

1 AN ACT relating to the behavioral health conditional dismissal program.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 533.270 is amended to read as follows:

4 As used in KRS 533.270 to 533.290:

- 5 (1) "Behavioral health conditional dismissal program" means a program designed to
6 provide an eligible person who has a behavioral health disorder and who has been
7 charged with a qualifying offense an alternative to receive treatment and recovery
8 support services addressing the behavioral health disorder instead of incarceration,
9 resulting in dismissal of the charges upon successful completion;
- 10 (2) "Behavioral health disorder" means a mental health disorder or substance use
11 disorder, or both;
- 12 (3) "Behavioral health treatment program" means a plan or recovery program, based
13 upon a clinical assessment, that:
- 14 (a) Identifies and incorporates recovery services to meet the specific treatment
15 and recovery goals and the needs of the individual served;
- 16 (b) Addresses the social determinants of health to include housing, transportation,
17 access to medical care, and meaningful employment; and
- 18 (c) Considers a full continuum of care;
- 19 (4) "Clinical assessment" means an assessment that is performed by a qualified mental
20 health professional in accordance with the most recent American Society of
21 Addiction Medicine criteria for a substance use disorder and the most recent edition
22 of the American Psychiatric Association's Diagnostic and Statistical Manual of
23 Mental Disorders for a mental health disorder;
- 24 (5) "Eligible applicant" or "eligible person" means an individual:
- 25 (a) Who has completed a clinical assessment and been referred to care; and
- 26 (b) Who meets the requirements of KRS 533.274;
- 27 (6) **"Homeless individual" means an individual who:**

1 (a) Lacks a fixed, regular, and adequate nighttime residence, including but not
2 limited to those individuals living in emergency shelters, transitional
3 housing, or places not meant for habitation;

4 (b) Will lose his or her primary nighttime residence within fourteen (14) days,
5 provided no subsequent housing has been identified and the individual
6 lacks the means of obtaining housing; or

7 (c) Is fleeing or attempting to flee domestic violence, has no other residence,
8 and lacks the resources or support networks to obtain other housing;

9 (7) "Mental health disorder" is a diagnostic term that covers many clinical categories
10 typically including behavioral or psychological symptoms, or both, along with
11 impairment of personal and social function, and specifically defined and clinically
12 interpreted through reference to criteria contained in the most recent edition of the
13 American Psychiatric Association's Diagnostic and Statistical Manual of Mental
14 Disorders;

15 (8)(7) "Qualified mental health professional" means the same as in KRS 202A.011
16 and shall include the following approved behavioral health practitioners who are
17 under the supervision of a qualified mental health professional and who are
18 employed by or under contract with the same billing provider as the billing
19 supervisor:

20 (a) A licensed psychological associate;

21 (b) A certified psychologist working under the supervision of a board-approved
22 licensed psychologist;

23 (c) A certified social worker;

24 (d) A licensed professional counselor associate;

25 (e) A licensed clinical alcohol and drug counselor associate or a certified
26 alcohol and drug counselor; and

27 (f) A licensed assistant behavior analyst~~[a licensed clinical alcohol and drug~~

1 ~~counselor under KRS Chapter 309~~;

2 ~~(9)(8)~~ "Qualifying offense" means a misdemeanor or Class D felony that is not:

3 (a) An offense that would qualify the person as a violent offender under KRS
4 439.3401;

5 (b) A sex crime as defined by KRS 17.500;

6 (c) An offense under KRS 189A.010;

7 (d) An offense against a victim who has a protective order as defined in KRS
8 508.130 against the defendant at the time the offense is charged;

9 (e) An act of domestic violence and abuse as defined in KRS 403.720, or an act
10 of dating violence and abuse as defined in KRS 456.010, against the
11 defendant at the time the offense is charged; or

12 (f) An offense against a victim who has an interpersonal protective order issued
13 under KRS 456.060;

14 ~~(10)(9)~~ "Recovery services" means rehabilitative treatment services that shall include
15 but not be limited to any or all of the following:

16 (a) Outpatient treatment;

17 (b) National Alliance of Recovery Residences or the Council on Accreditation of
18 Rehabilitation Facilities certified housing;

19 (c) Medication treatment;

20 (d) Personal and family counseling;

21 (e) Substance abuse education and prevention classes or counseling;

22 (f) Vocational training;

23 (g) Literacy training;

24 (h) Community service;

25 (i) Inpatient or residential behavioral health treatment as needed to address:

26 1. Impaired capacity to use self-control, judgment, or discretion related to
27 behavior;

- 1 2. Severe dependence;
- 2 3. Special detoxification;
- 3 4. Relapse; or
- 4 5. Other treatments recommended by a qualified mental health
- 5 professional;
- 6 (j) Restorative practices designed to make the participant accountable to the
- 7 victim when there is an identified victim, and it is safe to do so;
- 8 (k) Recovery housing assistance; and
- 9 (l) Recovery housing programs that have an established third-party outcome
- 10 evaluation; and

11 ~~(11)~~~~(10)~~ "Substance use disorder" has the same meaning as in KRS 222.005.

12 ➔Section 2. KRS 533.274 is amended to read as follows:

- 13 (1) In addition to the pretrial diversion program established under KRS 533.250 to
- 14 533.260, and the deferred prosecution program established under KRS 218A.14151,
- 15 a behavioral health conditional dismissal program shall be operated in each county
- 16 participating in the pilot program established under KRS 533.272. The behavioral
- 17 health conditional dismissal program shall:
 - 18 (a) Provide eligible persons, on an equal basis, an alternative to ordinary
 - 19 prosecution for qualifying offenses arising from a behavioral health disorder
 - 20 by receiving early recovery services and treatment reasonably expected to
 - 21 deter future criminal behavior; and
 - 22 (b) Provide an expedited alternative to prosecution for eligible persons who may
 - 23 be harmed by the imposition of criminal sanctions in the absence of the
 - 24 alternative when the alternative is reasonably expected to serve as a sufficient
 - 25 deterrent to criminal conduct.
- 26 (2) The program may be utilized by any person:
 - 27 (a) Who is a resident of the Commonwealth and who is at least eighteen (18)

- 1 years of age;
- 2 (b) Whose clinical assessment indicates the presence of a behavioral health
- 3 disorder;
- 4 (c) Charged with a qualifying offense;
- 5 (d) Who does not have a previous conviction for a:
- 6 1. Class A, B, or C felony;~~;~~ or ~~a~~
- 7 2. Class D felony ~~or misdemeanor~~ that is not a qualifying offense; and
- 8 (e) Who has been assessed by pre-trial services as a low-risk, low-level offender,
- 9 or has been otherwise determined by the attorney for the Commonwealth or
- 10 the attorney for the defendant as a viable participant in the program.
- 11 (3) Other factors that may be considered for admission into the behavioral health
- 12 conditional dismissal program include but are not limited to:
- 13 (a) The likelihood that the applicant's offense is related to a behavioral health
- 14 disorder that would be conducive to change through his or her participation in
- 15 a behavioral health treatment program;
- 16 (b) The availability of behavioral health treatment programs in the defendant's
- 17 county of residence if different from the county of arrest;
- 18 (c) The history of any physical violence toward others as documented through
- 19 judicial or law enforcement records;
- 20 (d) Any involvement of the applicant with organized crime under KRS 506.120;
- 21 and
- 22 (e) Whether or not the applicant's participation in a behavioral health treatment
- 23 program would adversely affect the prosecution of codefendants.
- 24 (4) Eligible defendants in pretrial confinement shall be given preference for
- 25 participation in the behavioral health conditional dismissal program.
- 26 (5) Eligible defendants who have charges pending but are not in custody shall be
- 27 assessed for participation in the behavioral health conditional dismissal program as

1 provided under KRS 533.276(1)(d).

2 **(6) Any defendant, whether qualifying as an eligible defendant or not, who is a**
3 **homeless individual shall be assessed for the presence of a behavioral health**
4 **disorder, and if:**

5 **(a) An eligible defendant, shall be given preference for participation in the**
6 **behavioral health conditional dismissal program; or**

7 **(b) Not an eligible defendant, shall be given information for available recovery**
8 **services, and referral for those services as applicable or appropriate.**

9 ➔Section 3. KRS 533.286 is amended to read as follows:

10 (1) (a) The Office of Adult Education within the Department of Workforce
11 Development of the Education and Labor Cabinet, in conjunction with a
12 community rehabilitation provider, shall conduct an~~[-in-person]~~ initial
13 screening of any individual participating in a behavioral health conditional
14 dismissal program within thirty (30) days of a participant beginning the
15 program under KRS 533.276.

16 (b) Nothing in this section shall prohibit any department, office, or division of the
17 Education and Labor Cabinet from entering into an agreement with a third
18 party in each county participating in the pilot program to provide the services
19 required under this section.

20 (2) The initial screening shall include:

21 (a) Educational history, including highest school grade completed, and when;

22 (b) Employment history, including types and lengths of employments;

23 (c) Military history, if any;

24 (d) The participant's physical, mental, and emotional abilities and limitations;

25 (e) Aptitude, skill level, and interest testing;

26 (f) An assessment of language skills; and

27 (g) A determination of whether further assessment is needed to develop the

1 vocational component of the recovery treatment program. If further
2 assessment is required, it shall be completed within the first ninety (90) days
3 following entry into the recovery treatment program unless additional time is
4 needed to provide for physical recovery from the effects of a severe
5 behavioral health disorder.

6 (3) Within ten (10) days of completion of the vocational assessment, the Office of
7 Adult Education, in consultation with the behavioral health conditional dismissal
8 program provider, shall establish an individualized plan designed to attain a specific
9 employment outcome to include:

10 (a) Specific educational goals with identification of institutions from which the
11 participant will receive educational credits or training;

12 (b) Specific job-skills training, and the facility or institution from which the
13 participant will receive the job-skills training, to include:

14 1. A holistic education curriculum that includes but is not limited to
15 problem solving, communication skills, and interpersonal skills; and

16 2. Sector-specific employers as designated by the Kentucky Workforce
17 Innovation Board;

18 (c) The required number of hours per week the participant will be engaged in
19 educational or vocational training, including anticipated study time or
20 assigned projects completion time outside of the classroom or training facility;

21 (d) The specific services that will be provided through the Department of
22 Workforce Development to achieve the employment outcome, overcome or
23 minimize any identified obstacles to employment, and the frequency with
24 which those services will be provided, including but not limited to access to
25 services during nontraditional business hours and support;

26 (e) The beginning and projected completion date of each service;

27 (f) If supported employment training or services are to be provided outside of the

- 1 Education and Labor Cabinet, the identification of the provider of the
2 extended services and the reporting and accountability requirements
3 established with the program provider;
- 4 (g) The criteria established for evaluating progress and success;
- 5 (h) The attendance and reporting requirements established for the participant and
6 for the institution or facility providing the service, including to whom and
7 with what frequency reports are to be made;
- 8 (i) The date the employment plan is estimated to be completed;
- 9 (j) The job-placement assistance plan that will be provided to the participant by
10 the department;
- 11 (k) The need for ongoing or future training following completion of the
12 employment plan and the availability of that training to the participant; and
- 13 (l) The continuum of care to be provided by a community rehabilitation provider.
- 14 (4) The Department of Workforce Development, in consultation with the Kentucky
15 Higher Education Assistance Authority, shall provide the participant with assistance
16 in securing all scholarships, grants, or other available financial assistance to ensure
17 access to the educational or training requirements needed to achieve the specific
18 employment outcome.
- 19 (5) The Department of Workforce Development may establish an electronic registry to
20 be used by participants in the behavioral conditional dismissal program, treatment
21 plan providers, and prospective employers to assist in matching program
22 participants with employment opportunities.