

1 AN ACT relating to community supervision.

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

3 ➔Section 1. KRS 439.250 is amended to read as follows:

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

- 5 (1) "Secretary" means the secretary of the Justice and Public Safety Cabinet;
- 6 (2) "Commissioner" means the commissioner of the Department of Corrections;
- 7 (3) "Department" means the Department of Corrections;
- 8 (4) "Deputy commissioner" means the deputy commissioner of the Office of Adult
9 Institutions or the deputy commissioner of the Office of Community Services and
10 Facilities of the Department of Corrections;
- 11 (5) "Board" means the Parole Board created by KRS 439.320;
- 12 (6) "Community supervision" means:
- 13 (a) The placement of a defendant under supervision with conditions imposed by a
14 court for a specified period during which:
- 15 1. Criminal proceedings are deferred without an adjudication of guilt; or
- 16 2. A sentence of imprisonment or confinement, imprisonment and fine, or
17 confinement and fine, is probated and the imposition of sentence is
18 suspended in whole or in part; or
- 19 (b) The placement of an individual under supervision after release from prison or
20 jail, with conditions imposed by the board for a specified period;
- 21 (7) "Parole compliance credit" means a credit on a paroled individual's sentence for
22 program credit, work-for-time credit, educational accomplishment, or meritorious
23 service and shall be calculated pursuant to the applicable provisions in KRS
24 197.045 and 197.047;
- 25 (8) "Supervised compliance credit" means a credit on a supervised individual's sentence
26 for compliance with supervision that shall be calculated pursuant to KRS 439.345;
- 27 (9) "Positive reinforcement" means any of a wide range of rewards and incentives,

1 including but not limited to awarding certificates of achievement, reducing
 2 reporting requirements, deferring a monthly supervision fee payment, removing
 3 supervision conditions such as home detention or curfew, or asking the supervised
 4 individual to be a mentor to others;

5 (10) "Probation and parole district supervisor" means the highest ranking field probation
 6 or parole administrator in each district;~~and~~

7 (11) "Supervised individual" means an individual placed on probation, **probation with**
 8 **an alternative sentence, or conditional discharge** by a court or serving a period of
 9 parole or post-release supervision from prison or jail;

10 **(12) "Technical violation" means any violation of the conditions of community**
 11 **supervision other than a new misdemeanor or felony conviction or absconding;**
 12 **and**

13 **(13) "Absconding" means willfully avoiding the detection of a probation and parole**
 14 **officer for a period of at least thirty (30) days and after the probation and parole**
 15 **officer has made at least four (4) documented attempts to locate the supervised**
 16 **individual.**

17 ➔Section 2. KRS 439.553 is amended to read as follows:

18 For supervised individuals on probation, **probation with an alternative sentence, or**
 19 **conditional discharge**, the court having jurisdiction of the case shall determine the
 20 conditions of community supervision and:

21 **(1) For technical violations, shall~~may~~** impose as a condition of community
 22 supervision that the department supervising the individual shall, in accordance with
 23 KRS ~~439.551~~~~439.3108~~, impose graduated sanctions adopted by the department for
 24 **a technical violation**~~[violations of the conditions of community supervision];~~

25 **(2) For absconding, shall impose as a condition of community supervision that the**
 26 **department supervising the individual shall, in accordance with Section 4 of this**
 27 **Act, impose graduated sanctions adopted by the department for an absconding**

1 violation; and

2 (3) For violations resulting from new misdemeanor or felony convictions, the court
3 may impose as a condition of community supervision that the department
4 supervising the individual shall, in accordance with Section 4 of this Act, impose
5 graduated sanctions adopted by the department.

6 ➔Section 3. KRS 439.3107 is amended to read as follows:

- 7 (1) The department shall, by January 1, 2020~~[2012]~~, adopt a system of graduated
8 sanctions for violations of conditions of community supervision, which shall
9 include graduated sanctions for those supervised individuals on probation,
10 probation with an alternative sentence, or conditional discharge, for technical
11 violations and violations of absconding. Notwithstanding KRS Chapter 533, the
12 system shall set forth a menu of presumptive sanctions for the most common types
13 of supervision violations, including but not limited to: failure to report; failure to
14 pay fines, fees, and victim restitution; failure to participate in a required program or
15 service; failure to complete community service; violation of a protective or no
16 contact order; and failure to refrain from the use of alcohol or controlled substances.
17 The system of sanctions shall take into account factors such as the severity of the
18 current violation, the supervised individual's previous criminal record, the number
19 and severity of any previous supervision violations, the supervised individual's
20 assessed risk level, and the extent to which graduated sanctions were imposed for
21 previous violations. The system also shall define positive reinforcements that
22 supervised individuals may receive for compliance with conditions of supervision.
- 23 (2) The department shall establish by administrative regulation an administrative
24 process to review and approve or reject, prior to imposition, graduated sanctions
25 that deviate from those prescribed.
- 26 (3) The department shall establish by administrative regulation an administrative
27 process to review graduated sanctions contested by supervised individuals under

1 KRS 439.3108.

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

3 (1) Notwithstanding any administrative regulation or law to the contrary, including
4 KRS 439.340(3)(b), the department or board may:

5 (a) Modify the conditions of community supervision for the limited purpose of
6 imposing graduated sanctions;

7 (b) *For a supervised individual who is on probation, probation with an*
8 *alternative sentence, or conditional discharge and has been apprehended*
9 *following a violation of absconding, impose graduated sanctions as detailed*
10 *in subsection (5) of this section;*

11 (c) Place a supervised individual who is on probation, *probation with an*
12 *alternative sentence, or conditional discharge* who violates the conditions of
13 community supervision in a state or local correctional or detention facility or
14 residential center for a period of not more than ten (10) days consecutively,
15 and not more than sixty (60) days in any one (1) calendar year. The
16 department shall reimburse the local correctional or detention facility or
17 residential center for the costs of incarcerating a person confined under this
18 paragraph at the rate specified in KRS 532.100;

19 ~~(d)~~~~(e)~~ Place a supervised individual serving a period of parole or post-release
20 supervision from prison or jail who violates the conditions of community
21 supervision in a state or local correctional or detention facility or residential
22 center for a period of not more than thirty (30) days consecutively, and not
23 more than sixty (60) days in any one (1) calendar year. The department shall
24 reimburse the local correctional or detention facility or residential center for
25 the costs of incarcerating a person confined under this paragraph at the rate
26 specified in KRS 532.100; and

27 ~~(e)~~~~(d)~~ Notwithstanding paragraphs ~~(c)~~~~(b)~~ and ~~(d)~~~~(e)~~ of this subsection,

1 place any supervised individual who violates the conditions of community
2 supervision in a state or local correctional or detention facility or residential
3 center for the period of time a supervised individual awaits admission to a
4 residential alcohol or substance use treatment program. The department shall
5 reimburse the local correctional or detention facility or residential center for
6 the costs of incarcerating a supervised individual serving a period of parole or
7 post-release supervision confined under this paragraph at the rate specified in
8 KRS 532.100.

9 (2) A probation and parole officer intending to modify the conditions of community
10 supervision by imposing a graduated sanction shall issue to the supervised
11 individual a notice of the intended sanction. The notice shall inform the supervised
12 individual of the technical violation or violations alleged, the date or dates of the
13 violation or violations, and the graduated sanction to be imposed.

14 (3) The imposition of a graduated sanction or sanctions by a probation and parole
15 officer shall comport with the system of graduated sanctions adopted by the
16 department under KRS 439.3107. Upon receipt of the notice, the supervised
17 individual shall immediately accept or object to the sanction or sanctions proposed
18 by the officer. The failure of the supervised individual to comply with a sanction
19 shall constitute a violation of community supervision.

20 (4) If the supervised individual objects to the imposition of the sanction or sanctions,
21 then:

22 (a) If the supervised individual is serving a period of parole or post-release
23 supervision from prison or jail, then the administrative process promulgated
24 under KRS 439.3107(3) shall apply; or

25 (b) If the supervised individual is on probation, probation with an alternative
26 sentence, or conditional discharge, then the provisions of KRS 533.050 shall
27 apply.

1 (5) *If a supervised individual who is on probation, probation with an alternative*
 2 *sentence, or conditional discharge has committed a violation of absconding, then*
 3 *with the approval of his or her probation and parole district supervisor, a*
 4 *probation and parole officer:*

5 *(a) For the first absconding violation, shall use graduated sanctions in lieu of*
 6 *revocation, unless the probation and parole officer determines that the*
 7 *supervised individual has been arrested for new criminal activity or is being*
 8 *supervised for an offense that would qualify the individual as a violent*
 9 *offender as defined in KRS 439.3401 or a sex offender as defined in KRS*
 10 *17.550; and*

11 *(b) For the second or any subsequent absconding violation, may use graduated*
 12 *sanctions in lieu of revocation.*

13 **(6)** If the graduated sanction involves confinement in a correctional or detention
 14 facility, confinement shall be approved by the probation and parole district
 15 supervisor, but the supervised individual may be taken into custody for up to four
 16 (4) hours while such approval is obtained. If the supervised individual is employed,
 17 the probation and parole officer shall, to the extent feasible, impose this sanction on
 18 weekend days or other days and times when the supervised individual is not
 19 working.

20 ~~**(7)**~~ A sanction that confines a supervised individual in a correctional or detention
 21 facility for a period of more than ten (10) consecutive days, or extends the term of
 22 community supervision, shall not be imposed as a graduated sanction, except
 23 pursuant to an order of the court or the board.

24 ~~**(8)**~~ Upon successful completion of a graduated sanction or sanctions, a court may
 25 not revoke the term of community supervision or impose additional sanctions for
 26 the same violation.

27 ~~**(9)**~~ If a probation and parole officer modifies the conditions of community

1 supervision by imposing a graduated sanction, the officer shall:

- 2 (a) Deliver a copy of the modified conditions to the supervised individual;
- 3 (b) File a copy of the modified conditions with the sentencing court or releasing
4 authority; and
- 5 (c) Note the date of delivery of the copy in the supervised individual's file or case
6 management system.

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

8 **(1)** Preliminary revocation hearings of probation, **probation with an alternative**
9 **sentence, conditional discharge**, parole, and postincarceration supervision violators
10 shall be conducted by hearing officers. These hearing officers shall be attorneys,
11 appointed by the board and admitted to practice in Kentucky, who shall perform the
12 aforementioned duties and any others assigned by the board.

13 **(2)** **If a supervised individual who is on probation, probation with an alternative**
14 **sentence, or conditional discharge has been detained pursuant to Section 6 of this**
15 **Act for a technical violation, a preliminary revocation hearing shall be held**
16 **within fifteen (15) business days of the date of detainment. If the preliminary**
17 **revocation hearing does not occur within fifteen (15) business days of the date of**
18 **detainment, the supervised individual shall be released from detention and**
19 **continued on probation, probation with an alternative sentence, or conditional**
20 **discharge.**

21 ➔Section 6. KRS 533.050 is amended to read as follows:

- 22 (1) At any time before the discharge of the defendant or the termination of the sentence
23 of probation, **probation with an alternative sentence**, or conditional discharge:
- 24 (a) The court may summon the defendant to appear before it or may issue a
25 warrant for his arrest upon a finding of probable cause to believe that he has
26 failed to comply with a condition of the sentence; or
- 27 (b) A probation officer, or peace officer acting at the direction of a probation

1 officer, who sees the defendant violate the terms of his probation, probation
 2 with an alternative sentence, or conditional discharge may arrest the
 3 defendant without a warrant.

4 (2) ~~Except as provided in KRS 439.3108,~~ The court may not:

5 (a) Modify the conditions of a sentence of probation, probation with an
 6 alternative sentence, or conditional discharge except after a hearing with
 7 the defendant represented by counsel and following a written notice of the
 8 grounds for modification; or

9 (b) Revoke ~~or modify~~ the conditions of a sentence of probation, probation with
 10 an alternative sentence, or conditional discharge except after a final
 11 revocation hearing in accordance with subsections (3) of this section with
 12 the defendant represented by counsel and following a written notice of the
 13 grounds for revocation ~~or modification~~.

14 (3) If the defendant is arrested on a warrant and detained for a technical violation, a
 15 final revocation hearing shall be held within thirty (30) business days of the date
 16 of the preliminary revocation hearing. If a final revocation hearing for a
 17 technical violation does not occur within thirty (30) business days of the date of
 18 the preliminary revocation hearing, the defendant shall be released from
 19 detention and continued on probation, probation with an alternative sentence, or
 20 conditional discharge.

21 ➔Section 7. Sections 1 to 6 of this Act take effect January 1, 2020.