollars (\$100,000) or twice the amount of the gain from the commission of the offense, whichever is greater, in which case the higher of these two (2) amounts shall be awarded. The court may, in lieu of ordering monetary restitution, order the defendant to make restitution by working for or on behalf of the victim. The court shall determine the number of hours of work necessary by applying the then-prevailing federal minimum wage to the total amount of monetary damage caused by or incidental to the commission of the crime. The court may, with the consent of the agency, order the defendant to work as specified in KRS 533.070. Any work ordered pursuant to this section shall not be deemed employment for any purpose, nor shall the person performing the work be deemed an employee for any purpose. Where there is more than one (1) defendant or more than one (1) victim, restitution may be apportioned. Restitution shall be subject to the following additional terms and conditions:
- (a) Where property which is unlawfully in the possession of the defendant is in substantially undamaged condition from its condition at the time of the taking, return of the property shall be ordered in lieu of monetary restitution;
  - (b) The circuit clerk shall assess an additional fee of five percent (5%) to defray the administrative costs of collection of payments or property. This fee shall be paid by the defendant and shall inure to a trust and agency account which shall not lapse and which shall be used to hire additional deputy clerks and office personnel or increase deputy clerk or office personnel salaries, or combination thereof;
  - (c) When a defendant fails to make restitution ordered to be paid through the circuit clerk or a court-authorized program run by the county attorney or the Commonwealth's attorney, the circuit clerk or court-authorized program shall notify the court; and
  - (d) An order of restitution shall not preclude the owner of property or the victim who suffered personal physical or mental injury or out-of-pocket loss of earnings or support or other damages from proceeding in a civil action to recover damages from the defendant. A civil verdict shall be reduced by the amount paid under the criminal restitution order.

- (4) When requiring fees for controlled substances or alcohol tests, or other fees and payments authorized by this section or other statute, except restitution, to be paid by the defendant, the court shall not order the payments to be paid through the circuit clerk.
- (5) When a defendant is sentenced to probation or conditional discharge, he shall be given a written statement explicitly setting forth the conditions under which he is being released.
- (6) When imposing a sentence of probation or conditional discharge, the court, in addition to conditions imposed under this section, may require as a condition of the sentence that the defendant submit to a period of imprisonment in the county jail or to a period of home incarceration at whatever time or intervals, consecutive or nonconsecutive, the court shall determine. The time actually spent in confinement or home incarceration pursuant to this provision shall not exceed twelve (12) months or the maximum term of imprisonment assessed pursuant to KRS Chapter 532, whichever is the shorter. Time spent in confinement or home incarceration under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to KRS Chapter 532, if probation or conditional discharge is revoked and the defendant is sentenced to imprisonment. Any prohibitions against probation, shock probation, or conditional discharge under KRS 533.060(2) or 532.045 shall not apply to persons convicted of a misdemeanor or Class D felony and sentenced to a period of confinement or home incarceration under this section.

➔Section 4. KRS 533.250 is amended to read as follows:

- (1) A pretrial diversion program shall be operated in each judicial circuit. The chief judge of each judicial circuit, in cooperation with the Commonwealth's attorney, shall submit a plan for the pretrial diversion program to the Supreme Court for approval on or before December 1, 1999. The pretrial diversion program shall contain the following elements:
  - (a) The program may be utilized for a person charged with a Class D felony offense who has not, within ten (10) years immediately preceding the commission of this offense, been convicted of a felony under the laws of this state, another state, or of the United States, or has not been on probation or parole or who has not been released from the service of any felony sentence within ten (10) years immediately preceding the commission of the offense;
  - (b) The program shall not be utilized for persons charged with offenses for which probation, parole, or conditional discharge is prohibited under KRS 532.045;
  - (c) No person shall be eligible for pretrial diversion more than once in a five (5) year period;
  - (d) No person shall be eligible for pretrial diversion who has committed a sex crime as defined in KRS 17.500. A person who is on pretrial diversion on July 12, 2006, may remain on pretrial diversion if the person continues to meet the requirements of the pretrial diversion and the registration requirements of KRS 17.510;
  - (e) Any person charged with an offense not specified as precluding a person from pretrial diversion under paragraph (b) of this subsection may apply in writing to the trial court and the Commonwealth's attorney for entry into a pretrial diversion program;
  - (f) Any person shall be required to enter an Alford plea or a plea of guilty as a condition of pretrial diversion;
  - (g) The provisions of KRS 533.251 shall be observed; and
  - (h) The program may include as a component referral to the intensive secured substance abuse treatment program developed under KRS 196.285 for persons charged with a felony offense under KRS Chapter 218A and persons charged with a felony offense whose record indicates a history of recent and relevant substance abuse who have not previously been referred to the program under KRS 533.251.
- (2) Upon the request of the Commonwealth's attorney, a court ordering pretrial diversion may order the person to:
  - (a) Participate in a global positioning monitoring system program through the use of a county-operated program pursuant to KRS 67.372 and 67.374 for all or part of the time during which a pretrial diversion agreement is in effect; *or*
  - (b) *Use and pay all costs, including administrative and operating costs, associated with the alcohol monitoring device as defined in Section 1 of this Act. If the court determines that the defendant is indigent, and a person, county, or other organization has not agreed to pay the costs for the*

*defendant in an attempt to reduce incarceration expenses and increase public safety, the court shall consider other conditions of pretrial diversion.*

- (3) A court ordering global positioning monitoring system for a person pursuant to this section shall:
  - (a) Require the person to pay all or a part of the monitoring costs based upon the sliding scale determined by the Supreme Court of Kentucky pursuant to KRS 403.761 and administrative costs for participating in the system;
  - (b) Provide the monitoring system with a written or electronic copy of the conditions of release; and
  - (c) Provide the monitoring system with a contact at the office of the Commonwealth's attorney for reporting violations of the monitoring order.
- (4) A person, county, or other organization may voluntarily agree to pay all or a portion of a person's monitoring costs specified in subsection (3) of this section.
- (5) The court shall not order a person to participate in a global positioning monitoring system program unless the person agrees to the monitoring in open court or the court determines that public safety and the nature of the person's crime require the use of a global positioning monitoring system program.
- (6) The Commonwealth's attorney shall make a recommendation upon each application for pretrial diversion to the Circuit Judge in the court in which the case would be tried. The court may approve or disapprove the diversion.
- (7) The court shall assess a diversion supervision fee of a sufficient amount to defray all or part of the cost of participating in the diversion program. Unless the fee is waived by the court in the case of indigency, the fee shall be assessed against each person placed in the diversion program. The fee may be based upon ability to pay.

➔Section 5. KRS 403.761 is amended to read as follows:

- (1) As used in this section, "substantial violation" means a violation of a domestic violence order that has resulted in one (1) or more of the following acts by the respondent against the petitioner, minor child of a petitioner, family member, or member of an unmarried couple protected in the order:
  - (a) An assault prohibited by KRS Chapter 508;
  - (b) Menacing as prohibited by KRS 508.050;
  - (c) Terroristic threatening as prohibited by KRS Chapter 508;
  - (d) Stalking as prohibited by KRS Chapter 508;
  - (e) Wanton endangerment as prohibited by KRS Chapter 508;
  - (f) Kidnapping or a related offense as prohibited by KRS Chapter 509;
  - (g) A sexual offense as prohibited by KRS Chapter 510 other than indecent exposure;
  - (h) Burglary as prohibited by KRS Chapter 511;
  - (i) Destruction or damage to property as prohibited by KRS Chapter 512;
  - (j) Theft as prohibited by KRS Chapter 514;
  - (k) Harassment or harassing communications as prohibited by KRS Chapter 525; or
  - (l) Any felony offense against the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order.
- (2) Following a report of an alleged substantial violation of a domestic violence order by a respondent and prior to any civil hearing on the alleged violation of the order, the court shall obtain an updated report of the respondent's Kentucky criminal history from the Administrative Office of the Courts or the Department of Kentucky State Police and shall obtain from the Administrative Office of the Courts the history of Kentucky Emergency Protective Orders and Domestic Violence Orders against the respondent, together with any violations of those orders.
- (3) Following an alleged substantial violation of a domestic violence order, the court shall hold a hearing to determine if the violation occurred, and if the violation occurred, what sanctions the court may apply. At the

hearing the court shall explain the sanctions which may be imposed to the petitioner and the respondent. The court shall explain to the petitioner that the court may require a respondent who has committed a substantial violation of the domestic violence order to wear a global positioning monitoring system device in lieu of imprisoning the respondent and, except as provided in this section, to pay the costs associated with operating that system in relation to the respondent and the costs associated with operating the system in relation to the petitioner if the petitioner elects to participate.

- (4) Before imposing global positioning monitoring, the court shall provide to the petitioner information regarding:
  - (a) The petitioner's right to participate in a global positioning monitoring system or to refuse to participate in that system and the procedure for requesting that the court terminate the petitioner's participation;
  - (b) The manner in which the global positioning monitoring system technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the respondent's location and movements;
  - (c) Any locations that the respondent is ordered to refrain from going into or near and the minimum distances, if any, that the respondent shall maintain from those locations;
  - (d) Any sanctions that the court may impose on the respondent for violating, in the future, a condition of the domestic violence order imposed under this section;
  - (e) The procedure that the petitioner is to follow, and support services available to assist the petitioner, including but not limited to a designated person or office to notify if the respondent violates a condition of the domestic violence order or if the global positioning monitoring equipment of the respondent or of the petitioner fails; and
  - (f) Community services available to assist the petitioner in obtaining shelter, counseling, education, child care, legal representation, and other assistance available to address the consequences of domestic violence.
- (5) Prior to ordering the respondent to wear a global positioning monitoring system device the court shall provide the respondent an opportunity to controvert the information provided by the petitioner or any other source and to provide to the court the respondent's reasons why the respondent should not be ordered to wear a global positioning monitoring system device.
- (6) If the court orders the respondent to wear a global positioning monitoring system device, in addition to the information described in subsection (4) of this section, the court shall provide to the petitioner who participates in a global positioning monitoring system under this section, the name and telephone number of an appropriate local law enforcement agency in the county in which the order is issued whom the petitioner may call to request immediate assistance if the respondent violates a condition of the domestic violence order imposed pursuant to KRS 403.750 and this section. If the local law enforcement agency does not provide service twenty-four (24) hours per day, seven (7) days per week, the petitioner shall be instructed to call the local public safety answering point using the 911 telephone number.
- (7) If the petitioner has requested that the respondent be ordered to wear a global positioning monitoring system device, the court shall, prior to ordering the respondent to wear a global positioning monitoring system device under this section:
  - (a) Consider the likelihood that without the utilization of a global positioning monitoring system the respondent will seek to kill, assault, stalk, harass, menace, or otherwise threaten the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order; and
  - (b) Enter a determination of findings of fact and reasons as to why the petitioner's request for the respondent to be ordered to participate in global positioning monitoring is being granted or denied.
- (8) A petitioner may request that the court terminate the petitioner's participation in a global positioning monitoring system at any time.
- (9) (a) When a court determines that the respondent shall wear a global positioning monitoring system device, the court shall notify the respondent, the petitioner, and the entity providing global positioning monitoring system services of:
  1. The fact that global positioning monitoring system participation has been ordered;

2. The cost that the respondent is to pay to the entity providing the global positioning monitoring system services, including but not limited to the amount to be paid, the frequency of the payments, the location to which the payments shall be sent, and the duration of the payments;
  3. The cost of the administrative fee that the respondent is to pay to the county or counties providing the monitoring service;
  4. The restrictions on the respondent with regard to locations which the respondent is not to go into or near and the specific distances contained in the order;
  5. The permitted exceptions to the restrictions on the respondent which relate to permitted travel by the respondent which may bring the respondent near or into a location where the respondent normally would be prohibited from going into or near;
  6. The duration of time that the respondent shall wear the device which shall not exceed the duration of the underlying domestic violence order but which may be shorter than the underlying domestic violence order. The date of expiration of the requirement to wear the device shall be specified in the order;
  7. The notifications to be made in the event that the respondent violates the domestic violence order; and
  8. Such other information as the court deems appropriate.
- (b) If the court determines that a respondent is indigent, the court may, based on a sliding scale established by the Supreme Court of Kentucky by rule, require the respondent to pay the costs imposed under this section in an amount that is less than the full amount of the costs associated with operating the global positioning monitoring system in relation to the respondent or providing the petitioner with an electronic receptor device.
- (c) If a respondent pays to an entity that operates a global positioning monitoring system the amount ordered by the court under this subsection, the entity shall accept the amount as payment in full. Neither the Commonwealth, nor the Court of Justice nor the county, urban-county, charter county, or consolidated local government shall be responsible for payment of any costs associated with operating the global positioning monitoring system in relation to an indigent respondent or petitioner.
- (d) A court that imposes a condition described by this section shall order the entity that operates the global positioning monitoring system to immediately notify the petitioner, the court, and the appropriate local law enforcement agency named in the order if a respondent violates a condition of the domestic violence order imposed under this section or KRS 403.750.
- (10) The provisions of this section do not limit the authority of a court to impose any other reasonable conditions authorized by KRS 403.740, 403.750, or 403.747.
- (11) (a) A respondent who has been ordered by a court to wear a global positioning monitoring system monitoring device pursuant to this section shall not, without written permission from the court issuing the order or a higher court to which the issuance of the order has been appealed:
1. Fail to wear the device;
  2. Remove a device that the respondent has been ordered to wear; or
  3. Tamper with or destroy a device that the respondent has been ordered to wear.
- (b) A respondent who violates paragraph (a) of this subsection shall be guilty of a Class D felony.
- (c) The provisions of this section shall not apply to a respondent who, upon the expiration of the order that required the respondent to wear the global positioning monitoring system device, permits the entity providing the monitoring to remove the device.
- (12) A person, county, or other organization may voluntarily agree to pay all or a portion of a defendant's monitoring costs specified in this section.
- (13) (a) *I.* The provisions of this section shall not prohibit a court from imposing any other authorized sanction for a substantial violation of a domestic violence order.

2. *Sanctions may include the use of an alcohol monitoring device, as defined in Section 1 of this Act, with all costs associated with the device, including administrative and operating costs, to be paid by the defendant. If the court determines that the defendant is indigent, and a person, county, or other organization has not agreed to pay the costs for the defendant in an attempt to reduce incarceration expenses and increase public safety, the court shall consider other sanctions.*
- (b) The provisions of this section shall not prohibit a court from imposing any authorized sanction, other than ordering the respondent to wear a global positioning system monitoring device *or an alcohol monitoring device*, for a violation of a domestic violence order which does not constitute a substantial violation as defined in this section.

**Signed by Governor April 25, 2014.**