

CHAPTER 166**(HB 353)**

AN ACT relating to crimes and punishments.

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

➔Section 1. KRS 218A.500 is amended to read as follows:

As used in this section and KRS 218A.510:

- (1) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes but is not limited to:
 - (a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
 - (b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
 - (c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
 - (d) ***Except as provided in subsection (7) of this section,*** testing equipment used, intended for use, or designed for use in ~~identifying, or in~~ analyzing the strength, effectiveness, or purity of controlled substances;
 - (e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
 - (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;
 - (g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;
 - (h) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
 - (i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
 - (j) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
 - (k) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body; and
 - (l) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as: metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls; water pipes; carburetion tubes and devices; smoking and carburetion masks; roach clips which mean objects used to hold burning material, such as marijuana cigarettes, that have become too small or too short to be held in the hand; miniature cocaine spoons, and cocaine vials; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice pipes or chillers.
- (2) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter.

- (3) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.
- (4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.
- (5) (a) This section shall not prohibit a local health department from operating a substance abuse treatment outreach program which allows participants to exchange hypodermic needles and syringes.
- (b) To operate a substance abuse treatment outreach program under this subsection, the local health department shall have the consent, which may be revoked at any time, of the local board of health and:
1. The legislative body of the first or home rule class city in which the program would operate if located in such a city; and
 2. The legislative body of the county, urban-county government, or consolidated local government in which the program would operate.
- (c) Items exchanged at the program shall not be deemed drug paraphernalia under this section while located at the program.
- (6) (a) Prior to searching a person, a person's premises, or a person's vehicle, a peace officer may inquire as to the presence of needles or other sharp objects in the areas to be searched that may cut or puncture the officer and offer to not charge a person with possession of drug paraphernalia if the person declares to the officer the presence of the needle or other sharp object. If, in response to the offer, the person admits to the presence of the needle or other sharp object prior to the search, the person shall not be charged with or prosecuted for possession of drug paraphernalia for the needle or sharp object or for possession of a controlled substance for residual or trace drug amounts present on the needle or sharp object.
- (b) The exemption under this subsection shall not apply to any other drug paraphernalia that may be present and found during the search or to controlled substances present in other than residual or trace amounts.
- (7) (a) This section shall not prohibit the retail sale of hypodermic syringes and needles without a prescription in pharmacies.
- (b) Hypodermic syringe and needle inventory of a pharmacy shall not be deemed drug paraphernalia under this section.
- (c) **1. *Except as provided in subparagraph 2. of this paragraph, narcotic drug testing products utilized in determining whether a controlled substance contains a synthetic opioid or its analogues shall not be deemed drug paraphernalia under this section.***
- 2. *A narcotic drug testing product that is utilized in conjunction with the importation, manufacture, or selling of fentanyl or a fentanyl analogue in violation of this chapter shall be deemed drug paraphernalia under this section.***
- (d) ***Notwithstanding any other statute to the contrary, possession of a narcotic drug testing product used in accordance with paragraph (c)1. of this subsection that contains residual or trace amounts of a synthetic opioid or an analogue thereof shall not be prosecuted as possession of a controlled substance under any provision of this chapter.***
- (8) Any person who violates any provision of this section shall be guilty of a Class A misdemeanor.
- ➔Section 2. KRS 533.282 is amended 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 KRS 533.270 to 533.284 shall be evidence-based, and may be a behavioral treatment plan, 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) ***A program provider may provide services directly to the participant or in conjunction with other treatment providers to ensure all required services under the treatment plan are accessible and received.***
- (5) 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 ***or meet alternative and relevant licensure or certification criteria recognized by the cabinet or a federal agency;***
 - (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;
 4. ***The Council on Accreditation; or***
 5. ***Other accreditations or standards recognized by the cabinet.***
- ~~(6)~~~~(5)}~~ All recovery housing service providers shall:

- (a) Be certified using the National Alliance for Recovery Residences standards *or meet Oxford House 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.
- ~~(7)(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.
 - (c) A Medicaid managed care organization shall treat any referral for treatment under KRS 533.270 to 533.284 as an "expedited authorization request" as provided under KRS 205.534(2)(a)2.b.
- ~~(8)(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 3. KRS 533.288 is amended 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 KRS 533.272.
 - (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 Office of Adult Education, or his or her designee;***
 - (k) The executive director of the Kentucky Jailers Association, or his or her designee; and
- ~~(l)(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 KRS 533.270.

- (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; and
 - (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 4. The Cabinet for Health and Family Services, in coordination with the Justice and Public Safety Cabinet, shall conduct or have conducted a Fentanyl Education and Awareness campaign. The campaign shall begin no later than 90 days after the effective date of this Act.

Signed by Governor March 31, 2023.