## 439.267 Shock probation in misdemeanor convictions -- Procedure -- Exercise of authority -- Availability for sexual offenders.

- (1) Subject to the provisions of KRS Chapter 439 and Chapters 500 to 534, any District Court, or any Circuit Court with respect to a defendant convicted in Circuit Court of a misdemeanor, may, upon motion of the defendant made not earlier than thirty (30) days after the defendant has been 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 as the court determines.
- (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) 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 this 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.
- (4) If the defendant has been convicted of a misdemeanor offense under KRS Chapter 510, or criminal attempt to commit any of these offenses under KRS 506.010, prior to considering the motion to suspend the sentence, the court may, for a misdemeanor offense specified herein, and shall, for any felony offense specified in this subsection order an evaluation of the defendant to be conducted by the sex offender treatment program operated or approved by the Department of Corrections or the Department for Behavioral Health, Developmental and Intellectual Disabilities. The 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.

Effective: July 12, 2012

- History: Amended 2012 Ky. Acts ch. 146, sec. 117, effective July 12, 2012; and ch. 158, sec. 75, effective July 12, 2012. -- Amended 1994 Ky. Acts ch. 94, sec. 2, effective July 15, 1994. -- Created 1982 Ky. Acts ch. 153, sec. 1, effective July 15, 1982.
- **Legislative Research Commission Note** (7/12/2012). This statute was amended by 2012 Ky. Acts chs. 146 and 158, which do not appear to be in conflict and have been codified together.