

CHAPTER 154

(SB 91)

AN ACT relating to court-ordered outpatient mental health treatment and making an appropriation therefor.

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

➔Section 1. KRS 202A.261 is amended to read as follows:

No public or private hospital, other than a state-operated or contracted mental hospital or institution, shall be required to provide services under KRS 202A.008, 202A.011, 202A.028, 202A.041, 202A.051, 202A.071, *Sections 3 to 13 of this Act*, 202A.081, 202A.101, 202A.141, 202A.241, 202A.251, 202A.261, 202A.271, 202B.170, 202B.200, 387.540, 504.085, 600.020, 645.020, 645.120, and 645.280 unless the hospital agrees to provide the services. Any hospital shall make every reasonable attempt to cooperate with the implementation of KRS 202A.008, 202A.011, 202A.028, 202A.041, 202A.051, 202A.071, 202A.081, 202A.101, 202A.141, 202A.241, 202A.251, 202A.261, 202A.271, 202B.170, 202B.200, 387.540, 504.085, 600.020, 645.020, 645.120, and 645.280.

➔Section 2. KRS 202A.271 is amended to read as follows:

Each public or private hospital, other than a state-operated or contracted mental hospital or institution, which provides services under KRS 202A.008, 202A.011, 202A.028, 202A.041, 202A.051, 202A.071, *Sections 3 to 13 of this Act*, 202A.081, 202A.101, 202A.141, 202A.241, 202A.251, 202A.261, 202A.271, 202B.170, 202B.200, 387.540, 504.085, 600.020, 645.020, 645.120, and 645.280 shall be paid for the services at the same rates the hospital negotiates with the Department for Behavioral Health, Developmental and Intellectual Disabilities or the regional community program for mental health and for individuals with an intellectual disability.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

- (1) *Proceedings for court-ordered assisted outpatient treatment of a person shall be initiated by the filing of a verified petition for that purpose 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 health professional; peace officer; county attorney; Commonwealth's attorney; spouse, relative, friend, or guardian of the person concerning whom the petition is filed; or any other interested person.*
- (4) *The petition shall set forth:*
 - (a) *Petitioner's relationship to the respondent;*
 - (b) *Respondent's name, residence, and current location, if known;*
 - (c) *Petitioner's belief, including the factual basis therefor, that the respondent meets the criteria for court-ordered assisted outpatient treatment as set forth in Section 6 of this Act; and*
 - (d) *Whether, within five (5) days prior to the filing of the petition, the respondent has been examined by a qualified mental health professional to determine whether the respondent meets the criteria for court-ordered assisted outpatient treatment pursuant to Section 5 of this Act.*
- (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 health 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 court-ordered to assisted outpatient treatment, the court shall:*
 - (a) *Order the respondent to be examined without unnecessary delay by a qualified mental health professional to determine whether the respondent meets the criteria for court-ordered assisted outpatient treatment set forth in Section 5 of this Act, unless the court has already received the certified findings of such an examination conducted no earlier than five (5) days prior to the filing of the petition. The qualified mental health professional shall certify his or her findings within seventy-two (72) hours, excluding weekends and holidays; and*

(b) *Set a date for a hearing within six (6) days from the date of the examination under the provisions of this section, excluding weekends and holidays, to determine if the respondent should be court-ordered to assisted outpatient treatment.*

(7) *If the court finds there is no probable cause to believe the respondent should be court-ordered to assisted outpatient treatment, the proceedings against the respondent shall be dismissed.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

(1) *The court may order that the sheriff of the county or a peace officer transport the respondent to a hospital or site designated by the cabinet so that the respondent shall be examined without unnecessary delay by a qualified mental health professional. The sheriff or peace officer may authorize, upon agreement of a person authorized by the peace officer, the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the person to a hospital or site designated by the cabinet.*

(2) (a) *When the court is authorized to issue an order that the respondent be transported to a hospital or site designated by the cabinet for examination, the court may issue a summons.*

(b) *A summons so issued shall be directed to the respondent and shall command the respondent to appear at a time and place specified in the summons, where the respondent shall be examined by a qualified mental health professional.*

(c) *If a respondent who has been summoned fails to appear for the examination, the court may order that the sheriff of the county or a peace officer transport the respondent to a hospital or site designated by the cabinet for the purpose of an examination.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

No person shall be court-ordered to assisted outpatient mental health treatment unless the person:

(1) *Has been involuntarily hospitalized pursuant to KRS 202A.051(11) at least two (2) times in the past twelve (12) months;*

(2) *Is diagnosed with a serious mental illness;*

(3) *Is unlikely to adequately adhere to outpatient treatment on a voluntary basis based on a qualified mental health professional's:*

(a) *Clinical observation;*

(b) *Review of treatment history, including the person's prior history of repeated treatment nonadherence; and*

(c) *Identification of specific characteristics of the person's clinical condition described as anosognosia, or failure to recognize his or her diagnosis of serious mental illness; and*

(4) *Is in need of court-ordered assisted outpatient treatment as the least restrictive alternative mode of treatment presently available and appropriate.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

No later than the date of the hearing held pursuant to Section 3 of this Act, the qualified mental health professional who examined the respondent pursuant to Section 3 of this Act shall provide to the court and the respondent a proposed written treatment plan for the respondent for court-ordered assisted outpatient treatment, which shall have the goal of recovery. In developing a treatment plan, a qualified mental health professional shall:

(1) *Provide reasonable opportunities for the respondent to actively participate in the development of the treatment plan and any modifications thereafter, and involve any other persons whom the respondent requests to have participate;*

(2) *Follow any advanced directive for mental health treatment executed by the respondent; and*

(3) *Include in the treatment plan:*

(a) *A proactive crisis plan that includes access to emergency or crisis services twenty-four (24) hours a day and the contact information to access such crisis services; and*

- (b) *Evidence-based practices. As used in this paragraph, "evidence-based practices" means intervention programs, policies, procedures, and practices that have been rigorously tested; are proven by scientific research; have yielded consistent, replicable results; and have proven safe, beneficial, and effective for most people diagnosed with mental illness when implemented competently. Evidence-based practices may include but are not limited to psychotropic medications, psychosocial rehabilitation, recovery-oriented therapies, assertive community treatment, supported employment, supported housing, and peer support services.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

- (1) *At a hearing and at all stages of a proceeding for court-ordered assisted outpatient treatment, the respondent shall be:*
- (a) *Represented by counsel;*
 - (b) *Accompanied by a peer support specialist or other person in a support relationship, if requested by the respondent; and*
 - (c) *Afforded an opportunity to present evidence, call witnesses on his or her behalf, and cross-examine adverse witnesses.*
- (2) *If a respondent does not appear at the hearing, and appropriate attempts to elicit the respondent's appearance have failed, the court may conduct the hearing in the respondent's absence.*
- (3) *A qualified mental health professional who recommends court-ordered assisted outpatient treatment for the respondent shall:*
- (a) *Testify at the hearing, in person or via electronic means;*
 - (b) *State the facts and clinical determinations which support the allegation that the respondent meets the criteria stated in Section 5 of this Act; and*
 - (c) *Testify in support of the treatment plan provided pursuant to Section 6 of this Act, and for each category of proposed evidence-based treatment, he or she shall state the specific recommendation and the clinical basis for his or her belief that such treatment is essential to the maintenance of the respondent's health or safety.*
- (4) *If after hearing all relevant evidence, the court does not find by clear and convincing evidence that the respondent meets the criteria stated in Section 5 of this Act, the court shall deny the petition and the proceedings against the respondent shall be dismissed.*
- (5) *If after hearing all relevant evidence, the court finds by clear and convincing evidence that the respondent meets the criteria stated in Section 5 of this Act, the court may order the respondent to receive assisted outpatient treatment for a period of time not to exceed three hundred sixty (360) days. The court's order shall incorporate a treatment plan, which shall be limited in scope to the recommendations included in the treatment plan provided by the qualified mental health professional pursuant to Section 6 of this Act.*
- (6) *The court shall report every order for assisted outpatient treatment issued under this section to the Kentucky Commission on Services and Supports for Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses established pursuant to KRS 210.502.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

If the court orders assisted outpatient mental health treatment pursuant to Section 7 of this Act, the court shall appoint an outpatient provider agency recognized by the cabinet which shall assemble a multi-disciplinary team. The multi-disciplinary team shall regularly monitor the person's adherence to the conditions of the order and regularly report this information to the court that ordered the person's release. Reports may be provided in written format, in person, or via electronic means, at the court's discretion.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

A person's substantial failure to comply with a court order for assisted outpatient treatment may constitute presumptive grounds for an authorized staff physician to order a seventy-two (72) hour emergency admission pursuant to KRS 202A.031. Failure to comply with an order for assisted outpatient treatment shall not be grounds to find the person in contempt of court.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

- (1) *At any time during the period of an order for court-ordered assisted outpatient treatment, the person subject to the order may move the court to stay, vacate, or modify the order.*
- (2) (a) *As used in this subsection, "material change" means an addition or deletion of a category of services to or from a treatment plan.*
- (b) *If a treating qualified mental health professional proposes a material change to the court-ordered treatment plan, he or she shall apply to the court for approval of the proposed change. Not later than five (5) days after receiving the application, excluding weekends and holidays, the court shall hold a hearing. If the person under order informs the court that he or she agrees to the proposed material change, the court may approve such change without a hearing.*
- (3) *Within thirty (30) days of the expiration of an order for assisted outpatient treatment, the original petitioner may petition the court for an additional period of court-ordered assisted outpatient treatment. The procedures for the consideration of the petition shall be identical to the procedures provided in Sections 3 to 13 of this Act, except that the parties may mutually agree to waive the requirement of a new hearing. The person under order shall be represented by an attorney in responding to the petition for an additional period of court-ordered assisted outpatient treatment.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

For persons who are Medicaid-eligible, assisted outpatient mental health treatment services identified under Sections 3 to 13 of this Act shall be authorized by the Department for Medicaid Services and its contractors as Medicaid-eligible services and shall be subject to the same medical necessity criteria and reimbursement methodology as for all other covered behavioral health services.

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

Implementation of Sections 3 to 13 of this Act is contingent upon adequate funding by any unit of state or local government or divisions thereof, special purpose governmental entity, or any other entity able to utilize funds for the purposes set forth in Sections 3 to 13 of this Act. Funding may be provided through the appropriation of federal, state, or local resources or from donations, grants, gifts, or pledges from private resources.

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

Sections 3 to 13 of this Act may be cited as Tim's Law.

Vetoed March 27, 2017; became law without Governor's signature when veto overridden March 29, 2017.