

908 KAR 1:315. Zero tolerance program requirements.

RELATES TO: KRS 189A.010, 189A.040

STATUTORY AUTHORITY: KRS 189A.040(6), EO 2004-726

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Behavioral Health, Developmental and Intellectual Disabilities within the cabinet. The 2000 session of the General Assembly enacted amendments to KRS Chapter 189A to specify penalties and service requirements for persons under the age of twenty-one (21) years who are convicted of being in control of a motor vehicle while having a blood alcohol concentration between .02 and .08 grams of alcohol per 100 milliliters of blood, or per 210 liters of breath. KRS 189A.040(6) requires the cabinet to promulgate administrative regulations for the licensure of education and treatment facilities and programs for offenders receiving education or treatment under KRS 189A.040. This administrative regulation establishes licensing requirements and standards for facilities and programs that provide services to persons convicted of violating KRS 189A.010(1)(e).

Section 1. Definitions.

- (1) "AODE" means a nonmedical and nonhospital-based alcohol and other drug abuse treatment entity licensed in accordance with 908 KAR 1:370.
- (2) "Case coordination" means facilitating the provision of court-ordered services to an offender, including communicating with other service providers and the court.
- (3) "Prevention assessment" means a process designed to separate a person who requires substance abuse prevention services, from a person who needs a referral to an AODE, by the administration of an assessment tool which has been validated for use with the population being served.
- (4) "Preventionist" means an individual or certified prevention professional who receives remuneration for an alcohol or other drug prevention program.
- (5) "Prevention program" means a holder of a license issued in accordance with 908 KAR 1:380.
- (6) "Qualified early intervention specialist" means a preventionist who:
 - (a) Specializes in providing services to an individual who is at higher risk for developing a substance abuse disorder, than the individual's age group cohort; and
 - (b) Meets the requirements of 908 KAR 1:380, Section 4(2)(a).
- (7) "Risk-reduction curriculum" means a curriculum that has been demonstrated to promote behavioral change that halts progression toward substance dependency, and reduces risk for other alcohol or drug-related problems, in specified target populations.
- (8) "Zero tolerance offender" or "offender" means a person who has been convicted of violating KRS 189A.010(1)(e), and has been sentenced in accordance with KRS 189A.040(1).
- (9) "Zero tolerance program" or "program" means a prevention program which provides court-ordered substance abuse services to a person who is convicted of violating KRS 189A.010(1)(e), in accordance with this administrative regulation.

Section 2. License Requirement.

- (1) An individual or other entity shall not provide a zero tolerance program, unless the program is operated by a licensed prevention program.
- (2) An AODE may provide the substance abuse services recommended by a zero tolerance program, based on the assessment required by Section 3 of this administrative regulation, if a zero tolerance program refers an offender to the AODE.

Section 3. Offender Enrollment Process.

- (1) A program shall perform a prevention assessment on an offender who:

- (a) Is ordered by a court to attend a zero tolerance program; or
- (b) Requests enrollment in the program.
- (2) A zero tolerance program shall notify an offender, in writing, and prior to enrollment, of the rules established in accordance with Section 4 of this administrative regulation.
- (3) A zero tolerance program shall enroll an offender who:
 - (a) Agrees in writing, to participate in the program;
 - (b) Authorizes the program, in writing, to disclose information to the sentencing court, including:
 - 1. The results of a prevention assessment;
 - 2. The offender's compliance, or non-compliance with program rules;
 - 3. The date of completion of the program, if applicable; and
 - 4. Other information required by an order of the sentencing court; and
 - (c) Agrees, in writing, to comply with the program rules established in accordance with Section 4 of this administrative regulation.

Section 4. Program Rules.

- (1) A zero tolerance program shall establish written rules for participation in the program which specify:
 - (a) Requirements for attendance, including attendance at services provided by an AODE, if a referral is made in accordance with Section 5(2) of this administrative regulation;
 - (b) Requirements for payment of fees, in accordance with KRS 189A.040(1)(b);
 - (c) Standards for enrollment in the program;
 - (d) Standards for successful completion of the program;
 - (e) Rules of conduct;
 - (f) Procedures for sharing information with the sentencing court or its designee;
 - (g) Procedures for payment of a fee;
 - (h) A requirement for an offender to authorize an AODE to disclose information needed by the zero tolerance program; and
 - (i) Other requirements, which are not inconsistent with the requirements of KRS 189A.040, or this administrative regulation, that the program determines to be necessary for the orderly and effective administration of the program.
- (2) A zero tolerance program shall establish criteria for involuntary discharge from the program, for violation of program rules.
- (3) A program that discharges an offender in accordance with the criteria required by subsection (2) of this section, shall notify the sentencing court, in writing of:
 - (a) The date the offender is discharged; and
 - (b) The criteria for involuntary discharge that the offender met.
- (4) The notice required by subsection (3) of this section shall be made no later than three (3) days after the decision is made to discharge the offender.

Section 5. Services Required.

- (1) A zero tolerance program shall provide the following services:
 - (a) Prevention assessment;
 - (b) Case coordination;
 - (c) Preventive education; and
 - (d) Referral to an AODE, if indicated by the results of a prevention assessment.
- (2) If a zero tolerance program makes a referral in accordance with subsection (1)(d) of this section, it shall:
 - (a) Notify the offender of the results of the prevention assessment;
 - (b) Provide the offender with a list of AODE programs which are geographically accessible to the offender; and
 - (c) Provide the offender with a written referral to:

1. The AODE the offender prefers, if an offender states a preference, from the programs identified in paragraph (b) of this subsection; or
 2. An AODE on the list specified in paragraph (b) of this subsection, if the offender does not state a preference.
- (3) An offender shall:
- (a) Enroll in an AODE identified in subsection (2)(b) of this section no later than seven (7) days after the date of the referral; and
 - (b) Notify the zero tolerance program of the name of the AODE in which the offender enrolls.
- (4) The zero tolerance program shall, no later than seven (7) days after the date of the referral made in accordance with subsection (2)(c) of this section, contact the program identified in subsection (3)(b) of this section, to determine if the offender is enrolled in that program.
- (5) A zero tolerance program shall assure that offenders under the age of eighteen (18) receive services provided separately from services provided to individuals who are convicted of violating KRS 189A.010(a), (b), (c), or (d).

Section 6. Standards for Required Services.

- (1) A prevention assessment shall be performed by a qualified early intervention specialist who shall be:
- (a) Employed by the zero tolerance program; or
 - (b) Under contract to the zero tolerance program.
- (2) Preventive education services shall be provided:
- (a) In accordance with a risk-reduction curriculum validated as effective for persons under twenty-one (21) years of age, who are at a higher risk than the general public for developing a substance abuse disorder; and
 - (b) By an individual who has been authorized, in writing, to use the curriculum, by the author of the curriculum.
- (3) A zero tolerance program shall:
- (a) Use the written or visual material, included in a curriculum identified in subsection (2)(a) of this section, unless the use of other material has been approved, in writing, by the author of the curriculum, or the Behavioral Health, Developmental and Intellectual Disabilities; and
 - (b) Follow the sequence of presentation specified in the curriculum used, if a sequence is specified in the curriculum, unless the author of the curriculum grants approval, in writing, to deviate from the specified sequence.
- (4) A zero tolerance program shall provide case coordination services to a zero tolerance offender who is enrolled, including an offender who is referred to an AODE.
- (5) Case coordination shall be performed by a qualified early intervention specialist.
- (6) Case coordination shall include:
- (a) A review of an offender's progress once every two (2) weeks; and
 - (b) Provision of the reports required by KRS 189A.040(7).
- (27 Ky.R. 2622; Am. 3109; eff. 5-14-2001; TAm eff. 4-27-2016; Crt eff. 12-18-2019.)