

202C.030 Evidentiary hearing -- Purposes and procedures -- When subsequent commitment hearing is required -- Evidence submitted by respondent inadmissible in other criminal or civil cases.

- (1) An adversarial evidentiary hearing on the record shall be held within forty-five (45) days, excluding weekends and holidays, of the filing of a petition pursuant to KRS 202C.020, unless the court orders a later hearing for good cause shown. Appropriate notice shall be served on all parties. The court shall order the Commonwealth to provide all available discovery to the respondent no later than seven (7) days, excluding weekends and holidays, before the hearing, unless the court orders a later date for good cause shown. Evidence that has not been disclosed through discovery shall not be presented at the hearing.
- (2) The respondent may stipulate to potential responsibility and waive the hearing. A stipulation of potential responsibility shall not be used against the respondent in any future criminal prosecution or civil litigation.
- (3)
 - (a) The purpose of the evidentiary hearing shall be to determine whether sufficient evidence exists to support a finding that the respondent is responsible for the charged crime against him or her.
 - (b) The Commonwealth's attorney's office serving the county of criminal prosecution shall have the burden of proving the sufficiency of the evidence by a preponderance of the evidence.
- (4) The evidentiary hearing shall be held before a judge without a jury. The rules of evidence shall apply. The respondent shall be permitted to 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, except for the defense of insanity. 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.
- (5)
 - (a) If the court determines that sufficient evidence has been presented to support a finding that the respondent is responsible for the charged crime against him or her, the court shall immediately schedule a commitment hearing under this chapter to be held within forty-five (45) days, unless the court orders a later hearing for good cause shown, excluding weekends and holidays.
 - (b)
 1. The court shall cause the respondent to be examined without unnecessary delay by two (2) qualified mental health professionals, at least one (1) of whom is a physician. The qualified mental health professionals shall, no fewer than seven (7) days, excluding weekends and holidays, prior to the hearing, certify to the court their findings as to whether the respondent meets the criteria for involuntarily commitment under KRS 202C.050.
 2. A copy of the findings submitted under subparagraph 1. of this paragraph shall be sent to the Commonwealth, the respondent's attorney of record, the respondent's guardian ad litem, and all other parties of record.
- (6) If the court determines that insufficient evidence has been presented to support a

finding that the respondent is responsible for the charged crime against him or her, the court shall order the immediate release of the respondent.

- (7) Any evidence or statement submitted by the respondent at the evidentiary hearing shall not be admissible in any criminal prosecution or civil litigation.

Effective: October 1, 2026

History: Amended 2026 Ky. Acts ch. 92, sec. 28, effective October 1, 2026. -- Created 2021 Ky. Acts ch. 175, sec. 8, effective April 1, 2021.