

**CHAPTER 195****(SB 174)**

AN ACT relating to mental retardation.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 202B.021 is amended to read as follows:

- (1) Mentally retarded minors and adult persons may be voluntarily admitted for care and treatment in an ICF/MR under the applicable provisions of this section.
- (2) Upon the recommendation or approval of the interdisciplinary team of an ICF/MR, a physician may admit for care and treatment a mentally retarded minor upon application of a parent or guardian. Upon recommendation or approval of the interdisciplinary team of an ICF/MR, the physician may also admit ***an individual with mental retardation***~~[a mildly or moderately mentally retarded adult person]~~ who applies voluntarily therefor and who, in the opinion of the physician, possesses the mental capacity to give informed consent for admission.
- (3) Upon recommendation or approval of the interdisciplinary team of an ICF/MR, the physician shall discharge any voluntarily admitted resident whose care and treatment in the ICF/MR is determined to be no longer necessary or advisable.
- (4) If an adult resident who has been admitted voluntarily requests his or her release in writing, or if the release of a minor resident is requested in writing by the minor's parent or guardian, the resident shall be released unless further detained under the applicable provisions of this chapter.

Section 2. KRS 202B.100 is amended to read as follows:

- (1) Proceedings for involuntary admission of a person to an ICF/MR shall be initiated by the filing of a verified petition in District Court.
- (2) The petition and all subsequent court documents shall be entitled: "In the interest of (name of respondent)."
- (3) The petition shall be filed by a qualified mental retardation professional, peace officer, county attorney, Commonwealth's attorney, spouse, relative, friend, or guardian of the person concerning whom the petition is filed.
- (4) The petition shall set forth:
  - (a) Petitioner's relationship to the respondent;
  - (b) Respondent's name, residence, and current location, if known;
  - (c) The name and residence of respondent's parents, if living and if known, or respondent's legal guardian, if any and if known;
  - (d) The name and residence of respondent's husband or wife, if any, and if known;
  - (e) The name and residence of the person having custody of the respondent, if any, or if no such person is known, the name and residence of a near relative or that such person is unknown;~~and~~
  - (f) ***Documentation by the petitioner that the respondent has mental retardation that shall include the findings of a psychological examination or assessment completed in a reasonable time prior to the filing of the petition that documents a Full Scale IQ in the moderate to severe range of mental retardation. If the court finds that a more current psychological examination or assessment is necessary, the court shall order such examination; and***
  - (g) Petitioner's belief, including the factual basis therefor, that the respondent~~[is mentally retarded and]~~ presents a danger or threat of danger to self, family, or others if not admitted to an ICF/MR.
- (5) Upon receipt of the petition, the court shall examine the petitioner under oath as to the contents of the petition. If the petitioner is a qualified mental retardation professional, the court may dispense with the examination.
- (6) If, after reviewing the allegations contained in the petition and examining the petitioner under oath, it appears to the court that there is probable cause to believe the respondent should be involuntarily admitted, the court shall:

- (a) Set a date for a preliminary hearing;
  - (b) Notify the respondent, the respondent's legal guardian, if any, and if known, and the respondent's spouse, parents, or nearest relative or friend concerning the allegations and contents of the petition and the date and purpose of the preliminary hearing; and the name, address, and telephone number of the attorney appointed to represent the respondent; and
  - (c) Cause the respondent to be examined without unnecessary delay by two (2) ~~qualified mental retardation~~ professionals, ~~at least~~ one (1) of whom is a **qualified mental retardation professional and one (1) of whom is a licensed psychiatrist, psychologist, or physician with special training and experience in serving individuals with mental retardation. One (1) of the professionals shall be from the community and one (1) shall be an employee of a state operated ICF/MR facility** ~~physician~~. The qualified mental retardation ~~professional~~ ~~professionals~~ shall certify *his or her* ~~their~~ findings within twenty-four (24) hours, excluding weekends and holidays.
- (7) (a) If the respondent is presently residing in an ICF/MR under the provisions of this chapter, the court may allow continued further residence therein for the respondent to accomplish the examination ordered by the court.
  - (b) If the respondent is not currently residing in an ICF/MR under the provisions of this chapter, the court may order the respondent, the respondent's guardian, or any person or entity exercising custodial control of the respondent to submit the respondent to an examination, without unnecessary delay, by two (2) ~~qualified mental retardation~~ professionals, ~~at least~~ one (1) of whom is a **qualified mental retardation professional and one (1) of whom is a licensed psychiatrist, psychologist, or physician with special training and experience in serving individuals with mental retardation. One (1) of the professionals shall be from the community and one (1) shall be an employee of a state-operated ICF/MR facility** ~~physician~~.
- (8) If, upon completion of the preliminary hearing, the court finds there is probable cause to believe the respondent should be involuntarily admitted, the court shall order a final hearing to determine if the respondent should be involuntarily admitted.
  - (9) If the court finds there is no probable cause, the proceedings against the respondent shall be dismissed, and the respondent shall be released from the ICF/MR.
  - (10) If, upon completion of the final hearing, the court finds the respondent should be involuntarily admitted, the court shall order the respondent admitted in an ICF/MR for an indeterminate period. The order shall also specify the period within which the initial review pursuant to KRS 202B.250.

Section 3. KRS 202B.130 is amended to read as follows:

In any proceeding for involuntary admission under the applicable provisions of this chapter, if the criteria for involuntary admission are not certified by at least two (2) ~~examining qualified mental retardation~~ professionals **as specified in subsection (6)(c) of Section 2 of this Act**, ~~at least one (1) of whom is a physician~~, the court shall, without taking any further action, terminate the proceedings and order the release of the person. The qualified mental retardation ~~professional~~ ~~professionals~~ shall certify to the court, within twenty-four (24) hours of the examination, excluding weekends and holidays, *his or her* ~~their~~ findings and opinions as to whether the person shall be involuntarily admitted.

Section 4. KRS 202B.170 is amended to read as follows:

- (1) Following the preliminary hearing but prior to the completion of the final hearing, the court may order the respondent to reside in ***his or her current residence, an emergency placement designated by the regional mental health and mental retardation program, or*** an ICF/MR approved by the secretary for that purpose for the committing judicial district in a community program approved by the secretary or in a hospital. The respondent may be released, upon application and agreement of the parties, for the purpose of community-based outpatient treatment.
- (2) A physician of an ICF/MR or a hospital shall discharge a respondent residing therein and notify the court and attorneys of record, if the interdisciplinary team of the ICF/MR or an authorized staff physician of the hospital determines that the respondent no longer meets the criteria for involuntary admission.

- (3) If a respondent is discharged by the ICF/MR or hospital pursuant to subsection (2) of this section, the proceedings against the respondent shall be dismissed.

Section 5. KRS 202B.200 is amended to read as follows:

- (1) The court which orders any person to an ICF/MR under the provisions of this chapter, shall at once notify the cabinet that the order has been made, advising of the sex and condition of the person.
- (2) The ICF/MR may refuse to receive any person who has been ordered to be involuntarily admitted by a court order if appropriate programs and space are not available or the papers presented with the person at the ICF/MR do not comply with the provisions of this chapter or if it does not receive notification of the order of involuntary admission as required by this chapter.
- (3) After the cabinet has been so notified, the court may order the sheriff of the county to transport the person from the county in which the person is located to the ICF/MR designated by the cabinet. The actual traveling expenses of persons transporting the person to the institution shall be paid by the cabinet. Each female admitted to an ICF/MR shall be accompanied by a female attendant, unless accompanied by her mother, father, sister, brother, husband, daughter, or son.
- (4) In returning any person to the county from which that person is sent, the cost of returning the person shall be paid in the same manner, when necessary.
- (5) If a person is involuntarily admitted by a court order, the person shall be transported to the ICF/MR designated by the cabinet and accompanied by the following documents:
- (a) A copy of the petition for involuntary admission;
  - (b) The certificate of qualified mental retardation professionals;~~and~~
  - (c) ***A current physical examination that documents no serious medical issues;***
  - (d) ***The psychological examination or assessment that documents a Full Scale IQ in the moderate to severe range of mental retardation; and***
  - (e) The order of involuntary admission.

SECTION 6. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) ***As used in this section, "aging caregiver" means an individual age sixty (60) and older who provides care for an individual with mental retardation or other developmental disability.***
- (2) ***If state, federal, or other funds are available, the Kentucky Department for Mental Health and Mental Retardation shall, in cooperation with the Division of Aging Services and the Department for Medicaid Services, establish a centralized resource and referral center designed as a one-stop, seamless system to provide aging caregivers with information and assistance with choices and planning for long-term supports for individuals with mental retardation or developmental disability.***
- (3) ***The center created in subsection (2) of this section shall provide, but not be limited to, the following services:***
- (a) ***Comprehensive information on available programs and services, including but not limited to:***
    1. ***Residential services;***
    2. ***Employment training;***
    3. ***Supported employment;***
    4. ***Behavioral support;***
    5. ***Respite services;***
    6. ***Adult day health or adult day social services;***
    7. ***Support coordination;***
    8. ***Home or environmental modifications;***

9. *Community living services, including an attendant, and assistance with homemaking, shopping, and personal care;*
  10. *Support groups in the community;*
  11. *Psychiatric services;*
  12. *Consumer-directed options;*
  13. *Attorneys or legal services to assist with will preparation; and*
  14. *The impact of inheritance on government benefits and options including establishing a special needs trust;*
- (b) *Printed material and Internet-based information related to:*
1. *Options for future planning;*
  2. *Financial and estate planning;*
  3. *Wills and trusts; and*
  4. *Advance directives and funeral and burial arrangements; and*
- (c) *Referral to community resources.*
- (4) *The center created in subsection (2) of this section shall operate a toll-free number at least during regular business hours and shall publish information required in paragraph (a) of subsection (3) of this section and a description of services provided by the center on a cabinet Web site.*
  - (5) *The center created in subsection (2) of this section shall make the information listed in subsection (3) of this section available to the support broker and any representative of an individual who is participating in a Medicaid consumer directed option.*
  - (6) *The center shall use electronic information technology to track services provided and to follow-up with individuals served and provide additional information or referrals as needed.*
  - (7) *The department may contract with a private entity to provide the services required under subsections (2) and (3) of this section.*
  - (8) *The cabinet may provide services identified in subsection (3) of this section to individuals of any age who are caregivers of individuals with mental retardation or developmental disability.*
  - (9) *Prior to January 1, 2008, the department shall submit a report to the Interim Joint Committee on Health and Welfare that includes, but is not limited to, the following information:*
    - (a) *The number of individuals who contacted the center;*
    - (b) *A description of the categories of questions asked by individuals calling the center; and*
    - (c) *A summary of the services provided, including the community resources to which individuals were referred.*

**Approved April 21, 2006.**