

1 AN ACT relating to probation program credits.

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

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

5 *(1) Any supervised individual on probation, probation with an alternative sentence,*
6 *or conditional discharge shall receive credit on his or her sentence for:*

7 *(a) Successfully receiving a High School Equivalency Diploma or a high*
8 *school diploma, a college degree, a completed vocational or technical*
9 *education program, or a correspondence postsecondary education program*
10 *which results in a diploma or degree, as defined and approved by the*
11 *department in the amount of ninety (90) days per diploma, degree, or*
12 *vocational or technical education program completed;*

13 *(b) Successfully completing a drug treatment program, evidence-based*
14 *program, or any other promising practice or life skills program approved by*
15 *the department, in the amount of not more than ninety (90) days for each*
16 *program completed. The department shall determine criteria to establish*
17 *whether a life skills or promising practice program is eligible for probation*
18 *program credits. Programs shall demonstrate learning of skills necessary*
19 *for reintegration into the community to minimize barriers to successful*
20 *reentry. Approval of programs shall be subject to review by the department;*
21 *and*

22 *(c) Work-for-time credit, which shall be applied for any public employment, at*
23 *the same rates as calculated pursuant to KRS 197.047.*

24 *(2) Probation program credits earned pursuant to subsection (1) of this section shall*
25 *be applied to reduce the period of probation, probation with an alternative*
26 *sentence, or conditional discharge ordered by the sentencing court.*

27 *(3) No less than ninety (90) days before the projected date of final discharge, the*

1 department shall notify the sentencing court of probation program credits
 2 awarded pursuant to this section and that the period of supervision is reduced by
 3 the number of days of probation program credits earned by the supervised
 4 individual, and the impending discharge from supervision. If the sentencing
 5 court, upon receiving such notice does not take any action pursuant to Section 8
 6 of this Act, the offender shall be discharged.

7 (4) The department may promulgate administrative regulations for the awarding of
 8 probation program credits.

9 (5) For supervised individuals on supervision prior to the effective date of this Act,
 10 probation program credits shall begin to accrue on the first day of the first month
 11 after the effective date of this Act.

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

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

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

1 (b) The placement of an individual under supervision after release from prison or
2 jail, with conditions imposed by the board for a specified period;

3 (7) "Parole compliance credit" means a credit on a paroled individual's sentence for
4 program credit, work-for-time credit, educational accomplishment, or meritorious
5 service and shall be calculated pursuant to the applicable provisions in KRS
6 197.045 and 197.047;

7 (8) **"Probation program credit" means a credit on the sentence of a supervised**
8 **individual who is on probation, probation with an alternative sentence, or**
9 **conditional discharge for educational credit, program completion credit, or work-**
10 **for-time credit calculated pursuant to Section 1 of this Act;**

11 **(9)** "Supervised compliance credit" means a credit on a ~~paroled~~^{supervised}
12 individual's sentence for compliance with supervision that shall be calculated
13 pursuant to KRS 439.345;

14 **(10)**~~(9)~~ "Positive reinforcement" means any of a wide range of rewards and
15 incentives, including but not limited to awarding certificates of achievement,
16 reducing reporting requirements, deferring a monthly supervision fee payment,
17 removing supervision conditions such as home detention or curfew, or asking the
18 supervised individual to be a mentor to others;

19 **(11)**~~(10)~~ "Probation and parole district supervisor" means the highest ranking field
20 probation or parole administrator in each district; and

21 **(12)**~~(11)~~ "Supervised individual" means an individual placed on probation, **probation**
22 **with an alternative sentence, or conditional discharge** by a court or serving a
23 period of parole or post-release supervision from prison or jail.

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

25 (1) Supervised individuals shall be subject to:

26 (a) Violation revocation proceedings and possible incarceration for failure to
27 comply with the conditions of supervision when such failure constitutes a

1 significant risk to prior victims of the supervised individual or the community
2 at large, and cannot be appropriately managed in the community; or

3 (b) Sanctions other than revocation and incarceration as appropriate to the
4 severity of the violation behavior, the risk of future criminal behavior by the
5 offender, and the need for, and availability of, interventions which may assist
6 the offender to remain compliant and crime-free in the community.

7 (2) (a) At a final revocation hearing, the board may subject a supervised individual to
8 a supervision continuation sanction for a period of up to nine (9) months, or
9 until the completion of the individual's sentence, whichever is shorter.

10 (b) Individuals under a supervision continuation sanction shall be placed in:

- 11 1. A state or local correctional or detention facility;
- 12 2. An inpatient program for substance abuse treatment which has been
13 approved by the department; or
- 14 3. Notwithstanding KRS 532.100, a halfway house, when the individuals
15 have been classified by the department as community custody.

16 (c) Individuals under a supervision continuation sanction shall be considered
17 inmates for the duration of the supervision continuation sanction period. If an
18 individual under a supervision continuation sanction successfully completes
19 the sanction and has not completed the individual's sentence, the individual
20 shall then be considered a supervised individual.

21 (d) 1. When a supervised individual has successfully completed the
22 supervision continuation sanction and has not completed the individual's
23 sentence, the individual shall be:

24 a. Reinstated to supervision in the community without another
25 hearing before the board; and

26 b. Subject to the same supervision conditions that the individual had
27 been under at the time of the probable cause~~[preliminary]~~

1 revocation hearing.

2 2. When a supervised individual does not successfully complete a
3 supervision continuation sanction and has not completed the individual's
4 sentence, the individual shall be returned to the board for revocation
5 proceedings.

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

- 7 (1) Notwithstanding any administrative regulation or law to the contrary, including
8 KRS 439.340(3)(b), the department or board may:
- 9 (a) Modify the conditions of community supervision for the limited purpose of
10 imposing graduated sanctions;
 - 11 (b) Place a supervised individual who is on probation who violates the conditions
12 of community supervision in a state or local correctional or detention facility
13 or residential center for a period of not more than ten (10) days consecutively,
14 and not more than sixty (60) days in any one (1) calendar year. The
15 department shall reimburse the local correctional or detention facility or
16 residential center for the costs of incarcerating a person confined under this
17 paragraph at the rate specified in KRS 532.100;
 - 18 (c) Place a supervised individual serving a period of parole or post-release
19 supervision from prison or jail who violates the conditions of community
20 supervision in a state or local correctional or detention facility or residential
21 center for a period of not more than thirty (30) days consecutively, and not
22 more than sixty (60) days in any one (1) calendar year. The department shall
23 reimburse the local correctional or detention facility or residential center for
24 the costs of incarcerating a person confined under this paragraph at the rate
25 specified in KRS 532.100; and
 - 26 (d) Notwithstanding paragraphs (b) and (c) of this subsection, place any
27 supervised individual who violates the conditions of community supervision

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

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

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

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

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

24 (b) If the supervised individual is on probation, then the provisions of KRS
25 533.050 shall apply.

26 (5) If the graduated sanction involves confinement in a correctional or detention
27 facility;[;]

1 **(a)** Confinement shall be approved by the probation and parole district supervisor,
 2 but the supervised individual may be taken into custody for up to four (4)
 3 hours while such approval is obtained; ~~[-]~~

4 **(b)** If the supervised individual is employed, the probation and parole officer
 5 shall, to the extent feasible, impose this sanction on weekend days or other
 6 days and times when the supervised individual is not working; **and**

7 **(c) *The supervised individual may be placed on work release for work at his or***
 8 ***her place of employment.***

9 (6) A sanction that confines a supervised individual in a correctional or detention
 10 facility for a period **longer than authorized under subsection (1) of this section** ~~[of~~
 11 ~~more than ten (10) consecutive days]~~, or extends the term of community
 12 supervision, shall not be imposed as a graduated sanction, except pursuant to an
 13 order of the court or the board.

14 (7) Upon successful completion of a graduated sanction or sanctions, a court may not
 15 revoke the term of community supervision or impose additional sanctions for the
 16 same violation.

17 (8) If a probation and parole officer modifies the conditions of community supervision
 18 by imposing a graduated sanction, the officer shall:

19 (a) Deliver a copy of the modified conditions to the supervised individual;

20 (b) File a copy of the modified conditions with the sentencing court or releasing
 21 authority; and

22 (c) Note the date of delivery of the copy in the supervised individual's file or case
 23 management system.

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

25 **Probable cause** ~~[Preliminary]~~ revocation hearings of probation, parole, and
 26 postincarceration supervision violators shall be conducted by hearing officers. These
 27 hearing officers shall be attorneys, appointed by the board and admitted to practice in

1 Kentucky, who shall perform the aforementioned duties and any others assigned by the
2 board.

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

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

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

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

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

19 (1) When a person who has been convicted of an offense or who has entered a plea of
20 guilty to an offense is not sentenced to imprisonment, the court shall place him on
21 probation if he is in need of the supervision, guidance, assistance, or direction that
22 the probation service can provide. Conditions of probation shall be imposed as
23 provided in KRS 533.030, but the court may modify or enlarge the conditions or, if
24 the defendant commits an additional offense or violates a condition, revoke the
25 sentence at any time prior to the expiration or termination of the period of
26 probation. When setting conditions under this subsection, the court shall not order
27 any defendant to pay incarceration costs or any other cost permitted to be ordered

1 under KRS 533.010 or other statute, except restitution and any costs owed to the
2 Department of Corrections, through the circuit clerk.

3 (2) When a person who has been convicted of an offense or who has entered a plea of
4 guilty to an offense is not sentenced to imprisonment, the court may sentence him to
5 probation with an alternative sentence if it is of the opinion that the defendant
6 should conduct himself according to conditions determined by the court and that
7 probationary supervision alone is insufficient. The court may modify or enlarge the
8 conditions or, if the defendant commits an additional offense or violates a
9 condition, revoke the sentence at any time prior to the expiration or termination of
10 the alternative sentence.

11 (3) When a person who has been convicted of an offense or who has entered a plea of
12 guilty to an offense is not sentenced to imprisonment, the court may sentence him to
13 conditional discharge if it is of the opinion that the defendant should conduct
14 himself according to conditions determined by the court but that probationary
15 supervision is inappropriate. Conditions of conditional discharge shall be imposed
16 as provided in KRS 533.030, but the court may modify or enlarge the conditions or,
17 if the defendant commits an additional offense or violates a condition, revoke the
18 sentence at any time prior to the expiration or termination of the period of
19 conditional discharge.

20 (4) The period of probation, probation with an alternative sentence, or conditional
21 discharge shall be fixed by the court and at any time may be extended or shortened
22 by duly entered court order *or as modified by the Department of Corrections*
23 *through the application of probation program credits under Section 1 of this Act.*
24 Such period, with extensions thereof, shall not exceed five (5) years, or the time
25 necessary to complete restitution, whichever is longer, upon conviction of a felony
26 nor two (2) years, or the time necessary to complete restitution, whichever is longer,
27 upon conviction of a misdemeanor. Upon completion of the probationary period,

1 probation with an alternative sentence, or the period of conditional discharge, the
2 defendant shall be deemed finally discharged, provided no warrant issued by the
3 court is pending against him, and probation, probation with an alternative sentence,
4 or conditional discharge has not been revoked.

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