

533.276 Clinical assessment for behavioral disorder -- Conduct -- Treatment referral -- Requirements of Commonwealth's attorney when considering individual's participation in pilot program -- Agreement.

- (1) (a) Following arrest, and within seventy-two (72) hours after being booked into a jail or detention facility, any person who has been charged with a qualifying offense shall undergo a clinical assessment to determine if he or she may have a behavioral health disorder.
- (b) The Cabinet for Health and Family Services shall provide a list of approved assessors in accordance with KRS 533.284 for each county participating in the pilot program.
- (c) The jailer or his or her designee shall contact a qualified mental health professional from the list of approved assessors for the county provided under paragraph (b) of this subsection, and shall advise the qualified mental health professional that a clinical assessment is needed.
- (d) If a person has been charged with a qualifying offense and has been released prior to receiving a clinical assessment, he or she individually, or through his or her counsel, if any, may request a clinical assessment by a qualified mental health professional at any time during the proceedings from the list of approved assessors provided under paragraph (b) of this subsection.
- (e) Notwithstanding any other provision to the contrary, the clinical assessment may be conducted through telehealth or in person, whether the person charged is in the custody of the jail or has been released.
- (f) If the qualified mental health professional determines that the person being assessed is physically or psychologically impaired to the extent that he or she cannot provide sufficient information or responses to conduct or complete the assessment, the assessment may be delayed but only for the time required for the person to adequately respond.
- (g) No statement or other disclosure made by the person charged in the course of the clinical assessment shall be admissible in a criminal trial unless the trial is for a crime committed during the assessment; however, nothing in this subsection shall be interpreted to prevent any reporting required by law or as an implied waiver of applicable privacy laws and professional standards regarding confidentiality.
- (h) Any referral for treatment shall be based upon the clinical assessment and a finding by the qualified mental health professional that treatment is medically necessary.
- (i) The treatment referral shall be forwarded to the attorney for the Commonwealth and the attorney for the person charged, if any, within forty-eight (48) hours of the assessment.
- (j) The failure of the assessor to forward the referral to the attorney for the Commonwealth or the attorney for the person charged, if any, within forty-eight (48) hours shall not result in automatic release of the person charged.
- (k) Nothing in this subsection shall be interpreted to create a duty of the jailer to

pay for any costs associated with the clinical assessment.

- (2) At any time following arrest, the Commonwealth's attorney if the underlying charge includes a felony, or the county attorney if the underlying charge only includes a misdemeanor, and the person charged may agree to the individual's participation in the behavioral health conditional dismissal program.
- (3) When an individual is being considered for the behavioral health conditional dismissal program, the attorney for the Commonwealth shall:
 - (a) Have a criminal record check made to ascertain if the person is eligible for the program;
 - (b) Consult with the victim of the crime if there is an identified victim;
 - (c) Explain the behavioral health conditional dismissal program to the victim, including potential terms and conditions, and any other matter the attorney for the Commonwealth deems to be appropriate, including the right of the victim to submit a written statement that shall be included in the record placed under seal under KRS 533.280; and
 - (d) Conduct any other investigation that the attorney for the Commonwealth determines may be necessary to assist him or her in agreeing to the referral for treatment by the qualified mental health professional and the defendant's participation in the behavioral health conditional dismissal program.
- (4) If the defendant agrees to the terms of the individualized treatment plan, which shall include restitution, and the attorney for the Commonwealth agrees to the defendant's participation in the program, the defendant and the attorney for the Commonwealth shall sign an agreement specifying the terms and conditions. If the defendant is represented by counsel, defense counsel shall also sign the agreement.
- (5) The length of the program shall be determined by the qualified mental health professional in collaboration with the provider and the type of program based upon the assessment and shall not:
 - (a) Be less than one (1) year in duration unless discharged earlier by the provider upon satisfactory completion of the recommended treatment plan with agreement of the attorney for the Commonwealth after consultation with the victim and with agreement of the defendant; or
 - (b) Exceed a period of time longer than the defendant's maximum potential period of incarceration if found guilty of the offenses charged unless the defendant agrees in writing to an extension of the treatment period.
- (6) A defendant participating in the behavioral health conditional dismissal program shall not be required to:
 - (a) Plead guilty or enter an Alford plea as a condition for participation in the program; or
 - (b) Make any statement or stipulate to any statement relating to evidence in the underlying case as a condition for participation in the program.
- (7) Execution of the agreement by the defendant shall toll all further proceedings against the defendant relating to the agreement, except the matter may be set for a

status review at the discretion of the court.

- (8) Upon execution of the agreement as provided in subsection (4) of this section, the defendant shall present himself or herself for treatment no later than three (3) days after the agreement is signed. The attorney for the Commonwealth shall:
 - (a) Notify the treatment provider of the agreement and the effective date; and
 - (b) Provide the victim, if there is an identified victim, with notice that an agreement has been reached for the defendant's participation in the behavioral health conditional dismissal program, and the terms of the agreement that are applicable to the victim.
- (9) If the defendant remains in custody at the time of the agreement, the court shall order release of the defendant which shall not include a requirement of cash bail.
- (10) The charges against the defendant shall proceed with ordinary prosecution upon dismissal of the defendant from the treatment program by the provider for noncompliance.

Effective: July 14, 2022

History: Created 2022 Ky. Acts ch. 230, sec. 4, effective July 14, 2022.