

KRS 202C Overview

Ramsey Dallam

Deputy Executive Director

Special Prosecutions Division

Kentucky Office of the Attorney General



KRS 202C

History

- KRS 202C became effective on April 1, 2021.
- KRS 202C closed a loophole in KRS 202A and 202B.
- KRS 202A and 202B govern involuntary civil commitment.



KRS 202C

History

KRS 202A.026

No person shall be involuntarily hospitalized unless such person is a mentally ill person:

- (1) Who presents a danger or threat of danger to self, family or others as a result of the mental illness;
- (2) *Who can reasonably benefit from treatment*; and
- (3) For whom hospitalization is the least restrictive alternative mode of treatment presently available.



KRS 202C

History

KRS 202B.040

When a person who is alleged to be an individual with an intellectual disability is involuntarily admitted, there shall be a determination that:

- (1) The person is an individual with an intellectual disability;
- (2) The person presents a danger or a threat of danger to self, family, or others;
- (3) The least restrictive alternative mode of treatment presently available requires placement in an ICF/ID; and
- (4) *Treatment that can reasonably benefit the person* is available in an ICF/ID.



KRS 202C

Applicability

KRS 202C.020

- Defendant found **incompetent to stand trial** with no substantial probability of attaining competency within 360 days.
- Defendant charged with **qualifying offense**.
 - KRS 202C.010(12) defines qualifying offense → a capital offense, a Class A felony, a Class B felony resulting in death or serious physical injury, or a violation of KRS 510.040 (Rape, 1st Degree) or 510.070 (Sodomy, 1st Degree)



KRS 202C

Applicability

KRS 202C.020

- Commonwealth's attorney's office shall **immediately** petition the Circuit Court in the county of the criminal prosecution for an involuntary commitment proceeding, to include an **evidentiary hearing** and a **commitment hearing**.
- The court shall assign a guardian ad litem to represent the needs and best interest of the respondent, who is not a replacement for the defense attorney.



KRS 202C.030

Evidentiary Hearing

- An adversarial evidentiary hearing on the record *shall be held within 20 days*, excluding weekends and holidays, of the filing of a petition pursuant to KRS 202C.020.
- Respondent may stipulate to potential guilt and waive the hearing. A stipulation of potential guilt cannot be used against the respondent in any future criminal prosecution or civil litigation.
- Purpose is to determine whether sufficient evidence exists to support a finding that the respondent is guilty of the charged crime. The Commonwealth has the burden of proving the sufficiency of the evidence by a *preponderance of the evidence*.



KRS 202C.030

Evidentiary Hearing

- The evidentiary hearing is held before a judge without a jury.
- The rules of evidence apply.
- The respondent may present evidence and cross examine witnesses.
- The respondent may present evidence of affirmative defenses that could be raised at a criminal trial on the charged crime.
- The Commonwealth shall not have the burden of disproving an affirmative defense.
- The respondent must prove an affirmative defense by a preponderance of the evidence.



KRS 202C.030

Evidentiary Hearing

- If the court determines that sufficient evidence has been presented to support a finding that the respondent is guilty of the charged crime, the court must schedule a commitment hearing under this chapter *within 20 days*, excluding weekends and holidays.
- The respondent must be examined by two qualified mental health professionals, as least one of whom is a physician. *Within seven days*, excluding weekends and holidays, prior to the hearing, the qualified mental health professionals must certify to the court their findings as to whether the respondent meets the criteria for involuntary commitment under KRS 202C.050.



KRS 202C.030

Evidentiary Hearing

- However, if the court determines that insufficient evidence has been presented to support a finding that the respondent is guilty of the charged crime, *the court shall order the immediate release of the respondent.*



KRS 202C.040

Commitment Hearing

- A commitment hearing shall be held *within 20 days*, excluding weekends and holidays, after the court finds that the evidence presented in an evidentiary hearing supports a finding that the respondent is guilty of the charged crime by a preponderance of the evidence.
- The Commonwealth must present evidence regarding whether the respondent meets the criteria for involuntary commitment under KRS 202C.050.
- The respondent and the respondent's guardian ad litem shall be afforded an opportunity to testify, present evidence, and to cross-examine any witnesses.



KRS 202C.040

Commitment Hearing

- The manner of proceeding and the rules of evidence shall be the same as those in any criminal proceeding. The standard of proof shall be proof beyond a reasonable doubt. Proceedings shall be heard by the judge *unless a party or the guardian ad litem requests a jury*.
- The respondent's right to the commitment hearing shall not be waived.



KRS 202C.050

Criteria for Involuntary Commitment

- (1) No respondent shall be involuntarily committed under this chapter unless there is a determination that:
- (a) The respondent presents a danger to self or others as a result of his or her mental condition;
 - (b) The respondent needs care, training, or treatment in order to mitigate or prevent substantial physical harm to self or others;
 - (c) The respondent has a demonstrated history *or recent manifestation* of criminal behavior that has endangered or caused injury to others or has a substantial history of involuntary hospitalizations under KRS Chapter 202A or 202B prior to the commission of the charged crime;
or
 - (d) A less restrictive alternative mode of treatment would endanger the safety of the respondent or others.



KRS 202C.050

Criteria for Involuntary Commitment

(2) When a respondent is involuntarily committed under this chapter, the cabinet shall place the respondent in a forensic psychiatric facility designated by the secretary.



KRS 202C.060(1)(b)

Involuntary Commitment Review Hearings

- If *at any point* during the respondent's placement at a forensic psychiatric facility it appears that the respondent no longer meets the criteria for involuntary commitment under KRS 202C.050 because there has been a material change in circumstances or there is new evidence to present, the respondent or the respondent's guardian ad litem may request a review hearing pursuant to this section.



KRS 202C.060(2)

Involuntary Commitment Review Hearings

The schedule for review hearings shall be as follows:

- (a) From the initial order of commitment, a standard review hearing shall be conducted not sooner than 90 days and not later than 120 days;
- (b) First 2 years after initial order of commitment, standard review hearings shall be conducted not less than 180 days and not more than 210 days from the most recent review;
- (c) Beginning 2 years after the initial order of commitment, a standard review hearing shall be conducted not more than 365 days from the most recent review hearing; and
- (d) A heightened review hearing shall be conducted not more than 5 years from the initial order of commitment and, thereafter, not more than 5 years from the most recent heightened review hearing.

- The respondent's right to this hearing shall not be waived.



KRS 202C.060(3)

Involuntary Commitment Review Hearings

- Prior to each standard review hearing, the court shall
 - Cause the respondent to be examined without unnecessary delay by *two qualified mental health professionals*, at least one of whom is a physician.
 - The qualified mental health professionals shall, *within seven days prior to the hearing*, excluding weekends and holidays, certify to the court their findings as to whether the respondent meets the criteria for involuntary commitment under KRS 202C.050.



KRS 202C.060(5)

Involuntary Commitment Review Hearings

- The Commonwealth's attorney's office serving the county of criminal prosecution which led to the finding that the respondent was incompetent to stand trial *shall present evidence regarding whether the respondent remains incompetent to stand trial and continues to meet the criteria for involuntary commitment under KRS 202C.050.* The respondent and respondent's guardian ad litem shall be afforded an opportunity to present evidence, and to cross-examine any witnesses.



KRS 202C.050

Criteria for Involuntary Commitment

- (1) No respondent shall be involuntarily committed under this chapter unless there is a determination that:
- (a) The respondent presents a danger to self or others as a result of his or her mental condition;
 - (b) The respondent needs care, training, or treatment in order to mitigate or prevent substantial physical harm to self or others;
 - (c) The respondent has a demonstrated history *or recent manifestation* of criminal behavior that has endangered or caused injury to others or has a substantial history of involuntary hospitalizations under KRS Chapter 202A or 202B prior to the commission of the charged crime;
or
 - (d) A less restrictive alternative mode of treatment would endanger the safety of the respondent or others.



KRS 202C.060(6)

Involuntary Commitment Review Hearings

- The manner of proceeding and the rules of evidence shall be the same as those in any criminal proceeding. *The standard of proof shall be proof beyond a reasonable doubt.* Proceedings shall be heard by the judge without a jury, *except that a respondent shall be entitled to a jury upon request if the respondent has not had a review hearing with a jury during the preceding twelve (12) months.*



KRS 202C.060(8)

Involuntary Commitment Review Hearings

- At the conclusion of a standard review hearing, the court shall make written findings of fact concerning whether the criteria for involuntary commitment under KRS 202C.050 continue to be satisfied *based upon proof beyond a reasonable doubt*. If the court finds that the criteria continue to be satisfied, the court shall enter an order authorizing the continued care and treatment of the respondent at the forensic psychiatric facility. *Otherwise, the court shall enter an order requiring the respondent to be discharged.*



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QUESTIONS?





Ramsey Dallam
ramsey.dallam@ky.gov
(502) 696-5651



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