

1 AN ACT relating to crimes and punishments and making an appropriation therefor.

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

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

5 *(1) A pilot program shall be established in no less than ten (10) counties selected by*  
6 *the Chief Justice of the Supreme Court to participate in a behavioral health*  
7 *conditional dismissal program. The pilot program shall begin October 1, 2022,*  
8 *and shall last for four (4) years unless extended or limited by the General*  
9 *Assembly.*

10 *(2) Each participating county shall have access to:*

11 *(a) Medication assisted treatment;*

12 *(b) Recovery services as defined under Section 2 of this Act; and*

13 *(c) Educational and vocational resources sufficient to provide the training and*  
14 *assistance required under Section 9 of this Act.*

15 *(3) (a) Every behavioral health treatment program provider in the pilot program*  
16 *shall collect and maintain data as provided in this subsection relating to*  
17 *program participants under their care, designed to inform the outcomes and*  
18 *effectiveness of the pilot program, to be submitted to the Administrative*  
19 *Office of the Courts as provided under paragraphs (b) to (e) of this*  
20 *subsection.*

21 *(b) A report shall be made for each program participant no later than fourteen*  
22 *(14) days following the initiation of treatment. The data to be collected and*  
23 *submitted in the report shall include the following information regarding*  
24 *each participant:*

25 *1. Age, gender, and race or ethnicity;*

26 *2. Housing history;*

27 *3. Educational history;*

1           4. Employment history;

2           5. Past involvement in addiction recovery and treatment for a substance  
3           use disorder;

4           6. Past treatment for a mental health disorder; and

5           7. Criminal history.

6           (c) A second report shall be made for each program participant identified in  
7           paragraph (b) of this subsection no later than twenty-eight (28) days after  
8           filing the initial report and shall provide the progression of the program  
9           participant including but not limited to:

10          1. Continuation in the program;

11          2. The status and type of recommended treatment;

12          3. Employment or job training;

13          4. The status and type of educational training;

14          5. Housing status;

15          6. Any other information the program provider determines may assist in  
16          evaluation of the pilot program; and

17          7. If the participant has been discharged from the program due to an  
18          inability or unwillingness to meet the terms and conditions of the  
19          treatment program, including the specific reason for the discharge.

20          (d) Subsequent reports shall be filed on a quarterly basis. The initial quarterly  
21          report shall be submitted no later than January 15, 2023, with reports due  
22          thereafter on January 15, April 15, July 15, and October 15 of each year of  
23          the pilot program. The quarterly reports shall include for the reporting  
24          period:

25          1. The information required under paragraph (c) of this subsection as it  
26          relates to each program participant, including the length of time the  
27          individual has been a program participant;

- 1            2. The number of clinical assessments performed by the program
- 2            provider;
- 3            3. The total number of individuals participating in the behavioral health
- 4            conditional dismissal program with that provider;
- 5            4. The number of individuals who remain in compliance with the terms
- 6            and conditions of the treatment program;
- 7            5. The number of individuals who have been discharged from the
- 8            program due to an inability or unwillingness to meet the terms and
- 9            conditions of the treatment program, including the specific reason for
- 10           the discharge;
- 11           6. For any individual discharged under subparagraph 5. of this
- 12           paragraph, the length of time the individual participated in the
- 13           program;
- 14           7. The number of individuals who have been discharged from the
- 15           program upon successful completion of the treatment program
- 16           requirements;
- 17           8. The number of individuals who have received medication-assisted
- 18           treatment and the result of that treatment;
- 19           9. The number of individuals who have completed a recommended job
- 20           skills or job training program; and
- 21           10. The number of individuals who have completed a recommended
- 22           educational component of the program.
- 23           (e) A final report shall be filed for each program participant no later than
- 24           thirty (30) days following discharge from the program and shall contain, at
- 25           a minimum, the following information:
- 26           1. If the discharge from the program was due to an inability or
- 27           unwillingness to meet the terms and conditions of the treatment

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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 January 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

- 1                   participation was not agreed to by the attorney for the Commonwealth;
- 2                   (c) The number of victims, if there is an identified victim, who did not
- 3                   participate in the process; and
- 4                   (d) The number of victims, if there is an identified victim, who did not agree to
- 5                   the defendant's participation in the program.
- 6                   (5) If the attorney for the Commonwealth did not agree to an eligible defendant's
- 7                   participation in the behavioral health conditional dismissal program, he or she
- 8                   shall include in each quarterly report to the Administrative Office of the Courts
- 9                   the specific offenses charged for that defendant, and the substantial and
- 10                   compelling reasons, based upon delineated facts specific to the defendant, why
- 11                   the defendant was denied participation in the program.
- 12                   (6) The Chief Justice of the Supreme Court shall submit an annual report to the
- 13                   Legislative Research Commission, the chair of the Senate Standing Committee
- 14                   on Judiciary, the chair of the House Standing Committee on Judiciary, and the
- 15                   Governor by January 31 of each year that includes the information received from
- 16                   the attorneys for the Commonwealth and the providers for the counties
- 17                   participating in the behavioral health conditional dismissal program. The report
- 18                   shall include the information reported under subsections (3) to (5) of this section
- 19                   and shall also include:
- 20                   (a) The number of defendants assessed who did not meet the eligibility
- 21                   requirements for the program following the clinical assessment;
- 22                   (b) The specific offenses charged for each defendant and the classification of
- 23                   offenses charged;
- 24                   (c) The percentage of defendants participating in the program who successfully
- 25                   completed the program;
- 26                   (d) The percentage of defendants discharged from the program for
- 27                   noncompliance; and

1        (e) The percentage of defendants who are arrested, convicted, and incarcerated  
2                within six (6) months, one (1) year, and two (2) years of successful  
3                completion of the program.

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

6        As used in Sections 1 to 8 of this Act:

7        (1) "Behavioral health conditional dismissal program" means a program designed  
8                to provide an eligible person who has a behavioral health disorder and who has  
9                been charged with a qualifying offense an alternative to receive treatment and  
10                recovery support services addressing the behavioral health disorder instead of  
11                incarceration, resulting in dismissal of the charges upon successful completion;

12        (2) "Behavioral health disorder" means a mental health disorder or substance use  
13                disorder, or both;

14        (3) "Behavioral health treatment program" means a plan or recovery program,  
15                based upon a clinical assessment, that:

16                (a) Identifies and incorporates recovery services to meet the specific treatment  
17                and recovery goals and the needs of the individual served;

18                (b) Addresses the social determinants of health to include housing,  
19                transportation, access to medical care, and meaningful employment; and

20                (c) Considers a full continuum of care;

21        (4) "Clinical assessment" means an assessment that is performed by a qualified  
22                mental health professional in accordance with the most recent American Society  
23                of Addiction Medicine criteria for a substance use disorder, and the most recent  
24                edition of the American Psychiatric Association's Diagnostic and Statistical  
25                Manual of Mental Disorders for a mental health disorder;

26        (5) "Eligible applicant" or "eligible person" means an individual:

27                (a) Who has completed a clinical assessment and been referred to care; and

- 1        (b) Who meets the requirements of Section 3 of this Act;
- 2        (6) "Mental health disorder" is a diagnostic term that covers many clinical  
3        categories typically including behavioral or psychological symptoms, or both,  
4        along with impairment of personal and social function, and specifically defined  
5        and clinically interpreted through reference to criteria contained in the most  
6        recent edition of the American Psychiatric Association's Diagnostic and  
7        Statistical Manual of Mental Disorders;
- 8        (7) "Qualified mental health professional" means the same as in KRS 202A.011 and  
9        shall include a licensed clinical alcohol and drug counselor under KRS Chapter  
10       309;
- 11       (8) "Qualifying offense" means a misdemeanor or Class D felony that is not:
- 12       (a) An offense that would qualify the person as a violent offender under KRS  
13       439.3401;
- 14       (b) A sex crime as defined by KRS 17.500;
- 15       (c) An offense under KRS 189A.010;
- 16       (d) An offense against a victim who has a protective order as defined in KRS  
17       508.130 against the defendant at the time the offense is charged;
- 18       (e) An act of domestic violence and abuse as defined in KRS 403.720, or an act  
19       of dating violence and abuse as defined in KRS 456.010; or
- 20       (f) An offense against a victim who has an interpersonal protective order  
21       issued under KRS 456.060.
- 22       (9) "Recovery services" means rehabilitative treatment services that shall include but  
23       not be limited to any or all of the following:
- 24       (a) Outpatient treatment;
- 25       (b) National Alliance of Recovery Residences or the Council on Accreditation  
26       of Rehabilitation Facilities certified housing;
- 27       (c) Medication treatment;

- 1        (d) Personal and family counseling;
- 2        (e) Substance abuse education and prevention classes or counseling;
- 3        (f) Vocational training;
- 4        (g) Literacy training;
- 5        (h) Community service;
- 6        (i) Inpatient or residential behavioral health treatment as needed to address:
- 7            1. Impaired capacity to use self-control, judgment, or discretion related
- 8            to behavior;
- 9            2. Severe dependence;
- 10          3. Special detoxification;
- 11          4. Relapse; or
- 12          5. Other treatments recommended by a qualified mental health
- 13          professional;
- 14        (j) Restorative practices designed to make the participant accountable to the
- 15        victim when there is an identified victim, and it is safe to do so; and
- 16        (k) Recovery housing assistance; and
- 17        (l) Recovery housing programs that have an established third party outcome
- 18        evaluation; and
- 19        (10) "Substance use disorder" has the same meaning as in KRS 222.005.

20        ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 533 IS CREATED TO

21        READ AS FOLLOWS:

- 22        (1) In addition to the pretrial diversion program established under KRS 533.250 to
- 23        533.260, and the deferred prosecution program established under KRS
- 24        218A.14151, a behavioral health conditional dismissal program shall be operated
- 25        in each county participating in the pilot program established under Section 1 of
- 26        this Act. The behavioral health conditional dismissal program shall:
- 27        (a) Provide eligible persons, on an equal basis, an alternative to ordinary



1 prosecution for qualifying offenses arising from a behavioral health  
2 disorder by receiving early recovery services and treatment reasonably  
3 expected to deter future criminal behavior; and

4 (b) Provide an expedited alternative to prosecution for eligible persons who  
5 may be harmed by the imposition of criminal sanctions in the absence of the  
6 alternative when the alternative is reasonably expected to serve as a  
7 sufficient deterrent to criminal conduct.

8 (2) The program may be utilized by any person:

9 (a) Who is a resident of the Commonwealth and who is at least eighteen (18)  
10 years of age;

11 (b) Whose clinical assessment indicates the presence of a behavioral health  
12 disorder;

13 (c) Charged with a qualifying offense;

14 (d) Who does not have a previous conviction for a Class A, B, or C felony, or a  
15 Class D felony or misdemeanor that is not a qualifying offense; and

16 (e) Who has been assessed by pre-trial services as a low-risk, low-level  
17 offender, or has been otherwise determined by the attorney for the  
18 Commonwealth or the attorney for the defendant as a viable participant in  
19 the program.

20 (3) Other factors that may be considered for admission into the behavioral health  
21 conditional dismissal program include but are not limited to:

22 (a) The likelihood that the applicant's offense is related to a behavioral health  
23 disorder that would be conducive to change through his or her participation  
24 in a behavioral health treatment program;

25 (b) The availability of behavioral health treatment programs in the defendant's  
26 county of residence if different from the county of arrest;

27 (c) The history of any physical violence toward others as documented through

- 1           judicial or law enforcement records;  
 2           (d) Any involvement of the applicant with organized crime under KRS 506.120;  
 3           and  
 4           (e) Whether or not the applicant's participation in a behavioral health  
 5           treatment program would adversely affect the prosecution of codefendants.  
 6           (4) Eligible defendants in pretrial confinement shall be given preference for  
 7           participation in the behavioral health conditional dismissal program.  
 8           (5) Eligible defendants who have charges pending but are not in custody shall be  
 9           assessed for participation in the behavioral health conditional dismissal program  
 10           as provided under subsection (1)(d) of Section 4 of this Act.

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

- 13           (1) (a) Following arrest, and within seventy-two (72) hours after being booked into  
 14           a jail or detention facility, any person who has been charged with a  
 15           qualifying offense shall undergo a clinical assessment to determine if he or  
 16           she may have a behavioral health disorder;  
 17           (b) The Cabinet for Health and Family Services shall provide a list of approved  
 18           assessors in accordance with Section 8 of this Act for each county  
 19           participating in the pilot program;  
 20           (c) The jailer or his or her designee shall contact a qualified mental health  
 21           professional from the list of approved assessors for the county provided  
 22           under paragraph (b) of this subsection, and shall advise the qualified  
 23           mental health professional that a clinical assessment is needed;  
 24           (d) If a person has been charged with a qualifying offense and has been  
 25           released prior to receiving a clinical assessment, he or she individually, or  
 26           through his or her counsel, if any, may request a clinical assessment by a  
 27           qualified mental health professional at any time during the proceedings

1 from the list of approved assessors provided under paragraph (b) of this  
2 subsection;

3 (e) Notwithstanding any other provision to the contrary, the clinical assessment  
4 may be conducted through telehealth or in person, whether the person  
5 charged is in the custody of the jail or has been released;

6 (f) If the qualified mental health professional determines that the person being  
7 assessed is physically or psychologically impaired to the extent that he or  
8 she cannot provide sufficient information or responses to conduct or  
9 complete the assessment, the assessment may be delayed but only for the  
10 time required for the person to adequately respond;

11 (g) No statement or other disclosure made by the person charged in the course  
12 of the clinical assessment shall be admissible in a criminal trial unless the  
13 trial is for a crime committed during the assessment; however, nothing in  
14 this subsection shall be interpreted to prevent any reporting required by law;

15 (h) Any referral for treatment shall be based upon the clinical assessment and a  
16 finding by the qualified mental health professional that treatment is  
17 medically necessary;

18 (i) The treatment referral shall be forwarded to the attorney for the  
19 Commonwealth and the attorney for the person charged, if any, within  
20 forty-eight (48) hours of the assessment;

21 (j) The failure of the assessor to forward the referral to the attorney for the  
22 Commonwealth or the attorney for the person charged, if any, within forty-  
23 eight (48) hours shall not result in automatic release of the person charged;  
24 and

25 (k) Nothing in this subsection shall be interpreted to create a duty of the jailer  
26 to pay for any costs associated with the clinical assessment.

27 (2) At any time following arrest the Commonwealth's attorney if the underlying

1 charge includes a felony, or the county attorney if the underlying charge only  
2 includes a misdemeanor, and the person charged may agree to the individual's  
3 participation in the behavioral health conditional dismissal program.

4 (3) When an individual is being considered for the behavioral health conditional  
5 dismissal program, the attorney for the Commonwealth shall:

6 (a) Have a criminal record check made to ascertain if the person is eligible for  
7 the program;

8 (b) Consult with the victim of the crime, if there is an identified victim;

9 (c) Explain the behavioral health conditional dismissal program to the victim,  
10 including potential terms and conditions, and any other matter the attorney  
11 for the Commonwealth deems to be appropriate, including the right of the  
12 victim to submit a written statement that shall be included in the record  
13 placed under seal under Section 6 of this Act; and

14 (d) Conduct any other investigation that the attorney for the Commonwealth  
15 determines may be necessary to assist him or her in agreeing to the referral  
16 for treatment by the qualified mental health professional and the  
17 defendant's participation in the behavioral health conditional dismissal  
18 program.

19 (4) If the defendant agrees to the terms of the individualized treatment plan, which  
20 shall include restitution, and the attorney for the Commonwealth agrees to the  
21 defendant's participation in the program, the defendant and the attorney for the  
22 Commonwealth shall sign an agreement specifying the terms and conditions. If  
23 the defendant is represented by counsel, defense counsel shall also sign the  
24 agreement.

25 (5) The length of the program shall be determined by the qualified mental health  
26 professional in collaboration with the provider and the type of program based  
27 upon the assessment and shall not:

- 1        (a) Be less than one (1) year in duration unless discharged earlier by the  
2        provider upon satisfactory completion of the recommended treatment plan  
3        with agreement of the attorney for the Commonwealth after consultation  
4        with the victim, and with agreement of the defendant; or
- 5        (b) Exceed a period of time longer than the defendant's maximum potential  
6        period of incarceration if found guilty of the offenses charged unless the  
7        defendant agrees in writing to an extension of the treatment period.
- 8        (6) A defendant participating in the behavioral health conditional dismissal program  
9        shall not be required to:
- 10       (a) Plead guilty or enter an Alford plea as a condition for participation in the  
11       program; or
- 12       (b) Make any statement or stipulate to any statement relating to evidence in the  
13       underlying case as a condition for participation in the program.
- 14       (7) Execution of the agreement by the defendant shall toll all further proceedings  
15       against the defendant relating to the agreement, except the matter may be set for  
16       a status review at the discretion of the court.
- 17       (8) Upon execution of the agreement as provided in subsection (4) of this section, the  
18       defendant shall present himself or herself for treatment no later than three (3)  
19       days after the agreement is signed. The attorney for the Commonwealth shall:
- 20       (a) Notify the treatment provider of the agreement and the effective date; and  
21       (b) Provide the victim, if there is an identified victim, with notice that an  
22       agreement has been reached for the defendant's participation in the  
23       behavioral health conditional dismissal program, and the terms of the  
24       agreement that are applicable to the victim.
- 25       (9) If the defendant remains in custody at the time of the agreement, the court shall  
26       order release of the defendant which shall not include a requirement of cash bail.
- 27       (10) The charges against the defendant shall proceed with ordinary prosecution upon

1 dismissal of the defendant from the treatment program by the provider for  
2 noncompliance.

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

5 (1) Upon initiation of treatment, the designated behavioral health treatment provider  
6 shall assign a case manager who shall notify the Office of Adult Education  
7 within the Department of Workforce Investment of the Education and Workforce  
8 Development Cabinet of the individual's participation in a behavioral health  
9 conditional dismissal program.

10 (2) The case manager shall work in collaboration with the individual referred for  
11 treatment and the treatment team and provider to:

12 (a) Obtain all releases from the individual served that may be required to  
13 confirm compliance with the program requirements;

14 (b) Coordinate all services and testing required under the program, including  
15 transportation if needed and available;

16 (c) Receive and maintain copies of all necessary documentation to ensure  
17 compliance with the program requirements, including but not limited to:

18 1. Treatment records;

19 2. Drug tests;

20 3. Educational assessments and advancements, if applicable;

21 4. Employment status and employment training;

22 5. Community service, if applicable; and

23 6. Housing status;

24 (d) Meet or conference with providers of any program requirements on a  
25 regular basis to address the participant's progress, including restitution,  
26 and any required adjustment that may be needed to the participant's  
27 program;

1 (e) Provide periodic progress reports to the attorney for the Commonwealth and  
 2 the attorney for the participant according to the following schedule:

3 1. An initial report within fourteen (14) days of the initiation of  
 4 treatment;

5 2. A follow-up report within twenty-eight (28) days after submission of  
 6 the initial fourteen (14) day report;

7 3. Subsequent reports on a quarterly basis throughout the course of  
 8 treatment beginning January 15, 2023, with reports due thereafter on  
 9 January 15, April 15, July 15, and October 15 of each year of the  
 10 participation in the pilot program; and

11 4. A final report within thirty (30) days of the successful completion of  
 12 the program;

13 (f) Request modifications that may be needed to the treatment program to the  
 14 attorney for the Commonwealth, and the attorney for the participant;

15 (g) Review the individual's progress and recommend continued participation in  
 16 the program or dismissal from the program due to an inability or  
 17 unwillingness to meet the terms and conditions of the program;

18 (h) Immediately report dismissal from the treatment program based upon lack  
 19 of compliance with the terms and conditions of the program to the attorney  
 20 for the Commonwealth, the court, and the attorney for the participant; and

21 (i) Advise the attorney for the Commonwealth, the court, the attorney for the  
 22 participant, and the victim, if there is an identified victim, of the  
 23 participant's successful completion of the program requirements.

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

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

- 1        (a) The court shall dismiss the charged offense or offenses with prejudice and  
2                discharge the defendant;
- 3        (b) All records relating to the case, including but not limited to arrest records  
4                and records relating to the charges, shall be sealed, except as provided in  
5                KRS 27A.099;
- 6        (c) The offense shall be accessible for review for the sole purpose of  
7                determining the defendant's eligibility for deferred prosecution under KRS  
8                218A.1415; and
- 9        (d) The defendant shall not be required to disclose the arrest or other  
10                information relating to the charges or participation in the program on an  
11                application for employment, credit, or other type of application unless  
12                required to do so by state or federal law.
- 13        (2) If a defendant who is participating in the behavioral health conditional dismissal  
14                program is convicted of or enters a plea of guilty to any felony offense that was  
15                charged under any law of the United States, this state, or any other state while  
16                participating in the program, the defendant shall be discharged from the  
17                behavioral health conditional dismissal program for failure to comply with the  
18                terms and conditions.
- 19        (3) If the defendant is discharged from the behavioral health conditional dismissal  
20                program by the treatment provider under Section 5 of this Act, all statements or  
21                other disclosures made by the defendant to any provider while participating in the  
22                program shall be protected by all applicable privacy laws and professional  
23                standards regarding confidentiality and shall not be admissible in a criminal trial  
24                relating to the offenses covered by the agreement executed under Section 4 of this  
25                Act.
- 26        (4) The attorney for the Commonwealth shall notify the victim, if there is an  
27                identified victim, of the defendant's dismissal from the program for



1        noncompliance or discharge from the program following successful completion  
2        of the program.

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

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

7        (a) The existence of programs and resources within the community;

8        (b) Available treatment providers;

9        (c) Available recovery housing;

10       (d) Accessible public and private agencies;

11       (e) The benefit of keeping the participant in his or her community or relocation  
12       for purposes of treatment, housing, and other supportive services;

13       (f) The safety of the victim of the offense, if there is an identified victim; and

14       (g) The specific and personalized needs of the participant, including the choice  
15       of the participant.

16       (2) A program shall be designed to provide the participant with the skills, training,  
17       and resources needed to maintain recovery and prevent the person from engaging  
18       in criminal activity arising from a behavioral health disorder upon release from  
19       the program.

20       (3) A behavioral health treatment program under Sections 1 to 8 of this Act shall be  
21       evidence-based, and may be a behavioral treatment plan, or a medically assisted  
22       treatment plan, or both, with recovery services or a Substance Abuse and Mental  
23       Health Services Administration evidence-based recovery housing program. The  
24       program shall provide at a minimum access, as needed, to:

25       (a) Inpatient detoxification and treatment, that may include a faith-based  
26       residential treatment program;

27       (b) Outpatient treatment;

1 (c) Drug testing;

2 (d) Addiction counseling;

3 (e) Cognitive and behavioral therapies;

4 (f) Medication assisted treatment including:

5 1. At least one (1) federal Food and Drug Administration approved  
6 agonist medication for the treatment of opioid or alcohol dependence;

7 2. Partial agonist medication;

8 3. Antagonist medication; and

9 4. Any other approved medication for the mitigation of opioid  
10 withdrawal symptoms;

11 (g) Educational services;

12 (h) Vocational services;

13 (i) Housing assistance;

14 (j) Peer support services; and

15 (k) Community support services, that may include faith-based services.

16 (4) Except for recovery housing providers, all treatment providers shall:

17 (a) Meet the licensure requirements and standards established by the Cabinet  
18 for Health and Family Services under KRS Chapter 222;

19 (b) Qualify as a Medicaid approved provider; and

20 (c) Be accredited by at least one (1) of the following:

21 1. American Society of Addiction Medicine;

22 2. Joint Commission on the Accreditation of Healthcare Organizations;

23 or

24 3. Commission on Accreditation of Rehabilitation Facilities.

25 (5) All recovery housing service providers shall:

26 (a) Qualify to provide recovery housing services by the Department of  
27 Corrections;

1 (b) Provide evidence-based services;

2 (c) Provide a record of outcomes;

3 (d) Provide peer support services; and

4 (e) Address the social determinants of health.

5 (6) (a) The Department for Medicaid Services, in conjunction with the program  
 6 provider, shall assist any program participant who qualifies for Medicaid  
 7 services to obtain or access Medicaid services for his or her behavioral  
 8 health disorder treatment or recovery program;

9 (b) The Department for Medicaid Services and its contractors shall provide an  
 10 individual participating in the behavioral health conditional dismissal  
 11 program with the substance use disorder benefit as provided under KRS  
 12 205.6311; and

13 (c) A Medicaid managed care organization shall treat any referral for  
 14 treatment under Sections 1 to 8 of this Act as an "expedited authorization  
 15 request" as provided under KRS 205.534(2)(a)2.b.

16 (7) Recovery housing services provided under this pilot program shall be paid  
 17 utilizing a value-based payment system developed and established by the medical  
 18 managed care organizations in conjunction with the Department for Medicaid  
 19 Services and recovery housing providers. The value-based payment system shall  
 20 be established no later than October 1, 2022 and shall include the following for  
 21 recovery housing programs:

22 (a) The development of a qualified recovery housing provider network; and

23 (b) Establishment and implementation of a value-based payment system that  
 24 shall include the regular collection of outcomes data within existing  
 25 Medicaid reimbursement regulations.

26 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 355 IS CREATED TO  
 27 READ AS FOLLOWS:

1 (1) The Cabinet for Health and Family Services shall establish and maintain a list of  
 2 approved assessors for each county participating in the pilot program established  
 3 under Section 1 of this Act to perform clinical assessments; and

4 (2) No assessor shall be approved unless he or she is a:

5 (a) Qualified mental health professional as defined under Section 2 of this Act;

6 and

7 (b) Medicaid approved provider or employed by a Medicaid approved provider.

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

10 (1) (a) The Office of Adult Education within the Department of Workforce  
 11 Investment of the Education and Workforce Development Cabinet in  
 12 conjunction with a community rehabilitation provider shall conduct an in-  
 13 person initial screening of any individual participating in a behavioral  
 14 health conditional dismissal program within thirty (30) days of a participant  
 15 beginning the program under Section 4 of this Act.

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

20 (2) The initial screening shall include:

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

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

23 (c) Military history, if any;

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

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

26 (f) An assessment of language skills; and

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

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

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

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

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

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

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

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

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

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

1 (f) If supported employment training or services are to be provided outside of  
 2 the Education and Workforce Development Cabinet, the identification of  
 3 the provider of the extended services and the reporting and accountability  
 4 requirements established with the program provider;

5 (g) The criteria established for evaluating progress and success;

6 (h) The attendance and reporting requirements established for the participant  
 7 and for the institution or facility providing the service, including to whom  
 8 and with what frequency reports are to be made;

9 (i) The date the employment plan is estimated to be completed;

10 (j) The job-placement assistance plan that will be provided to the participant by  
 11 the department;

12 (k) The need for ongoing or future training following completion of the  
 13 employment plan and the availability of that training to the participant; and

14 (l) The continuum of care to be provided by a community rehabilitation  
 15 provider.

16 (4) The Department of Workforce Investment, in consultation with the Kentucky  
 17 Higher Education Assistance Authority, shall provide the participant with  
 18 assistance in securing all scholarships, grants, or other available financial  
 19 assistance to ensure access to the educational or training requirements needed to  
 20 achieve the specific employment outcome.

21 (5) The Department of Workforce Investment may establish an electronic registry to  
 22 be used by participants in the behavioral conditional dismissal program,  
 23 treatment plan providers, and prospective employers to assist in matching  
 24 program participants with employment opportunities.

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

27 (1) The Behavioral Health Conditional Dismissal Program Implementation Council

1 is created for the purpose of assisting with the implementation of the behavioral  
2 health conditional dismissal pilot program created under Section 1 of this Act.

3 (2) The membership of the council shall include the following:

4 (a) The executive director of the Office of Drug Control Policy, or his or her  
5 designee, who shall serve as chair of the council;

6 (b) The director of the Administrative Office of the Courts, or his or her  
7 designee;

8 (c) The commissioner of the Department for Behavioral Health, Developmental  
9 and Intellectual Disabilities, or his or her designee;

10 (d) The commissioner of the Kentucky Department for Medicaid Services, or  
11 his or her designee;

12 (e) The public advocate, or his or her designee;

13 (f) A member of the Kentucky Commonwealth's Attorneys' Association, elected  
14 by its membership;

15 (g) A member of the Kentucky County Attorneys Association;

16 (h) One (1) Circuit Judge, elected by the Circuit Judges Association of  
17 Kentucky;

18 (i) One (1) District Judge, elected by the District Judges Association of  
19 Kentucky;

20 (j) The executive director of the Kentucky Jailers Association, or his or her  
21 designee; and

22 (k) Two (2) individuals selected by the Kentucky Association of Regional  
23 Programs, one (1) of whom shall be in recovery from a substance use  
24 disorder and one (1) of whom is being treated or has been treated for a  
25 mental health disorder as defined in Section 2 of this Act.

26 (3) The council shall meet at least quarterly. Meetings shall be held at the call of the  
27 chair, or upon the written request of two (2) members to the chair.

- 1 **(4) The council shall:**
- 2 **(a) Oversee the implementation of the behavioral health conditional dismissal**
- 3 **program pilot project;**
- 4 **(b) Review the data collected by the Administrative Office of the Courts and**
- 5 **report to the Interim Joint Committee on Judiciary and the Governor by**
- 6 **October 1 of each year of the pilot project regarding:**
- 7 **1. Recommendations for any additional performance measures needed to**
- 8 **promote the success of the program;**
- 9 **2. Whether any action is necessary, including funding or legislation;**
- 10 **3. Recommendations for resolving any matters that reduce the**
- 11 **effectiveness of the program; and**
- 12 **4. Any additional information the council deems appropriate.**
- 13 **(5) Members shall not receive any additional compensation for their service on the**
- 14 **council but shall be reimbursed for all necessary expenses.**
- 15 **(6) The council shall be attached to the Justice and Public Safety Cabinet for**
- 16 **administrative purposes.**
- 17 **(7) The council shall terminate September 30, 2027, unless extended by the General**
- 18 **Assembly.**

19 ➔Section 11. KRS 197.020 is amended to read as follows:

- 20 (1) The Department of Corrections shall:
- 21 (a) Promulgate administrative regulations for the government and discipline of
- 22 the penitentiary, for the government and official conduct of all officials
- 23 connected with the penitentiary, and for the government of the prisoners in
- 24 their department and conduct;
- 25 (b) Promulgate administrative regulations for the character of food and diet of the
- 26 prisoners; the preservation of the health of the prisoners; the daily cleansing of
- 27 the penitentiary; the cleanliness of the persons of the prisoners; the general



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