**Senate Bill 90 FAQ**

SB 90 creates a pilot program for a behavioral health conditional dismissal program beginning January 1, 2023, to divert defendants charged with certain non-violent, non-sexual misdemeanors and Class D felonies away from jail and into treatment for substance-use disorder(s) or mental-health issues.

The goal of SB 90 is to eliminate barriers to addiction and expand access to treatment. The legislation provides an alternative to incarceration by allowing eligible defendants to receive treatment for substance abuse and/or behavioral health disorder.   Under this legislation, eligible defendants must be assessed as soon as possible (but within at least 72 hours) by a mental health specialist who will ascertain the presence of a behavioral health disorder.   If the defendant is determined to be eligible for the behavioral health conditional dismissal program, the prosecutor can enter into an agreement for the defendant to enter this program.  This program will include an array of services such as outpatient or inpatient treatment, cognitive and behavioral therapies, education, vocational services, and housing assistance. The programs will be funded through either the defendant’s current health insurance (including Medicaid), or if the defendant is uninsured or underinsured, the Opioid Abatement Trust Fund, which will be administered by the Department for Behavioral Health, Developmental and Intellectual Disabilities (BHDID).

SB 90 also requires treatment providers and County or Commonwealth Attorneys to collect data regarding the defendant’s participation in the program and report to the Administrative Office of the Courts throughout various time periods during the defendant’s participation in the program.

**Pilot Sites**

The following eleven counties were selected as pilot sites for SB 90 based on a variety of factors including: the operation of a county jail, availability of community and mental health programs, historical data relating to eligible individuals for participation, initial interest by counties expressing desire to participate, and consideration of equal representation of each Supreme Court District.

·       Kenton

·       Greenup

·       Letcher

·       Clark

·       McCracken

·       Daviess

·       Pulaski

·       Madison

·       Oldham

·       Hopkins

·       Christian

**Eligible Participants**

* Must be charged with a qualifying offense (No violent offender, sex offense, DUI, domestic violence, or protective orders against victim)
* Must be at least 18 years of age and a resident of the Commonwealth;
* Must not have a previous conviction for a Class A, B, or C felony, or a Class D felony or misdemeanor that is not a qualifying offense; and
* Has been assessed by pretrial services as a low-risk, low-level offender

OR

* Determined by the attorney for the Commonwealth or the attorney for the defendant as a viable participant in the program.
* Clinical assessment must indicate behavioral health disorder

**Data Collection and Reporting**

SB 90 requires AOC to collect data from treatment providers and prosecutors relating to an individual’s participation in the conditional dismissal program for preparation of an annual report. The report shall be submitted to the following entities by January 31:

* LRC
* Chairs of the Judiciary Committee
* Governor
* Behavioral Health Conditional Dismissal Program Implementation Council (October 1)

**Report shall include:**

1. The number of defendants assessed who did not meet the eligibility requirements for the program following the clinical assessment;
2. The specific offenses charged for each defendant and the classification of offenses charged;

3. The percentage of defendants participating in the program who successfully completed

the program;

4. The percentage of defendants discharged from the program for noncompliance; and

1. The percentage of defendants who are arrested, convicted, and incarcerated within six (6)

months, one (1) year, and two (2) years of successful completion of the program.

**Behavioral Health Treatment Programs Reporting Requirements**

**Within 14 days following initiation of treatment, collection, and submission of participant information to include:**

1. Age, gender, and race or ethnicity;
2. Housing history;
3. Educational history;
4. Employment history;
5. Past involvement in addiction recovery and treatment for a substance use disorder;
6. Past treatment for a mental health disorder; and
7. Criminal history.

**Within 28 days after the initial report, provide progression of the program participant to include:**

1. Continuation in the program;
2. The status and type of recommended treatment;
3. Employment or job training;
4. The status and type of educational training;
5. Housing status;
6. Any other information the program provider determines may assist in evaluation of the pilot program; and
7. If the participant has been discharged from the program due to an inability or unwillingness to meet the terms and conditions of the treatment program, including the specific reason for the discharge.

**Quarterly reports (first due by April 15, 2023, and thereafter due January 15, April 15, July 15, and October 15 to include:**

1. Length of time the individual has been a program participant;
2. Continuation in the program;
3. The status and type of recommended treatment;
4. Employment or job training;
5. The status and type of educational training;
6. Housing status;
7. Any other information the program provider determines may assist in evaluation of the pilot program;
8. If the participant has been discharged from the program due to an inability or unwillingness to meet the terms and conditions of the treatment program, including the specific reason for the discharge;
9. The number of clinical assessments performed by the program provider;
10. The total number of individuals participating in the behavioral health conditional dismissal program with that provider;
11. The number of individuals who remain in compliance with the terms and conditions of the treatment program;
12. The number of individuals who have been discharged from the program due to an inability or unwillingness to meet the terms and conditions of the treatment program, including the specific reason for the discharge;
13. For any individual discharged due to an inability or unwillingness to meet the terms and conditions of the treatment program, the length of time the individual participated in the program;
14. The number of individuals who have been discharged from the program upon successful completion of the treatment program requirements;
15. The number of individuals who have received medication-assisted treatment and the result of that treatment;
16. The number of individuals who have completed a recommended job skills or job training program; and
17. The number of individuals who have completed a recommended educational component of the program.

**Final report shall be submitted for each program participant no later than 30 days following discharge from the program:**

1. If the discharge from the program was due to an inability or unwillingness to meet the terms and conditions of the treatment 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.

**Treatment providers must also submit periodic progress reports to the attorney for the Commonwealth and the attorney for the participant according to the following schedule:**

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

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

day report;

3. Subsequent reports on a quarterly basis throughout the course of treatment beginning April

15, 2023, with reports due thereafter on January 15, April 15, July 15, and October 15 of each

year of the participation in the pilot program; and

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

**County/Commonwealth Attorneys’ Reporting Requirements**

**Quarterly reports (first due by April 15, 2023, and thereafter due January 15, April 15, July 15, and October 15 to include:**

1. 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;
2. The number of eligible defendants, including the defendant's race, ethnicity, and gender, who sought to participate in the program but whose participation was not agreed to by the attorney for the Commonwealth;
3. The number of victims, if there is an identified victim, who did not participate in the process; and
4. The number of victims, if there is an identified victim, who did not agree to the defendant's participation in the program.
5. If the attorney for the Commonwealth did not agree to an eligible defendant's participation in the behavioral health conditional dismissal program, he or she shall include in each quarterly report to the Administrative Office of the Courts the specific offenses charged for that defendant, and the substantial and compelling reasons, based upon delineated facts specific to the defendant, why the defendant was denied participation in the program.

**Behavioral Health Conditional Dismissal Program Implementation Council**

* Meets quarterly to assist with implementation
* Membership includes:
  + Chair: Executive Director of ODCP
  + Director of AOC
  + Commissioner of BHDID
  + Commissioner of Medicaid
  + Kentucky Adult Education
  + Public Advocate
  + Member of Commonwealth's Attorney Assoc.
  + Member of Kentucky County Attorney’s Assoc.
  + Circuit Judge
  + District Judge
  + Executive Director of Jailer’s Assoc.
  + Two representatives selected by the Kentucky Assoc. of Regional Programs (one in substance abuse recovery and other treated for mental health disorder)