

**CHAPTER 175****( HB 310 )**

AN ACT relating to crimes and punishments and declaring an emergency.

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

➔Section 1. KRS 439.340 is amended to read as follows:

- (1) The board may release on parole persons confined in any adult state penal or correctional institution of Kentucky or sentenced felons incarcerated in county jails eligible for parole. All paroles shall issue upon order of the board duly adopted. As soon as practicable after his or her admission to an adult state penal or correctional institution or county jail if he or she is a sentenced felon, and at such intervals thereafter as it may determine, the Department of Corrections shall obtain all pertinent information regarding each prisoner, except those not eligible for parole. The information shall include the results of his or her most recent risk and needs assessment, his or her criminal record, his or her conduct, employment, and the reports of physical and mental examinations that have been made. The Department of Corrections shall furnish the circumstances of his or her offense, the results of his or her most recent risk and needs assessment, and his or her previous social history to the board. The Department of Corrections shall prepare a report on any information it obtains. It shall be the duty of the Department of Corrections to supplement this report with any material the board may request and submit the report to the board.
- (2) Before granting the parole of any prisoner, the board shall consider the pertinent information regarding the prisoner, including the results of his or her most recent risk and needs assessment, and shall have him or her appear before it for interview and hearing. The board in its discretion may hold interviews and hearings for prisoners convicted of Class C felonies not included within the definition of "violent offender" in KRS 439.3401 and Class D felonies *not included within the definition of "sex crime" in KRS 17.500*. The board in its discretion may request the parole board of another state confining prisoners pursuant to KRS 196.610 to interview eligible prisoners and make a parole recommendation to the board. A parole shall be ordered only for the best interest of society and not as an award of clemency, and it shall not be considered a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his or her proper employment or for his or her maintenance and care, and when the board believes he or she is able and willing to fulfill the obligations of a law abiding citizen. Notwithstanding any statute to the contrary, including KRS 440.330, when a prisoner is otherwise eligible for parole and the board has recommended parole for that prisoner for the reasons set forth in this subsection, the board may grant parole to any prisoner wanted as a fugitive by any other jurisdiction, and the prisoner shall be released to the detainer from that jurisdiction. Such parole shall not constitute a relinquishment of jurisdiction over the prisoner, and the board in all cases expressly reserves the right to return the prisoner to confinement in a correctional institution of the Commonwealth if the prisoner violates the terms of his or her parole.
- (3)
  - (a) A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years who is confined to a state penal institution or county jail shall have his or her case reviewed by the Parole Board after serving fifteen percent (15%) or two (2) months of the original sentence, whichever is longer.
  - (b) Except as provided in this section, the board shall adopt administrative regulations with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings and all other matters that come before it, or conditions to be imposed upon parolees. Regulations governing the eligibility of prisoners for parole shall be in accordance with professionally accepted ideas of correction and reform and may utilize in part objective, performance-based criteria and risk and needs assessment information; however, nothing herein contained shall preclude the board from utilizing its present regulations in conjunction with other factors involved that would relate to the inmate's needs and the safety of the public.
- (4) The board shall insure that all sentenced felons who have longer than ninety (90) days to serve in state penal institutions, halfway houses, reentry centers, and county jails are considered for parole not less than sixty (60) days prior to their parole eligibility date, and the Department of Corrections shall provide the necessary assistance and information to the board in order for it to conduct timely parole reviews.

- (5) In addition to or in conjunction with each hearing conducted under subsection (2) of this section for any prisoner convicted of a Class A, B, or C felony *or a Class D felony included within the definition of "sex crime" in KRS 17.500* and prior to the granting of a parole to any such prisoner, the parole board shall conduct a hearing of which the following persons shall receive not less than forty-five (45) nor more than ninety (90) days' notice: the Commonwealth's attorney who shall notify the sheriff of every county and the chief of police of every city and county in which the prisoner committed any Class A, B, or C felony *or a Class D felony included within the definition of "sex crime" in KRS 17.500* for which he or she is imprisoned, and all identified victims of the crimes or the next of kin of any victim who is deceased. Notice to the Commonwealth's attorney shall be by mail, fax, or electronic means at the discretion of the board, and shall be in a manner that ensures receipt at the Commonwealth attorney's business office. Notices received by chiefs of police and sheriffs shall be posted in a conspicuous location where police employed by the department may see it. Notices shall be posted in a manner and at a time that will allow officers to make comment thereon to the Parole Board. Notice to victims or their next of kin shall be made, for prisoners incarcerated prior to July 15, 1986, by mail, fax, or electronic means at the discretion of the board, and shall be in a manner that ensures receipt by the Commonwealth's attorney, who shall forward the notice promptly to the victims or their next of kin at their last known address. For prisoners incarcerated on or after July 15, 1986, notice to the victims or their next of kin shall be by mail from the Parole Board to their last known address as provided by the Commonwealth's attorney to the Parole Board at the time of incarceration of the prisoner. ***For prisoners incarcerated prior to the effective date of this Act for a Class D felony included within the definition of "sex crime" in KRS 17.500, notice to the victims or their next of kin shall be in a manner that ensures receipt by the Commonwealth's attorney, who shall forward the notice promptly to the victims or their next of kin at their last known address. For prisoners incarcerated on or after the effective date of this Act for a Class D felony included within the definition of "sex crime" in KRS 17.500, notice to the victims or their next of kin shall be by mail from the Parole Board to their last known address as provided by the Commonwealth's attorney to the Parole Board at the time of incarceration of the prisoner.*** Notice to the victim or the next of kin of subsequent considerations for parole after the initial consideration shall not be sent if the victim or the next of kin gives notice to the board that he or she no longer wants to receive such notices. The notice shall include the time, date, and place of the hearing provided for in this subsection, and the name and address of a person to write if the recipient of the notice desires to attend the hearing or to submit written comments.
- (6) Persons receiving notice as provided for in subsection (5) of this section may submit comments, in person or in writing, to the board upon all issues relating to the parole of the prisoner. The board shall read and consider all comments prior to making its parole decision, if they are received by the board not less than seven (7) days before the date for the hearing. The board shall retain all comments in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decisions affecting the prisoner. In addition to officers listed in subsection (5) of this section, the crime victims or the next of kin of any victim who is deceased or who is disabled and cannot attend the hearing or the parent or legal guardian of any victim who is a minor may attend the hearing provided for in subsection (5) of this section and present oral and written comments upon all issues relating to the parole of the prisoner, if they have advised the board, in writing received by the board not less than seven (7) days prior to the date set for the hearing, of their intention to attend the hearing. The board shall receive and consider all comments, shall make a record of them which it shall retain in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decision affecting the prisoner. Persons appearing before the Parole Board pursuant to this subsection may elect to make their presentations outside of the presence of the prisoner.
- (7) Victims of Class D felonies *not included within the definition of "sex crime" in KRS 17.500* may submit comments in person or in writing to the board upon all issues relating to the parole of a prisoner.
- (8) Any hearing provided for in subsections (5), (6), and (7) of this section shall be open to the public unless the persons having a right to appear before the board as specified in those subsections request closure of hearing for reasons of personal safety, in which event the hearing shall be closed. The time, date, and location of closed hearings shall not be disclosed to the public.
- (9) Except as specifically set forth in this section, nothing in this section shall be deemed to expand or abridge any existing rights of persons to contact and communicate with the Parole Board or any of its members, agents, or employees.
- (10) The unintentional failure by the Parole Board, sheriff, chief of police, or any of its members, agents, or employees or by a Commonwealth's attorney or any of his or her agents or employees to comply with any of the provisions of subsections (5), (6), and (8) of this section shall not affect the validity of any parole decision or give rise to any right or cause of action by the crime victim, the prisoner, or any other person.

- (11) No eligible sexual offender within the meaning of KRS 197.400 to 197.440 shall be granted parole unless he or she has successfully completed the Sexual Offender Treatment Program.
- (12) Any prisoner who is granted parole after completion of the Sexual Offender Treatment Program shall be required, as a condition of his or her parole, to participate in regular treatment in a mental health program approved or operated by the Department of Corrections.
- (13) When the board grants parole contingent upon completion of a program, the commissioner, or his or her designee, shall determine the most appropriate placement in a program operated by the department or a residential or nonresidential program within the community approved by the department. If the department releases a parolee to a nonresidential program, the department shall release the parolee only if he or she will have appropriate community housing pursuant to KRS 439.3408.
- (14) If the parole board does not grant parole to a prisoner, the maximum deferment for a prisoner convicted of a non-violent, non-sexual Class C or Class D felony shall be twenty-four (24) months. For all other prisoners who are eligible for parole:
  - (a) No parole deferment greater than five (5) years shall be ordered unless approved by a majority vote of the full board; and
  - (b) No deferment shall exceed ten (10) years, except for life sentences.
- (15) When an order for parole is issued, it shall recite the conditions thereof.

➔Section 2. KRS 510.037 is amended to read as follows:

The entering of a judgment of conviction for any degree of rape, sodomy, or sexual abuse under this chapter, *or for a criminal attempt, conspiracy, facilitation, or solicitation to commit any degree of rape, sodomy, or sexual abuse*, shall operate as an application for an interpersonal protective order issued under KRS Chapter 456, unless the victim requests otherwise. Notwithstanding the provisions of KRS Chapter 456:

- (1) An interpersonal protective order requested under this subsection may be issued by the court that entered the judgment of conviction;
- (2) The judgment of conviction shall constitute sufficient cause for the entry of the order without the necessity of further proof being taken; and
- (3) The order may be effective for up to ten (10) years, with further renewals in increments of up to ten (10) years.

➔Section 3. KRS 456.010 is amended to read as follows:

As used in this chapter:

- (1) "Dating relationship" means a relationship between individuals who have or have had a relationship of a romantic or intimate nature. It does not include a casual acquaintanceship or ordinary fraternization in a business or social context. The following factors may be considered in addition to any other relevant factors in determining whether the relationship is or was of a romantic or intimate nature:
  - (a) Declarations of romantic interest;
  - (b) The relationship was characterized by the expectation of affection;
  - (c) Attendance at social outings together as a couple;
  - (d) The frequency and type of interaction between the persons, including whether the persons have been involved together over time and on a continuous basis during the course of the relationship;
  - (e) The length and recency of the relationship; and
  - (f) Other indications of a substantial connection that would lead a reasonable person to understand that a dating relationship existed;
- (2) "Dating violence and abuse" means physical injury, serious physical injury, stalking, sexual assault, strangulation, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault occurring between persons who are or have been in a dating relationship;
- (3) "Foreign protective order" means any judgment, decree, or order of protection which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 which was not issued on the basis of domestic violence and abuse;

- (4) "Global positioning monitoring system" means a system that electronically determines a person's location through a device worn by the person which does not invade his or her bodily integrity and which transmits the person's latitude and longitude data to a monitoring entity;
- (5) "Order of protection" means any interpersonal protective order, including those issued on a temporary basis, and includes a foreign protective order;
- (6) "Sexual assault" refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under KRS Chapter 510 *or a criminal attempt, conspiracy, facilitation, or solicitation to commit any degree of rape, sodomy, or sexual abuse*, or incest under KRS 530.020;
- (7) "Stalking" refers to conduct prohibited as stalking under KRS 508.140 or 508.150, *or a criminal attempt, conspiracy, facilitation, or solicitation to commit the crime of stalking*;
- (8) "Strangulation" refers to conduct prohibited by KRS 508.170 and 508.175, *or a criminal attempt, conspiracy, facilitation, or solicitation to commit the crime of strangulation*; and
- (9) "Substantial violation" means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection.

➔Section 4. KRS 403.720 is amended to read as follows:

As used in KRS 403.715 to 403.785:

- (1) "Domestic violence and abuse" means physical injury, serious physical injury, stalking, sexual abuse, strangulation, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, strangulation, or assault between family members or members of an unmarried couple;
- (2) "Family member" means a spouse, including a former spouse, a grandparent, a grandchild, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim;
- (3) "Foreign protective order" means any judgment, decree, or order of protection which is entitled to full faith and credit pursuant to 18 U.S.C. sec. 2265 that was issued on the basis of domestic violence and abuse;
- (4) "Global positioning monitoring system" means a system that electronically determines a person's location through a device worn by the person which does not invade his or her bodily integrity and which transmits the person's latitude and longitude data to a monitoring entity;
- (5) "Member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together;
- (6) "Order of protection" means an emergency protective order or a domestic violence order and includes a foreign protective order;
- (7) "Strangulation" refers to conduct prohibited by KRS 508.170 and 508.175, *or a criminal attempt, conspiracy, facilitation, or solicitation to commit the crime of strangulation*; and
- (8) "Substantial violation" means criminal conduct which involves actual or threatened harm to the person, family, or property of an individual protected by an order of protection.

➔Section 5. KRS 504.110 is amended to read as follows:

- (1) If the court finds the defendant incompetent to stand trial but there is a substantial probability *the defendant*~~he~~ will attain competency in the foreseeable future, it shall commit the defendant to a treatment facility or a forensic psychiatric facility and order *the defendant*~~him~~ to submit to treatment for sixty (60) days or until the psychologist or psychiatrist treating him *or her* finds *the defendant*~~him~~ competent *to stand trial*, whichever occurs first, except that if the defendant is charged with a felony, he *or she* shall be committed to a forensic psychiatric facility unless the secretary of the Cabinet for Health and Family Services or the secretary's designee determines that the defendant shall be treated in another Cabinet for Health and Family Services facility. Within ten (10) days of that time, the court shall hold another hearing to determine whether or not the defendant is competent to stand trial.
- (2) If the court finds the defendant incompetent to stand trial *and*~~but~~ there is no substantial probability he *or she* will attain competency in the foreseeable future:
  - (a) *The Commonwealth's attorney's office serving the county of criminal prosecution shall immediately petition the Circuit Court that found the defendant incompetent to stand trial or, if the finding was by*

*a District Court, the Circuit Court in the county of criminal prosecution, to initiate an involuntary commitment proceeding under Sections 6 to 10 of this Act if the defendant is charged with 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 or 510.070; or*

- (b) *The court~~, it~~ shall conduct an involuntary hospitalization proceeding under KRS Chapter 202A or 202B if the defendant is charged with an offense not listed in paragraph (a) of this subsection.*
- (3) *A defendant who is the subject of an involuntary commitment proceeding under Sections 6 to 10 of this Act shall be committed to a forensic psychiatric facility unless the secretary of the Cabinet for Health and Family Services or the secretary's designee determines that the defendant shall be treated in another Cabinet for Health and Family Services facility, during the pendency of the proceeding.*
- ~~(4)~~(3) If the court finds the defendant competent to stand trial, the court shall continue the proceedings against the defendant.

➔SECTION 6. KRS CHAPTER 202C IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

*As used in this chapter, unless the context otherwise requires:*

- (1) *"Cabinet" means the Kentucky Cabinet for Health and Family Services;*
- (2) *"Commitment hearing" means the hearing under Section 9 of this Act to determine if a respondent meets the criteria for involuntary commitment under this chapter;*
- (3) *"Danger" means substantial physical harm or threat of substantial physical harm upon self or others;*
- (4) *"Evidentiary hearing" means the hearing under Section 8 of this Act to determine if the defendant committed the qualifying offense for which he or she was charged by a preponderance of the evidence;*
- (5) *"Forensic psychiatric facility" means a mental institution or facility, or part thereof, designated by the secretary for the purpose and function of providing inpatient evaluation, care, and treatment for mentally ill persons or individuals with an intellectual disability who have been charged with or convicted of a felony;*
- (6) *"Hospital" means:*
  - (a) *A state mental hospital or institution or other licensed public or private hospital, institution, health-care facility, or part thereof, approved by the Kentucky Cabinet for Health and Family Services as equipped to provide full-time residential care and treatment for mentally ill persons or individuals with an intellectual disability; or*
  - (b) *A hospital, institution, or health-care facility of the government of the United States equipped to provide residential care and treatment for mentally ill persons or individuals with an intellectual disability;*
- (7) *"Individual with an intellectual disability" means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period;*
- (8) *"Judge" means the judge who found the respondent incompetent to stand trial in the criminal proceeding from which the petition for involuntary commitment arose;*
- (9) *"Less restrictive alternative mode of treatment" means a treatment given outside of a forensic psychiatric facility which would provide a respondent with appropriate treatment or care consistent with accepted professional practice standards and protect the respondent's safety and the safety of others;*
- (10) *"Mentally ill person" means a person with substantially impaired capacity to use self-control, judgment, or discretion in the conduct of the person's affairs and social relations, associated with maladaptive behavior or recognized emotional symptoms where impaired capacity, maladaptive behavior, or emotional symptoms can be related to physiological, psychological, or social factors;*
- (11) *"Qualified mental health professional" means:*
  - (a) *A physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;*

- (b) *A psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the practice of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;*
- (c) *A psychologist with the health service provider designation, a psychological practitioner, a certified psychologist, or a psychological associate, licensed under the provisions of KRS Chapter 319;*
- (d) *A licensed registered nurse with a master's degree in psychiatric nursing from an accredited institution and two (2) years of clinical experience with mentally ill persons, or a licensed registered nurse, with a bachelor's degree in nursing from an accredited institution, who is certified as a psychiatric and mental health nurse by the American Nurses Association and who has three (3) years of inpatient or outpatient clinical experience in psychiatric nursing and is currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability;*
- (e) *A licensed clinical social worker licensed under the provisions of KRS 335.100, or a certified social worker licensed under the provisions of KRS 335.080 with three (3) years of inpatient or outpatient clinical experience in psychiatric social work and currently employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability;*
- (f) *A marriage and family therapist licensed under the provisions of KRS 335.300 to 335.399 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, a psychiatric unit of a general hospital, a private agency or company engaged in providing mental health services, or a regional community program for mental health and individuals with an intellectual disability;*
- (g) *A professional counselor credentialed under the provisions of KRS Chapter 335.500 to 335.599 with three (3) years of inpatient or outpatient clinical experience in psychiatric mental health practice and currently employed by a hospital or forensic facility licensed by the Commonwealth, a psychiatric unit of a general hospital, a private agency or company engaged in providing mental health services, or a regional community program for mental health and individuals with an intellectual disability; or*
- (h) *A physician assistant licensed under KRS 311.840 to 311.862, who meets one (1) of the following requirements:*
  - 1. *Provides documentation that he or she has completed a psychiatric residency program for physician assistants;*
  - 2. *Has completed at least one thousand (1,000) hours of clinical experience under a supervising physician, as defined by KRS 311.840, who is a psychiatrist and is certified or eligible for certification by the American Board of Psychiatry and Neurology, Inc.;*
  - 3. *Holds a master's degree from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor agencies, is practicing under a supervising physician as defined by KRS 311.840, and:*
    - a. *Has two (2) years of clinical experience in the assessment, evaluation, and treatment of mental disorders; or*
    - b. *Has been employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability for at least two (2) years; or*
  - 4. *Holds a bachelor's degree, possesses a current physician assistant certificate issued by the board prior to July 15, 2002, is practicing under a supervising physician as defined by KRS 311.840, and:*
    - a. *Has three (3) years of clinical experience in the assessment, evaluation, and treatment of mental disorders; or*

- b. *Has been employed by a hospital or forensic psychiatric facility licensed by the Commonwealth or a psychiatric unit of a general hospital or a private agency or company engaged in the provision of mental health services or a regional community program for mental health and individuals with an intellectual disability for at least three (3) years;*
- (12) *"Qualifying offense" means 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 or 510.070;*
- (13) *"Respondent" means a person who was a criminal defendant found incompetent to stand trial who is or was the subject of a petition for involuntary commitment filed under KRS Chapter 504;*
- (14) *"Review hearing" means any hearing conducted to determine if a respondent continues to meet the criteria for involuntary commitment after the initial order for involuntary commitment has been issued under this chapter; and*
- (15) *"Secretary" means the secretary of the Cabinet for Health and Family Services.*

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

- (1) *When a defendant who is charged with a qualifying offense has been found, after a hearing under KRS Chapter 504, to be incompetent to stand trial with no substantial probability that the defendant will attain competency within three hundred sixty (360) days, the Commonwealth's attorney's office serving the county of criminal prosecution shall immediately petition the Circuit Court that found the defendant incompetent to stand trial or, if the finding was by a District Court, the Circuit Court in the county of the criminal prosecution, for an involuntary commitment proceeding, to include an evidentiary hearing and a commitment hearing, if applicable, under this chapter.*
- (2) *Upon the filing of the petition, the court shall assign a guardian ad litem to represent the needs and best interest of the respondent. The guardian ad litem shall be a full and active participant in all proceedings other than the evidentiary hearing under Section 8 of this Act and shall independently investigate, assess, and advocate for the defendant's best interest. The guardian ad litem is not a replacement for the defense attorney. If the defendant has retained or been appointed a defense attorney in the criminal case, that attorney may continue to represent the defendant in proceedings under this chapter. If, at any time during the pendency of proceedings under this chapter, the defendant is not represented by an attorney, the court shall appoint counsel for the defendant, without a showing of indigency, to be provided by the Department of Public Advocacy or its designee.*
- (3) *The Circuit Court shall have exclusive jurisdiction over all proceedings under this chapter.*

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

- (1) *An adversarial evidentiary hearing on the record shall be held within twenty (20) days, excluding weekends and holidays, of the filing of a petition pursuant to Section 7 of this Act. 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. No evidence may be presented at the hearing that has not been disclosed through discovery.*
- (2) *The 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.*
- (3) *The purpose of the evidentiary hearing shall be to determine whether sufficient evidence exists to support a finding that the respondent is guilty of the charged crime against him or her. 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. 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 guilty of the charged crime against him or her, the court shall immediately schedule a commitment hearing under this chapter within twenty (20) days, excluding weekends and holidays.*

(b) *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, within 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 Section 10 of this Act.*

(6) *If the court determines that insufficient evidence has been presented to support a finding that the respondent is guilty of the charged crime against him or her, the court shall order the immediate release of the respondent.*

(7) *No evidence or statement submitted by the respondent at the evidentiary hearing shall be admissible in any criminal prosecution or civil litigation.*

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

(1) *A commitment hearing shall be held within twenty (20) days, excluding weekends and holidays, after the court finds that the evidence presented in an evidentiary hearing pursuant to Section 8 of this Act supports a finding that the respondent is guilty of the charged crime against him or her by a preponderance of the evidence.*

(2) *The commitment hearing may be conducted in an informal manner, consistent with orderly procedures, and in a physical setting not likely to have a harmful effect on the mental or physical health of the respondent. The hearing may be held by the court in chambers, at a forensic psychiatric facility, or other suitable place.*

(3) *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 meets the criteria for involuntary commitment under Section 10 of this Act. The respondent and the respondent's guardian ad litem shall be afforded an opportunity to testify, to present evidence, and to cross-examine any witnesses.*

(4) *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.*

(5) *The respondent's right to the commitment hearing shall not be waived.*

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

(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 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; and*

(d) *A less restrictive alternative mode of treatment would endanger the safety of the respondent or others.*

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

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

(1) (a) *A review hearing to determine if a respondent involuntarily committed under this chapter should remain in a forensic psychiatric facility shall be conducted by the court that issued the initial order according to the provisions of subsection (2) of this section; and*

(b) *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 Section 10 of this Act 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.*



- (2) *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 ninety (90) days and not later than one hundred twenty (120) days;*
  - (b) *For the first two (2) years after the initial order of commitment, standard review hearings shall be conducted not less than one hundred eighty (180) days and not more than two hundred ten (210) days from the most recent review;*
  - (c) *Beginning two (2) years after the initial order of commitment, a standard review hearing shall be conducted not more than three hundred sixty-five (365) days from the most recent review hearing; and*
  - (d) *A heightened review hearing shall be conducted not more than five (5) years from the initial order of commitment and, thereafter, not more than five (5) years from the most recent heightened review hearing.*
- (3) *Prior to each standard review hearing, 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, within seven (7) days prior to the hearing, excluding weekends and holidays, certify to the court their findings as to whether the respondent meets the criteria for involuntarily commitment under Section 10 of this Act.*
- (4) *A standard review hearing may be conducted in an informal manner, consistent with orderly procedures, and in a physical setting not likely to have a harmful effect on the mental or physical health of the respondent. The hearing may be held by the court in chambers, or remotely from a forensic psychiatric facility, or other suitable place. The respondent shall be present in person or remotely for all review hearings, unless presence is waived by the respondent through counsel.*
- (5) *The Commonwealth's attorney's office serving the county of criminal prosecution which led to 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 Section 10 of this Act. The respondent and the respondent's guardian ad litem shall be afforded an opportunity to present evidence, and to cross-examine any witnesses.*
- (6) *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 a 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.*
- (7) *The respondent's right to this hearing shall not be waived.*
- (8) *At the conclusion of a standard review hearing, the court shall make written findings of fact concerning whether the criteria for involuntary commitment under Section 10 of this Act 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.*
- (9) *During a heightened review hearing, the procedures of a standard review hearing shall apply. Additionally, the qualified mental health professionals who evaluated the respondent in preparation for the hearing shall be required to give live testimony and answer questions before the court. The respondent shall be physically present in the courtroom for the hearing. If the respondent is unable to attend for any reason, the hearing shall be rescheduled to a time, place, and manner in which the respondent is able to attend.*

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

*In a hearing under Sections 8, 9, and 11 of this Act, the court may exclude all persons not necessary for the conduct of the hearing.*

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

*A qualified mental health professional retained by the respondent shall be permitted to witness and participate in any examination of the respondent under this chapter.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

*In proceedings under this chapter, there shall be no privilege as to any relevant communications between qualified mental health professionals. Qualified mental health professionals may disclose communications relating to diagnosis and treatment of the patient's mental condition.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

- (1) *The court records of a respondent made in all proceedings under this chapter are hereby declared to be confidential and shall not be open to the general public for inspection.*
- (2) *Any person seeking information contained in the court files or the court records of proceedings involving respondents under this chapter may file a written motion in the case setting out why the information is needed. A Circuit Judge may issue an order to disclose the information sought if he or she finds that the order is appropriate under the circumstances and if he or she finds it is in the best interest of the respondent or of the public to have such information disclosed.*

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

*At any time, and without notice, a respondent detained at a forensic psychiatric facility, or a relative, friend, guardian, representative, or attorney on behalf of such person, may petition for a writ of habeas corpus to question the cause and legality of the detention and request that the court issue a writ for release.*

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

- (1) *The court which orders any respondent transferred to a forensic psychiatric facility under subsection (3) of Section 5 or Section 10 of this Act, shall at once notify the receiving hospital or psychiatric facility that such order has been made, advising of the sex and condition of the respondent and any other pertinent information.*
- (2) *After the forensic psychiatric facility has been so notified, the court shall order the sheriff of the county or other peace officer to transport the respondent within forty-eight (48) hours, excluding weekends and holidays, from the county in which the respondent is located to the forensic psychiatric facility designated by the cabinet. The sheriff or other peace officer may, upon agreement of a person authorized by the peace officer, authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service designated by the cabinet to transport the respondent to the forensic psychiatric facility.*
- (3) *Any respondent released from a forensic psychiatric facility under Sections 8 or 11 of this Act shall be transported to the respondent's county of discharge by a sheriff or other peace officer, by an ambulance service designated by the cabinet, or by other appropriate means of transportation which is consistent with the treatment plan of that respondent. The cost of transporting the respondent to the respondent's county of discharge when performed by a peace officer, ambulance service, or other private agency on contract with the cabinet shall be paid by the cabinet in accordance with an administrative regulation issued by the cabinet pursuant to KRS Chapter 13A.*

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

*Forensic psychiatric facilities ordered to receive an involuntarily committed respondent shall have standing to petition the Circuit Court for any necessary clarification or modification of orders or judgments entered in proceedings under this chapter and to appeal from final judgments or orders entered in proceedings which have not complied with the provisions of this chapter. A copy shall be sent to the involuntarily committed respondent, the respondent's guardian ad litem, and the respondent's attorney of record, of whatever pleadings are filed by the hospital.*

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

*A respondent involuntarily committed under this chapter shall have the following rights as a patient:*

- (1) *The right to be adequately informed as to his or her individual treatment program;*
- (2) *The right to assist in the planning of his or her treatment program;*
- (3) *The right to refuse treatment subject to the provisions of Section 20 of this Act;*
- (4) *The right to maintain, keep, and use personal possessions and money;*
- (5) *The right to receive visitors;*
- (6) *The right to receive payment for work performed on behalf of the forensic psychiatric facility;*
- (7) *The right to refuse intrusive treatment subject to the provisions of Section 20 of this Act;*

- (8) *The right to be free from unreasonable use of seclusion and restraint;*
- (9) *The right to seek relief from participating in his or her treatment plan; and*
- (10) *The right to the assistance of counsel to uphold these rights and all rights under this chapter.*

➔SECTION 20. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

- (1) *Every forensic psychiatric facility caring for respondents involuntarily committed under this chapter shall have a review committee of three (3) qualified mental health professionals appointed by the facility director. This review committee shall have the authority to review the appropriateness of a respondent's individual treatment plan.*
- (2) *Upon the refusal of a respondent to participate in any or all aspects of his or her treatment plan, the review committee shall examine the appropriateness of the respondent's individual treatment plan. Within three (3) days of the refusal, the review committee shall meet with the respondent and his or her counsel, guardian ad litem, or other representative to discuss its recommendations.*
- (3) *If the respondent still refuses to participate in any or all aspects of his or her individual treatment plan, the forensic psychiatric facility may petition the Circuit Court for a de novo determination of the appropriateness of the proposed treatment. Within seven (7) days, excluding weekends and holidays, the court shall conduct a hearing, consistent with the respondent's rights to due process of law, and shall utilize the following factors in reaching its determination:*
  - (a) *Whether the treatment is necessary to protect the respondent or others from harm;*
  - (b) *Whether the respondent is incapable of giving informed consent to the proposed treatment;*
  - (c) *Whether any less restrictive alternative mode of treatment exists; and*
  - (d) *Whether the proposed treatment carries any risk of permanent side effects.*
- (4) *Upon the completion of the hearing, the court shall enter an appropriate judgment.*

➔SECTION 21. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

*This chapter shall not apply to persons under eighteen (18) years of age unless specifically authorized by the Kentucky Unified Juvenile Code.*

➔SECTION 22. A NEW SECTION OF KRS CHAPTER 202C IS CREATED TO READ AS FOLLOWS:

*This cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A in order to carry out the provisions of this chapter.*

➔Section 23. KRS 31.110 is amended to read as follows:

- (1) A needy person who is being detained by a law enforcement officer, on suspicion of having committed, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, or who is accused of having committed a public or status offense or who has been committed to the Department of Juvenile Justice or Cabinet for Health and Family Services for having committed a public or status offense as those are defined by KRS 610.010(1), 610.010(2)(a), (b), (c), or 630.020(2) is entitled:
  - (a) To be represented by an attorney to the same extent as a person having his or her own counsel is so entitled; and
  - (b) Except as provided in subsection (2)(c) of this section, to be provided with the necessary services and facilities of representation, including investigation and other preparation. The courts in which the defendant is tried shall waive all costs.
- (2) A needy person who is entitled to be represented by an attorney under subsection (1) of this section is entitled:
  - (a) To be counseled and defended at all stages of the matter beginning with the earliest time when a person providing his or her own counsel would be entitled to be represented by an attorney and including revocation of probation or parole;
  - (b) To be represented in any appeal; and
  - (c) To be represented in any other post-conviction, or, if a minor under the age of eighteen (18), post-disposition proceeding, including any appeal from a post-conviction or post-disposition action.

However, if the department and the court of competent jurisdiction determines that it is not a proceeding that a reasonable person with adequate means would be willing to bring at his or her own expense, there shall be no further right to be represented by counsel under the provisions of this chapter. In cases involving a minor under the age of eighteen (18), prior to making a determination on whether or not a post-disposition action is a proceeding that a reasonable person with adequate means would be willing to bring at his or her own expense, an attorney with the department shall be granted access to the court file of the minor:

1. Without the requirement of a formal court order in which the attorney has provided a release signed by the minor or the minor's legal guardian authorizing the use of the records; and
  2. Notwithstanding any other statute prohibiting the disclosure of a juvenile court file.
- (3) A needy person's right to a benefit under subsection (1) or (2) of this section is not affected by his or her having provided a similar benefit at his or her own expense, or by he or she having waived it, at an earlier stage.
- (4) A person, whether a needy person or not, who is a minor under the age of eighteen (18) and who is in the custody of the Department of Juvenile Justice and is residing in a residential treatment center or detention center is entitled to be represented on a legal claim related to his or her confinement involving violations of federal or state statutory rights or constitutional rights. Prior to representation, an attorney with the department shall be granted access to the court file of the minor and residential treatment center or detention center records pertaining to the juvenile:
- (a) Without entering an appearance as an attorney of record; and
  - (b) Notwithstanding any other statute prohibiting the disclosure of a juvenile's record, including KRS 15A.0651, 610.320, 610.340, or 610.345.
- (5) ***A person, whether a needy person or not, who is subject to a proceeding under Sections 6 to 22 of this Act and is unrepresented at any time shall be entitled to the same rights of representation as a needy person under subsection (1) of this section.***

➔Section 24. Whereas protecting the safety of the people of Kentucky is an immediate and compelling need, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by Governor April 1, 2021.**