



KENTUCKY COURT OF JUSTICE

Implementation Efforts to Support SB90

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Senate Bill 90 Overview

- SB 90 created the pilot program, Behavioral Health Conditional Dismissal Program which began January 1, 2023, to divert defendants charged with certain non-violent, non-sexual misdemeanors and Class D felonies away from jail and into treatment for substance-use disorder(s) or mental-health issues.
- Legislation provides an alternative to incarceration by allowing eligible defendants to receive treatment for substance use and/or behavioral health disorder. Under this legislation, eligible defendants must be assessed as soon as possible (but within at least 72 hours) by a mental health specialist who will ascertain the presence of a behavioral health disorder.
- If the defendant is determined to be eligible for the behavioral health conditional dismissal program, the prosecutor can enter into an agreement for the defendant to enter this program. This program will include an array of services such as outpatient or inpatient treatment, cognitive and behavioral therapies, education, vocational services, and housing assistance.
- The programs will be funded through either the defendant's current health insurance (including Medicaid), or if the defendant is uninsured, the Opioid Abatement Trust Fund, which will be administered by the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID).
- SB 90 also requires treatment providers and County or Commonwealth Attorneys to collect data regarding the defendant's participation in the program and report to the Administrative Office of the Courts throughout various time periods during the defendant's participation in the program.



Implementation Council

- Meets quarterly to assist with implementation. Meetings– August 11th, October 26th, and November 30th.
- Membership includes:
 - Chair: Executive Director of Office of Drug Control Policy
 - Director of AOC
 - Commissioner of DBHDID
 - Commissioner of Medicaid
 - Public Advocate
 - Member of Commonwealth's Attorney Association
 - Member of Kentucky County Attorney's Association
 - Circuit Judge
 - District Judge
 - Executive Director of Jailer's Association
 - Two representatives selected by the Kentucky Association of Regional Programs (one in substance abuse recovery and other treated for mental health disorder)
 - Ex Officio: Executive Director of Kentucky Adult Education



Workgroups

The Implementation Council established workgroups and subcommittees to facilitate discussions on process-mapping and build effective tools to capture data requirements within the legislation.

Courts and Data Reporting

- Data mapping and collection, court process-mapping, development of case navigator role. Prosecutors, treatment providers, AOC data reporting process, data form development, and review of third-party data applications.
 - **Prosecutor Subcommittee** established to ensure data collection requirements specific to prosecutor responsibilities mandated in the legislation.

Treatment and Recovery Services

- Develop clinical assessment and service linkage processes, treatment provider and county-level assessor eligibility and application processes; coordinate with Medicaid regarding assessment and other service reimbursement options; explore opportunities to support participating behavioral health providers.

Education and Training

- Coordination across education, vocational, and workforce development agencies (work with local adult education providers and key stakeholders within pilot sites), development of a process map and decision support template, explore federal funding options, education/work needs assessment process, development of an employer registry.



Identification of Pilot Sites

The following eleven counties were selected as pilot sites for SB 90 based on a variety of factors including: the operation of a county jail, availability of community and mental health programs, historical data relating to eligible individuals for participation, initial interest by counties expressing desire to participate, and consideration of equal representation of each Supreme Court District.

- Christian
- Clark
- Daviess
- Greenup
- Hopkins
- Kenton
- Letcher
- Madison
- McCracken
- Oldham
- Pulaski



Community Forums

AOC in collaboration with DBHDID hosted local community forums in all 11 pilot sites

County	Date	Additional Meetings
Kenton	September 28, 2022	
Greenup	December 12, 2022	
Letcher	October 24, 2022	December 29, 2022
Clark	November 17, 2022	
McCracken	November 3, 2022	December 1, 2022; upcoming February 1, 2023
Daviess	November 14, 2022	
Pulaski	November 15, 2022	
Madison	November 17, 2022	
Oldham	November 16, 2022	
Hopkins	November 21, 2022	
Christian	December 15, 2022	



Eligibility Criteria

- Must be at least 18 years of age, Kentucky resident, and
 - Charged with a qualifying offense. (*Exclusions: violent offender, sex offense, DUI, domestic violence, or protective orders against victim*).
 - Who does not have a previous conviction for Class A, B, or C felony, or a Class D felony or misdemeanor that is not a qualifying offense; and
 - Assessed by Pretrial Services as low-risk for failure to appear, low-risk for new criminal activity.
 - Clinical assessment indicates substance use and/or mental health disorder.
- or
- Attorney for the Commonwealth or defendant's attorney identifies them as a viable participant in the program.



Pretrial Eligibility Screening

- Department of Pretrial Services implemented an eligibility screening to capture data requirements.
- Identifies reason(s) a defendant is not eligible for the program.
- When eligible form is distributed to the Assessor, Prosecutor, and DPA.

KRS 533.272(3)(b)		PRETRIAL ELIGIBILITY FOR CONSIDERATION FOR BEHAVIORAL HEALTH CONDITIONAL DISMISSAL PROGRAM (BHCDP) SCREENING		INTERVIEW #: _____	
				BOOKING DATE/TIME: _____	
				RAS: _____	
Defendant Name First Middle Last					
Sex Race Ethnicity Birthdate Social Security # Drivers License # State					
Phone Number <input type="checkbox"/> Cell/Text <input type="checkbox"/> Landline eMail					
Charging County: _____			Holding County: _____		
FTA Risk Level: _____			NCA Risk Level: _____		
YES NO UNK					
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 1. Is the defendant a Kentucky resident?					
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 2. Is the defendant charged with a Class A, B, or C felony?					
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 3. Is the defendant charged with an offense that would qualify as a violent offender under KRS 439.3401?					
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 4. Is the defendant charged with DUI offense under KRS 189A.010?					
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 5. Is the offense an act of domestic violence or abuse KRS 403.720 or an act of dating violence and abuse as defined KRS 456.010?					
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 6. Is the defendant charged with a sex crime as defined below:					
a. A felony under KRS 510, 529.100 or 529.110 involving commercial sexual activity, 530.020, 530.064(1)a, 531.310, 531.320, or 531.335;					
b. A felony attempt to commit a felony offense specified in question a above.					
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 7. Does the defendant have prior convictions of a Class A, B, or C felony?					
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 8. Does the defendant have prior convictions that would qualify as a violent offender under KRS 439.3401?					
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 9. Does the defendant have a prior DUI conviction under KRS 189A.010?					
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 10. Does the defendant have a conviction of an act of domestic violence or abuse KRS 403.720 or dating violence and abuse KRS 456.010?					
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 11. Does the defendant have a prior conviction of a sex crime as defined below:					
a. A felony under KRS 510, 529.100 or 529.110 involving commercial sexual activity, 530.020, 530.064(1)a, 531.310, 531.320, or 531.335;					
b. A felony attempt to commit a felony offense specified in question a above.					
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> c. A federal felony offense, a felony offense subject to a court-martial of the United States Armed Forces, or a felony offense from another state or a territory where the felony offense is similar to a felony offense specified in paragraph (a) of this subsection;					
Based upon the above screening conducted by a representative of Pretrial Services it is determined that the above named defendant: *Pretrial Services is unable to determine if the offense is against a victim who has a protective order under KRS 456.060 or 508.130B*					
<input type="checkbox"/> Is not eligible for participation in the BHCDP based on offense and criminal history.					
<input type="checkbox"/> Is eligible for participation in the BHCDP based on offense and criminal history and should be referred to a Qualified Mental Health Professional for assessment.					
Referral email sent to: _____				Comment:	
on: _____ at: _____					
Copies: <input type="checkbox"/> MHSUD Assessor <input type="checkbox"/> Attorney for the Commonwealth <input type="checkbox"/> DPA					



Clinical Assessment

Clinical assessment is performed by a QMHP to determine indication of a substance use disorder and/or mental health disorder.

- Assessment may be conducted via telehealth or in person.
- Clinical assessment must be completed within 72 hours of referral.
- If person has been released prior to receiving a clinical assessment, defendant with agreement from counsel may request a clinical assessment at any time during the proceedings.
- Initial assessment will be completed by the pilot-wide assessor OR the local county-level assessor.
- 48 hours of the assessment, the QMHP shall submit a treatment referral to the prosecutor and defense.
- A full, bio-psychosocial assessment will be completed by the selected treatment provider.



Data Collection and Reporting

SB 90 requires AOC to collect data from treatment providers and prosecutors relating to an individual's participation in the conditional dismissal program for preparation of an annual report. The report shall be submitted to the following entities by January 31:

- LRC
- Chairs of the Judiciary Committee
- Governor
- Behavioral Health Conditional Dismissal Program Implementation Council (October 1)

Report shall include:

1. The number of defendants assessed who did not meet the eligibility requirements for the program following the clinical assessment;
2. The specific offenses charged for each defendant and the classification of offenses charged;
3. The percentage of defendants participating in the program who successfully completed the program;
4. The percentage of defendants discharged from the program for noncompliance; and
5. The percentage of defendants who are arrested, convicted, and incarcerated within six (6) months, one (1) year, and two (2) years of successful completion of the program.



Funding

Behavioral Health Conditional Dismissal Program Trust Fund

- Administered by DBHDID
- \$10,500,000 is appropriated each fiscal year from Opioid Settlement Funds

Funds may cover:

- Assessment and treatment/recovery support costs not funded through the participant's current health insurance (including Medicaid) or other third party payor
- Transportation or other needs to increase recovery capital
- Program staff (e.g. Case Navigators) and other administrative costs
- Data platform development



Administrative Support

SB90 Statewide Operations Supervisor

Provide training to Pretrial Service staff in the pilot to ensure fidelity in determining eligibility for the program and the execution of sharing information with relevant stakeholders. Act as a liaison with jails and approved providers within the pilot sites to develop a process for the clinical assessments to be conducted, within 72 hours after the defendant being booked. Collaborate and offer technical assistance to prosecutors, defense counsel, providers, Adult Education, and any stakeholder in need of assistance or support throughout the pilot.

Develop a training plan, policies and procedures for the case navigator position. Oversee case navigators while providing training, coaching, and guidance to ensure fidelity across the sites. Enhance policies and procedures as the pilot grows and lessons are learned to provide a best practice approach with the defendants served.

SB90 Regional Supervisor

Assist the operations supervisor in implementing Senate Bill 90 by executing training, providing coaching and continuous quality improvement measures to ensure appropriate referrals are made. Responsible for gathering and maintaining data required in the legislation and troubleshoot barriers at the local level to streamline data collection.



Next Steps

- Secure Trust Funds
- Establish approved provider/assessor lists
- Refinement of technological solution/data collection process
- Ongoing training and technical assistance for local stakeholders
- Enhancement of process mapping based on local feedback and implementation
- Full implementation in all pilot counties
- Hiring and placement of Case Navigators



Case Navigators

- AOC with support from DBHDID is currently utilizing Comprehensive Opioid, Stimulant, and Substance Abuse Program (COSSAP) funds through the Justice and Public Safety Cabinet to hire Case Navigators; 12 case navigators --one in each pilot county, except 2 for f Kenton (which will have two because of its size and volume). Award ends September 2023; AOC is seeking other grant opportunities to sustain role in efforts to limit use of SB90 funds.
- Case Navigators will provide coordination of services and supports to defendants. This navigator works collaboratively with local courts, prosecutors, defense counsel and other community stakeholders to assist defendants in navigating the court process. Case Navigators will attend court regularly and are responsible for providing technical support at the local level.



Questions

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