

1 AN ACT relating to pretrial release.

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

3 ➔Section 1. KRS 431.066 is amended to read as follows:

- 4 (1) For purposes of this section, "verified and eligible defendant" means a defendant
5 who pretrial services is able to interview and assess, and whose identity pretrial
6 services is able to confirm through investigation.
- 7 (2) When a court considers pretrial release and bail for an arrested defendant, the court
8 shall consider whether the defendant constitutes a flight risk, is unlikely to appear
9 for trial, or is likely to be a danger to the public if released. In making this
10 determination, the court shall consider the pretrial risk assessment for a verified and
11 eligible defendant along with the factors set forth in KRS 431.525.
- 12 (3) If a verified and eligible defendant poses low risk of flight, is likely to appear for
13 trial, and is not likely to be a danger to others, the court shall order the defendant
14 released on unsecured bond or on the defendant's own recognizance subject to such
15 other conditions as the court may order, **except as provided in subsection (5) of this**
16 **section.**
- 17 (4) If a verified and eligible defendant poses a moderate risk of flight, has a moderate
18 risk of not appearing for trial, or poses a moderate risk of danger to others, the court
19 shall release the defendant under the same conditions as in subsection (3) of this
20 section but ~~may~~^{shall} consider ordering the defendant to participate in global
21 positioning system monitoring, controlled substance testing, increased supervision,
22 or such other conditions as the court may order, **except as provided in subsection**
23 **(5) of this section.**
- 24 **(5) (a) When a verified and eligible defendant is released on recognizance or on**
25 **unsecured bond, any conditions imposed by the court shall be the least**
26 **restrictive necessary to ensure appearance in court and mitigate danger,**
27 **and shall not be imposed as a means of punishment. A verified and eligible**

1 defendant may be ordered to participate in a global positioning system,
 2 monitoring, controlled substance testing, or home confinement only if no
 3 less-restrictive condition of release or combination of less-restrictive
 4 conditions of release would reasonably mitigate the risk of flight or danger
 5 to others.

6 **(b) If the court orders electronic monitoring, global positioning system**
 7 **monitoring, or home confinement, the court shall set forth in the record the**
 8 **basis for its finding.**

9 **(c) If the court orders electronic monitoring, global positioning system**
 10 **monitoring, or home confinement, the defendant shall be guaranteed an in-**
 11 **court reassessment of the condition after thirty (30) days, with a rebuttable**
 12 **presumption that it be lifted if the defendant has demonstrated compliance.**

13 ~~(6)~~(5) (a) Except as provided in paragraph (b) of this subsection, regardless of the
 14 amount of the bail set, the court shall permit the defendant a credit of one
 15 hundred dollars (\$100) per day as a payment toward the amount of the bail set
 16 for each day or portion of a day that the defendant remains in jail prior to trial.
 17 Upon the service of sufficient days in jail to have sufficient credit to satisfy
 18 the bail, the defendant shall be released from jail on the conditions specified
 19 in this section or in this chapter.

20 (b) The provisions of paragraph (a) of this subsection shall not apply to:

21 1. Any person convicted of, pleading guilty to, or entering an Alford plea
 22 to a felony offense under KRS Chapter 510, KRS 529.100 involving
 23 commercial sexual activity, KRS 530.020, 530.064(1)(a), 531.310, or
 24 531.320, or who is a violent offender as defined in KRS 439.3401; or

25 2. A defendant who is found by the court to present a flight risk or to be a
 26 danger to others.

27 (c) For purposes of this subsection, "a day or portion of a day" means any time

1 spent in a detention facility following booking.

2 (d) A defendant shall not earn credit pursuant to paragraph (a) of this subsection
3 while also earning credit pursuant to KRS 534.070.

4 ~~(7)~~~~(6)~~ If a court determines that a defendant shall not be released pursuant to
5 subsection ~~(6)~~~~(5)~~ of this section, the court shall document the reasons for denying
6 the release in a written order.

7 ~~(8)~~~~(7)~~ The jailer shall be responsible for tracking the credit earned by a defendant
8 pursuant to subsection ~~(6)~~~~(5)~~ of this section.

9 **(9) Notwithstanding any other provision of law, any person who is denied pretrial**
10 **release, or who remains in detention because he or she is unable to meet the**
11 **conditions of pretrial release shall, unless waived by the defendant, have his or**
12 **her case tried:**

13 **(a) If a felony offense, within one hundred eighty (180) days of his or her first**
14 **appearance in the court in which he or she will be tried; or**

15 **(b) If a misdemeanor offense, within sixty (60) days of his or her first**
16 **appearance in the court in which he or she will be tried.**

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

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

26 (1) Place the person in the custody of a designated person or organization agreeing to
27 supervise him **or her;**

- 1 (2) Place restrictions on the travel, association, or place of abode of the person during
2 the period of release;
- 3 (3) Require the execution of a bail bond:
- 4 (a) With sufficient personal surety or sureties acceptable to the court; in
5 determining the sufficiency of such surety or sureties, the court shall consider
6 his or her character, his or her place of residence, his or her relationship with
7 the defendant, and his or her financial and employment circumstances; or
- 8 (b) With the ten percent (10%) deposit as provided in KRS 431.530; provided
9 that if the defendant is permitted to earn credit toward bail pursuant to KRS
10 431.066, that credit shall be applied to the ten percent (10%) deposit; or
- 11 (c) With the deposit of cash equal to the amount of the bond or in lieu thereof
12 acceptable security as provided in KRS 431.535;
- 13 (4) If the court orders a defendant charged with any offense to be released on
14 recognizance or unsecured bond, impose certain conditions of release, except as
15 provided in subsection (8) of this section, including~~[person's record indicates a~~
16 ~~history of controlled substance or alcohol abuse]~~:
- 17 (a) Order the person to submit to periodic testing for use of controlled substances
18 or alcohol and pay a reasonable fee, not to exceed the actual cost of the test
19 and analysis, as determined by the court with the fee to be collected by the
20 circuit clerk, held in an agency account, and disbursed, on court order, solely
21 to the agency or agencies responsible for testing and analysis as compensation
22 for the cost of the testing and analysis performed under this subsection. If the
23 person is declared indigent, the testing fee shall~~may~~ be waived by the court.
24 The Administrative Office of the Courts shall establish pilot projects to
25 implement the provisions of this subsection; or
- 26 (b) Order the person to use an alcohol monitoring device, as defined in KRS
27 431.068. All costs associated with the device, including administrative and

1 operating costs, shall be paid by the defendant. If the court determines that the
2 defendant is indigent, and a person, county, or other organization has not
3 agreed to pay the costs for the defendant in an attempt to reduce incarceration
4 expenses and increase public safety, the court shall waive the costs or
5 consider other conditions of release provided for in this section;

6 (5) (a) During all or part of a person's period of release pursuant to this section, order
7 the person to participate in a global positioning monitoring system program
8 operated by a county pursuant to KRS 67.372 and 67.374 under the same
9 terms and conditions provided under KRS 431.517, except as provided in
10 subsection (8) of this section.

11 (b) If the person is charged with a sex crime as defined in KRS 17.500, consider
12 requiring that he or she be monitored electronically, and shall consider
13 requiring the person be subject to home incarceration, except as provided in
14 subsection (8) of this section;

15 (6) Impose any other condition deemed reasonably necessary to assure appearance as
16 required, including a condition requiring that the person return to custody after
17 specified hours;

18 (7) A court authorizing the release of a person pursuant to this section shall cause the
19 issuance of an appropriate order containing a statement of the conditions imposed,
20 if any, shall cause such person to be informed of the penalties applicable to
21 violations of the conditions of his release, and shall cause him or her to be informed
22 that a warrant for his or her arrest will be issued immediately upon any such
23 violation;

24 (8) (a) Any conditions imposed by the court shall be the least restrictive necessary
25 to ensure appearance in court and mitigate danger, and shall not be
26 imposed as a means of punishment. A verified and eligible defendant may
27 be ordered to participate in global positioning system monitoring, periodic

1 testing for use of controlled substances or alcohol, or home confinement
 2 only if no less-restrictive condition of release or combination of less-
 3 restrictive conditions of release would reasonably mitigate the risk of flight
 4 or danger to others.

5 **(b) If the court imposes global positioning system monitoring, periodic testing**
 6 **for use of controlled substances or alcohol, or home confinement, the court**
 7 **shall set forth in the record the basis for its finding.**

8 **(c) If the court imposes global positioning system monitoring, periodic testing**
 9 **for use of controlled substances or alcohol, or home confinement, the**
 10 **defendant shall be guaranteed an in-court reassessment of the condition**
 11 **after 30 days, with a rebuttable presumption that it be lifted if the defendant**
 12 **has demonstrated compliance.**

13 **(9)** A person for whom conditions of release are imposed and who after twenty-four
 14 (24) hours from the time of the imposition of said conditions continues to be
 15 detained as a result of his inability to meet the conditions of release shall, upon
 16 written application or upon the court's own motion, be entitled to have the
 17 conditions reviewed by the court which imposed them. A person who is ordered
 18 released on a condition which requires that he return to custody after specified hours
 19 shall, upon written application or upon the court's own motion, be entitled to a
 20 review by the court which imposed the condition; or

21 **(10)**~~**(9)**~~ If at any time following release of a defendant and before he **or she** is required
 22 to appear for trial, the court is advised of a material change in the defendant's
 23 circumstances or that he **or she** has not complied with all conditions imposed upon
 24 his release, the court having jurisdiction may:

- 25 (a) Order the arrest of the defendant;
- 26 (b) Enter an order requiring the defendant, his **or her** surety or sureties to appear
 27 and show cause why the bail bond should not be forfeited or the conditions of

1 his release be changed; or

2 (c) Both.

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