

1 AN ACT relating to crimes and punishments.

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

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

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

5 (1) "Drug paraphernalia" means all equipment, products and materials of any kind
6 which are used, intended for use, or designed for use in planting, propagating,
7 cultivating, growing, harvesting, manufacturing, compounding, converting,
8 producing, processing, preparing, testing, analyzing, packaging, repackaging,
9 storing, containing, concealing, injecting, ingesting, inhaling, or otherwise
10 introducing into the human body a controlled substance in violation of this chapter.

11 It includes but is not limited to:

12 (a) Kits used, intended for use, or designed for use in planting, propagating,
13 cultivating, growing, or harvesting of any species of plant which is a
14 controlled substance or from which a controlled substance can be derived;

15 (b) Kits used, intended for use, or designed for use in manufacturing,
16 compounding, converting, producing, processing, or preparing controlled
17 substances;

18 (c) Isomerization devices used, intended for use, or designed for use in increasing
19 the potency of any species of plant which is a controlled substance;

20 (d) **Except as provided in subsection (7) of this section,** testing equipment used,
21 intended for use, or designed for use in ~~identifying, or in~~ analyzing the
22 strength, effectiveness, or purity of controlled substances;

23 (e) Scales and balances used, intended for use, or designed for use in weighing or
24 measuring controlled substances;

25 (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite,
26 dextrose and lactose, used, intended for use, or designed for use in cutting
27 controlled substances;

- 1 (g) Separation gins and sifters used, intended for use, or designed for use in
2 removing twigs and seeds from, or in otherwise cleaning or refining
3 marijuana;
- 4 (h) Blenders, bowls, containers, spoons, and mixing devices used, intended for
5 use, or designed for use in compounding controlled substances;
- 6 (i) Capsules, balloons, envelopes, and other containers used, intended for use, or
7 designed for use in packaging small quantities of controlled substances;
- 8 (j) Containers and other objects used, intended for use, or designed for use in
9 storing or concealing controlled substances;
- 10 (k) Hypodermic syringes, needles, and other objects used, intended for use, or
11 designed for use in parenterally injecting controlled substances into the human
12 body; and
- 13 (l) Objects used, intended for use, or designed for use in ingesting, inhaling, or
14 otherwise introducing marijuana, cocaine, hashish, or hashish oil into the
15 human body, such as: metal, wooden, acrylic, glass, stone, plastic, or ceramic
16 pipes with or without screens, permanent screens, hashish heads, or punctured
17 metal bowls; water pipes; carburetion tubes and devices; smoking and
18 carburetion masks; roach clips which mean objects used to hold burning
19 material, such as marijuana cigarettes, that have become too small or too short
20 to be held in the hand; miniature cocaine spoons, and cocaine vials; chamber
21 pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice
22 pipes or chillers.
- 23 (2) It is unlawful for any person to use, or to possess with intent to use, drug
24 paraphernalia for the purpose of planting, propagating, cultivating, growing,
25 harvesting, manufacturing, compounding, converting, producing, processing,
26 preparing, testing, analyzing, packing, repacking, storing, containing, concealing,
27 injecting, ingesting, inhaling, or otherwise introducing into the human body a

1 controlled substance in violation of this chapter.

2 (3) It is unlawful for any person to deliver, possess with intent to deliver, or
3 manufacture with intent to deliver, drug paraphernalia, knowing, or under
4 circumstances where one reasonably should know, that it will be used to plant,
5 propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,
6 process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest,
7 inhale, or otherwise introduce into the human body a controlled substance in
8 violation of this chapter.

9 (4) It is unlawful for any person to place in any newspaper, magazine, handbill, or
10 other publication any advertisement, knowing, or under circumstances where one
11 reasonably should know, that the purpose of the advertisement, in whole or in part,
12 is to promote the sale of objects designed or intended for use as drug paraphernalia.

13 (5) (a) This section shall not prohibit a local health department from operating a
14 substance abuse treatment outreach program which allows participants to
15 exchange hypodermic needles and syringes.

16 (b) To operate a substance abuse treatment outreach program under this
17 subsection, the local health department shall have the consent, which may be
18 revoked at any time, of the local board of health and:

- 19 1. The legislative body of the first or home rule class city in which the
20 program would operate if located in such a city; and
- 21 2. The legislative body of the county, urban-county government, or
22 consolidated local government in which the program would operate.

23 (c) Items exchanged at the program shall not be deemed drug paraphernalia under
24 this section while located at the program.

25 (6) (a) Prior to searching a person, a person's premises, or a person's vehicle, a peace
26 officer may inquire as to the presence of needles or other sharp objects in the
27 areas to be searched that may cut or puncture the officer and offer to not

1 charge a person with possession of drug paraphernalia if the person declares
2 to the officer the presence of the needle or other sharp object. If, in response
3 to the offer, the person admits to the presence of the needle or other sharp
4 object prior to the search, the person shall not be charged with or prosecuted
5 for possession of drug paraphernalia for the needle or sharp object or for
6 possession of a controlled substance for residual or trace drug amounts
7 present on the needle or sharp object.

8 (b) The exemption under this subsection shall not apply to any other drug
9 paraphernalia that may be present and found during the search or to controlled
10 substances present in other than residual or trace amounts.

11 (7) (a) This section shall not prohibit the retail sale of hypodermic syringes and
12 needles without a prescription in pharmacies.

13 (b) Hypodermic syringe and needle inventory of a pharmacy shall not be deemed
14 drug paraphernalia under this section.

15 (c) 1. Except as provided in subparagraph 2. of this paragraph, narcotic
16 drug testing products utilized in determining whether a controlled
17 substance contains a synthetic opioid or its analogues shall not be
18 deemed drug paraphernalia under this section.

19 2. A narcotic drug testing product that is utilized in conjunction with the
20 importation, manufacture, or selling of fentanyl or a fentanyl
21 analogue in violation of this chapter shall be deemed drug
22 paraphernalia under this section.

23 (d) Notwithstanding any other statute to the contrary, possession of a narcotic
24 drug testing product used in accordance with paragraph (c)1. of this
25 subsection that contains residual or trace amounts of a synthetic opioid or
26 an analogue thereof shall not be prosecuted as possession of a controlled
27 substance under any provision of this chapter.

1 (8) Any person who violates any provision of this section shall be guilty of a Class A
2 misdemeanor.

3 ➔Section 2. KRS 533.282 is amended to read as follows:

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

- 6 (a) The existence of programs and resources within the community;
- 7 (b) Available treatment providers;
- 8 (c) Available recovery housing;
- 9 (d) Accessible public and private agencies;
- 10 (e) The benefit of keeping the participant in his or her community or relocation
11 for purposes of treatment, housing, and other supportive services;
- 12 (f) The safety of the victim of the offense if there is an identified victim; and
- 13 (g) The specific and personalized needs of the participant, including the choice of
14 the participant.

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

19 (3) A behavioral health treatment program under KRS 533.270 to 533.284 shall be
20 evidence-based, and may be a behavioral treatment plan, a medically assisted
21 treatment plan, or both, with recovery services or a Substance Abuse and Mental
22 Health Services Administration evidence-based recovery housing program. The
23 program shall provide at a minimum access, as needed, to:

- 24 (a) Inpatient detoxification and treatment that may include a faith-based
25 residential treatment program;
- 26 (b) Outpatient treatment;
- 27 (c) Drug testing;

- 1 (d) Addiction counseling;
- 2 (e) Cognitive and behavioral therapies;
- 3 (f) Medication-assisted treatment, including:
- 4 1. At least one (1) federal Food and Drug Administration-approved agonist
- 5 medication for the treatment of opioid or alcohol dependence;
- 6 2. Partial agonist medication;
- 7 3. Antagonist medication; and
- 8 4. Any other approved medication for the mitigation of opioid withdrawal
- 9 symptoms;
- 10 (g) Educational services;
- 11 (h) Vocational services;
- 12 (i) Housing assistance;
- 13 (j) Peer support services; and
- 14 (k) Community support services that may include faith-based services.
- 15 (4) **A program provider may provide services directly to the participant or in**
- 16 **conjunction with other treatment providers to ensure all required services under**
- 17 **the treatment plan are accessible and received.**
- 18 **(5)** Except for recovery housing providers, all treatment providers shall:
- 19 (a) Meet the licensure requirements and standards established by the Cabinet for
- 20 Health and Family Services under KRS Chapter 222 **or meet alternative and**
- 21 **relevant licensure or certification criteria recognized by the cabinet or a**
- 22 **federal agency;**
- 23 (b) Qualify as a Medicaid-approved provider; and
- 24 (c) Be accredited by at least one (1) of the following:
- 25 1. American Society of Addiction Medicine;
- 26 2. Joint Commission on the Accreditation of Healthcare Organizations;{
- 27 ~~or~~}

1 3. Commission on Accreditation of Rehabilitation Facilities;

2 **4. The Council on Accreditation; or**

3 **5. Other accreditations or standards recognized by the cabinet.**

4 ~~(6)~~~~(5)~~ All recovery housing service providers shall:

5 (a) Be certified using the National Alliance for Recovery Residences standards **or**
6 **meet Oxford House standards;**

7 (b) Provide evidence-based services;

8 (c) Provide a record of outcomes;

9 (d) Provide peer support services; and

10 (e) Address the social determinants of health.

11 ~~(7)~~~~(6)~~ (a) The Department for Medicaid Services, in conjunction with the program
12 provider, shall assist any program participant who qualifies for Medicaid
13 services to obtain or access Medicaid services for his or her behavioral health
14 disorder treatment or recovery program.

15 (b) The Department for Medicaid Services and its contractors shall provide an
16 individual participating in the behavioral health conditional dismissal program
17 with the substance use disorder benefit as provided under KRS 205.6311.

18 (c) A Medicaid managed care organization shall treat any referral for treatment
19 under KRS 533.270 to 533.284 as an "expedited authorization request" as
20 provided under KRS 205.534(2)(a)2.b.

21 ~~(8)~~~~(7)~~ Recovery housing services provided under this pilot program shall:

22 (a) Be paid utilizing a value-based payment system developed and established by
23 the medical managed care organizations in conjunction with the Department
24 for Medicaid Services and recovery housing providers. The value-based
25 payment system shall be established no later than January 1, 2023, and shall
26 include the following for recovery housing programs:

27 1. The development of a qualified recovery housing provider network; and

1 2. Establishment and implementation of a value-based payment system that
2 shall include the regular collection of outcomes data within existing
3 Medicaid reimbursement regulations; and

4 (b) Be limited to two hundred (200) individuals unless additional funding
5 designated for recovery housing is available through the Cabinet for Health
6 and Family Services.

7 ➔Section 3. KRS 533.288 is amended to read as follows:

8 (1) The Behavioral Health Conditional Dismissal Program Implementation Council is
9 created for the purpose of assisting with the implementation of the behavioral health
10 conditional dismissal pilot program created under KRS 533.272.

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

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

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

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

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

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

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

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

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

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

26 (j) *The executive director of the Office of Adult Education, or his or her*
27 *designee;*

1 (k) The executive director of the Kentucky Jailers Association, or his or her
2 designee; and

3 ~~(L)(k)~~ Two (2) individuals selected by the Kentucky Association of Regional
4 Programs, one (1) of whom shall be in recovery from a substance use disorder
5 and one (1) of whom is being treated or has been treated for a mental health
6 disorder as defined in KRS 533.270.

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

9 (4) The council shall:

10 (a) Oversee the implementation of the behavioral health conditional dismissal
11 program pilot project; and

12 (b) Review the data collected by the Administrative Office of the Courts and
13 report to the Interim Joint Committee on Judiciary and the Governor by
14 October 1 of each year of the pilot project regarding:

15 1. Recommendations for any additional performance measures needed to
16 promote the success of the program;

17 2. Whether any action is necessary, including funding or legislation;

18 3. Recommendations for resolving any matters that reduce the
19 effectiveness of the program; and

20 4. Any additional information the council deems appropriate.

21 (5) Members shall not receive any additional compensation for their service on the
22 council but shall be reimbursed for all necessary expenses.

23 (6) The council shall be attached to the Justice and Public Safety Cabinet for
24 administrative purposes.

25 (7) The council shall terminate December 31, 2027, unless extended by the General
26 Assembly.

27 ➔Section 4. The Cabinet for Health and Family Services, in coordination with the

1 Justice and Public Safety Cabinet, shall conduct or have conducted a Fentanyl Education
2 and Awareness campaign. The campaign shall begin no later than 90 days after the
3 effective date of this Act.