

expected to deter future criminal behavior. In addition, the participating counties are required to 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. Finally, **Section 3** lists the eligibility criteria for individuals to participate in the program.

Section 4 requires a clinical assessment for a behavioral health disorder of any individual charged with a qualifying offense within 72 hours of an arrest. The assessment will be conducted by a qualified professional from a list of approved assessors for the county provided by the Cabinet for Health and Family Services as required in **Section 8**. **Section 4** also provides procedures for the completion of the assessment. Finally, **Section 4** provides procedures and restrictions for a Commonwealth or county attorney to determine eligibility, admit an individual into the program, and provides time restrictions for the duration of the program.

Under **Section 5**, the designated behavioral health treatment provider is allowed to assign a case manager. The case manager's responsibilities to coordinate with and oversee the individual through the program are also provided in **Section 5**.

Upon successful completion of the program, **Section 6** requires the court to dismiss the charged offense or offenses with prejudice and discharge the defendant. In addition, all records relating to the case shall be sealed except as provided by KRS 27A.099, and the offense shall be deemed never to have occurred, except for purposes of determining the defendant's eligibility for deferred prosecution under KRS 218.1415. Next, 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. Finally, **Section 6** also provides grounds for an individual to be dismissed from the program.

Section 7 provides program provider eligibility criteria, and requirements for the provider in the process of establishing a specific behavioral health treatment plan. **Section 7** also requires the provider to consider available recovery housing and establishes minimum requirements for recovery housing. The number of individuals in recovery housing is limited to 200 unless additional funding is available through the Cabinet for Health and Family Services

Section 9 requires the Office of Adult Education within the Department of Workforce Investment of the Education and Workforce Development Cabinet to conduct an in-person initial screening of any individual participating in the program within 30 days of the participant beginning the program. **Section 9** also provides minimum requirements to be included in the screening and allows the Department of Workforce Investment to create an electronic registry to be used by participants, treatment plan providers, and prospective employers to assist in matching program participants with employment opportunities.

Section 10 creates the Behavioral Health Conditional Dismissal Program Implementation Council to assist with implementation of the pilot program. The council will be attached

to the Justice and Public Safety Cabinet and will terminate on September 30, 2027, unless extended by the General Assembly. Membership of the council includes the director of the Office of Drug Control Policy serving as the chair, the director of the Administrative Office of the Courts, the commissioner of the Department for Behavioral Health, Developmental and Intellectual Disabilities, the commissioner of the Kentucky Department for Medicaid Services, the public advocate, and a member of the Kentucky Commonwealth Attorneys' Association. **Section 10** also provides procedural and meeting requirements for the council.

Section 11 creates the Behavioral Health Conditional Dismissal Program trust fund, which will be administered by the Department for Behavioral Health, Developmental and Intellectual Disabilities within the Cabinet for Health and Family Services. The account can receive funding from General Assembly appropriation, state and federal grants, opioid settlement resources; devises, bequests, gifts, and donations; and any other contributions. Funds in the account shall be utilized to administer and support the purposes of Sections 1 to 11, and may include payments for services provided by a qualified mental health provider and treatment program providers upon exhaustion of payments from other payment providers. The Department may select and contract with a third-party administrator to serve as the benefit manager of the program. Funds in the account including accrued interest shall not be transferred by the General Assembly and shall not lapse.

Section 12 amends KRS 197.020 to require the Department of Corrections to promulgate regulations requiring telehealth services in county jails.

The fiscal impact of the behavioral health dismissal pilot program is indeterminable, but could be minimal to significant depending on the funds made available to local governments in the account created within Section 11. The Kentucky County Attorneys' Association (KCAA) states participating county attorney offices will need an additional full-time assistant as well as a paralegal to adequately administer the additional duties. These additional positions are expected to cost approximately \$225,000 including salary and fringe. These positions, however, fall within the umbrella of the Unified Prosecutorial System which will provide state funding. Some local governments supplement salaries with available local government funds dependent upon the local labor market. The Kentucky County Attorneys' Association also indicates they will need a social worker or treatment specialist to assist in carrying out the program. This isn't a position that would fall within the umbrella of the Unified Prosecutorial System, and would require local funds or absent the state providing the appropriate staff. The KCAA indicates that those positions would need to be provided in the bill as most counties don't have the funds necessary for those positions. An entry level Social Service Worker 1 at the Cabinet for Health and Family Services would cost \$76,000 annually including salary and fringe. **The fiscal impact of SB 90 HCS 1 would be minimal if the account created in Section 11 provided adequate funding for the necessary positions.**

The fiscal impact of Section 4 is expected to be minimal, but could be positive. The section requires a court to order the release without bail of a defendant that remains in custody at the time of the agreement.

A person convicted of a Class B misdemeanor may be incarcerated for up to 90 days. A person convicted of a Class A misdemeanor may be incarcerated for up to 12 months. Misdemeanants are housed in one of Kentucky's 74 full service jails or three life safety jails. While the expense of housing inmates varies by jail, this estimated impact will be based on an average cost to incarcerate of \$35.43 per day. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average cost to incarcerate of \$35.43 per day.

When a court denies bail to a felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 74 full service jails or three life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an average cost to incarcerate of \$35.43, which includes the \$31.34 per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Upon sentencing, a Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. Class C felons are ineligible for placement in local jails until they are classified at the lowest custody level with 24 months or less to their minimum expiration date or parole eligibility date. The Department of Corrections pays a jail \$31.34 per day to house a Class D and Class C felon. The per diem may be less than, equal to, or greater than the actual housing cost. Class A and B felons are ineligible for placement in local jails.

The fiscal impact of Section 12 is expected to be minimal on the county jails as there may be some additional technology purchases necessary for the county jails to comply with the provision.

The Kentucky Jailers Association was contacted for input. As of the submission of this Local Mandate Statement, a response has not been received from the organization. When a response is received, the statement may be updated accordingly.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II, above, pertains to **SB 90 HCS 1**. The GA version of the bill was amended by **HCS 1**. **The local government fiscal impact for SB 90 HCS 1 changed from an expectation of a moderate to significant impact on office of county attorneys to indeterminable with potential to be minimal dependent upon the funding made available to local governments by the account created in Section 11.**

Compared to the local mandate for the GA version of the bill, **HCS 1** delays the start date of the program from October 1, 2022, to January 1, 2023, and modifies certain reporting dates to conform. Section 5 allows a treatment provider to assign a case manager and removes the requirement to do so. In addition, **Section 7** limits the recovery housing to 200 individuals absent the Cabinet for Health and Family Services providing additional

funds. Finally, HCS 1 inserts Section 11 which creates the Behavioral Health Conditional Dismissal Program trust fund to be administered by the Cabinet for Health and Family Services. The fund will be utilized for the support and administration of the program established by the bill.

Data Source(s): LRC Staff; Kentucky County Attorneys' Association; Unified Prosecutorial System; Kentucky Department of Corrections

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