

 <p>KENTUCKY CORRECTIONS Policies and Procedures</p>	Policy Number	Total Pages
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References	Subject	
<p>KRS 196.035, 439.3106, 439.3107, 439.3108, 439.340, 439.551, 439.552, 446.010, 533.050 501 KAR 6:250 P &P ACA 2B-03, 2B-11, 2E-01</p>	<p>GRADUATED SANCTIONS AND DISCRETIONARY DETENTION</p>	

I. DEFINITIONS

“Discretionary detention” means a graduated sanction of confinement in a local correctional or detention facility imposed on an offender in response to a violation of the conditions of supervision.

“Graduated sanctions” is defined in KRS 446.010(20).

“High risk behavior” means a lifestyle activity that places a person at risk of suffering a particular harmful condition.

“Probation and parole violation matrix” means the table attached to this policy that guides sanction decisions.

II. POLICY and PROCEDURE

The Probation and Parole Division has a series of graduated responses pursuant to KRS 439.3106 and 439.3107 to address non-compliance with conditions of supervision.

A. Graduated Sanctions

An officer shall review violations of conditions of confinement by an offender for the use of graduated sanctions appropriate to the circumstances and severity of the violation. Implementation of graduated sanctions for minor and major violations shall be governed by the probation and parole violation matrix attached to this policy and procedure. (2E-01) The failure of an offender to comply with a sanction shall be a violation of the conditions of supervision.

1. Graduated Sanctions for Probation

Probationers may be ordered by the court to be subject to graduated sanctions pursuant to KRS 439.551. Graduated sanctions for probationers shall be implemented pursuant to 501 KAR 6:250 and this policy and

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procedure to the extent that it is not in conflict with the orders of the court.

2. Graduated Sanctions for Parolees or Other Post-release Supervision

Graduated sanctions for parolees or other post-release supervision, excluding probation, shall be implemented pursuant to this policy and procedure.

B. Informal Response

In lieu of graduated sanctions, the officer may resolve the following minor violations through an informal case management strategy:

1. Missing scheduled report day;
2. Traffic offense without arrest;
3. Failure to seek employment;
4. Failure to enroll or maintain school attendance; and
5. Failure to notify officer prior to change of address (2B-03).

The officer shall document in the offender management system the conditions violated and the informal response to the violation.

C. Minor violations shall include the following:

1. Failure to report a citation or arrest;
2. Failure to report;
3. Being in an establishment where alcohol is sold as a primary commodity;
4. Traffic offenses unless arrested;
5. Failure to pay financial obligations as ordered by the releasing authority;
6. Failure to seek employment;
7. Failure to enroll or maintain school attendance;
8. Falsifying a release report;

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9. Violation of other special conditions unless ordered by releasing authority;
10. Association with convicted felon;
11. Violation of travel restrictions;
12. Visiting a correctional institution without prior approval;
13. Issuance of an Emergency Protective Order or Domestic Violence Order;
14. Violation of curfew;
15. First or second positive drug or alcohol test;
16. Failure to comply with re-entry programming;
17. Failure to complete community service; and
18. Other violations of similar magnitude.

D. Major violations shall include the following:

1. Misdemeanor conviction that does not require submission to the releasing authority pursuant to II.E.;
2. Failure to complete treatment;
3. Failure to complete halfway house program;
4. Multiple minor violations within ninety (90) days;
5. Multiple positive drug or alcohol tests or high risk behavior;
6. Refusal to submit to an alcohol or drug test;
7. Altering or attempting to alter the results of a drug screen;
8. Harassing or threatening a Probation and Parole officer;
9. Possession or use of a weapon other than a firearm by an offender;
10. Failure to comply with sex offender registry;
11. Over three (3) months behind on restitution;

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12. Violation of a special condition ordered by the releasing authority;
13. Violation of travel restrictions to another state;
14. Violation of home incarceration with electronic monitoring device;
15. Change of residence without officer's permission;
16. Failure to notify Probation and Parole officer about address change;
17. Failure to participate in a required program or service; and
18. Other violations of similar magnitude.

E. Violations for Return to the Releasing Authority

1. The following violations shall be reported to the releasing authority for violation proceedings up to and including revocation:
 - a. Absconding supervision;
 - b. New felony conviction;
 - c. New misdemeanor conviction of assault;
 - d. New misdemeanor conviction of violation of emergency protective or domestic violence order;
 - e. New misdemeanor conviction for sexual offense;
 - f. New misdemeanor conviction for driving under the influence,
 - g. Possession or use of a firearm'
 - h. Failure to complete sex offender treatment program;
 - i. Demonstrated pattern of failure to comply with conditions of supervision; or
 - j. Violations of an assaultive nature.
2. If the offender contests the graduated sanction to be imposed for minor violations, the officer shall report the contest to the supervisor. The

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supervisor shall deny the offender's contest or grant an alternative sanction.

3. If the offender does not accept the graduated sanction to be imposed, the violation shall be reported to the releasing authority for further proceedings.

F. Officer Review for Sanctions

1. The officer shall consider the following factors in determining the violation response:
 - a. Offender's assessed risk and needs level;
 - b. Offender's adjustment on supervision;
 - c. Severity of the current violation;
 - d. Seriousness of the offender's previous criminal record;
 - e. Number and severity of any previous supervision violations;
 - f. Extent to which graduated sanctions were imposed for previous violations; and
 - g. Any other factors related to public safety. (2B-11)
2. Upon consideration of the totality of the circumstances and with supervisory approval, the officer may direct the offender into appropriate interventions not included in the violation matrix or seek to impose a higher level sanction, up to and including revocation.
3. If a determination is made by the officer to proceed with graduated sanctions, the officer shall:
 - a. Determine whether the violation is a major or minor violation in accordance with II.C. and D.; and
 - b. Review the probation and parole violation matrix to impose sanctions.
4. The officer shall consider the following when reviewing the violation behavior with the matrix.

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- a. If there are multiple violations, the officer shall use the most serious violation for the review for sanctions.
 - b. If the possible sanctions in a response range have been exhausted on previous violations, the officer may use sanctions in the next highest response range.
 - c. If the offender has violated conditions of supervision imposed in more than one case (i.e., multiple cases from a single jurisdiction, cases from multiple jurisdictions, or on supervision for probation and parole or other form of community supervision), the officer shall determine the criminal conviction in the case for which the graduated sanctions will be imposed. A graduated sanction shall not be imposed on more than one case at a time and cases shall not be sanctioned separately for individual violations arising from the same series of violations.
5. In order to determine the range of sanctions that may be imposed, the officer shall:
 - a. Determine the offender's risk and needs level based on the offender's most recent risk and needs assessment;
 - b. Use the probation and parole violation matrix to cross reference the violation behavior category with the offender's risk and needs level to determine the sanctions available in the indicated response range. (2B-11)
 6. If the officer determines that the indicated response range or a lower response range contains an appropriate sanction for the circumstances of the violation, then the officer shall impose the sanction.
 7. The officer shall seek approval from a supervisor, if the officer determines that:
 - a. More than two sanctions from response range 3 or higher are appropriate for the circumstances of the violation;
 - b. The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends imposing sanctions from a higher response range;

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- c. The sanctions from the indicated response range or a lower response range are insufficient for the circumstances of the violation and recommends revocation; or
 - d. Interventions not included in the matrix are appropriate for the circumstances of the violation.
- G. Upon receiving a recommendation for graduated sanctions, the supervisor shall review the recommendation.
 - 1. The supervisor shall:
 - a. Approve the recommendation; or
 - b. Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation.
 - 2. The officer shall document the action in the offender management system.
- H. Failure to Comply with Graduated Sanctions
 - 1. If the officer determines that the offender has failed to comply with graduated sanctions and further implementation of graduated sanctions would be futile, the officer shall seek approval from the supervisor to submit violation documentation to the releasing authority for violation proceedings.
 - 2. Upon receiving a recommendation to submit violation documentation to the releasing authority for violation proceedings the supervisor shall review the recommendation. The supervisor shall:
 - a. Approve the recommendation; or
 - b. Reject the recommendation and refer the violation back to the officer for alternative sanctions.
 - 3. The officer shall document the action in the offender management system.
- I. Documentation and Notice for Court Ordered Graduated Sanctions.
 - 1. Upon identifying violation behavior and prior to imposing graduated sanctions, the officer shall prepare a probation violation report. (2B-03)The report shall include:

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- a. A description of the violation behavior;
 - b. A description of the sanctions that will be imposed; and
 - c. Notice of the offender's right to:
 - (1) A violation hearing before the court;
 - (2) Representation by an attorney at the hearing; and
 - (3) Have an attorney appointed for him at state expense at the hearing, if he cannot afford one.
2. The officer shall provide the recommendation for graduated sanctions to the supervisor. Upon receiving a recommendation for graduated sanctions, the supervisor shall review the recommendation.
- a. The supervisor shall:
 - (1) Approve the recommendation; or
 - (2) Reject the recommendation and refer the violation back to the officer for alternative sanctions.
 - b. The Supervisor shall sign documenting the review and approval in the offender management system.
3. The officer shall:
- a. Provide a copy of the probation violation report to the offender prior to the imposition of sanctions;
 - b. Ask the offender if he can read the probation violation report. If the offender states that he cannot read, then the officer shall read the report to the offender.
 - c. Ask the offender if he can understand English. If the offender informs the officer that he cannot understand English, the officer shall provide the offender with a probation violation report in the offender's language or a language interpreter, if available. If the report cannot be provided in the offender's language and a language interpreter is not available, then the officer shall report the violation behavior to the court for disposition in lieu of proceeding with the graduated sanctioning process.

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4. If the offender indicates to the officer that he does not understand his rights as stated in the probation violation report, the officer shall report the violation behavior to the court for disposition in lieu of proceeding with the graduated sanctioning process.
 5. If the offender chooses to waive his right to a violation hearing and elects to participate in the graduated sanctioning process, then:
 - a. The offender shall note his choice and sign the probation violation report. The graduated sanctions shall apply at the time the offender signs the probation violation report.
 - b. The supervisor shall sign the probation violation report.
 - c. The officer shall provide the probation violation report to the releasing authority and document the actions taken in the offender management system.
 6. If an offender contests the sanctions to be imposed for minor violations, the officer shall give notice of the contest to the supervisor. The supervisor shall document in the offender management system his decision to deny the contest or grant an alternative sanction.
 7. If the offender does not accept the graduated sanction to be imposed, the officer shall note on the probation violation form the offender's decision.
 8. The officer shall:
 - a. Enter the necessary information from the violation report and the sanctions imposed into KOMS;
 - b. Provide the information from the violation report and the sanction imposed to the releasing authority; and
 - c. Note previous violations and graduated sanctions on supervision reports to the releasing authority.
- J. Documentation and Notice for Other Offenders Not under Court Ordered Graduated Sanctions
1. For parolees and offenders released on postincarceration supervision and mandatory reentry supervision, the officer shall submit a violation report with graduated sanctions.

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- a. Upon identifying violation behavior and prior to imposing graduated sanctions, the officer shall prepare a violation report with graduated sanctions. The report shall include:
 - (1) A description of the violation behavior;
 - (2) A description of the sanctions that will be imposed; and
 - (3) Notice of the offender's right to:
 - (a) A violation hearing before the Parole Board;
 - (b) Representation by an attorney at the hearing; and
 - (c) Have an attorney appointed for him at state expense at the hearing, if he cannot afford one.
- b. The officer shall:
 - (1) Provide a copy of the graduated sanctions violation report to the offender prior to the imposition of sanctions;
 - (2) Ask the offender if he can read the graduated sanctions violation report. If the offender states that he cannot read, then the officer shall read the report to the offender.
 - (3) Ask the offender if he can understand English. If the offender informs the officer that he cannot understand English, the officer shall provide the offender with graduated sanctions violation report in the offender's language or a language interpreter, if available. If the report cannot be provided in the offender's language and a language interpreter is not available, then the officer shall report the violation behavior to the Parole Board for disposition in lieu of proceeding with the graduated sanctioning process.
- c. If the offender indicates to the officer that he does not understand his rights as stated in the graduated sanctions violation report, the officer shall report the violation behavior to the Parole Board for disposition in lieu of proceeding with the graduated sanctioning process.

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- d. If the offender chooses to waive his right to a violation hearing and elects to participate in the graduated sanctioning process, then:
 - (1) The offender shall note his choice and sign the graduated sanctions violation report. The graduated sanctions shall apply at the time the offender signs the graduated sanctions violation report.
 - (2) The supervisor shall sign the graduated sanctions violation report.
 - (3) The officer shall provide the graduated sanctions violation report to the releasing authority and document the actions taken in the offender management system.

- e. If an offender contests the sanctions to be imposed for minor violations, the officer shall give notice of the contest to the supervisor. The supervisor shall document in the offender management system his decision to deny the contest or grant an alternative sanction.

- f. If the offender does not accept the graduated sanction to be imposed, the officer shall note on the graduated sanctions violation report the offender's decision.

- g. The officer shall:
 - (1) Enter the necessary information from the violation report and the sanctions imposed into KOMS,
 - (2) Provide the information from the violation report and the sanction imposed to the releasing authority, and
 - (3) Note previous violations and graduated sanctions on supervision reports to the releasing authority.

2. Probationers Not under Court Ordered Graduated Sanctions

Violations and recommendations for alternatives in lieu of revocation shall be submitted pursuant to CPP 27-15-01 (Investigating and Reporting Violations and Unusual Incidents).

- K. If an offender successfully completes a graduated sanction for a specific violation, the officer shall not seek revocation for that specific violation.

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L. Discretionary Detention

Discretionary detention as a sanction shall be administered pursuant to KRS 439.3108.

1. Upon incurring a violation, the officer shall review to determine if discretionary detention is an appropriate sanction based on the violation and the level of the violation matrix indicated according to subsection II.F.
 - a. Response Range One as indicated by the Violation Matrix may include three (3) days discretionary detention with supervisor approval.
 - b. Response Range Two as indicated by the Violation Matrix may include five (5) days discretionary detention with supervisor approval.
 - c. Response Range Three as indicated by the Violation Matrix may include ten (10) days discretionary detention with supervisor approval.
 - d. Response Range Four as indicated by the Violation Matrix may include thirty (30) days discretionary detention in lieu of revocation, for a parolee, with supervisor approval.
2. If the officer recommends discretionary detention as a sanction, the officer shall review the offender's record to determine if the recommended days of detention will cause the offender to serve more than sixty (60) days in discretionary detention during the calendar year as authorized in KRS 439.3108.
3. The officer shall determine a period of detention, not to exceed ten (10) days for a probationer and not to exceed thirty (30) days for a parolee, unless the parolee is pending entrance into a residential substance or alcohol abuse treatment program.
4. An officer may detain a parolee awaiting a substance or alcohol abuse treatment bed if the offender has had multiple positive drug or alcohol tests or high risk behavior.
5. The officer shall not recommend revocation unless discretionary detention has been used in a progressive fashion according to the violation matrix, with the following exceptions:

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- a. Absconding;
 - b. Discharge from a treatment program;
 - c. Discharge from a halfway house program;
 - d. Possession of a firearm or weapon;
 - e. Significant violation of supplemental sex offender conditions;
 - f. Violations for return to the releasing authority as specified in subsection II.E.; or
 - g. Supervisor override. The supervisor shall consider the factors as outlined in subsection II.N. Overrides shall be documented in the offender management system stating why discretionary detention was not considered.
6. The officer shall seek approval from the district supervisor for the detention. If the officer takes the offender into custody, the officer shall:
- a. Obtain approval from the district supervisor within four (4) hours;
 - b. If the detention is not approved, follow directives of the district supervisor;
 - c. Continue the detention if other legal process permits; or
 - d. Release the offender from detention.
7. Upon receiving a recommendation for detention:
- a. The district supervisor shall:
 - (1) Approve the recommendation; or
 - (2) Reject the recommendation and refer the violation back to the officer for alternative sanctions or revocation.
 - b. The officer shall document the action in the offender management system.

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8. The officer shall determine if the offender is employed and whether it is feasible for the offender to serve the approved detention at times that the offender is not scheduled to work.
 9. The officer shall document the violation and provide notice to the offender and the releasing authority pursuant to the provisions of Section J above.
 10. If the detention is approved, the offender shall be lodged in the local jail on a detainer according to CPP 27-18-01 (Probation and Parole Issuance of Detainer or Warrant). The officer shall document the actions taken in the offender management system, including the external movement.
 11. Upon completion of the term of discretionary detention, the officer shall release the offender from the county jail by removing the detainer and entering the external movement in the case management system.
 12. A parolee shall not receive good time credit on any period of confinement under discretionary detention.
- M. After consideration of the totality of the circumstances, if the officer determines that graduated sanctions are not appropriate for the violation and seeks to return the case to the releasing authority for violation proceedings, the officer shall staff the case with the supervisor for review.
1. The supervisor and officer shall review the following factors:
 - a. The offender has demonstrated an inability to comply with supervision;
 - b. Graduated sanctions have been previously imposed or the serious nature of the violation merits return to the releasing authority;
 - c. The offender refuses graduated sanctions;
 - d. All resources available in the community have been exhausted; or
 - e. The offender poses a safety risk to himself or the community.
 2. The case review shall be documented in the offender management system by the supervisor, including why graduated sanctions were not appropriate and the factors used to make the recommendation to the releasing authority.
- N. Incentives for Compliance
- An officer may use proportionate incentives for compliance with conditions of

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supervision. (2E-01) An officer may employ positive reinforcements, rewards and incentives, including:

1. Reduced reporting requirements;
2. Lower levels of supervision as indicated by the offender's risk and needs assessment;
3. Removal of supervision conditions, for example, home detention or curfew;
4. Eligibility for early termination of probation;
5. Awarding certificates of achievement;
6. Deferring a monthly supervision fee payment;
7. Asking the supervised individual to be a mentor to others; or
8. Other similar incentives.

PROBATION AND PAROLE VIOLATION MATRIX

OFFENDER RISK LEVEL

<u>VIOLATION</u>	Very High	High	Moderate	Low	Admin
1st Minor	2	1	1	1	1
2nd Minor	3	2	2	2	1
3rd (or more) Minor	4	3	3	2	2
1st Major	4	3	3	2	2
2nd Major	4	3	3		
3rd (or more) Major	4	4	4		

Response Range 1	Response Range 2	Response Range 3	Response Range 4
Verbal or Written Warning	Any response or combination of responses in range 1 or:	Any response or combination of responses in ranges 1-2 or:	Any response or combination of responses in ranges 1-3 or:
Increased Reporting			
Increase Frequency of Drug Testing	Curfew up to 60 days	Curfew up to 120 days	Curfew up to 180 days
Increase Level of Supervision	Community Service 20-30 hours	Community Service 30-40 hours	Community Service 40-50 hours
Loss of Travel or Other Privileges	Electronic Monitoring	Halfway House	
Curfew up to 30 days			
Three (3) days Discretionary Detention with Supervisor Approval	Increased Treatment Up To Residential	Ten (10) days Discretionary Detention with Supervisor Approval	For a Parolee, up to thirty (30) days Discretionary Detention with supervisor approval
Referral to the Social Service Clinician for substance abuse assessment and treatment	Five (5) days Discretionary Detention with Supervisor Approval	Jail time in excess of ten (10) days for a probationer requires an order from the court.	Jail Time for a Parolee that is awaiting a substance/alcohol abuse treatment bed with supervisor approval
Referral to Community Service Agency for Counseling or Treatment			Additional jail time shall be at the discretion of the releasing authority
Referral to programming approved by the Department			Request Revocation
Community Service up to 8 hours			

***Upon consideration of the totality of the circumstances, policy, and with supervisory approval, the officer may direct the offender into appropriate interventions not included in the violation matrix or seek to impose a higher level sanction, up to and including revocation.**
*** Discretionary detention for probationers shall be implemented pursuant to this policy and procedure to the extent that it is not in conflict with the orders of the court.**