

**533.010 Criteria for utilizing chapter -- Alternative sentences -- Monitoring by private agency -- Work release.**

- (1) Any person who has been convicted of a crime and who has not been sentenced to death may be sentenced to probation, probation with an alternative sentencing plan, or conditional discharge as provided in this chapter.
- (2) Before imposition of a sentence of imprisonment, the court shall consider probation, probation with an alternative sentencing plan, or conditional discharge. Unless the defendant is a violent felon as defined in KRS 439.3401 or a statute prohibits probation, shock probation, or conditional discharge, after due consideration of the nature and circumstances of the crime and the history, character, and condition of the defendant, probation or conditional discharge shall be granted, unless the court is of the opinion that imprisonment is necessary for protection of the public because:
  - (a) There is substantial risk that during a period of probation or conditional discharge the defendant will commit another crime;
  - (b) The defendant is in need of correctional treatment that can be provided most effectively by his commitment to a correctional institution; or
  - (c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.
- (3) In the event the court determines that probation is not appropriate after due consideration of the nature and circumstances of the crime, and the history, character, and condition of the defendant, probation with an alternative sentencing plan shall be granted unless the court is of the opinion that imprisonment is necessary for the protection of the public because:
  - (a) There is a likelihood that during a period of probation with an alternative sentencing plan or conditional discharge the defendant will commit a Class D or Class C felony or a substantial risk that the defendant will commit a Class B or Class A felony;
  - (b) The defendant is in need of correctional treatment that can be provided most effectively by commitment to a correctional institution; or
  - (c) A disposition under this chapter will unduly depreciate the seriousness of the defendant's crime.
- (4) The court shall not determine that there is a likelihood that the defendant will commit a Class C or Class D felony based upon the fact that:
  - (a) The defendant has never been convicted of, pled guilty to, or entered an Alford plea to a felony offense;
  - (b) If convicted of, having pled guilty to, or entered an Alford plea to a felony offense, the defendant successfully completed probation more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period; or

- (c) The defendant has been released from incarceration for the commission of a felony offense more than ten (10) years immediately prior to the date of the commission of the felony for which the defendant is now being sentenced and has had no intervening convictions, pleas of guilty, or Alford pleas to any criminal offense during that period.
- (5) In making a determination under subsection (4) of this section, the court may determine that the greater weight of the evidence indicates that there is a likelihood that the defendant will commit a Class C or Class D felony.
- (6) Upon initial sentencing of a defendant or upon modification or revocation of probation, when the court deems it in the best interest of the public and the defendant, the court may order probation with the defendant to serve one (1) of the following alternative sentences:
  - (a) To a halfway house for no more than twelve (12) months;
  - (b) To home incarceration with or without work release for no more than twelve (12) months;
  - (c) To jail for a period not to exceed twelve (12) months with or without work release, community service and other programs as required by the court;
  - (d) To a residential treatment program for the abuse of alcohol or controlled substances; or
  - (e) To any other specified counseling program, rehabilitation or treatment program, or facility.
- (7) If during the term of the alternative sentence the defendant fails to adhere to and complete the conditions of the alternative sentence, the court may modify the terms of the alternative sentence or may modify or revoke probation and alternative sentence and commit the defendant to an institution.
- (8) In addition to those conditions that the court may impose, the conditions of alternative sentence shall include the following and, if the court determines that the defendant cannot comply with them, then they shall not be made available:
  - (a) A defendant sentenced to a halfway house shall:
    - 1. Be working or pursuing his or her education or be enrolled in a full-time treatment program;
    - 2. Pay restitution during the term of probation; and
    - 3. Have no contact with the victim of the defendant's crime;
  - (b) A defendant sentenced to home incarceration shall:
    - 1. Be employed by another person or self-employed at the time of sentencing to home incarceration and continue the employment throughout the period of home incarceration, unless the court determines that there is a compelling reason to allow home incarceration while the defendant is unemployed;
    - 2. Pay restitution during the term of home incarceration;
    - 3. Enter a treatment program, if appropriate;

4. Pay all or some portion of the cost of home incarceration as determined by the court;
  5. Comply with other conditions as specified; and
  6. Have no contact with the victim of the defendant's crime;
- (c) A defendant sentenced to jail with community service shall:
1. Pay restitution during all or some part of the defendant's term of probation; and
  2. Have no contact with the victim of the defendant's crime; or
- (d) A defendant sentenced to a residential treatment program for drug and alcohol abuse shall:
1. Undergo mandatory drug screening during term of probation;
  2. Be subject to active, supervised probation for a term of five (5) years;
  3. Undergo aftercare as required by the treatment program;
  4. Pay restitution during the term of probation; and
  5. Have no contact with the victim of the defendant's crime.
- (9) When the court deems it in the best interest of the defendant and the public, the court may order the person to work at community service related projects under the terms and conditions specified in KRS 533.070. Work at community service related projects shall be considered as a form of conditional discharge.
- (10) Probation with alternative sentence shall not be available as set out in KRS 532.045 and 533.060, except as provided in KRS 533.030(6).
- (11) The court may utilize a community corrections program authorized or funded under KRS Chapter 196 to provide services to any person released under this section.
- (12) When the court deems it in the best interest of the defendant and the public, the court may order the defendant to placement for probation monitoring by a private agency. The private agency shall report to the court on the defendant's compliance with his terms of probation or conditional discharge. The defendant shall be responsible for any reasonable charges which the private agency charges.
- (13) The jailer in each county incarcerating Class D felons may deny work release privileges to any defendant for violating standards of discipline or other jail regulations. The jailer shall report the action taken and the details of the violation on which the action was based to the court of jurisdiction within five (5) days of the violation.
- (14) The Department of Corrections shall, by administrative regulation, develop written criteria for work release privileges granted under this section.
- (15) Reimbursement of incarceration costs shall be paid directly to the jailer in the amount specified by written order of the court. Incarceration costs owed to the Department of Corrections shall be paid through the circuit clerk.
- (16) The court shall enter into the record written findings of fact and conclusions of law when considering implementation of any sentence under this section.

**Effective:** June 24, 2003

**History:** Amended 2003 Ky. Acts ch. 150, sec. 6, effective June 24, 2003. -- Amended 2002 Ky. Acts ch. 183, sec. 35, effective August 1, 2002. -- Amended 1998 Ky. Acts ch. 606, sec. 73, effective July 15, 1998. -- Amended 1990 Ky. Acts ch. 459, sec. 2, effective July 13, 1990; and ch. 497, sec. 4, effective July 13, 1990. -- Created 1974 Ky. Acts ch. 406, sec. 285, effective January 1, 1975.