

CHAPTER 44

(HB 284)

AN ACT relating to probation program credits.

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

➔SECTION 1. A NEW SECTION OF KRS 439.250 TO 439.560 IS CREATED TO READ AS FOLLOWS:

- (1) *Any supervised individual on probation, probation with an alternative sentence, or conditional discharge shall receive credit on his or her sentence for:*
- (a) *Successfully receiving a High School Equivalency Diploma or a high school diploma, a college degree, a completed vocational or technical education program, or a correspondence postsecondary education program which results in a diploma or degree, as defined and approved by the department in the amount of ninety (90) days per diploma, degree, or vocational or technical education program completed;*
- (b) *Successfully completing a drug treatment program, evidence-based program, or any other promising practice or life skills program approved by the department, in the amount of not more than ninety (90) days for each program completed. The department shall determine criteria to establish whether a life skills or promising practice program is eligible for probation program credits. Programs shall demonstrate learning of skills necessary for reintegration into the community to minimize barriers to successful reentry. Approval of programs shall be subject to review by the department; and*
- (c) *Work-for-time credit, which shall be applied for any public employment, at the same rates as calculated pursuant to KRS 197.047.*
- (2) *Probation program credits earned pursuant to subsection (1) of this section shall be applied to reduce the period of probation, probation with an alternative sentence, or conditional discharge ordered by the sentencing court.*
- (3) *No less than ninety (90) days before the projected date of final discharge, the department shall notify the sentencing court of probation program credits awarded pursuant to this section and that the period of supervision is reduced by the number of days of probation program credits earned by the supervised individual, and the impending discharge from supervision. If the sentencing court, upon receiving such notice does not take any action pursuant to Section 8 of this Act, the offender shall be discharged.*
- (4) *The department may promulgate administrative regulations for the awarding of probation program credits.*
- (5) *For supervised individuals on supervision prior to the effective date of this Act, probation program credits shall begin to accrue on the first day of the first month after the effective date of this Act.*

➔Section 2. KRS 439.250 is amended to read as follows:

As used in KRS 439.250 to 439.560, unless the context requires otherwise:

- (1) "Secretary" means the secretary of the Justice and Public Safety Cabinet;
- (2) "Commissioner" means the commissioner of the Department of Corrections;
- (3) "Department" means the Department of Corrections;
- (4) "Deputy commissioner" means the deputy commissioner of the Office of Adult Institutions or the deputy commissioner of the Office of Community Services and Facilities of the Department of Corrections;
- (5) "Board" means the Parole Board created by KRS 439.320;
- (6) "Community supervision" means:
- (a) The placement of a defendant under supervision with conditions imposed by a court for a specified period during which:
1. Criminal proceedings are deferred without an adjudication of guilt; or
 2. A sentence of imprisonment or confinement, imprisonment and fine, or confinement and fine, is probated and the imposition of sentence is suspended in whole or in part; or

- (b) The placement of an individual under supervision after release from prison or jail, with conditions imposed by the board for a specified period;
- (7) "Parole compliance credit" means a credit on a paroled individual's sentence for program credit, work-for-time credit, educational accomplishment, or meritorious service and shall be calculated pursuant to the applicable provisions in KRS 197.045 and 197.047;
- (8) **"Probation program credit" means a credit on the sentence of a supervised individual who is on probation, probation with an alternative sentence, or conditional discharge for educational credit, program completion credit, or work-for-time credit calculated pursuant to Section 1 of this Act;**
- (9) "Supervised compliance credit" means a credit on a ~~paroled~~^{supervised} individual's sentence for compliance with supervision that shall be calculated pursuant to KRS 439.345;
- ~~(10)(9)~~ "Positive reinforcement" means any of a wide range of rewards and incentives, including but not limited to awarding certificates of achievement, reducing reporting requirements, deferring a monthly supervision fee payment, removing supervision conditions such as home detention or curfew, or asking the supervised individual to be a mentor to others;
- ~~(11)(10)~~ "Probation and parole district supervisor" means the highest ranking field probation or parole administrator in each district; and
- ~~(12)(11)~~ "Supervised individual" means an individual placed on probation, **probation with an alternative sentence, or conditional discharge** by a court or serving a period of parole or post-release supervision from prison or jail.

➔Section 3. KRS 439.3106 is amended to read as follows:

- (1) Supervised individuals shall be subject to:
- (a) Violation revocation proceedings and possible incarceration for failure to comply with the conditions of supervision when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large, and cannot be appropriately managed in the community; or
- (b) Sanctions other than revocation and incarceration as appropriate to the severity of the violation behavior, the risk of future criminal behavior by the offender, and the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community.
- (2) (a) At a final revocation hearing, the board may subject a supervised individual to a supervision continuation sanction for a period of up to nine (9) months, or until the completion of the individual's sentence, whichever is shorter.
- (b) Individuals under a supervision continuation sanction shall be placed in:
1. A state or local correctional or detention facility;
 2. An inpatient program for substance abuse treatment which has been approved by the department; or
 3. Notwithstanding KRS 532.100, a halfway house, when the individuals have been classified by the department as community custody.
- (c) Individuals under a supervision continuation sanction shall be considered inmates for the duration of the supervision continuation sanction period. If an individual under a supervision continuation sanction successfully completes the sanction and has not completed the individual's sentence, the individual shall then be considered a supervised individual.
- (d) 1. When a supervised individual has successfully completed the supervision continuation sanction and has not completed the individual's sentence, the individual shall be:
- a. Reinstated to supervision in the community without another hearing before the board; and
 - b. Subject to the same supervision conditions that the individual had been under at the time of the **probable cause**~~preliminary~~ revocation hearing.
2. When a supervised individual does not successfully complete a supervision continuation sanction and has not completed the individual's sentence, the individual shall be returned to the board for revocation proceedings.

➔Section 4. KRS 439.3108 is amended to read as follows:

- (1) Notwithstanding any administrative regulation or law to the contrary, including KRS 439.340(3)(b), the department or board may:
 - (a) Modify the conditions of community supervision for the limited purpose of imposing graduated sanctions;
 - (b) Place a supervised individual who is on probation who violates the conditions of community supervision in a state or local correctional or detention facility or residential center for a period of not more than ten (10) days consecutively, and not more than sixty (60) days in any one (1) calendar year. The department shall reimburse the local correctional or detention facility or residential center for the costs of incarcerating a person confined under this paragraph at the rate specified in KRS 532.100;
 - (c) Place a supervised individual serving a period of parole or post-release supervision from prison or jail who violates the conditions of community supervision in a state or local correctional or detention facility or residential center for a period of not more than thirty (30) days consecutively, and not more than sixty (60) days in any one (1) calendar year. The department shall reimburse the local correctional or detention facility or residential center for the costs of incarcerating a person confined under this paragraph at the rate specified in KRS 532.100; and
 - (d) Notwithstanding paragraphs (b) and (c) of this subsection, place any supervised individual who violates the conditions of community supervision in a state or local correctional or detention facility or residential center for the period of time a supervised individual awaits admission to a residential alcohol or substance use treatment program. The department shall reimburse the local correctional or detention facility or residential center for the costs of incarcerating a supervised individual serving a period of parole or post-release supervision confined under this paragraph at the rate specified in KRS 532.100.
- (2) A probation and parole officer intending to modify the conditions of community supervision by imposing a graduated sanction shall issue to the supervised individual a notice of the intended sanction. The notice shall inform the supervised individual of the technical violation or violations alleged, the date or dates of the violation or violations, and the graduated sanction to be imposed.
- (3) The imposition of a graduated sanction or sanctions by a probation and parole officer shall comport with the system of graduated sanctions adopted by the department under KRS 439.3107. Upon receipt of the notice, the supervised individual shall immediately accept or object to the sanction or sanctions proposed by the officer. The failure of the supervised individual to comply with a sanction shall constitute a violation of community supervision.
- (4) If the supervised individual objects to the imposition of the sanction or sanctions, then:
 - (a) If the supervised individual is serving a period of parole or post-release supervision from prison or jail, then the administrative process promulgated under KRS 439.3107(3) shall apply; or
 - (b) If the supervised individual is on probation, then the provisions of KRS 533.050 shall apply.
- (5) If the graduated sanction involves confinement in a correctional or detention facility:~~;~~
 - (a) Confinement shall be approved by the probation and parole district supervisor, but the supervised individual may be taken into custody for up to four (4) hours while such approval is obtained;~~;~~
 - (b) If the supervised individual is employed, the probation and parole officer shall, to the extent feasible, impose this sanction on weekend days or other days and times when the supervised individual is not working; *and*
 - (c) *The supervised individual may be placed on work release for work at his or her place of employment.*
- (6) A sanction that confines a supervised individual in a correctional or detention facility for a period **longer than authorized under subsection (1) of this section**~~of more than ten (10) consecutive days~~, or extends the term of community supervision, shall not be imposed as a graduated sanction, except pursuant to an order of the court or the board.
- (7) Upon successful completion of a graduated sanction or sanctions, a court may not revoke the term of community supervision or impose additional sanctions for the same violation.

- (8) If a probation and parole officer modifies the conditions of community supervision by imposing a graduated sanction, the officer shall:
- (a) Deliver a copy of the modified conditions to the supervised individual;
 - (b) File a copy of the modified conditions with the sentencing court or releasing authority; and
 - (c) Note the date of delivery of the copy in the supervised individual's file or case management system.

→Section 5. KRS 439.341 is amended to read as follows:

Probable cause~~(Preliminary)~~ revocation hearings of probation, parole, and postincarceration supervision violators shall be conducted by hearing officers. These hearing officers shall be attorneys, appointed by the board and admitted to practice in Kentucky, who shall perform the aforementioned duties and any others assigned by the board.

→Section 6. KRS 439.352 is amended to read as follows:

Recommitment of a **supervised individual on parole or post-release supervision**~~[parolee]~~ to prison **or jail** on a new sentence received for commission of a crime while on parole **or other post-release supervision** shall automatically terminate his **or her** parole **or other post-release supervision** status on any sentence on which he **or she** has not received a final discharge, or a restoration of civil rights, prior to the date of recommitment. The prisoner shall, at the time of the recommitment on the new sentence, begin to accrue additional time credit toward conditional release or expiration of sentence on the sentence on which he **or she** had previously been **on community supervision**~~[paroled]~~ unless he **or she** has been finally discharged from **community supervision**~~[parole]~~ on the sentence or has been restored to civil rights prior to the date of the recommitment.

→Section 7. KRS 439.440 is amended to read as follows:

Any prisoner returned to **state custody**~~[prison]~~ for violation of his **or her** release shall be heard by the board within **sixty (60)**~~[thirty (30)]~~ days on the propriety of his **or her** rerelease.

→Section 8. KRS 533.020 is amended to read as follows:

- (1) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court shall place him on probation if he is in need of the supervision, guidance, assistance, or direction that the probation service can provide. Conditions of probation shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of probation. When setting conditions under this subsection, the court shall not order any defendant to pay incarceration costs or any other cost permitted to be ordered under KRS 533.010 or other statute, except restitution and any costs owed to the Department of Corrections, through the circuit clerk.
- (2) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him to probation with an alternative sentence if it is of the opinion that the defendant should conduct himself according to conditions determined by the court and that probationary supervision alone is insufficient. The court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the alternative sentence.
- (3) When a person who has been convicted of an offense or who has entered a plea of guilty to an offense is not sentenced to imprisonment, the court may sentence him to conditional discharge if it is of the opinion that the defendant should conduct himself according to conditions determined by the court but that probationary supervision is inappropriate. Conditions of conditional discharge shall be imposed as provided in KRS 533.030, but the court may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of conditional discharge.
- (4) The period of probation, probation with an alternative sentence, or conditional discharge shall be fixed by the court and at any time may be extended or shortened by duly entered court order **or as modified by the Department of Corrections through the application of probation program credits under Section 1 of this Act**. Such period, with extensions thereof, shall not exceed five (5) years, or the time necessary to complete restitution, whichever is longer, upon conviction of a felony nor two (2) years, or the time necessary to complete restitution, whichever is longer, upon conviction of a misdemeanor. Upon completion of the probationary period, probation with an alternative sentence, or the period of conditional discharge, the defendant shall be deemed finally discharged, provided no warrant issued by the court is pending against him, and probation, probation with an alternative sentence, or conditional discharge has not been revoked.

- (5) Notwithstanding the fact that a sentence to probation, probation with an alternative sentence, or conditional discharge can subsequently be modified or revoked, a judgment which includes such a sentence shall constitute a final judgment for purposes of appeal.

Signed by Governor March 27, 2020.