

**439.3402 Exemption from KRS 439.3401 for victims of domestic violence and abuse
-- Procedures -- Effect.**

- (1) Any violent offender as defined in KRS 439.3401 who was convicted prior to July 14, 1992, who claims to come within the definitions of KRS 503.050 and 533.060 and the purview of this section as the victim of domestic violence and abuse may be exempt from KRS 439.3401 under the conditions set forth in this section.
- (2)
 - (a) The offender shall file a motion in the Circuit Court in which the offender was convicted stating the facts which qualify the offender for exemption under this section.
 - (b) The motion shall state whether the offender requests an evidentiary hearing, or whether the offender relies on the record of evidence already on file with the Circuit Court.
 - (c) If the offender requests an evidentiary hearing the motion shall state what witnesses the offender wishes to testify and a brief summary of each witness' expected testimony.
 - (d) The motion shall state whether the offender wishes the court to appoint counsel to represent the offender or what attorney, if any, will represent the offender at the hearing. The appointment of counsel by the court shall be made in conformity with the provisions of KRS Chapter 31.
- (3)
 - (a) The Commonwealth shall respond to the motion within twenty (20) days after the motion was filed.
 - (b) If the Commonwealth requests an evidentiary hearing and the offender did not, the Commonwealth's response shall state what witnesses and evidence the Commonwealth intends to introduce.
 - (c) The Commonwealth may stipulate to the offender's evidence stated in the motion in lieu of the evidentiary hearing.
- (4) The Circuit Court shall hold any evidentiary hearing within thirty (30) days after the Commonwealth's response was filed, or if the Commonwealth did not respond, within sixty (60) days.
- (5) The Circuit Court shall issue findings of fact and an order ruling upon the motion within thirty (30) days after the evidentiary hearing, or if no hearing was held, within sixty (60) days after the Commonwealth's response was filed or due to be filed.
- (6) The order of the Circuit Court may be appealed in the manner as authorized for judgments in criminal cases.
- (7) Only one (1) motion under this section may be filed by the same offender regarding the same conviction.
- (8) The effect of granting a motion under this section is to remove the status as a violent offender for the offense for which the motion was filed and permit the offender to be eligible for parole in the manner specified in KRS 439.340.

Effective: July 14, 1992

History: Created 1992 Ky. Acts ch. 173, sec. 5, effective July 14, 1992.