

## CHAPTER 96

## (SB 4)

AN ACT relating to crimes and punishments and declaring an emergency.

WHEREAS, a number of ongoing and new substance abuse initiatives from the legislative, executive, and judicial branches of government, including the "Recovery Kentucky" initiative, drug courts, and jail and prison treatment initiatives, will soon be bringing over 40 million dollars in drug abuse treatment facilities and infrastructure online and available for the intensive treatment of persons suffering from substance abuse within the Commonwealth; and

WHEREAS, with the upcoming availability of new treatment facilities and programs and with the experience gained from drug courts, the Commonwealth is prepared to implement a more aggressive and effective response to the threat to public health and safety created by persons with severe substance abuse addictions; and

WHEREAS, over 80 percent of the persons involved in the Kentucky Criminal Justice System are there as a result, either directly, or indirectly of drug abuse;

NOW, THEREFORE,

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall develop an intensive secured substance abuse recovery program utilizing existing resources or by contract to house and care for persons suffering from substance abuse who have been charged with a felony offense.*
- (2) *The program shall accept persons referred to it under Sections 4 and 5 of this Act.*
- (3) *Persons may agree to be ordered into the program for a period of not less than ninety (90) days and not more than three hundred sixty-five (365) days. No person shall be involuntarily ordered into the program, a commitment shall not occur before the court has considered an evaluation of the defendant's treatment needs and conducted a hearing where the defendant may appear with counsel with an opportunity to present evidence on his or her own behalf, and persons in the program may petition the court to review the program's determination as to the length of time the person is to remain in the program or to issue an order to leave the program, which the court shall grant upon request, at any time. However, that departure shall constitute a material breach of any agreement to hold the person's case in abeyance or of the person's pretrial diversion agreement. The court shall revoke a defendant's program commitment over the defendant's objection prior to the expiration of the commitment period only pursuant to an order of the committing court issued after the court has conducted a hearing on the matter where the defendant may appear with counsel and present evidence on his or her behalf.*
- (4) *The department shall locate the program in a secure facility with security standards comparable to those found in a minimum security correctional institution operated by the department.*
- (5) *The program shall be capable of concurrently housing no fewer than two hundred (200) persons. The department shall have regulatory authority, when the program is at or near capacity, to prioritize admissions to the program.*
- (6) *The program's recovery component shall be designed to serve the committed person's substance abuse condition, and to provide the person with the skills and training needed to prevent the person from engaging in substance abuse upon release from the program. The program shall provide each person leaving the program with an aftercare plan, which shall include a referral to a local substance abuse provider capable of providing a level of continuing substance abuse care appropriate to the released person's needs. In designing the program, the department shall consult with and may contract with the Division of Mental Health and Substance Abuse Services.*

➔Section 2. KRS 431.515 is amended to read as follows:

- (1) All trial courts in this Commonwealth having jurisdiction of criminal causes shall provide such pretrial release investigation and services as necessary to effectuate the purposes of KRS 431.510 to 431.550, **including Section 3 of this Act**, and, where practical, to assist in the earliest possible determination of whether a person is a needy person under KRS Chapter 31.

- (2) The Supreme Court may by appropriate rule or order establish and provide for such pretrial investigation and release services including, where practical, the taking of financial statements, and the court's determination of whether a person is a needy person as provided in KRS 31.120.

➔SECTION 3. A NEW SECTION OF KRS 431.510 TO 431.550 IS CREATED TO READ AS FOLLOWS:

*When considering the pretrial release of a person charged with a felony offense under KRS Chapter 218A or a person charged with a felony offense whose criminal record indicates a history of recent and relevant substance abuse, the court considering the release shall cause the court's pretrial release investigation and services office to have the person screened for recent and relevant substance abuse risk factors. A person's refusal to participate in the screening shall not disqualify the person from being granted pretrial release. If this screening indicates the presence of recent and relevant substance abuse risk factors, the court may order as a condition of pretrial release that the person:*

- (1) *Undertake any testing ordered by the court under KRS 431.520 or 431.525;*
- (2) *Participate in an additional assessment of the person's condition;*
- (3) *Participate in a secular or faith-based treatment or recovery program if one (1) is identified as appropriate to the person as a result of the person's initial assessment or an additional assessment performed under subsection (2) of this section; and*
- (4) *Appear at any subsequent hearing ordered by the court where the person's conditions of pretrial release may be reviewed and modified as the result of any testing performed under subsection (1) of this section, any additional assessment performed under subsection (2) of this section, any additional assessment of the defendant performed by a qualified mental health professional which the defendant may offer for the court's consideration, or the person's compliance with any treatment or recovery plan ordered by the court under subsection (3) of this section.*

➔SECTION 4. A NEW SECTION OF KRS 533.250 TO 533.260 IS CREATED TO READ AS FOLLOWS:

- (1) *Every pretrial diversion program shall set as a condition precedent for entry into the program that any defendant charged with a Class D felony offense under KRS Chapter 218A and any defendant charged with a Class D felony offense whose criminal, medical, or mental health record indicates a present need for or benefit from substance abuse treatment participate in and demonstrate suitable compliance with the terms of a secular or faith-based substance abuse treatment or recovery program if space is available in a treatment or recovery program suitable for that defendant. The substance abuse treatment or recovery program shall be appropriate to the defendant's needs, and may include commitment to an intensive outpatient program, a residential substance abuse treatment or recovery facility, or the intensive secured drug abuse treatment program developed under Section 1 of this Act. Consideration may be given, in whole or in part, to a defendant's participation in drug monitoring or a substance abuse treatment or recovery plan ordered under Section 3 of this Act as evidence of suitable compliance under this section.*
- (2) *The court may waive compliance with subsection (1) of this section if the defendant can show that exigent circumstances exist sufficient to justify diversion program participation without a prior demonstration of treatment compliance.*
- (3) *The court may continue in effect any nonfinancial conditions of pretrial release imposed under KRS 431.520 or 431.525 and may hold the case in abeyance during the period of time the defendant is attempting treatment or recovery prior to diversion under subsection (1) of this section.*
- (4) *The court may allow a person charged with a Class C felony to participate in a secular or faith-based substance abuse treatment or recovery program under subsection (1) of this section or obtain a waiver under subsection (2) of this section. If the person is successful in the program or is waived, the person shall be eligible for entry into the pretrial diversion program under the same terms, conditions, and limitations as a Class D felon.*

➔Section 5. KRS 533.250 is amended to read as follows:

- (1) A pretrial diversion program shall be operated in each judicial circuit. The chief judge of each judicial circuit, in cooperation with the Commonwealth's attorney, shall submit a plan for the pretrial diversion program to the Supreme Court for approval on or before December 1, 1999. The pretrial diversion program shall contain the following elements:

- (a) The program may be utilized for a person charged with a Class D felony offense who has not, within ten (10) years immediately preceding the commission of this offense, been convicted of a felony under the laws of this state, another state, or of the United States, or has not been on probation or parole or who has not been released from the service of any felony sentence within ten (10) years immediately preceding the commission of the offense;~~;~~
  - (b) The program shall not be utilized for persons charged with offenses for which probation, parole, or conditional discharge is prohibited under KRS 532.045;~~;~~
  - (c) No person shall be eligible for pretrial diversion more than once in a five (5) year period;~~;~~
  - (d) No person shall be eligible for pretrial diversion who has committed a sex crime as defined in KRS 17.500. A person who is on pretrial diversion on July 12, 2006, may remain on pretrial diversion if the person continues to meet the requirements of the pretrial diversion and the registration requirements of KRS 17.510;~~;~~
  - (e) Any person charged with an offense not specified as precluding a person from pretrial diversion under paragraph (b) of this subsection may apply in writing to the trial court and the Commonwealth's attorney for entry into a pretrial diversion program;~~;~~
  - (f) Any person shall be required to enter an Alford plea or a plea of guilty as a condition of pretrial diversion;
  - (g) *The provisions of Section 4 of this Act shall be observed; and*
  - (h) *The program may include as a component referral to the intensive secured substance abuse treatment program developed under Section 1 of this Act for persons charged with a felony offense under KRS Chapter 218A and persons charged with a felony offense whose record indicates a history of recent and relevant substance abuse who have not previously been referred to the program under Section 4 of this Act.*
- (2) The Commonwealth's attorney shall make a recommendation upon each application for pretrial diversion to the Circuit Judge in the court in which the case would be tried. The court may approve or disapprove the diversion.
  - (3) The court shall assess a diversion supervision fee of a sufficient amount to defray all or part of the cost of participating in the diversion program. Unless the fee is waived by the court in the case of indigency, the fee shall be assessed against each person placed in the diversion program. The fee may be based upon ability to pay.

➔Section 6. KRS 532.120 is amended to read as follows:

- (1) An indeterminate sentence of imprisonment commences when the prisoner is received in an institution under the jurisdiction of the Department of Corrections. When a person is under more than one (1) indeterminate sentence, the sentences shall be calculated as follows:
  - (a) If the sentences run concurrently, the maximum terms merge in and are satisfied by discharge of the term which has the longest unexpired time to run; or
  - (b) If the sentences run consecutively, the maximum terms are added to arrive at an aggregate maximum term equal to the sum of all the maximum terms.
- (2) A definite sentence of imprisonment commences when the prisoner is received in the institution named in the commitment. When a person is under more than one (1) definite sentence, the sentences shall be calculated as follows:
  - (a) If the sentences run concurrently, the terms merge in and are satisfied by discharge of the term which has the longest unexpired time to run; or
  - (b) If the sentences run consecutively, the terms are added to arrive at an aggregate term and are satisfied by discharge of the aggregate term.
- (3) Time spent in custody prior to the commencement of a sentence as a result of the charge that culminated in the sentence shall be credited by the court imposing sentence toward service of the maximum term of imprisonment. If the sentence is to an indeterminate term of imprisonment, the time spent in custody prior to the commencement of the sentence shall be considered for all purposes as time served in prison.

- (4) If a person has been in custody due to a charge that culminated in a dismissal, acquittal, or other disposition not amounting to a conviction, the amount of time that would have been credited under subsection (3) of this section if the defendant had been convicted of that charge shall be credited as provided in subsection (3) of this section against any sentence based on a charge for which a warrant or commitment was lodged during the pendency of that custody.
- (5) If a person serving a sentence of imprisonment escapes from custody, the escape shall interrupt the sentence. The interruption shall continue until the person is returned to the institution from which he escaped or to an institution administered by the Department of Corrections. Time spent in actual custody prior to return under this subsection shall be credited against the sentence if custody rested solely on an arrest or surrender for the escape itself.
- (6) *As used in subsections (3) and (4) of this section, time spent in custody shall include time spent in the intensive secured substance abuse recovery program developed under Section 1 of this Act and may include, at the discretion of the sentencing court, time spent in a different residential substance abuse treatment or recovery facility pursuant to Section 3 or 4 of this Act, if under each option allowed by this subsection, the person has successfully completed the program offered by the intensive secured substance abuse recovery program or the residential substance abuse treatment or recovery facility. If the defendant fails to complete a program, the court may still award full or partial sentence credit if the defendant demonstrates that good cause existed for the failure to complete the program.*

➔Section 7. Whereas the citizens of Kentucky face a present and ongoing danger as the result of substance abuse-driven crime and the provisions of this Act offer relief from that danger, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by the Governor March 24, 2009.**