

2020 KSSC WORKSHOP LEGISLATIVE PROPOSAL #14

Proposal to provide early release for drug grid crimes

1. Allow a defendant to petition the trial court for modification of incarceration sentence upon completion of at least 50% of total sentence. This procedure only applies to defendants who are in custody on a sentence where the primary crime is a drug grid sentence.¹
2. Modification can include either, or both, a modification of the length of sentence or being placed on probation to community corrections for the probation period imposed for the level of the crime of conviction, or for the period of the balance of their incarceration sentence plus one year, whichever is greater.²
3. If a defendant is placed on probation pursuant to this proposal, the court may revoke said probation upon a finding that any term or condition has been violated. There shall be no requirement that any quick dip sanction be used prior to a revocation, although the court is authorized to use jail sanctions, if deemed appropriate by the court.³
4. To be eligible to file a motion the defendant must have completed all programs required by the Secretary of Corrections.⁴
5. The defendant can only file one such motion during the period of their incarceration, unless the court authorizes the filing of a second motion, if the first motion is denied. The court can require certain conditions to be met prior to the filing of the second motion.⁵
6. The decision to grant the motion shall be within the discretion of the trial court.⁶

7. Upon request, the defendant is entitled to counsel to assist the defendant in making a determination on when the motion should be filed and presentation of the motion to the court.⁷
8. Upon the filing of said motion, the Secretary of Corrections shall file with the court a report identifying all programs completed by the defendant, any programs recommended, but not yet completed, all disciplinary actions imposed on the defendant while in custody, and any other information deemed relevant by the Secretary of Corrections. The Secretary may make a recommendation to the court as to whether the motion should be granted, but said recommendations will not be binding on the court.⁸

Footnotes to Proposal

1. This proposal is limited to the drug grid only. Typically, there is no individual victim of drug grid crimes. Therefore, there would be no victim notification requirements. Expanding the proposal to include nondrug grid crimes would require victim notification and could negatively impact victims as a result of these addition proceedings.
2. This proposal is not designed to reduce sentences imposed for drug crimes, but to give defendants a second chance at probation should they perform well in prison and satisfy the conditions necessary to file the motion. The sentence can remain intact and can be re-imposed if the defendant fails on probation.
3. This proposal does not require the use of quick dips prior to revocation of the release to probation under this proposal. It is my belief that quick dips are not as effective with defendants who have already served time in prison.
4. All programs available and appropriate for the defendant should be completed prior to being eligible to file a motion. This may require the Department of Corrections to modify when it provides programs to defendants to make them eligible, but if early release is an option, they should be motivated to make any changes necessary to accomplish that goal.
5. Motion filings are limited to prevent successive filings by defendants, similar to limitations imposed of motions under K.S.A. 6-1507 actions.
6. Decisions on the motions should be left to the discretion of the sentencing judge with input from local prosecutors and defense counsel. This may result in variance of the application of the option across the state, but that exists in prosecution and sentencing decisions already.
7. This provision makes it clear that counsel can be appointed prior to the filing of any motion.
8. This report requirement allows for the obtaining of information relevant to the decision-making process without the necessity of KDOC staff appearing and testifying at motion hearings.