

CHAPTER 230**(SB 90)**

AN ACT relating to legal proceedings and making an appropriation therefor.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

- (1) *A pilot program shall be established in no less than ten (10) counties selected by the Chief Justice of the Supreme Court to participate in a behavioral health conditional dismissal program. The pilot program shall begin January 1, 2023, and shall last for four (4) years unless extended or limited by the General Assembly.*
- (2) *Each participating county shall have access to:*
 - (a) *Medication assisted treatment;*
 - (b) *Recovery services as defined under Section 2 of this Act; and*
 - (c) *Educational and vocational resources sufficient to provide the training and assistance required under Section 9 of this Act.*
- (3) *Every behavioral health treatment program provider in the pilot program shall collect and maintain data as provided in this subsection relating to program participants under their care, designed to inform the outcomes and effectiveness of the pilot program, to be submitted to the Administrative Office of the Courts as provided under paragraphs (b) to (e) of this subsection.*
 - (a) *A report shall be made for each program participant no later than fourteen (14) days following the initiation of treatment. The data to be collected and submitted in the report shall include the following information regarding each participant:*
 1. *Age, gender, and race or ethnicity;*
 2. *Housing history;*
 3. *Educational history;*
 4. *Employment history;*
 5. *Past involvement in addiction recovery and treatment for a substance use disorder;*
 6. *Past treatment for a mental health disorder; and*
 7. *Criminal history.*
 - (b) *A second report shall be made for each program participant identified in paragraph (b) of this subsection no later than twenty-eight (28) days after filing the initial report and shall provide the progression of the program participant including but not limited to:*
 1. *Continuation in the program;*
 2. *The status and type of recommended treatment;*
 3. *Employment or job training;*
 4. *The status and type of educational training;*
 5. *Housing status;*
 6. *Any other information the program provider determines may assist in evaluation of the pilot program; and*
 7. *If the participant has been discharged from the program due to an inability or unwillingness to meet the terms and conditions of the treatment program, including the specific reason for the discharge.*
 - (c) *Subsequent reports shall be filed on a quarterly basis. The initial quarterly report shall be submitted no later than April 15, 2023, with reports due thereafter on January 15, April 15, July 15, and*

October 15 of each year of the pilot program. The quarterly reports shall include for the reporting period:

- 1. The information required under paragraph (c) of this subsection as it relates to each program participant, including the length of time the individual has been a program participant;*
- 2. The number of clinical assessments performed by the program provider;*
- 3. The total number of individuals participating in the behavioral health conditional dismissal program with that provider;*
- 4. The number of individuals who remain in compliance with the terms and conditions of the treatment program;*
- 5. The number of individuals who have been discharged from the program due to an inability or unwillingness to meet the terms and conditions of the treatment program, including the specific reason for the discharge;*
- 6. For any individual discharged under subparagraph 5. of this paragraph, the length of time the individual participated in the program;*
- 7. The number of individuals who have been discharged from the program upon successful completion of the treatment program requirements;*
- 8. The number of individuals who have received medication-assisted treatment and the result of that treatment;*
- 9. The number of individuals who have completed a recommended job skills or job training program; and*
- 10. The number of individuals who have completed a recommended educational component of the program.*

(e) A final report shall be filed for each program participant no later than thirty (30) days following discharge from the program and shall contain, at a minimum, the following information:

- 1. If the discharge from the program was due to an inability or unwillingness to meet the terms and conditions of the treatment program the:

 - a. Specific reason for the discharge;*
 - b. Length of time the individual participated in the program;*
 - c. Goals met during the participation period;*
 - d. Identified barriers to completion of the program, if known; and*
 - e. Recommended adjustments to the behavioral health conditional dismissal program that could provide a greater probability of successful completion to similar participants; and**
- 2. If the discharge from the program occurred upon successful completion of the program requirements:

 - a. The length of time the individual participated in the program;*
 - b. A summary of the specific programs completed and goals attained by the participant;*
 - c. What continued treatment, if any, is recommended; and*
 - d. Recommended adjustments to the behavioral health conditional dismissal program that could provide greater benefit to similar participants.**

(4) The attorneys for the Commonwealth participating in the pilot program shall submit quarterly reports to the Administrative Office of the Courts. The initial quarterly report shall be submitted no later than April 15, 2023, with reports due thereafter on January 15, April 15, July 15, and October 15 of each year of the pilot program. The quarterly reports shall include for the reporting period:

- (a) The number of eligible defendants, including the defendant's race, ethnicity, and gender, who were offered participation in the behavioral health conditional dismissal program but declined to participate;*

- (b) *The number of eligible defendants, including the defendant's race, ethnicity, and gender, who sought to participate in the program but whose participation was not agreed to by the attorney for the Commonwealth;*
 - (c) *The number of victims, if there is an identified victim, who did not participate in the process; and*
 - (d) *The number of victims, if there is an identified victim, who did not agree to the defendant's participation in the program.*
- (5) *If the attorney for the Commonwealth did not agree to an eligible defendant's participation in the behavioral health conditional dismissal program, he or she shall include in each quarterly report to the Administrative Office of the Courts the specific offenses charged for that defendant, and the substantial and compelling reasons, based upon delineated facts specific to the defendant, why the defendant was denied participation in the program.*
- (6) *The Chief Justice of the Supreme Court shall submit an annual report to the Legislative Research Commission, the chair of the Senate Standing Committee on Judiciary, the chair of the House Standing Committee on Judiciary, and the Governor by January 31 of each year that includes the information received from the attorneys for the Commonwealth and the providers for the counties participating in the behavioral health conditional dismissal program. The report shall include the information reported under subsections (3) to (5) of this section and shall also include:*
- (a) *The number of defendants assessed who did not meet the eligibility requirements for the program following the clinical assessment;*
 - (b) *The specific offenses charged for each defendant and the classification of offenses charged;*
 - (c) *The percentage of defendants participating in the program who successfully completed the program;*
 - (d) *The percentage of defendants discharged from the program for noncompliance; and*
 - (e) *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.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 11 of this Act:

- (1) *"Behavioral health conditional dismissal program" means a program designed to provide an eligible person who has a behavioral health disorder and who has been charged with a qualifying offense an alternative to receive treatment and recovery support services addressing the behavioral health disorder instead of incarceration, resulting in dismissal of the charges upon successful completion;*
- (2) *"Behavioral health disorder" means a mental health disorder or substance use disorder, or both;*
- (3) *"Behavioral health treatment program" means a plan or recovery program, based upon a clinical assessment, that:*
 - (a) *Identifies and incorporates recovery services to meet the specific treatment and recovery goals and the needs of the individual served;*
 - (b) *Addresses the social determinants of health to include housing, transportation, access to medical care, and meaningful employment; and*
 - (c) *Considers a full continuum of care;*
- (4) *"Clinical assessment" means an assessment that is performed by a qualified mental health professional in accordance with the most recent American Society of Addiction Medicine criteria for a substance use disorder, and the most recent edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders for a mental health disorder;*
- (5) *"Eligible applicant" or "eligible person" means an individual:*
 - (a) *Who has completed a clinical assessment and been referred to care; and*
 - (b) *Who meets the requirements of Section 3 of this Act;*
- (6) *"Mental health disorder" is a diagnostic term that covers many clinical categories typically including behavioral or psychological symptoms, or both, along with impairment of personal and social function, and*

specifically defined and clinically interpreted through reference to criteria contained in the most recent edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders;

- (7) *"Qualified mental health professional" means the same as in KRS 202A.011 and shall include a licensed clinical alcohol and drug counselor under KRS Chapter 309;*
- (8) *"Qualifying offense" means a misdemeanor or Class D felony that is not:*
- (a) *An offense that would qualify the person as a violent offender under KRS 439.3401;*
 - (b) *A sex crime as defined by KRS 17.500;*
 - (c) *An offense under KRS 189A.010;*
 - (d) *An offense against a victim who has a protective order as defined in KRS 508.130 against the defendant at the time the offense is charged;*
 - (e) *An act of domestic violence and abuse as defined in KRS 403.720, or an act of dating violence and abuse as defined in KRS 456.010, against the defendant at the time the offense is charged; or*
 - (f) *An offense against a victim who has an interpersonal protective order issued under KRS 456.060;*
- (9) *"Recovery services" means rehabilitative treatment services that shall include but not be limited to any or all of the following:*
- (a) *Outpatient treatment;*
 - (b) *National Alliance of Recovery Residences or the Council on Accreditation of Rehabilitation Facilities certified housing;*
 - (c) *Medication treatment;*
 - (d) *Personal and family counseling;*
 - (e) *Substance abuse education and prevention classes or counseling;*
 - (f) *Vocational training;*
 - (g) *Literacy training;*
 - (h) *Community service;*
 - (i) *Inpatient or residential behavioral health treatment as needed to address:*
 - 1. *Impaired capacity to use self-control, judgment, or discretion related to behavior;*
 - 2. *Severe dependence;*
 - 3. *Special detoxification;*
 - 4. *Relapse; or*
 - 5. *Other treatments recommended by a qualified mental health professional;*
 - (j) *Restorative practices designed to make the participant accountable to the victim when there is an identified victim, and it is safe to do so;*
 - (k) *Recovery housing assistance; and*
 - (l) *Recovery housing programs that have an established third party outcome evaluation; and*
- (10) *"Substance use disorder" has the same meaning as in KRS 222.005.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

- (1) *In addition to the pretrial diversion program established under KRS 533.250 to 533.260, and the deferred prosecution program established under KRS 218A.14151, a behavioral health conditional dismissal program shall be operated in each county participating in the pilot program established under Section 1 of this Act. The behavioral health conditional dismissal program shall:*
- (a) *Provide eligible persons, on an equal basis, an alternative to ordinary prosecution for qualifying offenses arising from a behavioral health disorder by receiving early recovery services and treatment reasonably expected to deter future criminal behavior; and*

- (b) *Provide an expedited alternative to prosecution for eligible persons who may be harmed by the imposition of criminal sanctions in the absence of the alternative when the alternative is reasonably expected to serve as a sufficient deterrent to criminal conduct.*
- (2) *The program may be utilized by any person:*
 - (a) *Who is a resident of the Commonwealth and who is at least eighteen (18) years of age;*
 - (b) *Whose clinical assessment indicates the presence of a behavioral health disorder;*
 - (c) *Charged with a qualifying offense;*
 - (d) *Who does not have a previous conviction for a Class A, B, or C felony, or a Class D felony or misdemeanor that is not a qualifying offense; and*
 - (e) *Who has been assessed by pre-trial services as a low-risk, low-level offender, or has been otherwise determined by the attorney for the Commonwealth or the attorney for the defendant as a viable participant in the program.*
- (3) *Other factors that may be considered for admission into the behavioral health conditional dismissal program include but are not limited to:*
 - (a) *The likelihood that the applicant's offense is related to a behavioral health disorder that would be conducive to change through his or her participation in a behavioral health treatment program;*
 - (b) *The availability of behavioral health treatment programs in the defendant's county of residence if different from the county of arrest;*
 - (c) *The history of any physical violence toward others as documented through judicial or law enforcement records;*
 - (d) *Any involvement of the applicant with organized crime under KRS 506.120; and*
 - (e) *Whether or not the applicant's participation in a behavioral health treatment program would adversely affect the prosecution of codefendants.*
- (4) *Eligible defendants in pretrial confinement shall be given preference for participation in the behavioral health conditional dismissal program.*
- (5) *Eligible defendants who have charges pending but are not in custody shall be assessed for participation in the behavioral health conditional dismissal program as provided under subsection (1)(d) of Section 4 of this Act.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Following arrest, and within seventy-two (72) hours after being booked into a jail or detention facility, any person who has been charged with a qualifying offense shall undergo a clinical assessment to determine if he or she may have a behavioral health disorder;*
- (b) *The Cabinet for Health and Family Services shall provide a list of approved assessors in accordance with Section 8 of this Act for each county participating in the pilot program;*
- (c) *The jailer or his or her designee shall contact a qualified mental health professional from the list of approved assessors for the county provided under paragraph (b) of this subsection, and shall advise the qualified mental health professional that a clinical assessment is needed;*
- (d) *If a person has been charged with a qualifying offense and has been released prior to receiving a clinical assessment, he or she individually, or through his or her counsel, if any, may request a clinical assessment by a qualified mental health professional at any time during the proceedings from the list of approved assessors provided under paragraph (b) of this subsection;*
- (e) *Notwithstanding any other provision to the contrary, the clinical assessment may be conducted through telehealth or in person, whether the person charged is in the custody of the jail or has been released;*
- (f) *If the qualified mental health professional determines that the person being assessed is physically or psychologically impaired to the extent that he or she cannot provide sufficient information or*

- responses to conduct or complete the assessment, the assessment may be delayed but only for the time required for the person to adequately respond;*
- (g) No statement or other disclosure made by the person charged in the course of the clinical assessment shall be admissible in a criminal trial unless the trial is for a crime committed during the assessment; however, nothing in this subsection shall be interpreted to prevent any reporting required by law, or as an implied waiver of applicable privacy laws and professional standards regarding confidentiality;*
 - (h) Any referral for treatment shall be based upon the clinical assessment and a finding by the qualified mental health professional that treatment is medically necessary;*
 - (i) The treatment referral shall be forwarded to the attorney for the Commonwealth and the attorney for the person charged, if any, within forty-eight (48) hours of the assessment;*
 - (j) The failure of the assessor to forward the referral to the attorney for the Commonwealth or the attorney for the person charged, if any, within forty-eight (48) hours shall not result in automatic release of the person charged; and*
 - (k) Nothing in this subsection shall be interpreted to create a duty of the jailer to pay for any costs associated with the clinical assessment.*
- (2) At any time following arrest the Commonwealth's attorney if the underlying charge includes a felony, or the county attorney if the underlying charge only includes a misdemeanor, and the person charged may agree to the individual's participation in the behavioral health conditional dismissal program.*
- (3) When an individual is being considered for the behavioral health conditional dismissal program, the attorney for the Commonwealth shall:*
- (a) Have a criminal record check made to ascertain if the person is eligible for the program;*
 - (b) Consult with the victim of the crime, if there is an identified victim;*
 - (c) Explain the behavioral health conditional dismissal program to the victim, including potential terms and conditions, and any other matter the attorney for the Commonwealth deems to be appropriate, including the right of the victim to submit a written statement that shall be included in the record placed under seal under Section 6 of this Act; and*
 - (d) Conduct any other investigation that the attorney for the Commonwealth determines may be necessary to assist him or her in agreeing to the referral for treatment by the qualified mental health professional and the defendant's participation in the behavioral health conditional dismissal program.*
- (4) If the defendant agrees to the terms of the individualized treatment plan, which shall include restitution, and the attorney for the Commonwealth agrees to the defendant's participation in the program, the defendant and the attorney for the Commonwealth shall sign an agreement specifying the terms and conditions. If the defendant is represented by counsel, defense counsel shall also sign the agreement.*
- (5) The length of the program shall be determined by the qualified mental health professional in collaboration with the provider and the type of program based upon the assessment and shall not:*
- (a) Be less than one (1) year in duration unless discharged earlier by the provider upon satisfactory completion of the recommended treatment plan with agreement of the attorney for the Commonwealth after consultation with the victim, and with agreement of the defendant; or*
 - (b) Exceed a period of time longer than the defendant's maximum potential period of incarceration if found guilty of the offenses charged unless the defendant agrees in writing to an extension of the treatment period.*
- (6) A defendant participating in the behavioral health conditional dismissal program shall not be required to:*
- (a) Plead guilty or enter an Alford plea as a condition for participation in the program; or*
 - (b) Make any statement or stipulate to any statement relating to evidence in the underlying case as a condition for participation in the program.*
- (7) Execution of the agreement by the defendant shall toll all further proceedings against the defendant relating to the agreement, except the matter may be set for a status review at the discretion of the court.*

- (8) *Upon execution of the agreement as provided in subsection (4) of this section, the defendant shall present himself or herself for treatment no later than three (3) days after the agreement is signed. The attorney for the Commonwealth shall:*
- (a) *Notify the treatment provider of the agreement and the effective date; and*
 - (b) *Provide the victim, if there is an identified victim, with notice that an agreement has been reached for the defendant's participation in the behavioral health conditional dismissal program, and the terms of the agreement that are applicable to the victim.*
- (9) *If the defendant remains in custody at the time of the agreement, the court shall order release of the defendant which shall not include a requirement of cash bail.*
- (10) *The charges against the defendant shall proceed with ordinary prosecution upon dismissal of the defendant from the treatment program by the provider for noncompliance.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon initiation of treatment, the designated behavioral health treatment provider may assign a case manager in accordance with criteria established by the Cabinet of Health and Family Services in administrative regulations promulgated under KRS Chapter 13A. The case manager, or the treatment provider if no case manager has been assigned, shall notify the Office of Adult Education within the Department of Workforce Investment of the Education and Workforce Development Cabinet of the individual's participation in a behavioral health conditional dismissal program.*
- (2) *Any assigned case manager, working in collaboration with the individual referred for treatment and the treatment team and provider, or the treatment provider if there is no case manager shall:*
- (a) *Obtain all releases from the individual served that may be required to confirm compliance with the program requirements;*
 - (b) *Coordinate all services and testing required under the program, including transportation if needed and available;*
 - (c) *Receive and maintain copies of all necessary documentation to ensure compliance with the program requirements, including but not limited to:*
 1. *Treatment records;*
 2. *Drug tests;*
 3. *Educational assessments and advancements, if applicable;*
 4. *Employment status and employment training;*
 5. *Community service, if applicable; and*
 6. *Housing status;*
 - (d) *Meet or conference with providers of any program requirements on a regular basis to address the participant's progress, including restitution, and any required adjustment that may be needed to the participant's program; and*
 - (e) *Provide periodic progress reports to the attorney for the Commonwealth and the attorney for the participant according to the following schedule:*
 1. *An initial report within fourteen (14) days of the initiation of treatment;*
 2. *A follow-up report within twenty-eight (28) days after submission of the initial fourteen (14) day report;*
 3. *Subsequent reports on a quarterly basis throughout the course of treatment beginning April 15, 2023, with reports due thereafter on January 15, April 15, July 15, and October 15 of each year of the participation in the pilot program; and*
 4. *A final report within thirty (30) days of the successful completion of the program.*
- (3) *Any assigned case manager, treatment provider, or member of the treatment team, is encouraged to:*

- (a) *Utilize digital notification or reminder services for participants throughout the treatment program period; and*
- (b) *If digital services under paragraph (a) of this subsection are utilized, include in each quarterly report required under subsection (2)(e) of this section the following data:*
 - 1. *The number of participants;*
 - 2. *The type of digital services provided;*
 - 3. *The costs of providing the digital services;*
 - 4. *Health and social outcomes from the use of the digital services; and*
 - 5. *Any other information pertaining to outcomes related to the use of the digital services.*

(4) *The treatment provider shall:*

- (a) *Recommend modifications to the treatment program to the attorney for the Commonwealth, and the attorney for the participant;*
- (b) *Review the individual's progress and recommend continued participation in the program or dismissal from the program due to an inability or unwillingness to meet the terms and conditions of the program;*
- (c) *Immediately report dismissal from the treatment program based upon lack of compliance with the terms and conditions of the program to the attorney for the Commonwealth, the court, and the attorney for the participant; and*
- (d) *Advise the attorney for the Commonwealth, the court, the attorney for the participant, and the victim, if there is an identified victim, of the participant's successful completion of the program requirements.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) *Upon successful completion of the behavioral health conditional dismissal program:*

- (a) *The court shall dismiss the charged offense or offenses with prejudice and discharge the defendant;*
- (b) *All records relating to the case, including but not limited to arrest records and records relating to the charges, shall be sealed, except as provided in KRS 27A.099;*
- (c) *The offense shall be accessible for review for the sole purpose of determining the defendant's eligibility for deferred prosecution under KRS 218A.1415; and*
- (d) *The defendant shall not be required to disclose the arrest or other information relating to the charges or participation in the program on an application for employment, credit, or other type of application unless required to do so by state or federal law.*

(2) *If a defendant who is participating in the behavioral health conditional dismissal program is convicted of or enters a plea of guilty to a felony offense other than a qualifying offense under any law of the United States, this state, or any other state, that was committed while participating in the program, the defendant shall be discharged from the behavioral health conditional dismissal program for failure to comply with the terms and conditions.*

(3) *If the defendant is discharged from the behavioral health conditional dismissal program by the treatment provider under Section 5 of this Act, all statements or other disclosures made by the defendant to any provider while participating in the program shall be protected by all applicable privacy laws and professional standards regarding confidentiality and shall not be admissible in a criminal trial relating to the offenses covered by the agreement executed under Section 4 of this Act.*

(4) *The attorney for the Commonwealth shall notify the victim, if there is an identified victim, of the defendant's dismissal from the program for noncompliance or discharge from the program following successful completion of the program.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

(1) *In establishing a specific behavioral health disorder treatment plan, the program provider formulating the plan shall consider the following:*

- (a) *The existence of programs and resources within the community;*
 - (b) *Available treatment providers;*
 - (c) *Available recovery housing;*
 - (d) *Accessible public and private agencies;*
 - (e) *The benefit of keeping the participant in his or her community or relocation for purposes of treatment, housing, and other supportive services;*
 - (f) *The safety of the victim of the offense, if there is an identified victim; and*
 - (g) *The specific and personalized needs of the participant, including the choice of the participant.*
- (2) *A program shall be designed to provide the participant with the skills, training, and resources needed to maintain recovery and prevent the person from engaging in criminal activity arising from a behavioral health disorder upon release from the program.*
- (3) *A behavioral health treatment program under Sections 1 to 8 of this Act shall be evidence-based, and may be a behavioral treatment plan, or a medically assisted treatment plan, or both, with recovery services or a Substance Abuse and Mental Health Services Administration evidence-based recovery housing program. The program shall provide at a minimum access, as needed, to:*
- (a) *Inpatient detoxification and treatment, that may include a faith-based residential treatment program;*
 - (b) *Outpatient treatment;*
 - (c) *Drug testing;*
 - (d) *Addiction counseling;*
 - (e) *Cognitive and behavioral therapies;*
 - (f) *Medication assisted treatment including:*
 - 1. *At least one (1) federal Food and Drug Administration approved agonist medication for the treatment of opioid or alcohol dependence;*
 - 2. *Partial agonist medication;*
 - 3. *Antagonist medication; and*
 - 4. *Any other approved medication for the mitigation of opioid withdrawal symptoms;*
 - (g) *Educational services;*
 - (h) *Vocational services;*
 - (i) *Housing assistance;*
 - (j) *Peer support services; and*
 - (k) *Community support services, that may include faith-based services.*
- (4) *Except for recovery housing providers, all treatment providers shall:*
- (a) *Meet the licensure requirements and standards established by the Cabinet for Health and Family Services under KRS Chapter 222;*
 - (b) *Qualify as a Medicaid approved provider; and*
 - (c) *Be accredited by at least one (1) of the following:*
 - 1. *American Society of Addiction Medicine;*
 - 2. *Joint Commission on the Accreditation of Healthcare Organizations; or*
 - 3. *Commission on Accreditation of Rehabilitation Facilities.*
- (5) *All recovery housing service providers shall:*
- (a) *Be certified using the National Alliance for Recovery Residences standards;*

- (b) *Provide evidence-based services;*
 - (c) *Provide a record of outcomes;*
 - (d) *Provide peer support services; and*
 - (e) *Address the social determinants of health.*
- (6) (a) *The Department for Medicaid Services, in conjunction with the program provider, shall assist any program participant who qualifies for Medicaid services to obtain or access Medicaid services for his or her behavioral health disorder treatment or recovery program;*
- (b) *The Department for Medicaid Services and its contractors shall provide an individual participating in the behavioral health conditional dismissal program with the substance use disorder benefit as provided under KRS 205.6311; and*
- (c) *A Medicaid managed care organization shall treat any referral for treatment under Sections 1 to 8 of this Act as an "expedited authorization request" as provided under KRS 205.534(2)(a)2.b.*
- (7) *Recovery housing services provided under this pilot program shall:*
- (a) *Be paid utilizing a value-based payment system developed and established by the medical managed care organizations in conjunction with the Department for Medicaid Services and recovery housing providers. The value-based payment system shall be established no later than January 1, 2023, and shall include the following for recovery housing programs:*
 - 1. *The development of a qualified recovery housing provider network; and*
 - 2. *Establishment and implementation of a value-based payment system that shall include the regular collection of outcomes data within existing Medicaid reimbursement regulations; and*
 - (b) *Be limited to two hundred (200) individuals unless additional funding designated for recovery housing is available through the Cabinet for Health and Family Services.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

- (1) *The Cabinet for Health and Family Services shall establish and maintain a list of approved assessors for each county participating in the pilot program established under Section 1 of this Act to perform clinical assessments; and*
- (2) *No assessor shall be approved unless he or she is a:*
- (a) *Qualified mental health professional as defined under Section 2 of this Act; and*
 - (b) *Medicaid approved provider or employed by a Medicaid approved provider.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *The Office of Adult Education within the Department of Workforce Investment of the Education and Workforce Development Cabinet in conjunction with a community rehabilitation provider shall conduct an in-person initial screening of any individual participating in a behavioral health conditional dismissal program within thirty (30) days of a participant beginning the program under Section 4 of this Act.*
- (b) *Nothing in this section shall prohibit any department, office, or division of the Education and Workforce Development Cabinet from entering into an agreement with a third party in each county participating in the pilot program to provide the services required under this section.*
- (2) *The initial screening shall include:*
- (a) *Educational history, including highest school grade completed, and when;*
 - (b) *Employment history, including types and lengths of employments;*
 - (c) *Military history, if any;*
 - (d) *The participant's physical, mental, and emotional abilities and limitations;*
 - (e) *Aptitude, skill level, and interest testing;*
 - (f) *An assessment of language skills; and*

- (g) *A determination of whether further assessment is needed to develop the vocational component of the recovery treatment program. If further assessment is required, it shall be completed within the first ninety (90) days following entry into the recovery treatment program unless additional time is needed to provide for physical recovery from the effects of a severe behavioral health disorder.*
- (3) *Within ten (10) days of completion of the vocational assessment, the Office of Adult Education, in consultation with the behavioral health conditional dismissal program provider, shall establish an individualized plan designed to attain a specific employment outcome to include:*
 - (a) *Specific educational goals with identification of institutions from which the participant will receive educational credits or training;*
 - (b) *Specific job-skills training, and the facility or institution from which the participant will receive the job skills training, to include:*
 - 1. *A holistic education curriculum that includes but is not limited to problem solving, communication skills, and interpersonal skills; and*
 - 2. *Sector specific employers as designated by the Kentucky Workforce Innovation Board;*
 - (c) *The required number of hours per week the participant will be engaged in educational or vocational training, including anticipated study time or assigned projects completion time outside of the classroom or training facility;*
 - (d) *The specific services that will be provided through the Department of Workforce Investment to achieve the employment outcome, overcome or minimize any identified obstacles to employment, and the frequency with which those services will be provided, including but not limited to access to services during non-traditional business hours and support;*
 - (e) *The beginning and projected completion date of each service;*
 - (f) *If supported employment training or services are to be provided outside of the Education and Workforce Development Cabinet, the identification of the provider of the extended services and the reporting and accountability requirements established with the program provider;*
 - (g) *The criteria established for evaluating progress and success;*
 - (h) *The attendance and reporting requirements established for the participant and for the institution or facility providing the service, including to whom and with what frequency reports are to be made;*
 - (i) *The date the employment plan is estimated to be completed;*
 - (j) *The job-placement assistance plan that will be provided to the participant by the department;*
 - (k) *The need for ongoing or future training following completion of the employment plan and the availability of that training to the participant; and*
 - (l) *The continuum of care to be provided by a community rehabilitation provider.*
- (4) *The Department of Workforce Investment, in consultation with the Kentucky Higher Education Assistance Authority, shall provide the participant with assistance in securing all scholarships, grants, or other available financial assistance to ensure access to the educational or training requirements needed to achieve the specific employment outcome.*
- (5) *The Department of Workforce Investment may establish an electronic registry to be used by participants in the behavioral conditional dismissal program, treatment plan providers, and prospective employers to assist in matching program participants with employment opportunities.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:

- (1) *The Behavioral Health Conditional Dismissal Program Implementation Council is created for the purpose of assisting with the implementation of the behavioral health conditional dismissal pilot program created under Section 1 of this Act.*
- (2) *The membership of the council shall include the following:*
 - (a) *The executive director of the Office of Drug Control Policy, or his or her designee, who shall serve as chair of the council;*

- (b) *The director of the Administrative Office of the Courts, or his or her designee;*
 - (c) *The commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities, or his or her designee;*
 - (d) *The commissioner of the Kentucky Department for Medicaid Services, or his or her designee;*
 - (e) *The public advocate, or his or her designee;*
 - (f) *A member of the Kentucky Commonwealth's Attorneys' Association, elected by its membership;*
 - (g) *A member of the Kentucky County Attorneys Association;*
 - (h) *One (1) Circuit Judge, elected by the Circuit Judges Association of Kentucky;*
 - (i) *One (1) District Judge, elected by the District Judges Association of Kentucky;*
 - (j) *The executive director of the Kentucky Jailers Association, or his or her designee; and*
 - (k) *Two (2) individuals selected by the Kentucky Association of Regional Programs, one (1) of whom shall be in recovery from a substance use disorder and one (1) of whom is being treated or has been treated for a mental health disorder as defined in Section 2 of this Act.*
- (3) *The council shall meet at least quarterly. Meetings shall be held at the call of the chair, or upon the written request of two (2) members to the chair.*
- (4) *The council shall:*
- (a) *Oversee the implementation of the behavioral health conditional dismissal program pilot project;*
 - (b) *Review the data collected by the Administrative Office of the Courts and report to the Interim Joint Committee on Judiciary and the Governor by October 1 of each year of the pilot project regarding:*
 - 1. *Recommendations for any additional performance measures needed to promote the success of the program;*
 - 2. *Whether any action is necessary, including funding or legislation;*
 - 3. *Recommendations for resolving any matters that reduce the effectiveness of the program; and*
 - 4. *Any additional information the council deems appropriate.*
- (5) *Members shall not receive any additional compensation for their service on the council but shall be reimbursed for all necessary expenses.*
- (6) *The council shall be attached to the Justice and Public Safety Cabinet for administrative purposes.*
- (7) *The council shall terminate December 31, 2027, unless extended by the General Assembly.*
- ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO READ AS FOLLOWS:
- (1) *There is hereby created a trust and agency account to be known as the Behavioral Health Conditional Dismissal Program trust fund to be administered by the Department for Behavioral Health, Developmental and Intellectual Disabilities within the Cabinet for Health and Family Services.*
- (2) *The fund may contain:*
- (a) *Appropriations by the General Assembly for the purpose of the behavioral health conditional dismissal program;*
 - (b) *State and federal grants, including but not limited to treatment related to substance abuse disorder or a mental health disorder;*
 - (c) *Opioid settlement moneys made available for the purposes of the fund;*
 - (d) *Devises, bequests, gifts, and donations, including philanthropic organizations; and*
 - (e) *Any other contributions from public agencies or other entities made available for the purposes of the fund.*
- (3) *Moneys deposited in the fund shall be used to administer and support the purposes of Sections 1 to 11 of this Act, and may include payments for services rendered by a qualified mental health provider as defined*

under Section 2 of this Act and treatment program providers upon exhaustion of payments from other payment providers, including but not limited to Medicaid and private insurance.

- (4) *The department may, in accordance with KRS Chapter 45A, select and contract with a third-party administrator to serve as the benefit manager for the program. The contract between the department and the benefit manager shall be submitted to the Government Contract Review Committee of the Legislative Research Commission for comment and review.*
- (5) *Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes established in Sections 1 to 11 of this Act.*
- (6) *Any interest earned on moneys in the fund shall accrue to the fund and shall not lapse.*
- (7) *Moneys deposited in the fund are hereby appropriated for the purposes set forth in this section and shall not be appropriated or transferred by the General Assembly for any other purposes.*

➔Section 12. KRS 197.020 is amended to read as follows:

- (1) The Department of Corrections shall:
 - (a) Promulgate administrative regulations for the government and discipline of the penitentiary, for the government and official conduct of all officials connected with the penitentiary, and for the government of the prisoners in their department and conduct;
 - (b) Promulgate administrative regulations for the character of food and diet of the prisoners; the preservation of the health of the prisoners; the daily cleansing of the penitentiary; the cleanliness of the persons of the prisoners; the general sanitary government of the penitentiary and prisoners; the character of the labor; the quantity of food and clothing; and the length of time during which the prisoners shall be employed daily;
 - (c) Promulgate administrative regulations, as the department deems necessary, for the disposition of abandoned, lost, or confiscated property of prisoners;
 - (d) Promulgate administrative regulations for the administration of a validated risk and needs assessment to assess the criminal risk factors and correctional needs of all inmates upon commitment to the department;
 - (e) Promulgate administrative regulations to:
 - 1. Create a certification process for county jails that may house female state inmates. The administrative regulations shall include a requirement of a physical barrier between male and female inmates; and
 - 2. ***Require telehealth services in county jails; and***
 - (f) Cause the administrative regulations promulgated by the department, together with the law allowing commutation of time to prisoners for good conduct, to be printed and posted in conspicuous places in the cell houses and workshops.
- (2) The department may impose a reasonable fee for the use of medical facilities by a prisoner who has the ability to pay for the medical and dental care. These funds may be deducted from the prisoner's inmate account. A prisoner shall not be denied medical or dental treatment because he or she has insufficient funds in his or her inmate account.
- (3) The department may promulgate administrative regulations in accordance with KRS Chapter 13A to implement a program that provides for reimbursement of telehealth consultations.
- (4) Fees for the use of medical facilities by a state prisoner who is confined in a jail pursuant to KRS 532.100 or other statute shall be governed by KRS 441.045.

➔Section 13. Notwithstanding KRS 15.291 and 15.293(5), there is hereby appropriated Restricted Funds in the amount of \$10,500,000 in each fiscal year from the Opioid Abatement Trust Fund to the Behavioral Health, Developmental and Intellectual Disabilities budget unit for the behavioral health conditional dismissal program described in Sections 1 to 8 of this Act. The department shall reimburse the Administrative Office of the Courts for administrative costs related to the program up to \$500,000 per year.

➔Section 14. 2022 RS HB 214/EN is hereby amended as follows:

On page 10, line 3, delete "January 1, 2027" and insert in lieu thereof "January 1, 2031"; and

and
On page 10, line 10, after "November 2026 regular election" insert "or the November 2030 regular election";

and
On page 10, line 18, after "November 2026 regular election" insert "or the November 2030 regular election";

On page 11, line 3, delete "November 2026" and insert in lieu thereof "November 2030".

➔Section 15. KRS 625.090 is amended to read as follows:

(1) The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that:

- (a)
 1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction;
 2. The child is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding;
 3. The child is found to have been diagnosed with neonatal abstinence syndrome at the time of birth, unless his or her birth mother:
 - a. Was prescribed and properly using medication for a legitimate medical condition as directed by a health care practitioner that may have led to the neonatal abstinence syndrome; or
 - b. Is currently, or within ninety (90) days after the birth, enrolled in and maintaining substantial compliance with both a substance abuse treatment or recovery program and a regimen of prenatal care or postnatal care as recommended by her health care practitioner throughout the remaining term of her pregnancy or the appropriate time after her pregnancy; or
 4. The parent has been convicted of a criminal charge relating to the physical or sexual abuse or neglect of any child and that physical or sexual abuse, neglect, or emotional injury to the child named in the present termination action is likely to occur if the parental rights are not terminated;
- (b)
 1. The Cabinet for Health and Family Services has filed a petition with the court pursuant to KRS 620.180 *or* **625.050**; *or*
 2. ***A child-placing agency licensed by the cabinet, any county or Commonwealth's attorney, or a parent has filed a petition with the court under KRS 625.050***; and
- (c) Termination would be in the best interest of the child.

(2) No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:

- (a) That the parent has abandoned the child for a period of not less than ninety (90) days;
- (b) That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;
- (c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;
- (d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to any child;
- (e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;
- (f) That the parent has caused or allowed the child to be sexually abused or exploited;

- (g) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;
 - (h) That:
 - 1. The parent's parental rights to another child have been involuntarily terminated;
 - 2. The child named in the present termination action was born subsequent to or during the pendency of the previous termination; and
 - 3. The conditions or factors which were the basis for the previous termination finding have not been corrected;
 - (i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect;
 - (j) That the child has been in foster care under the responsibility of the cabinet for fifteen (15) cumulative months out of forty-eight (48) months preceding the filing of the petition to terminate parental rights; or
 - (k) That the child has been removed from the biological or legal parents more than two (2) times in a twenty-four (24) month period by the cabinet or a court.
- (3) In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:
- (a) Mental illness as defined by KRS 202A.011(9), or an intellectual disability as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;
 - (b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;
 - (c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents unless one or more of the circumstances enumerated in KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court;
 - (d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;
 - (e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and
 - (f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.
- (4) If the child has been placed with the cabinet, the parent may present testimony concerning the reunification services offered by the cabinet and whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent.
- (5) If the parent proves by a preponderance of the evidence that the child will not continue to be an abused or neglected child as defined in KRS 600.020(1) if returned to the parent the court in its discretion may determine not to terminate parental rights.
- (6) Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter findings of fact, conclusions of law, and a decision as to each parent-respondent within thirty (30) days either:
- (a) Terminating the right of the parent; or
 - (b) Dismissing the petition and stating whether the child shall be returned to the parent or shall remain in the custody of the state.

Signed by Governor April 20, 2022.

