

**439.265 Shock probation in felony conviction -- Procedure -- Availability for violent offenders and sexual offenders -- Comprehensive sex offender presentence evaluation -- Exercise of authority.**

- (1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any Circuit Court may, upon motion of the defendant made not earlier than thirty (30) days nor later than one hundred eighty (180) days after the defendant has been incarcerated in a county jail following his conviction and sentencing pending delivery to the institution to which he has been sentenced, or delivered to the keeper of the institution to which he has been sentenced, suspend the further execution of the sentence and place the defendant on probation upon terms the court determines. Time spent on any form of release following conviction shall not count toward time required under this section.
- (2) The court shall consider any motion filed in accordance with subsection (1) of this section within sixty (60) days of the filing date of that motion, and shall enter its ruling within ten (10) days after considering the motion. The defendant may, in the discretion of the trial court, have the right to a hearing on any motion he may file, or have filed for him, that would suspend further execution of sentence. Any court order granting or denying a motion to suspend further execution of sentence is not reviewable.
- (3)
  - (a) During the period in which the defendant may file a motion pursuant to this statute, the sentencing judge, within his or her discretion, may order that the defendant be held in a local detention facility that is not at or above maximum capacity until such time as the court rules on said motion. During this period of detention, and prior to the court's ruling on said motion, the court may require the defendant to participate in any approved community work program or other forms of work release. Persons held in the county jail pursuant to this subsection shall not be subject to transfer to a state correctional facility until the decision is made not to place the petitioner on shock probation.
  - (b) The provisions concerning community work programs or other forms of work release shall apply only to persons convicted of Class C or Class D felonies, and may be granted only after a hearing at which the Commonwealth's attorney has the opportunity to present arguments in favor or opposition thereto.
- (4) If the defendant is a violent offender as defined in KRS 439.3401, the sentence shall not be probated under this section.
- (5) If the defendant has been convicted of an offense under KRS 510.050, 510.080, 530.020, 530.064(1)(a), or 531.310, or criminal attempt to commit any of these offenses under KRS 506.010, the sentence shall not be suspended, in accordance with KRS 532.045.
- (6) When a defendant has been convicted of a sex crime, as defined in KRS 17.500, the court shall order a comprehensive sex offender presentence evaluation, unless one has been provided within the past six (6) months, in which case the court may order an update of the comprehensive sex offender presentence evaluation of the defendant conducted by the sex offender treatment program operated or approved

by the Department of Corrections or the Sex Offender Risk Assessment Advisory Board. The comprehensive sex offender presentence evaluation shall provide to the court a recommendation related to the risk of a repeat offense by the defendant and the defendant's amenability to treatment, and shall be considered by the court in determining whether to suspend the sentence. If the court suspends the sentence and places the defendant on probation, the provisions of KRS 532.045(3) to (7) shall apply.

- (7) The authority granted in this section shall be exercised by the judge who imposed sentence on the defendant, unless he is unable to act and it appears that his inability to act should continue beyond the expiration of the term of the court. In such case, the judge who imposed sentence shall assign a judge to dispose of a motion filed under this section, or as prescribed by the rules and practices concerning the responsibility for disposition of criminal matters.
- (8) The provisions of this section shall not apply where a sentence of death has been imposed.

**Effective:** July 12, 2006

**History:** Amended 2006 Ky. Acts ch. 182, sec. 28, effective July 12, 2006. -- Amended 2000 Ky. Acts ch. 401, sec. 2, effective July 14, 2000; and ch. 401, sec. 33, effective April 11, 2000. -- Amended 1994 Ky. Acts ch. 94, sec. 1, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 463, sec. 63, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 497, sec. 13, effective July 13, 1990. -- Amended 1984 Ky. Acts ch. 26, sec. 1, effective February 23, 1984. -- Amended 1982 Ky. Acts ch. 153, sec. 2, effective July 15, 1982. -- Amended 1976 (1st Extra. Sess.) Ky. Acts ch. 14, sec. 448, effective January 2, 1978; and ch. 15, sec. 7, effective December 22, 1976. -- Amended 1974 Ky. Acts ch. 406, sec. 329. -- Created 1972 Ky. Acts ch. 169, sec. 1.