

1 AN ACT relating to crimes and punishments.

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; **and**

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 ➔Section 2. KRS 439.3107 is amended to read as follows:

13 (1) The department shall, by January 1, ~~2012~~**2021**, adopt a system of graduated
14 sanctions for violations of conditions of community supervision, **which shall**
15 **include graduated sanctions for those supervised individuals on parole or post-**
16 **release supervision for technical violations.** Notwithstanding KRS Chapter 533,
17 the system shall set forth a menu of presumptive sanctions for the most common
18 types of supervision violations, including but not limited to: failure to report; failure
19 to pay fines, fees, and victim restitution; failure to participate in a required program
20 or service; failure to complete community service; violation of a protective or no
21 contact order; and failure to refrain from the use of alcohol or controlled substances.
22 The system of sanctions shall take into account factors such as the severity of the
23 current violation, the supervised individual's previous criminal record, the number
24 and severity of any previous supervision violations, the supervised individual's
25 assessed risk level, and the extent to which graduated sanctions were imposed for
26 previous violations. The system also shall define positive reinforcements that
27 supervised individuals may receive for compliance with conditions of supervision.

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

4 (3) The department shall establish by administrative regulation an administrative
5 process to review graduated sanctions contested by supervised individuals under
6 KRS 439.3108.

7 ➔Section 3. KRS 439.315 is amended to read as follows:

8 (1) A person placed by a releasing authority on probation, parole, or other form of
9 release subject to supervision by the Department of Corrections and all persons
10 supervised pursuant to KRS 439.560 shall pay a fee to offset the costs of
11 supervising the probation, parole, or other supervised release.

12 (2) The fees shall be as follows:

13 (a) For a felony, not less than ten dollars (\$10) per month while on active
14 supervision nor more than two thousand five hundred dollars (\$2,500) per
15 year.

16 (b) For a misdemeanor, not less than ten dollars (\$10) per month while on active
17 supervision nor more than five hundred dollars (\$500) per year, except as
18 provided in subsection (13) of this section.

19 (3) The releasing authority shall order the fee paid in a lump sum or installments. If the
20 fee is to be paid in a lump sum, the person shall not be released from custody until
21 the fee is paid in full.

22 (4) Upon the failure of a person to pay an installment on a fee set forth in a release
23 agreement, the releasing authority shall hold a hearing to determine why the
24 installment has not been paid. Failure without good cause to pay an installment
25 pursuant to a release agreement shall be **a technical violation and shall be** grounds
26 for the revocation of probation, **probation with an alternative sentence, or**
27 **conditional discharge in accordance with Section 9 of this Act or** parole **or**

1 ~~*postincarceration supervision in accordance with Section 5 of this Act*~~,
2 ~~conditional release, or other form of release upon which the person has been~~
3 ~~released as provided in KRS 533.050~~].

4 (5) The releasing authority shall hold a hearing to determine the ability of the defendant
5 to make the payments; and in making this determination, the releasing authority
6 shall take into account the amount of any fine imposed upon the defendant and any
7 amount the defendant has been ordered to pay in restitution. In counties containing a
8 city of the first class or an urban-county form of government, the releasing authority
9 may waive the payment of the fee in whole or in part for defendants placed under
10 the supervision of the adult misdemeanor probation and work release program, if it
11 finds that any of the factors in subsection (6) of this section exist.

12 (6) The releasing authority shall not waive any fee unless the commissioner of the
13 Department of Corrections or his designee petitions the releasing authority in
14 written form for the waiver. The Department of Corrections shall not petition
15 unless:

16 (a) The offender is a student in a school, college, university, or course of
17 vocational or technical training designed to fit the student for gainful
18 employment. Certification of student status shall be supplied to the releasing
19 authority by the educational institution in which the offender is enrolled. In
20 such case, the fee may be postponed until completion of education but shall be
21 paid thereafter.

22 (b) The offender has an employment disability, as determined by a physical,
23 psychological, or psychiatric examination acceptable to, or ordered by, the
24 releasing authority.

25 (7) At any time during the pendency of the judgment or order rendered according to the
26 terms of this section, a defendant may petition the releasing authority to modify or
27 vacate its previous judgment or order on the grounds of change of circumstances

- 1 with regard to the defendant's ability to pay the fee. The releasing authority shall
2 advise the defendant of this right at the time of the rendering of the judgment or
3 order placing the defendant on probation, parole, or other supervised release.
- 4 (8) All sums paid by the defendant pursuant to this section shall be paid into the general
5 fund, except as provided in subsection (13) of this section.
- 6 (9) When granting a release of any supervised individual~~[defendant by way of~~
7 ~~probation, parole, or otherwise]~~, the releasing authority shall make the payment of
8 this fee a condition of release, unless the fee has been waived, suspended, reduced,
9 or delayed as provided in this section. Willful nonpayment shall be a technical
10 violation and shall be grounds for revocation of probation, probation with an
11 alternative sentence, or conditional discharge in accordance with~~[the release as~~
12 ~~provided in]~~ KRS 533.050 or parole or postincarceration supervision in
13 accordance with Section 5 of this Act.
- 14 (10) The releasing authority, if the Department of Corrections petitions the releasing
15 authority to modify the fee, shall consider the petition and may waive the payment
16 of the fee in whole or in part, delay payment of the fee, increase the fee, or deny the
17 petition.
- 18 (11) All fees fixed under the provisions of this section shall be collected by the circuit
19 clerk of the county where the defendant is supervised, except as provided in
20 subsection (13) of this section.
- 21 (12) The Department of Corrections and the Division of Probation and Parole shall, for
22 each person released under its supervision, keep an account of all payments made
23 and report delinquencies to the releasing authority.
- 24 (13) In a city, county, consolidated local government, charter county, or an urban-county
25 government, persons placed by a releasing authority on probation, parole, or other
26 release subject to supervision by the adult misdemeanor probation and work
27 release program of the county, city, consolidated local government, charter county,

1 or urban-county government shall pay a fee to offset the costs of supervising the
2 probation, parole, or other supervised release. The fees shall be assessed by the
3 releasing authority in accordance with the provisions of this section. The fee for a
4 misdemeanor defendant placed under the supervision of an adult misdemeanor
5 probation and work release program of a county, city, consolidated local
6 government, charter county, or an urban-county government shall be not less than
7 one hundred dollars (\$100) nor more than five hundred dollars (\$500) per year. All
8 sums paid by the defendant under this subsection shall be paid into the general fund
9 of the county, city, consolidated local government, charter county, or urban-county
10 government in lieu of the payment specified in subsection (8) of this section. All
11 fees fixed under this subsection shall be collected by the circuit clerk of the county
12 or urban-county involved. The adult misdemeanor probation and work release
13 program of the county, consolidated local government, city, charter county, or
14 urban-county government shall, for each person released under its supervision, keep
15 an account of all payments made, maintain copies of all receipts issued by the
16 circuit clerk, and report delinquencies to the court.

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

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

23 (2) If a supervised individual has been detained pursuant to Section 5 or 9 of this Act
24 for a technical violation, a preliminary revocation hearing shall be held within
25 fifteen (15) business days of the date of detainment. If the preliminary revocation
26 hearing does not occur within fifteen (15) business days of the date of
27 detainment, a show cause hearing may be held to extend the period of

1 detainment. However, the period of detainment for a technical violation shall
2 never exceed the maximum period of imprisonment for a technical violation
3 established in Section 5 or 9 of this Act. If no show cause hearing is held before
4 the expiration of the maximum period of imprisonment for a technical violation,
5 the supervised individual shall be released from detention and continued on
6 community supervision.

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

- 8 (1) Any parole officer having reason to believe that a parolee or a person on
9 postincarceration supervision pursuant to KRS 532.043 or 532.400 has violated the
10 terms of his or her release may arrest the parolee or offender on postincarceration
11 supervision without a warrant or may deputize any other peace officer to do so by
12 giving him or her a written statement setting forth that the parolee or offender on
13 postincarceration supervision, in the judgment of the parole officer, has violated the
14 conditions of his or her release. The written statement delivered with the parolee or
15 offender on postincarceration supervision by the arresting officer to the official in
16 charge of the station house, jail, workhouse, or other place of detention, shall be
17 sufficient warrant for the detention of the parolee or offender on postincarceration
18 supervision. The parole officer who arrests or causes the arrest of the prisoner shall
19 notify the commissioner or his or her designee at once of the arrest and detention of
20 the parolee or offender on postincarceration supervision, and shall submit in writing
21 a report showing in what manner there has been a violation of the conditions of
22 release. Except as provided under subsection (2) of this section~~[Thereupon]~~, if the
23 commissioner or his or her designee believes the parolee or offender on
24 postincarceration supervision should have his or her parole or postincarceration
25 supervision revoked and be returned to prison, the commissioner or his or her
26 designee at once shall submit his or her recommendations to the board, and, if the
27 board approves, it shall issue a warrant upon which the releasee shall be returned to

1 prison; otherwise the prisoner shall be released upon the order of the commissioner
2 or his or her designee.

3 (2) *If the parolee has committed a technical violation and the commissioner or his or*
4 *her designee believes the parolee should have his or her parole revoked and be*
5 *returned to prison, the commissioner or his or her designee at once shall submit*
6 *his or her recommendations to the board, and, if the board approves, may issue a*
7 *summons in lieu of a warrant for the parolee to appear before the board for a*
8 *hearing. A written statement by a parole officer, approved by the commissioner or*
9 *his or her designee, and filed with the board setting forth that the parolee in the*
10 *judgment of the officer has committed a technical violation of the condition of his*
11 *or her release, shall be sufficient cause for the board, in its discretion, to issue a*
12 *summons for the parolee to appear before the board. The summons shall be*
13 *accompanied by a copy of the written statement filed with the board.*

14 (3) A written statement, approved by the commissioner or his or her designee, by a
15 parole officer, and filed with the board setting forth that the parolee or offender on
16 postincarceration supervision in the judgment of the officer has violated the
17 condition of his or her release, shall be sufficient cause for the board, in its
18 discretion, to issue a warrant for the arrest of the parolee or offender on
19 postincarceration supervision or for his or her return to prison.

20 ~~(4)~~⁽³⁾ A prisoner for whose return a warrant *or summons* has been issued by the
21 board, shall be deemed a fugitive from justice or to have fled from justice. If it shall
22 appear he or she has violated the provisions of his or her release, the time from the
23 issuing of the warrant *or summons* to the date of his or her arrest shall not be
24 counted as any part of the time to be served in determining his or her final discharge
25 eligibility date from parole if the board in its discretion so orders.

26 ~~(5)~~⁽⁴⁾ The Parole Board may at its discretion issue a *summons for a parolee when*
27 *in its judgment a technical violation of the condition of release has been violated*

1 or a warrant for any parolee or offender on postincarceration supervision when in
2 its judgment the condition of release has been violated. The summons shall be
3 accompanied by a copy of the written statement filed with the board.

4 (6) The board shall only revoke parole or postincarceration supervision after:

5 (a) A preliminary hearing conducted pursuant to Section 5 of this Act found
6 probable cause that the parolee or offender on postincarceration
7 supervision failed to comply with a condition of supervision; and

8 (b) A final revocation hearing was held. If a final revocation hearing is held for
9 a technical violation, the hearing shall be in accordance with subsection (7)
10 of this section.

11 (7) If the parolee is arrested on a warrant and detained for a technical violation, a
12 final revocation hearing shall be held within thirty (30) business days of the date
13 of the preliminary revocation hearing. If a final revocation hearing does not
14 occur within thirty (30) business days of the date of the preliminary revocation
15 hearing, a show cause hearing may be held to extend the period of detainment.
16 However, the period of detainment for a technical violation shall never exceed the
17 maximum period of imprisonment for a technical violation established in
18 subsection (8) of this section. If no show cause hearing is held before the
19 expiration of the maximum period of imprisonment for a technical violation, the
20 parolee shall be released from detention and continued on parole.

21 (8) If, at the final revocation hearing, the board finds that the parolee committed a
22 technical violation, the board may continue supervision with additional
23 conditions or revoke parole and impose a term of imprisonment of not more than:

24 (a) For the first revocation for a technical violation, thirty (30) days;

25 (b) For the second revocation for a technical violation, ninety (90) days;

26 (c) For the third revocation for a technical violation, one hundred eighty (180)
27 days; and

1 **(d) For the fourth and any subsequent revocation for a technical violation, two**
 2 **(2) years;**
 3 **in a state or local correctional or detention facility or residential center before**
 4 **being released and continued on community supervision. However, the term of**
 5 **imprisonment shall not exceed the parolee's sentence expiration date.**

6 ➔Section 6. KRS 439.553 is amended to read as follows:

7 For supervised individuals on probation, **probation with an alternative sentence, or**
 8 **conditional discharge**, the court having jurisdiction of the case shall:

9 **(1)** Determine the conditions of community supervision; and~~[may]~~

10 **(2) For technical violations**, impose as a condition of community supervision that the
 11 department supervising the individual shall, in accordance with KRS
 12 **439.551**~~[439.3108]~~, impose graduated sanctions adopted by the department for **a**
 13 **technical violation**~~[violations of the conditions of community supervision].~~

14 ➔Section 7. KRS 532.260 is amended to read as follows:

15 (1) Any Class C or Class D felon who is serving a sentence in a state-operated prison,
 16 contract facility, or county jail shall, at the discretion of the commissioner, be
 17 eligible to serve the remainder of his or her sentence outside the walls of the
 18 detention facility under terms of home incarceration or conditional release to an
 19 appropriate housing alternative specified by KRS 532.262 using an approved
 20 monitoring device as defined in KRS 532.200, if the felon:

21 (a) 1. Has not been convicted of, pled guilty to, or entered an Alford plea to a
 22 violent felony as defined by the Department of Corrections classification
 23 system; or

24 2. Has not been convicted of, pled guilty to, or entered an Alford plea to a
 25 sex crime as defined in KRS 17.500;

26 (b) Has nine (9) months or less to serve on his or her sentence;

27 (c) Has voluntarily participated in a discharge planning process with the

1 department to address his or her:

- 2 1. Education;
- 3 2. Employment, technical, and vocational skills;
- 4 3. Housing, medical, and mental health needs; and
- 5 4. Criminal risk factors; and

6 (d) Has needs that may be adequately met in the community where he or she will
7 reside upon release.

8 (2) A person who is placed under terms of home incarceration pursuant to subsection
9 (1) of this section shall remain in the custody of the Department of Corrections. **The**
10 **department may, in accordance with KRS 439.3108, impose graduated sanctions**
11 **for any technical violation committed while on home incarceration. As used in**
12 **this subsection, "technical violation" has the same meaning as in Section 1 of**
13 **this Act.** Any unauthorized departure from the terms of home incarceration may be
14 prosecuted as an escape pursuant to KRS Chapter 520 and shall result in the person
15 being returned to prison.

16 (3) The Department of Corrections shall promulgate administrative regulations to
17 implement the provisions of this section.

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 probation
26 **in accordance with Section 9 of this Act.** When setting conditions under this
27 subsection, the court shall not order any defendant to pay incarceration costs or any

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

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

12 (3) When a person who has been convicted of an offense or who has entered a plea of
13 guilty to an offense is not sentenced to imprisonment, the court may sentence him to
14 conditional discharge if it is of the opinion that the defendant should conduct
15 himself according to conditions determined by the court but that probationary
16 supervision is inappropriate. Conditions of conditional discharge shall be imposed
17 as provided in KRS 533.030, but the court may modify or enlarge the conditions or,
18 if the defendant commits an additional offense or violates a condition, revoke the
19 sentence at any time prior to the expiration or termination of the period of
20 conditional discharge *in accordance with Section 9 of this Act.*

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

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

9 ➔Section 9. KRS 533.050 is amended to read as follows:

10 (1) At any time before the discharge of the defendant or the termination of the sentence
 11 of probation, probation with an alternative sentence, or conditional discharge:

12 (a) The court may summon the defendant to appear before it or may issue a
 13 warrant for his arrest upon a finding of probable cause to believe that he has
 14 failed to comply with a condition of the sentence; or

15 (b) A probation officer, or peace officer acting at the direction of a probation
 16 officer, who sees the defendant violate the terms of his probation, probation
 17 with an alternative sentence, or conditional discharge may arrest the
 18 defendant without a warrant.

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

20 (a) Modify the conditions of a sentence of probation, probation with an
 21 alternative sentence, or conditional discharge except after a hearing with
 22 the defendant represented by counsel and following a written notice of the
 23 grounds for modification; or

24 (b) Revoke ~~or modify~~ the conditions of a sentence of probation, probation with
 25 an alternative sentence, or conditional discharge except after a final
 26 revocation hearing in accordance with subsections (3) and (4) of this section
 27 with the defendant represented by counsel and following a written notice of

1 the grounds for revocation~~[or modification]~~.

2 **(3) If the defendant is arrested on a warrant and detained for a technical violation, a**
3 **final revocation hearing shall be held within thirty (30) business days of the date**
4 **of the preliminary revocation hearing. If a final revocation hearing for a**
5 **technical violation does not occur within thirty (30) business days of the date of**
6 **the preliminary revocation hearing, a show cause hearing may be held to extend**
7 **the period of detainment. However, the period of detainment for a technical**
8 **violation shall never exceed the maximum period of detainment for technical**
9 **violations established in subsection (4) of this section. If no show cause hearing**
10 **is held before the expiration of the maximum period of detainment for a technical**
11 **violation, the defendant shall be released from detention and continued on**
12 **probation, probation with an alternative sentence, or conditional discharge.**

13 **(4) If, at the final revocation hearing, the court finds that the defendant committed a**
14 **technical violation, the court may continue supervision with additional conditions**
15 **or revoke a sentence of probation, probation with an alternative sentence, or**
16 **conditional discharge and impose a term of imprisonment of not more than:**

17 **(a) For the first revocation for a technical violation, thirty (30) days;**

18 **(b) For the second revocation for a technical violation, ninety (90) days;**

19 **(c) For the third revocation for a technical violation, one hundred eighty (180)**
20 **days; and**

21 **(d) For the fourth and any subsequent revocation for a technical violation, two**
22 **(2) years;**

23 **in a state or local correctional or detention facility or residential center before**
24 **being released and continued on probation, probation with an alternative**
25 **sentence, or conditional discharge. However, the term of imprisonment shall not**
26 **exceed the defendant's sentence expiration date.**

27 ➔Section 10. The following KRS section is repealed:

- 1 439.440 Prisoner returned to prison for violation of release to be heard by board -- Time.
- 2 ➔Section 11. This Act takes effect January 1, 2021.