

1 AN ACT relating to shock probation.

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

3 ➔Section 1. KRS 439.265 is amended to read as follows:

- 4 (1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any Circuit  
5 Court may, upon motion of the defendant made not earlier than thirty (30) days nor  
6 later than one hundred eighty (180) days after the defendant has been incarcerated in  
7 a county jail following his conviction and sentencing pending delivery to the  
8 institution to which he has been sentenced, or delivered to the keeper of the  
9 institution to which he has been sentenced, suspend the further execution of the  
10 sentence and place the defendant on probation upon terms the court determines.  
11 Time spent on any form of release following conviction shall not count toward time  
12 required under this section.
- 13 (2) The court shall consider any motion filed in accordance with subsection (1) of this  
14 section within sixty (60) days of the filing date of that motion, and shall enter its  
15 ruling within ten (10) days after considering the motion. The defendant may, in the  
16 discretion of the trial court, have the right to a hearing on any motion he may file, or  
17 have filed for him, that would suspend further execution of sentence. Any court  
18 order granting or denying a motion to suspend further execution of sentence is not  
19 reviewable.
- 20 (3) (a) During the period in which the defendant may file a motion pursuant to this  
21 statute, the sentencing judge, within his or her discretion, may order that the  
22 defendant be held in a local detention facility that is not at or above maximum  
23 capacity until such time as the court rules on said motion. During this period  
24 of detention, and prior to the court's ruling on said motion, the court may  
25 require the defendant to participate in any approved community work program  
26 or other forms of work release. Persons held in the county jail pursuant to this  
27 subsection shall not be subject to transfer to a state correctional facility until

1 the decision is made not to place the petitioner on shock probation.

2 (b) The provisions concerning community work programs or other forms of work  
3 release shall apply only to persons convicted of Class C or Class D felonies,  
4 and may be granted only after a hearing at which the Commonwealth's  
5 attorney has the opportunity to present arguments in favor or opposition  
6 thereto.

7 (4) (a) If the defendant is a violent offender as defined in KRS 439.3401, the  
8 sentence shall not be probated under this section.

9 (b) *The sentence shall not be probated under this section if the defendant has*  
10 *been convicted of:*

11 *1. A violation of KRS 507.040 and a violation of KRS 189A.010 arising*  
12 *out of the same incident; or*

13 *2. A violation of KRS 507.050 and a violation of KRS 189A.010 arising*  
14 *out of the same incident.*

15 (5) If the defendant has been convicted of an offense under KRS 510.050, 510.080,  
16 530.020, 530.064(1)(a), or 531.310, or criminal attempt to commit any of these  
17 offenses under KRS 506.010, the sentence shall not be suspended, in accordance  
18 with KRS 532.045.

19 (6) When a defendant has been convicted of a sex crime, as defined in KRS 17.500, the  
20 court shall order a comprehensive sex offender presentence evaluation, unless one  
21 has been provided within the past six (6) months, in which case the court may order  
22 an update of the comprehensive sex offender presentence evaluation of the  
23 defendant conducted by the sex offender treatment program operated or approved  
24 by the Department of Corrections or the Sex Offender Risk Assessment Advisory  
25 Board. The comprehensive sex offender presentence evaluation shall provide to the  
26 court a recommendation related to the risk of a repeat offense by the defendant and  
27 the defendant's amenability to treatment, and shall be considered by the court in

1           determining whether to suspend the sentence. If the court suspends the sentence and  
2           places the defendant on probation, the provisions of KRS 532.045(3) to (7) shall  
3           apply.

4       (7) The authority granted in this section shall be exercised by the judge who imposed  
5           sentence on the defendant, unless he is unable to act and it appears that his inability  
6           to act should continue beyond the expiration of the term of the court. In such case,  
7           the judge who imposed sentence shall assign a judge to dispose of a motion filed  
8           under this section, or as prescribed by the rules and practices concerning the  
9           responsibility for disposition of criminal matters.

10       (8) The provisions of this section shall not apply where a sentence of death has been  
11           imposed.