

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 by a court or
8 serving a period of parole or postincarceration~~[post-release]~~ supervision from
9 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 439.3107 is amended to read as follows:

18 (1) The department shall, by January 1, 2020~~[2012]~~, adopt a system of graduated
19 sanctions for violations of conditions of community supervision, **which shall**
20 **include graduated sanctions for those supervised individuals on parole or**
21 **postincarceration supervision for technical violations and violations of**
22 **absconding**. Notwithstanding KRS Chapter 533, the system shall set forth a menu
23 of presumptive sanctions for the most common types of supervision violations,
24 including but not limited to: failure to report; failure to pay fines, fees, and victim
25 restitution; failure to participate in a required program or service; failure to
26 complete community service; violation of a protective or no contact order; and
27 failure to refrain from the use of alcohol or controlled substances. The system of

1 sanctions shall take into account factors such as the severity of the current violation,
2 the supervised individual's previous criminal record, the number and severity of any
3 previous supervision violations, the supervised individual's assessed risk level, and
4 the extent to which graduated sanctions were imposed for previous violations. The
5 system also shall define positive reinforcements that supervised individuals may
6 receive for compliance with conditions of supervision.

7 (2) The department shall establish by administrative regulation an administrative
8 process to review and approve or reject, prior to imposition, graduated sanctions
9 that deviate from those prescribed.

10 (3) The department shall establish by administrative regulation an administrative
11 process to review graduated sanctions contested by supervised individuals under
12 KRS 439.3108.

13 ➔Section 3. KRS 439.3108 is amended to read as follows:

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

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

18 (b) *For a supervised individual who is on parole or postincarceration*
19 *supervision and has been apprehended following a violation of absconding,*
20 *impose graduated sanctions as detailed in subsection (5) of this section;*

21 (c) Place a supervised individual who is on probation who violates the conditions
22 of community supervision in a state or local correctional or detention facility
23 or residential center for a period of not more than ten (10) days consecutively,
24 and not more than sixty (60) days in any one (1) calendar year. The
25 department shall reimburse the local correctional or detention facility or
26 residential center for the costs of incarcerating a person confined under this
27 paragraph at the rate specified in KRS 532.100;

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

9 ~~(e)~~~~(d)~~ Notwithstanding paragraphs ~~(c)~~~~(b)~~ and ~~(d)~~~~(e)~~ of this subsection,
10 place any supervised individual who violates the conditions of community
11 supervision in a state or local correctional or detention facility or residential
12 center for the period of time a supervised individual awaits admission to a
13 residential alcohol or substance use treatment program. The department shall
14 reimburse the local correctional or detention facility or residential center for
15 the costs of incarcerating a supervised individual serving a period of parole or
16 postincarceration~~post-release~~ supervision confined under this paragraph at
17 the rate specified in KRS 532.100.

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

23 (3) The imposition of a graduated sanction or sanctions by a probation and parole
24 officer shall comport with the system of graduated sanctions adopted by the
25 department under KRS 439.3107. Upon receipt of the notice, the supervised
26 individual shall immediately accept or object to the sanction or sanctions proposed
27 by the officer. The failure of the supervised individual to comply with a sanction

1 shall constitute a violation of community supervision.

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

4 (a) If the supervised individual is serving a period of parole or postincarceration
5 ~~[post-release]~~ supervision from prison or jail, then the administrative process
6 promulgated under KRS 439.3107(3) shall apply; or

7 (b) If the supervised individual is on probation, then the provisions of KRS
8 533.050 shall apply.

9 (5) *If the supervised individual who is on parole or postincarceration supervision has*
10 *committed a violation of absconding and with the approval of his or her*
11 *probation and parole district supervisor, a probation and parole officer:*

12 *(a) For the first absconding violation, shall use graduated sanctions in lieu of*
13 *revocation, unless the probation and parole officer determines that the*
14 *supervised individual has been arrested for new criminal activity or is being*
15 *supervised for an offense that would qualify the individual as a violent*
16 *offender as defined in KRS 439.3401 or a sex offender as defined in KRS*
17 *17.550; and*

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

20 (6) If the graduated sanction involves confinement in a correctional or detention
21 facility, confinement shall be approved by the probation and parole district
22 supervisor, but the supervised individual may be taken into custody for up to four
23 (4) hours while such approval is obtained. If the supervised individual is employed,
24 the probation and parole officer shall, to the extent feasible, impose this sanction on
25 weekend days or other days and times when the supervised individual is not
26 working.

27 ~~(7)~~~~(6)~~ A sanction that confines a supervised individual in a correctional or detention

1 facility for a period of more than ten (10) consecutive days, or extends the term of
2 community supervision, shall not be imposed as a graduated sanction, except
3 pursuant to an order of the court or the board.

4 ~~(8)~~~~(7)~~ Upon successful completion of a graduated sanction or sanctions, a court or
5 the board may not revoke the term of community supervision or impose additional
6 sanctions for the same violation.

7 ~~(9)~~~~(8)~~ If a probation and parole officer modifies the conditions of community
8 supervision by imposing a graduated sanction, the officer shall:

- 9 (a) Deliver a copy of the modified conditions to the supervised individual;
- 10 (b) File a copy of the modified conditions with the sentencing court or releasing
11 authority; and
- 12 (c) Note the date of delivery of the copy in the supervised individual's file or case
13 management system.

14 ➔Section 4. KRS 439.341 is amended to read as follows:

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

19 (2) *If a supervised individual who is on parole or postincarceration supervision has*
20 *been detained pursuant to Section 5 of this Act for a technical violation, a*
21 *preliminary revocation hearing shall be held within fifteen (15) business days of*
22 *the date of detainment. If the preliminary revocation hearing does not occur*
23 *within fifteen (15) business days of the date of detainment, the supervised*
24 *individual shall be released from detention and continued on parole or*
25 *postincarceration supervision.*

26 ➔Section 5. KRS 439.430 is amended to read as follows:

27 (1) Any parole officer having reason to believe that a parolee or a person on

1 postincarceration supervision pursuant to KRS 532.043 or 532.400 has violated the
2 terms of his or her release may arrest the parolee or offender on postincarceration
3 supervision without a warrant or may deputize any other peace officer to do so by
4 giving him or her a written statement setting forth that the parolee or offender on
5 postincarceration supervision, in the judgment of the parole officer, has violated the
6 conditions of his or her release. The written statement delivered with the parolee or
7 offender on postincarceration supervision by the arresting officer to the official in
8 charge of the station house, jail, workhouse, or other place of detention, shall be
9 sufficient warrant for the detention of the parolee or offender on postincarceration
10 supervision. The parole officer who arrests or causes the arrest of the prisoner shall
11 notify the commissioner or his or her designee at once of the arrest and detention of
12 the parolee or offender on postincarceration supervision, and shall submit in writing
13 a report showing in what manner there has been a violation of the conditions of
14 release. Thereupon, if the commissioner or his or her designee believes the parolee
15 or offender on postincarceration supervision should be returned to prison, the
16 commissioner or his or her designee at once shall submit his or her
17 recommendations to the board, and, if the board approves, it shall issue a warrant
18 upon which the releasee shall be returned to prison; otherwise the prisoner shall be
19 released upon the order of the commissioner or his or her designee.

20 (2) A written statement, approved by the commissioner or his or her designee, by a
21 parole officer, and filed with the board setting forth that the parolee or offender on
22 postincarceration supervision in the judgment of the officer has violated the
23 condition of his or her release, shall be sufficient cause for the board, in its
24 discretion, to issue a warrant for the arrest of the parolee or offender on
25 postincarceration supervision or for his or her return to prison.

26 (3) A prisoner for whose return a warrant has been issued by the board, shall be deemed
27 a fugitive from justice or to have fled from justice. If it shall appear he or she has

1 violated the provisions of his or her release, the time from the issuing of the warrant
2 to the date of his or her arrest shall not be counted as any part of the time to be
3 served in determining his or her final discharge eligibility date from parole if the
4 board in its discretion so orders.

5 (4) The Parole Board may at its discretion issue a warrant for any parolee or offender
6 on postincarceration supervision when in its judgment the condition of release has
7 been violated.

8 **(5) The board shall only revoke parole or postincarceration supervision after:**

9 **(a) A preliminary hearing conducted pursuant to Section 4 of this Act found**
10 **probable cause that the parolee or offender on postincarceration**
11 **supervision failed to comply with a condition of supervision; and**

12 **(b) A final revocation hearing was held. If a final revocation hearing is held for**
13 **a technical violation, the hearing shall be in accordance with subsection (6)**
14 **of this section.**

15 **(6) If the parolee or offender on postincarceration supervision is arrested on a**
16 **warrant and detained for a technical violation, a final revocation hearing shall be**
17 **held within thirty (30) business days of the date of the preliminary revocation**
18 **hearing. If a final revocation hearing does not occur within thirty (30) business**
19 **days of the date of the preliminary revocation hearing, the parolee or offender on**
20 **postincarceration supervision shall be released from detention and continued on**
21 **parole or postincarceration supervision.**

22 ➔Section 6. Sections 1 to 5 of this Act take effect January 1, 2020.