

# CORRECTIONS IMPACT STATEMENT

SESSION: 22RS BILL # SB 90 SCS 1 BR # 1 DOC ID #: SB009040.100 - 1 - XXXX

BILL SPONSOR(S): Sen. W. Westerfield, R. Stivers, B. Storm AMENDMENT SPONSOR(S): . .

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

**SUMMARY OF LEGISLATION:** Create new sections of KRS Chapter 533 to establish a behavioral health conditional dismissal pilot program beginning October 1, 2022, and continuing for four years to provide eligible individuals an alternative to receive treatment for a behavioral health disorder instead of incarceration, resulting in dismissal of the criminal charges upon successful completion of the program; identify the counties participating in the pilot program; define terms; establish program procedures, reporting requirements, and program requirements including access to medical treatment, counseling, education, and vocational counseling and training; create a council with designated membership to assist with the implementation of the pilot program; provide that the council shall end September 30, 2027; amend KRS 197.020 to provide for telehealth services in county jails; APPROPRIATION.

**AMENDMENT:** Retain original provisions; establish that the Chief Justice of the Supreme Court shall select the counties to participate in the pilot program; change the time for the clinical assessment to be performed from 24 hours to 72 hours; provide specific dates for required reporting; establish guidelines for recovery housing providers; include additional medication assisted treatment options; establish reports to be provided to the courts; add members to the Implementation Council; APPROPRIATION.

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This  bill  amendment  committee substitute is expected to:

Have the following Corrections impact  Have no Corrections impact

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|--|--|
| <input type="checkbox"/> Creates new crime(s)                              | <input type="checkbox"/> Repeals existing crime(s)                     |
| <input type="checkbox"/> Increases penalty for existing crime(s)           | <input type="checkbox"/> Decreases penalty for existing crime(s)       |
| <input type="checkbox"/> Increases incarceration                           | <input checked="" type="checkbox"/> Decreases incarceration            |
| <input type="checkbox"/> Reduces inmate/offender services                  | <input checked="" type="checkbox"/> Increases inmate/offender services |
| <input type="checkbox"/> Increases staff time or positions                 | <input type="checkbox"/> Reduces staff time or positions               |
| <input type="checkbox"/> Changes elements of offense for existing crime(s) |  |
| <input type="checkbox"/> Otherwise impacts incarceration (Explain) .       |  |
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**STATE IMPACT:** Class A, B, & C felonies are based on an average daily prison rate of \$97.60. Community Custody Class C and most Class D felons are housed in one of seventy-four (74) full service or regional jails for up to five (5) years. Department of Corrections' cost to incarcerate a felony inmate in a jail is \$35.43 per day, which includes \$31.34 per diem, medical costs, & central office administrative costs (substance abuse treatment not included).\*

**Projected Impact:**  NONE  MINIMAL to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

SB 90 establishes a behavioral health conditional dismissal program. The pilot program will be four (4) years in duration for eleven (11) counties across the Commonwealth. The pilot program allows individuals charged with a misdemeanor or Class D felony to be diverted into a treatment program upon arrest rather than face prosecution for a criminal offense. The pilot program will reduce convictions for felony offenses and provide needed treatment for participants.

Certain offenses are not eligible for the behavioral health conditional dismissal pilot program: violent offenses, sex crimes, DUI offenses, and domestic or dating violence offenses. Participants will have a behavioral health disorder and meet other review criteria, including assessed as low risk or identified as a viable participant by legal counsel. The legislation includes factors which may be considered, including the individual's offense and criminal history. A previous discharge for non-compliance from a conditional release program within the last five (5) years is a disqualifier.

The legislation outlines assessments, referrals, court paperwork and processes, reporting, and tracking requirements. The program shall not be less than one (1) year in length unless an earlier successful discharge is issued. However, the program length may not exceed the maximum term of incarceration for the charges. There is an option to extend the period if needed.

A range of treatment options is permissible, from out-patient to residential treatment, including medication assisted treatment. In addition to behavioral health treatment provision, the legislation also includes case management, assessment,

and referrals to assist with education or job training. Upon successful completion, the charge is dismissed and the record sealed. Program dismissal, including new convictions, would result in the continued prosecution of the case.

The legislation creates a Behavioral Health Conditional Dismissal Program Implementation Council. And KRS 197.020 requires the Department of Corrections to promulgate regulations requiring telehealth services in county jails. This language would need to be adopted under the Jail Standards Commission in accordance with KRS 441.055.

**LOCAL IMPACT:** Local governments are responsible for the cost of incarcerating individuals charged with Class A or B misdemeanors and felony defendants until disposition of the case. The estimated impact will be based on the \$35.43 cost to incarcerate for the Department of Corrections, including \$31.34 per diem and medical that DOC pays jails to house felony offenders. This cost to incarcerate may not be the actual housing cost for the jail.\*

**Projected Impact:**  NONE  MINIMAL to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

SB 90 will reduce days in custody for individuals facing felony or misdemeanor charges. While the expected number of participants is unknown, the legislation could provide a substantial cost savings for participating counties in pre-adjudication costs.

**PROJECTED IMPACT FROM AMENDMENTS:**

NONE  MINIMAL to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

Senate Committee Substitute:

The Committee Substitute removes specified counties for the behavioral health conditional dismissal pilot program, instead requiring a number to be no less than ten (10) counties selected by the Chief Justice. There are a few changes to the reporting requirements for the pilot program.

The qualifications for the pilot program are modified to prohibit those who have had a prior conviction for a Class A, B, or C felony or Class D felony or misdemeanor that is not a qualifying offense. The assessment for low risk offenders is specified as an assessment completed by pre-trial services. Availability of behavioral health treatment programs in the defendant’s county of residence as well as victims’ comments are added as factors for consideration for entrance into the pilot program. The timeline for the assessment is modified from within twenty-four (24) to within seventy-two (72) hours of arrest. Directions are added for those who may be released before receiving the assessment. Clarification is added that jails are not charged with paying the cost of the assessment. Restitution obligations, if applicable, are mandated. The length of the treatment program is to be set by the provider and type of program. Court procedures are further detailed. Violation of the program due to new convictions are clarified as those occurring during participation in the pilot program.

Housing and peer support services are added to a participant’s treatment plan. Options for medication assisted treatment are expanded. Language is added that all recovery housing service providers shall meet Department of Corrections’ qualifications to provide recovery housing services, along with other requirements such as provision of evidence-based services. A system is established for payment for recovery housing services. Job skills training requirements are delineated.

*\*All projections are based on the daily rate x 365 days x number of years. The cost to incarcerate as calculated by the Department is shown here as rounded to the hundredths. Offenders may have multiple offenses or be incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers will include inchoate offenses at the underlying offense level.*

**The following offices contributed to this Corrections Impact Statement:**

Dept. of Corrections  Dept. of Kentucky State Police  Administrative Office of the Courts  Parole Board  Other

NOTE: Consideration should be given to the cumulative impact of all bills that increase the felon population, lengthens the term or incarceration, or impose new obligations on state or local governments.

APPROVED BY:

A handwritten signature in blue ink, appearing to be 'K. J. [unclear]', written over a horizontal line.

Chief of Staff, Kentucky Department of Corrections

3/18/2022

Date